

# *Right-of-Way Program*

## *Manual*

Revised December 2018

Wyoming  
Department of  
Transportation







# Right-of-Way Manual

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# Part I

## Introduction

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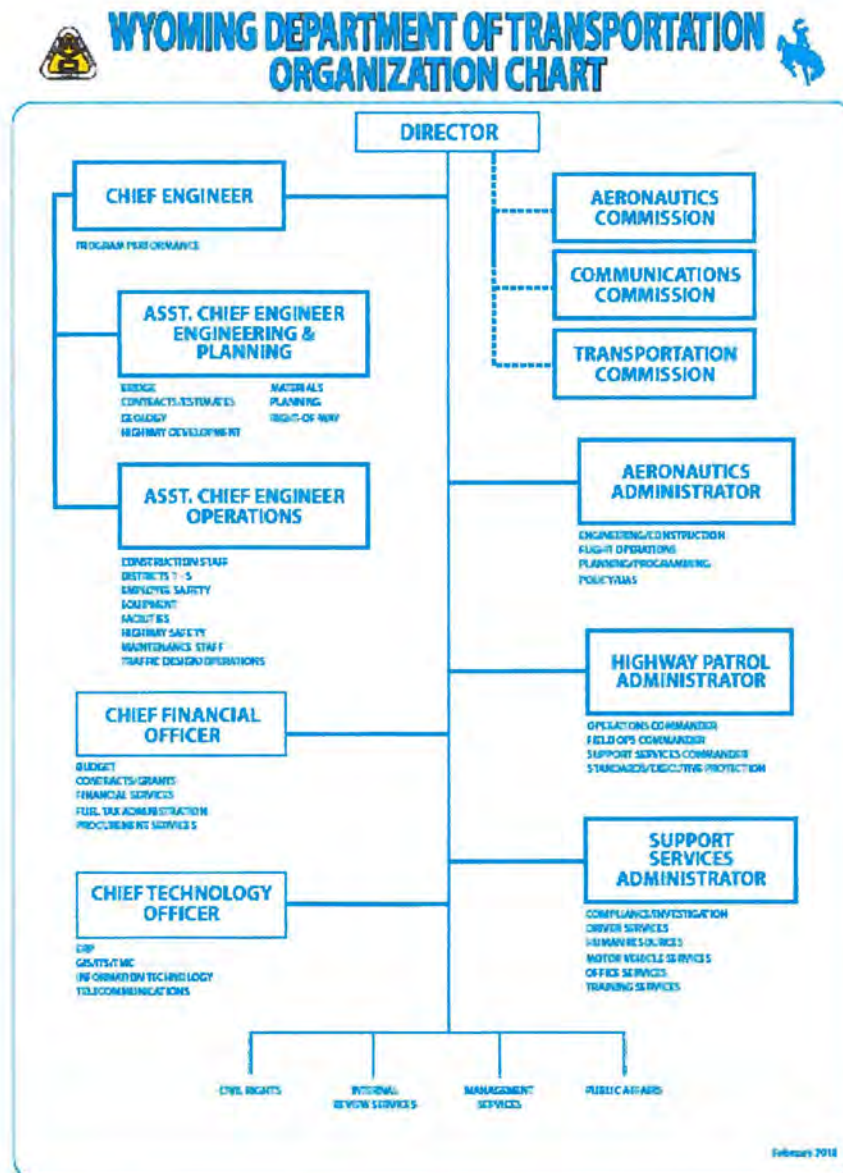
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## Introduction

### A. PURPOSE OF MANUAL

The purpose of the Right-of-Way Manual is to assure uniform practices within the Right-of-Way Program of the Wyoming Department of Transportation in conformity with established, laws, rules, regulations and policies.

The Right-of-Way Program, under the direction of the Lands Management Administrator, functions under the Assistant Chief Engineer, Engineering and Planning who answers to the Chief Engineer. The Lands Management Administrator and the Chief Engineer are both “at will positions” serving at the will of the Director which is also an “at will position” serving at the will of the Governor as shown in the organizational chart below:



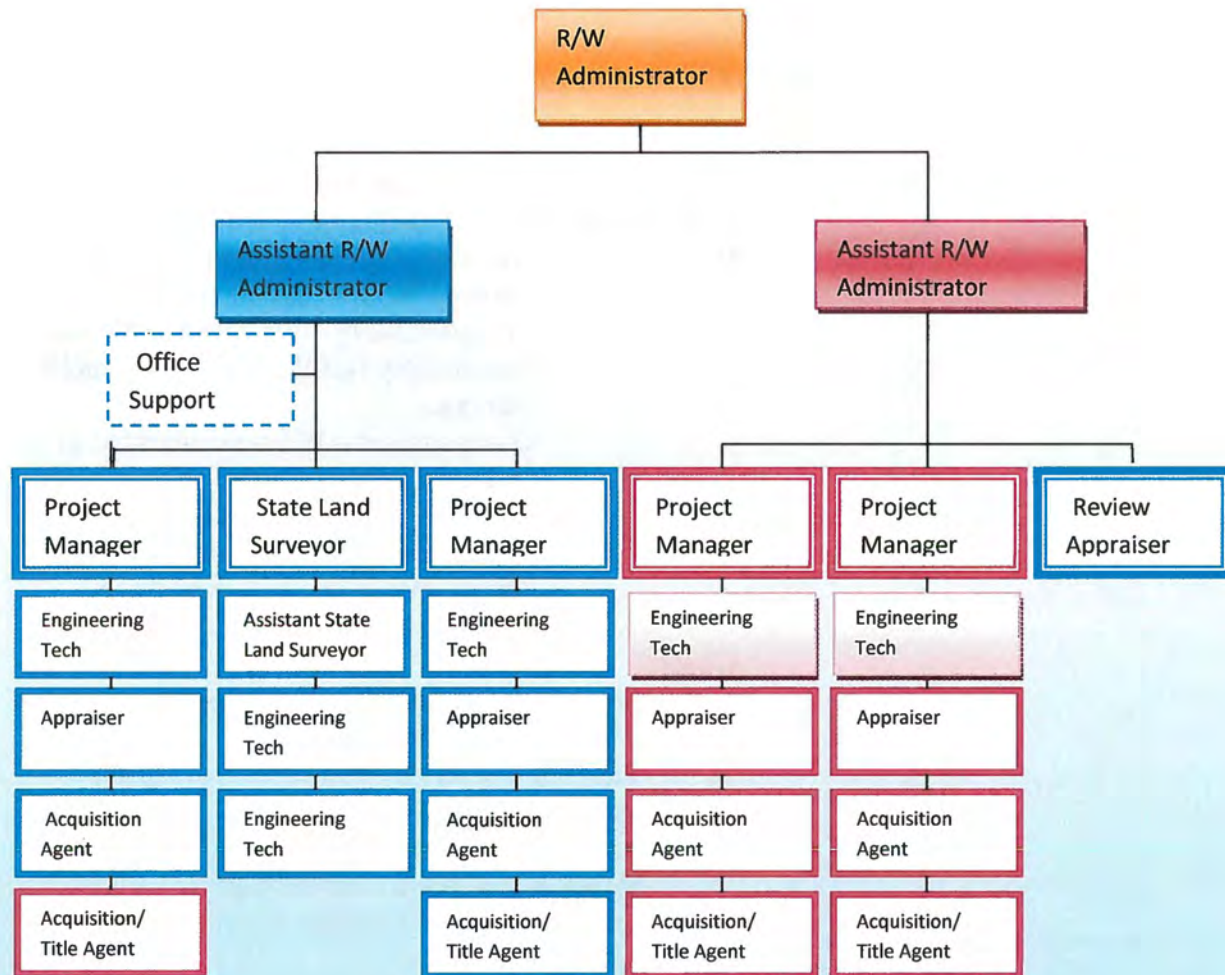


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R/W Organizational Chart 2018



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### A. PURPOSE OF MANUAL

This Manual is intended to present the processes and procedures for the various functions of the Right-of-Way Program in its efforts to meet the Mission and Goals of the Wyoming Transportation Department. We have made the contents detailed enough to enable this Manual to function as a training tool and day to day guide for Right-of-Way staff members.

#### WYDOT Mission, Vision and Goals (Basic Policy 1)

**Mission Statement:** To provide a safe, high quality, and efficient transportation system.

**Vision Statement:** Excellence in Transportation

**Values:** *Honesty* – We are honest in our dealings with each other and the public.

*Accountability* – We consistently and responsibly fulfill our duties as public servants.

*Commitment* – We are committed to achieving our mission.

*Respect* – We respectfully consider the opinions and values of others.

*Innovation* – We seek excellence through innovation and creativity.

**Goals:**

- Improve safety on the state transportation system.
- Serve our customers.
- Take Care of all physical aspects of the state transportation system.
- Improve agency efficiency and effectiveness.
- Develop and care for our people.
- Exercise good stewardship of our resources.

#### RIGHT OF WAY MISSION:

**"To provide professional right-of-way and real estate services while balancing public and private interests."**



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### B. RIGHT-OF-WAY PROGRAM OVERVIEW

#### 1. GENERAL FUNCTIONS AND RESPONSIBILITIES

##### **GENERAL FUNCTIONS AND RESPONSIBILITIES:**

The following is a list of the general functions and responsibilities of the Right of Way Program. This Manual is divided into sections. Each Section identifies and further explains the functions and responsibilities of this program.

- 1: Acquisition of Right of Way
- 2: Other Acquisitions
- 3: Property Sales, Relinquishments, & Abandonments
- 4: Leases
- 5: Research
- 6: Property Management
- 7: Employee Relocation

#### 2. LAWS, RULES AND REGULATIONS

##### **LAWS, RULES AND REGULATIONS:**

Several laws, rules, regulations and policies impact the day to day operations of the Right of Way Program. These will be referenced when they apply to other areas of the Manual. A Summary of the various laws and regulations impacting the Right-of-Way Program is presented below:

- VIII. U.S. Constitution
  - A. 5th Amendment
- IX. Wyoming State Constitution
  - A. 97-1-006 Due Process
  - B. 97-1-033 Compensation
- X. United States Statutes
  - A. Uniform Act
- XI. Wyoming State Statutes
  - A. Title 1, Chapter 26, Eminent Domain
  - B. Title 24, Highways
  - C. Title 23, Chapter 19, Junkyards
  - D. Title 6, Chapter 6, Encroachments
  - E. Title 35, Chapter 10, Encroachments
  - F. Title 37, Chapter 2, Railroad Separations
- XII. Federal Rules
  - A. 49 Code of Federal Regulation, Part 24 (R/W Acquisition & Relocation)
  - B. 23 Code of Federal Regulation, Parts 710 - 740 (Department of Transportation)
- XIII. Wyoming Department of Transportation Rules
  - A. Chapter 2, Railroads
  - B. Chapter 4, Relocation

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- C. Chapter 5, Abandonments
- D. Chapter 12, Junkyard
- E. Chapter 16, Outdoor Advertising
- F. Chapter 24, Encroachments
- G. Chapter 25, Excess Lands
- XIV. Wyoming Department of Transportation Policy
  - A. Survey
    - 1. 18-11 Survey Oversight Committee
    - 2. 18-12 Land Surveys
    - 3. 18-13 Monuments
  - B. Right of Way
    - 1. 19-1 Acquisition Settlements
    - 2. 19-2 Excess Land
    - 3. 19-3 Encroachments
    - 4. 19-5 Abandonments
    - 5. 19-6 Property Acquisition
  - C. Relocation
    - 1. 34-1 Relocation

### POSITION RESPONSIBILITIES

**POSITION RESPONSIBILITIES:** The following is a summary of the responsibilities of the various positions within the Right-of-Way Program:

#### **Lands Management Program Manager II (Right of Way Administrator) (LRLM13):**

This position is responsible for the operation and supervision of the program including the following: Manages, directs and controls the Right of Way Program's operations through the managers and have ultimate responsibility for all offers and payments to landowners. Provides vision and leadership for the management staff through formal and informal meetings and general guidelines on the overall philosophy of the program while ensuring these are in line with the philosophy of the Department and State leadership. Makes decisions related to very complicated and high value land acquisition or real estate management. Authorizes offers and payments to landowners. Handles political issues impacting the Right of Way Program. Communicate with Department Staff, the Transportation Commission, Governor's Office staff as well as legislators on issues associated with landowner's rights, eminent domain laws, relocation laws and federal government requirements. Attends Legislative hearings to provide testimony on potential law changes. Attends Commission meetings to provide information and answer questions regarding any right of way issues. Responds to or meets with the Governor's staff to answer questions and discuss landowner issues. Provides advisory services for

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other local, state and federal agencies as well as private landowners on the condemnation process in Wyoming. Answers questions from many other entities and individuals about eminent domain in Wyoming. Advises government agencies on decisions related to acquisition under the threat of condemnation. Provides advisory services for other local, state and federal agencies on the acquisition process using federal funds under the Federal Uniform Act. Answers questions and provides advice to government agencies using federal funds to acquire property. Reviews, monitors, and controls amounts expended from the budget to assure that expenditures do not exceed funds available. Attends management staff meetings; testifies in court as official witness.

Extra responsibilities outside of the program include sitting on the Access Committee, Accident Review Committee, and the Research Advisory Committee. This position currently supervises two LRLM11s.

### **Lands Management Program Manager I (Assistant Administrator) (LRLM11):**

This position is responsible for the operation and supervision of the program when the Administrator is out of the office. This position primarily handles the right of way certifications, and deals with projects through the acquisition phase. It also handles issues with public meetings, local public agencies, excess lands, relocation, state land acquisitions, federal land acquisitions, research, property management, Outdoor Advertising, Leases and Employee Relocation. The Assistant Administrator directly supervises two Project Managers, the State Land Surveyor and an Administrative Assistant. Other duties include, but are not limited to the following:

Supervises, directs and controls Project Managers in the Right of Way Program who direct and oversee all functions related to right-of-way engineering, title examination, State and Federal land procurement, appraisal, acquisition, and management of removal of improvements and sale of excess lands while assuring compliance with Federal and State Eminent Domain Statutes. Responsible for writing various lease contracts, extensions and amendments for a variety of programs. Supervises, directs and controls the State Land Surveyor who is responsible for all land survey Statewide. Makes final decisions on complicated and high dollar value landowner issues, when Project Managers are unable to resolve at their level. Supervises, directs and controls

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Administrative Staff. Guides and supervises the Right of Way payments process. Guides and supervises the processing of access permits. Controls the process of securing Right of Way funding through FHWA on Federal Aid Projects. Certifies, by letter, that Right of Way is clear per Federal Regulation.

### **Lands Management Program Manager I (Right of Way Manager) (LRLM11):**

This position is responsible for the operation and supervision of the program when the Administrator is out of the office. This position handles the Project Control System meetings and follows projects from conception to the acquisition phase. It also handles, AFE requests, project funding issues, appraisal issues, Right of Way Engineering issues, program equipment such as cars and computers, imaging, and project closing. The Right of Way Manager directly supervises two Project Managers, the Review Appraiser and an Administrative Assistant. Other duties include, but are not limited to the following:

Supervises, directs and controls Project Managers in the Right of Way Program who direct and oversee all functions related to right-of-way engineering, title examination, State and Federal land procurement, appraisal, acquisition, and management of removal of improvements and sale of excess lands while assuring compliance with Federal and State Eminent Domain Statutes. Responsible for writing various lease contracts, extensions and amendments for a variety of programs. Supervises, directs and controls the State Land Surveyor who is responsible for all land survey Statewide. Makes final decisions on complicated and high dollar value landowner issues, when Project Managers are unable to resolve at their level. Supervises, directs and controls Administrative Staff. Guides and supervises the Right of Way payments process. Guides and supervises the processing of access permits. Controls the process of securing Right of Way funding through FHWA on Federal Aid Projects. Certifies, by letter, that Right of Way is clear per Federal Regulation.

### **Lands Management Program Supervisor (Project Manager) (LRLM10):**

Supervise and manage a production unit of the Right of Way Program. Direct and oversee all functions related to right-of-way engineering, title examination, State and Federal land procurement, appraisal, private land acquisition, railroad



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acquisition, and management of removal of improvements and sale of excess lands while assuring compliance with Federal and State Eminent Domain Statutes. Assign, prioritize and monitor section work production. Preside over section work production activities and meetings and coordinate legal issues with the Wyoming Attorney General. Assign and monitor R/W projects to assure all necessary real estate is secured prior to project letting. This includes the Engineering, Appraisal, Acquisition, and Property Management disciplines. Direct supervision of Engineering Technician, Appraiser, Acquisition Agent, and Title Examiner/Relocation personnel. The functions include: hiring, firing, training, meeting contract deadlines, writing administrative procedures, appraising properties, negotiating, preparing legal documents, hiring and supervising fee appraisers and acquisition consultants, court preparation, problem solving, and personnel supervision. Work with the Right of Way Assistant Administrators, District Engineers, Attorney General, and other WYDOT program managers with project flow. Attend developmental program and organizational meetings. Research and develop innovative methods, processes and standards as related to position responsibilities. Provide internal and external technical and professional guidance for the entire right of way acquisition process. Assure compliance with State and Federal laws, rules and regulations. Ensure all paper work is in compliance with State and Federal guidelines. Review and authorize parcels for payment procedures. Determine the type of instrument to be used in the purchase of right of way. Attend meetings with WYDOT, the Attorney General's office, Cities, Counties, and other State and Federal agencies. Oversee the close out of projects once construction is complete, to ensure conveyance and other necessary documents are recorded and stored correctly in the WYDOT records department. Close out budget accounts for each project and notify necessary departments that project is closed. Research, develop and support innovative processes and standards as related to all phases of right of way acquisition and property management. Develop and implement creative use of teams to shorten overall project time. Cross train employees in different disciplines for greater efficiency and use of manpower. Assist in the appraisal, acquisition, engineering, title or property management/relocation when needed to meet deadlines. Process and analyze time based reports to determine the overall effectiveness of the individual employee and team goals. Keep forms, manuals and software updated to meet current standards. Attend project inspections,



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reviews, program meetings and organizational meetings. Review projects with various field and agency staff internally and outside of the Wyoming Department of Transportation. Meet with WYDOT Staff as well as other officials in regard to the status and issues of projects assigned to the work unit. Responsible for producing Right of Way inspection reports based on field reviews of projects. Work closely with the Project Development Program, Resident Engineers and other local, state and federal agencies and departments to ensure reasonable landowner requests are reviewed. Attend PCS work review meetings to keep projects on track, and update PCS with the status of Right-of-Way acquisition process. Coordinate parcels requiring Eminent Domain proceedings with the State Attorney office. Assure all necessary legal documents, payments, and internal documentation is in order to submit to the Attorney General's office for condemnation proceedings. Oversee the creation of necessary legal documents for the Transportation Commission to authorize the use of Eminent Domain to acquire property. Testify in court as needed as an expert witness. Comply with court's decision and complete the necessary paper work to close the parcel. This position supervises the following positions: TNRW07, LRLM07, LRLM08 and LRLM09.

### **Lands Management Specialist II (LRLM07), Senior Lands Management Specialist I (LRLM08), & Lands Management Program Analyst (LRLM09)**

The Lands Management positions work at varying levels of oversight and complexity, starting with the most oversight and least complexity at the LRLM07 level and moving toward the least oversight and most complexity of assignments at the LRLM09 level.

Individuals in the entry level positions are primarily responsible for the appraisal, negotiation of acquisitions and property management functions dealing with everything from excess lands to employee relocation. Generally appraisals would be Valuation Waivers which would be uncomplicated. Positions with more knowledge, skills and abilities are responsible for one or more main functions such as appraisal, negotiation, property management or right-of-way engineering. This position also is responsible for all aspects of right-of-way acquisition with a working knowledge of all of the functions of the Right of Way Program. These individuals also serve as trainers and lead workers. The appraisal function includes the appraisal of real estate and signs associated with

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any project including new construction project, reconstruction projects, shop sites, rest areas, information centers, and airport easements. These positions also provide value estimates for AFE requests and alignment decisions. This position includes, but not limited to the following:

Prepares written appraisals on projects that require applying theory and techniques of the Direct Sales, Cost, and Income Approaches to value. Gathers and analyzes data on market, income, location, age, condition and other relevant factors as basis for real estate appraisals, special use leases, temporary use permits, and easements. Inspects land, property, companies and appraises its value, basing value on features, present use, potential use, market and income trends and condition. Reads and interprets aerial photographs, maps, soil surveys, production reports and land use patterns in developing a basis for appraisal of land; prepares descriptive maps and plats as required. Inspects land in field and compiles detailed description of land and facilities on the land. Researches, analyzes and interprets technical and legal documents such as title commitments, deeds, abstracts, and other land-related or financial documents. Cooperates and networks with other agencies, private owners, and local, State, and Federal governments as basis for determinations. Conducts surveys on state trust lands, private companies in order to determine use and utilization. Prepares and submits written appraisals. Researches county records and compiles ownership information including ownership documentation, tax assessments, mortgages, liens and other public information regarding the owner's property. Determines merchantability. Compiles full title abstracts with written opinions of ownership as needed. Constructs title books/reports for use by various positions/departments. Acquires Right of Way. Relocates businesses, farms, non-profit organizations, tenants and individuals caused by the acquisition of property in accordance with the Federal Uniform Relocation Assistance Act. May have to dispose of excess lands and rights-of-way no longer needed for state purposes. Testifies in court regarding appraisals. Leases property for state agencies. Negotiates with landowner's to acquire highway right-of-way by fee simple or easement interest.

### **Right of Way Specialist (TNRW07):**

These positions are fully performing specialists. They have a specialized level of technical experience. These individuals are involved in providing technical support with right of way,

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plan development, coordination for appraisal, negotiation, and property management. Individuals in these positions may provide work direction and guidance to a small number of employees. They may be responsible for staying within an assigned budget.

The listed functions are illustrative only and are not intended to describe every function which may be performed in the job level.

Works on concurrent, multiple, complex projects. Research, review and compilation of technical data s it relates to Right-of-Way design and plan development. Write land descriptions, maps, plots and exhibits necessary for legal property conveyances. Initiates adjustment agreements in conjunction with Right-of-Way utility plan notifications. Verify accuracy of title work, confirm ownership records, and ensure mathematical accuracy is correct by researching public and private records. Analyzes, summaries and/or review data, report's findings, interprets results and/or makes recommendations. Discusses results, findings and/or recommendations with appropriate parties. Provides consultation, makes recommendations, gives appropriate advice, and/or facilitates decisions. Prepare deficiency reports, confirm bearings from monuments, confirm all coordinates in geopak are accurate and that curve data is correct. Work closely with land surveyor - making recommendations and corrections for Engineer stamp on plans. Write the legal descriptions of all types property being purchased. Work in design software, ensuring that calculations are accurate and that all information is correct. Create warranty deed, wetland commitment agreement, descriptions, and exhibits for purchase of property from land owners and for abandonment process for Wyoming Department of Transportation, ensuring that legal and all ownership is accurate and traceable. Creates the legal for other sites used by WYDOT as well, such as tower sites, communication sites, easements, etc. Prepare parcel summary for the appraiser and the negotiator which includes everything on the property as well as permits, construction permits, etc. Prepare eminent domain paperwork. Responsible for everything needed in the acquisition of property for WYDOT. May testify in court about the legal description. Research legal for each purchase.

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### **Review Appraiser (LRRP10):**

This position is responsible for the review of all appraisals and waiver valuations. Review all staff and fee appraisers' appraisal reports and waiver valuations to make sure they have sound logic, have applied appropriate and accepted appraisal methodology, conform to USPAP, and meet all State and Federal eminent domain and condemnation appraisal requirements. Authorize the amount of money, for all acquisitions, to be paid to landowners as fair market value in accordance with State and Federal Laws. Plan, organize and supervise field reviews on all appraisals received to determine if they meet department guidelines and have applied acceptable appraisal standards and techniques. Prepare necessary supporting documentation regarding appraisal reviews. Includes condemnation appraisals, WYDOT facilities appraisals, WYDOT Excess land Appraisals, Employee Relocation Appraisals, and various other types of appraisals as needed. May appear as an expert witness in court proceedings. Advise and consult with acquisition agents on the legitimacy of landowner requests and appraisals which indicate larger payments than originally authorized. Write narrative review reports explaining why landowners' appraisals, opinions and requests are or are not acceptable and whether or not they justify an increase in the authorized amount. Authorize payments above that supported by the original appraisal when new data or errors are discovered. New authorization must be supported by sound appraisal theory and techniques and meet department, State and Federal guidelines. Assist in the supervision and training of new appraisers, including the training of acquisition agents that are cross training into appraisal and submitting waiver valuations. Assist the Project manager in directing, supervising and evaluating staff appraisers. Hire and manage consultant fee appraisers. Complete Right-of-Way cost estimates for future projects. Perform independent appraisals as needed. Advise Right-of-Way Management team on valuation issues. Consult and provide appraisal review services for city and county governments regarding airport expansion projects and road construction projects. Review all appraisal reports to make sure they have sound logic, have applied appropriate and accepted appraisal methodology, conform to USPAP, and meet all State and Federal eminent domain/condemnation appraisal requirements Plan, organize and supervise field reviews on all appraisals received to determine if they meet FAA guidelines and have applied acceptable appraisal standards and techniques. Prepare necessary supporting documentation regarding the appraisal

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review. Maintain a thorough knowledge and expertise of all Federal Highway

Administration requirements (23 & 49 CFR), Uniform Standards of Professional Appraisal Practice (USPAP), Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book), Land Acquisition and Relocation Assistance for Airport Projects (FAA Order 5100.37B), Department Operating Policy, State Laws/particular Eminent Domain Law, and State Appraiser Certification Requirements. Complete Continued Education Requirements by attending classes and seminars to keep abreast of current industry standards and changes.

### **Land Surveyor (State Land Surveyor) (LRSU11):**

This individual is responsible for performing all land-surveying activities and program support. This position will additionally be responsible for a department in their agency or responsible for oversight of consultant surveys. This position is responsible for staying within an assigned budget and may supervise a small number of administrative, technical and/or professional employees. The listed functions are illustrative only and are not intended to describe every function which may be performed in the job level. Does everything that 10 level does and additionally: Conduct employee evaluations and performance appraisals Answers technical questions posed by other programs. Conducts technical reviews and determine technical ratings. Resolves conflicts related to writing legal descriptions and entitlement. Prepares court presentations and serve as an expert witness. Conducts employee performance appraisals and provide professional development. Prepares and records final documents. Researches and maintains historical survey information and legal documents. Devises a timetable, schedule or agenda for achievement of work objectives, completion of projects or development of changes in work processes. Plans for effective use of material and personal resources in a division. Explains agency policies, procedures and practices to Board of Land Commissioners, individuals or groups. Reviews, monitors, and controls amounts expended from the budget to assure that expenditures do not exceed funds available. Analyze, interpret, evaluate, and make professional decisions in order to make correct corner, boundary and property ownership determinations. Establish a monument of right-of-way boundaries.

This position currently supervises two TNRW09's and one TNRW07 positions.



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### **Senior Design Specialist (Assistant Land Surveyor)**

**(TNRW09):** This position is responsible for assisting the State Land Surveyor in his functions. This includes reviewing and checking right of way engineering work products.

### **Office Support Specialist I (Administrative Assistant)**

**(BAAS05):** The Right of Way Program has two Administrative Assistant positions. These positions are responsible for the clerical support of entire program staff. In addition to clerical support, first line telephone support is required of these positions. Other responsibilities include payment processing, maintenance of access permits, file room, supplies, and conference room scheduling. The listed functions are illustrative only and are not intended to describe every function which may be performed in the job level.) Acts as a specialist in assigned program area, performing the most complex technical duties, which may include legal secretary responsibilities. Performs, leads, or supervises a wide variety of moderate to complex program and operational support duties. Serves as subject matter expert. Applies knowledge of programmatic and administrative requirements. Resolves problems and makes recommendations for improvements. Performs specialized tasks and coordinates general office functions such as budget, legal work, administrative, property management, travel arrangements, procurement, personnel, information systems or fiscal duties and provide training to staff. Conducts research, troubleshoots office systems or procedures for efficiency and accuracy; collects, organizes and details in writing the required documentation in answering queries. Coordinates and/or acts as a liaison between agency or work unit and other agencies. Processes monthly electronic filing; corresponds with operators regarding production filing; sets up new operators for electronic filing. Maintains financial or other records; verifies statistical reports for accuracy and completeness; assists with publishing statistical reports. Assists in budget development, analysis, interpretation and recommendation; including handling deposits and monetary transactions and/or perform audit functions. Accurately maintains agency files and records; inputs data into databases. Prepares reports; verifies computer systems, databases and coded data for accuracy. Responds verbally and/or in writing to requests for information. Screens and corrects documents for procedural compliance; evaluates information for accuracy. Provides customer service to customers, clients and staff and acts as a resource and explains rules and procedures to co-workers, customers and/or clients.

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Responsible for inventory assets. Performs administrative duties requiring considerable judgment, which may involve fiscal, human resources, or other specific program areas. Resolves some light computer issues/concerns. Greets, screens visitors, interviews customers/clients to evaluate and determine needs. Refers customers to appropriate supportive service agencies. Tracks information. Maintains and reviews case files to determine actions to be taken. Evaluates information for accuracy. Assures procurement process is managed appropriately and according to established procedures. Involves some processing/interpreting of legal documents.

# Part II

## Acquisition of Right of Way

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# Part II:

## Acquisition of Right of Way

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### A. GENERAL OVERVIEW

#### 1. ACQUISITION OF RIGHT OF WAY

##### ACQUISITION OF RIGHT OF WAY:

The purpose of these guidelines is to outline the policies and procedures to be followed in complying with applicable WYDOT, State, and Federal requirements concerning right-of-way acquisition.

Federally funded project activities of a local agency, such as a county, city or town, are monitored for FHWA by Local Programs. The Right-of-Way Administrator and Local Agency Coordinators monitor the acquisition and certification of right of way. To qualify to acquire right-of-way, an agency must submit and have approved right-of-way procedures prior to starting any acquisition activities, and follow the procedures and guidelines in this manual and in the WYDOT LPA manual. Local agencies should consult 23 CFR Part 710.201(d) prior to undertaking a federally funded project.

It is the policy of the Wyoming Department of Transportation that every reasonable effort be made to acquire expeditiously real property by negotiation (See Basic Policy 19.) Real property with an estimated value over \$10,000 shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

Before initiation of negotiations for real property, an amount shall be established which is estimated to be just compensation and such amount shall be offered for the property. In no event shall the amount be less than the approved appraisal of the fair market value of the property. Any decrease or increase in the fair market value of real property, prior to the date of valuation, caused by the public improvement for which the property is acquired, or by the likelihood the property would be acquired for such improvement, other than that due to physical deterioration with the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of and a summary of the basis for the amount estimated to be just compensation. The estimate of just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not

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## Acquisition of Right of Way

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less than the approved appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding of such property.

It is further policy that the construction or development of a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice of the date by which such move is required. If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

In no event shall the time of condemnation be advanced, or acquisition or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

In the case of where a landowner requests an acquisition prior to the completion of right-of-way plans and the normal acquisition process, the request will be reviewed by the Lands Management Administrator with the proper design and field engineers. If it is determined that the advanced acquisition is appropriate the landowner will be required to sign a letter indicating that if a value cannot be arrived at through negotiations, the Department will stop the acquisition process until such time as the project design is complete and the normal acquisition process begins.

If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

And finally, if the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

Protective buying and hardship acquisitions are allowed under 23 CFR Part 710.503. WYDOT may acquire property prior to final environmental approval and request FHWA reimbursement in these situations. The following is the

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## Acquisition of Right of Way

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### 2. ADVANCE ACQUISITION

procedure to be followed by the Right of Way program when these types of acquisitions are to be made.

#### **ADVANCE ACQUISITION:**

Federal regulations provide for completion of advance acquisition under two options: Protective Buying and Hardship Acquisition. Prior to final environmental approval of a transportation project, WYDOT may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent the imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition). Both Options must meet these conditions:

1. The project must be included in the currently approved STIP.
2. The state must have complied with the public improvement requirements addressed in federal regulations at 23 CFR parts 450 and 771.
3. If applicable, the Section 4(f) determination must have been made on the properties in question.
4. If applicable, the Section 106 requirements of the National Historic Preservation Act must have been completed on these properties.
5. For Federally-funded projects, FHWA approval for doing a protective or hardship acquisition is required.

#### **PROTECTIVE BUYING:**

Protective Buying the Lands Management Administrator will review information provided by Right of Way staff to determine if the following conditions are met:

- 1: The Department can clearly demonstrate that development of a property to be acquired is imminent and such development would limit future transportation choices. (Significant increases in cost may be considered as an element justifying a protective purchase)
- 2: The property to be acquired is part of a project included in WYDOT's current STIP.
- 3: WYDOT has complied with applicable public involvement requirements in 23 CFR parts 450 and 771.
- 4: A determination has been completed for any property subject to the provisions of 23 U.S.C. 138.

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## Acquisition of Right of Way

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- 5: Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

If all these conditions are met the Lands Management Administrator will request FHWA concurrence in the advanced acquisition of the property based on the fact it is protective buying. Upon concurrence from FHWA the standard procedures for an advanced acquisition will be followed, including a letter signed by the landowner indicating that if an agreement cannot be reached on value WYDOT will discontinue acquisition procedures until Right of Way and Utility Plans are issued. If FHWA funding is not involved FHWA concurrence will not be requested.

### **HARDSHIP ACQUISITIONS:**

The Lands Management Administrator will review information provided by Right of Way staff to determine if the following conditions are met:

- 1: The property owner's written submission clearly demonstrates that a hardship acquisition is justified based on the fact that for health, safety or financial reasons, remaining in the property poses an undue hardship compared to others, and the owners are unable to sell the property, at fair market value or within a time period typical for properties in the area because of the impending project.
- 2: The property to be acquired is part of a project included in WYDOT's current STIP.
- 3: WYDOT has complied with applicable public involvement requirements in 23 CFR parts 450 and 771.
- 4: A determination has been completed for any property subject to the provisions of 23 U.S.C. 138.
- 5: Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

If all these conditions are met the Lands Management Administrator will request FHWA concurrence in the hardship acquisition of the property. Upon concurrence from FHWA the standard procedures for an advanced acquisition will be followed, including a letter signed by the landowner indicating that if an agreement cannot be reached on value WYDOT will discontinue acquisition procedures until Right of Way and Utility Plans are issued. If the FHWA funding is not involved FHWA concurrence will not be requested. In any case the advanced acquisition of any property shall not influence the environmental assessment of a project,



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## Acquisition of Right of Way

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### 3. ACQUISITION OF INTERESTS IN RIGHTS-OF-WAY

including the decision relative to the need to construct the project or selection of a specific location.

#### **ACQUISITION OF INTERESTS IN RIGHTS-OF-WAY**

It is the policy of the Wyoming Department of Transportation to acquire fee simple interests when possible in the surface estate for all rights-of-way acquired by the Department.

All titles acquired by the Department to any real property, or interests therein, are vested in The Transportation Commission of Wyoming.

Fee simple interest is taken when title in fee simple can be obtained. A lesser interest is taken only when a greater interest cannot be obtained or is not desired.

### 4. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

#### **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

It is the policy of the Wyoming Department of Transportation to assure all persons are given equal consideration and treatment in both its right-of-way acquisition and relocation assistance programs without regard to their sex, creed, race, color, or national origin. No person, on the grounds of sex, creed, race, color, or national origin, shall be excluded from participation in, denied the benefits of, or subjected to discrimination under any of the Wyoming Department of Transportation's right-of-way programs.

#### **Responsibility**

##### **Division**

The Right-of-Way Program organizational status, function, and responsibility are outlined in the Wyoming Department of Transportation's Organization Chart on page 4, and the Right-of-Way Program Organization Chart on page 5.

Formal assignments and authorizations originate from the office of the Assistant Chief Engineer, Planning and Engineering. The Right-of-Way Program is responsible for the acquisition of all highway rights-of-way and other real property for the Wyoming Department of Transportation and for coordination and liaison with the Legal Division concerning real properties referred for condemnation.

Within the scope of the Engineering and Planning branch's authority, the Right-of-Way Program may develop and maintain its own internal and external liaison and

# Part II:

## Acquisition of Right of Way

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coordination with other Programs, both within and outside the structure of the Planning and Engineering organization.

### **Individual**

The Lands Management Administrator, his delegated assistants and the designated individuals under their supervision, are responsible for all acquisition and relocation matters.

The Right-of-Way Project Managers are responsible to the Lands Management Administrator for the acquisition and clearance of all rights-of-way for interstate, primary, and reconstructed secondary highways and for other real properties, or interests therein, for the Transportation Commission of Wyoming.

The Project Managers also secure detour, borrow, slope, irrigation, drainage, and such other construction permits when shown on Right-of-way plans or when requested through proper authority.

### **Categories**

Ordinarily, most routine appraisals and acquisitions will be conducted by staff personnel with assignments initiating from the immediate supervisor in charge of the Production Crew.

The above excepts and excludes condemnation matters which are authorized by the Lands Management Administrator and prosecuted by the Special Assistant Attorney General in charge of the Legal Division.

### **Personnel**

#### **Limitations and Restrictions**

It is a rule that personnel who have any interest in a property, or relationship to the owner or owners or their legal representatives, are prohibited from conducting appraisals or acquisition services for any such property.

It is an established requirement that concerned personnel notify their supervisor when any parcels in the above category are inadvertently assigned, in order that reassignment can be accomplished before any appraisals or acquisition services have taken place.

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It is also an established requirement that all appraisers and negotiators directly involved in the appraisal and acquisition execute certificates upon completion of their individual assignments. These are conflict-of-interest certificates which are contained in Part VIII Appendices and are identified as follows: (1) Certificate of Appraiser Form R/W 26A, (2) Review & Authorization Form R/W 57 and (3) Certification of Acquisition Agent Form R/W 60.

### **Required Qualifications**

The general required qualifications for personnel conducting appraisals, negotiations, relocation assistance, engineering, property management, etc., are contained in Human Resource's approved job descriptions for each position. These job descriptions are listed in the front of this manual.

Personnel entrusted with the responsibility of appraising or negotiating must be fully conversant with the several phases of right-of-way acquisition. They must have the qualities of salesmanship and they must be highly capable in the field of public relations.

In addition, the successful appraiser and negotiator must be so conversant with right-of-way purchase plans that he can intelligently and simply explain the engineering, legal, and appraisal factors of the property which is being acquired.

### **Clothing and Appearance**

The impression or image the public forms of the State, the Wyoming Department of Transportation, and the Right-of-Way Program is influenced by the appraiser's or negotiator's appearance. As a representative of the State, it is expected appraisers and acquisition agents will present a neat and clean appearance and will dress conservatively according to accepted business practices.

## 5. USE OF AUTOMOBILES

### **USE OF AUTOMOBILES**

#### **State**

State owned cars assigned to the Right-of-Way Program are checked out to Right-of-Way personnel by the Administrative Assistant through email. The Administrative Assistant may inquire about the request in order to match a vehicle to the needs of the trip. Vehicles are assigned in order to maximize the use and maintain a balance to aid in the rotation of vehicles.

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## Acquisition of Right of Way

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Right-of-Way is assigned only a limited number of cars. It is therefore necessary at times to use cars from the Wyoming Department of Transportation's motor pool to supplement the assigned cars. Vehicles from the Car Pool can be checked out through the Equipment Office.

When a trip is completed, the ending mileage is to be recorded and returned to the Administrative Assistant. The vehicle and mileage used is to be reported on the individual's weekly time sheet.

State cars are to be used only for official business and are to be serviced at state shops. Firearms are not permitted to be carried in State cars. These directives are a part of the administrative memorandums from the executive staff which govern the use of state owned cars. Right-of-Way personnel are to familiarize themselves with these and other memoranda from the executive staff.

### Private Cars

Privately owned cars may be used for official travel subject to prior authorization by the Lands Management Administrator. SEMM 1-6 governs the use of private cars for official travel. Reimbursement for such authorized mileage is requested on Form A-39, Affidavit, Use of Private Automobile for Official Travel. This form is contained in part VIII Appendices.

### Out-of-State Travel

Travel outside the State of more than 150 miles or with an overnight stay must have prior approval. Form A-33, Request for Authority for Out-of-State Travel is used for this purpose. Travel may be authorized by railroad, State car, private car, commercial plane, or Department plane. This form is contained in Part VIII Appendices.

## 6. USE OF STATE PLANE

### USE OF STATE PLANE

The Transportation Department plane may be used for official travel when available, subject to prior authorization. Form AV-1 is executed and signed by the Lands Management Administrator and forwarded to the Department's Aeronautics staff for confirmation of the flight. Use of the state plane is governed by Operating Policy 17-6.

## 7. HOURS OF WORK

### HOURS OF WORK

The standard office work week is currently 40 hours from 8:00 a.m. to 5:00 p.m. Monday through Friday with an hour

# Part II:

## Acquisition of Right of Way

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off for lunch periods. Staff may also take ½ hour for lunch and leave at 4:30 p.m.

### Field

Hours of work while in the field on business assignment are governed by appointments most convenient to property owners and other related business contracts. This may entail working odd hours and utilizing evening appointments. Appointment schedules should be worked out in advance of personal contacts for the orderly progression of the work. Working on Saturdays, Sundays, or holidays is subject to prior authorization by the Lands Management Administrator.

Administrative memorandums and Personnel Commission rules and regulations govern compensatory time for overtime and work on holidays.

## 8. TRAVEL EXPENSES

### TRAVEL EXPENSES

All actual travel expenses for lodging, meals, and other business expenses while on official travel by Right-of-Way Program personnel are reimbursed by the Wyoming Department of Transportation.

Personnel are required to pay for these services out-of-pocket and must submit Form A-40, Affidavit, Personal Expenses on Official Business, for reimbursement. This form is contained in Part VIII Appendices.

Business expenses covering recording fees and other miscellaneous items other than meals and lodging must be supported by receipts and attached to the Affidavit. As a matter of policy and in the interest of good public relations, Right-of-Way personnel may take property owners and others with whom they are dealing out to lunch or dinner as the circumstances or occasion merits.

The Transportation Department furnishes personalized business cards for all administrative, appraisal, acquisition, and relocation personnel. The cards are intended primarily for the introductory phases of the right-of-way process. They are also for official identification and to assist property owners or others in their follow-up contacts. The appraiser and acquisition agent are quite often the property owner's only official contact with the Transportation Department. It is reassuring to the landowner and a businesslike practice for them to properly identify themselves to assure their



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## Acquisition of Right of Way

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availability to answer questions during the right-of-way process.

### **Policy: Acceptance of Gratuities**

Transportation Commission policy prohibits any employee of the Transportation Department to do work for or receive compensation from any contractor, supplier, or businessman doing business or working with the Department.

Right-of-Way Program policy further prohibits employees from accepting gratuities or favors, which might have bearing or influence on a property settlement, from any persons or firms doing business with the Department.

These policies are not meant to preclude the acceptance of social amenities proffered as acts of hospitality. It is not intended such amenities should be refused, if it appears it would embarrass the owner or his family, but to accept them in the same spirit in which they have been offered.

### **9. NOTARY PUBLIC COMMISSIONS**

#### **NOTARY PUBLIC COMMISSIONS**

All acquisition personnel are required by the Right-of-Way Program to be commissioned notaries public for taking in-state acknowledgments from property owners in the execution of right-of-way or other property conveyances during the acquisition process.

All costs in connection with the application, bond, recording of the commission and bond, and acquiring the official seal is borne by the Transportation Department.

The acquisition agent must follow applicable state law in petitioning for a notary public commission. He should consult his supervisor for these procedures.

### **10. CONFIDENTIAL MATTERS**

#### **CONFIDENTIAL MATTERS**

All personnel involved with acquisition of right-of-way and other property rights, especially assigned appraisers and acquisition agents, should keep in mind all appraisals, offers of settlements, and actual settlements, are to be treated as confidential matters between the concerned property owner and the State.

The acquisition agent, especially, will often be asked to reveal offers made to and settlements accepted by a neighbor. They are prohibited by Transportation Department policy from revealing such information, and should so inform the landowner. Obviously, the subject owner would

# Part II:

## Acquisition of Right of Way

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want the matters discussed with him to be treated in confidence and should, therefore, have respect for the confidence of others.

### 11. BASIC DESIGN KNOWLEDGE

#### **BASIC DESIGN KNOWLEDGE**

It is a matter of Transportation Department policy that completed engineering and finished design features are not subject to adjustments during the right-of-way acquisition phase. This is not meant to preclude meetings, field trips, and discussion of these matters with design to arrive at a mutual understanding on the more involved or more complex problems affecting right-of-way.

The appraiser or acquisition agent should be able to explain the general design to the landowner. In cases where the landowner questions the design, they should inform him of Transportation Department policy. If the matter seems to have merit, they should inform him that they will refer it to the proper authority in Headquarters and report back on it.

If the objectionable matters are minor in nature, such as additional fencing, revision of irrigation, or relocation of approaches, the appraiser or acquisition agent should assess it in the light of good engineering, safety, and judgment and, if it has merit, clear it with the Lands Management Administrator, Resident Engineer and Road Design squad leader and inform the owner as soon as possible.

### 12. RIGHT OF WAY TERMINOLOGY

#### **RIGHT OF WAY TERMINOLOGY**

Appraisers and acquisition agents should be conversant with basic right-of-way terminology and be able to clearly interpret, correlate and explain to owners such terminology as may be shown on maps, construction plans, and other right-of-way documents.

In using any right-of-way, real estate, or map terminology, the appraiser or acquisition agent must keep in mind that the landowners are not conversant with some of the most simplified terms. Therefore, the appraisers and acquisition agent are cautioned to fully explain the meaning or to substitute more common and understandable terminology.

The same is applicable to map and plan discussions concerning partial takings. The appraiser or acquisition agent should carefully explain to the owner, in words and manner he can easily comprehend the situations and map terms as they may apply to his particular property. Making

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## Acquisition of Right of Way

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sure the landowner understands these situations will help avoid future misunderstandings and resultant adverse effect on public relations.

### 13. RECORDS AND CONTROL

#### RECORDS AND CONTROL

##### **PCS Project Control System:**

The project control system is currently run on the departments file servers. This system allows updating by the various programs involved. The Project Manager is primarily responsible for the updating and monitoring of this system for Right-of-Way activities. The Right-of-Way Manager, or his representative will attend the PCS committee meetings and provide input for Right-of-Way activities.

##### **PAECETRAK (BEM)**

In 2009, the Right of Way Branch had an internal program specific software developed for the purpose of storing all R/W documents and also serves as a reporting tool to aid in the tracking the work flow within the program. All documents related to production are stored in this program and are retained for a period of 3 years. After that time, the necessary documents are transferred over to FALCON, a Department wide document management system.

##### **FALCON:**

This is a Department wide document management system that allows all of the various Branches within WYDOT to store and retain vital records. This is a searchable program that allows for the retrieval and management of all WYDOT records.

### 14. REQUIRED PROCEDURES

#### REQUIRED PROCEDURES

##### **Assignments**

Projects are assigned to the individual Project Managers by the Assistant R/W Administrator. These assignments are based, but not limited to, workloads, type of and complexity of the projects, and overall scope of the projects. It is the responsibility of the Project Managers to assign the various portions of the projects to individuals within the crew. It is also the responsibility of the Project Managers to establish due dates and keep the project on track within the PCS Schedule.

# Part II:

## Acquisition of Right of Way

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### Appraisals

It is an established policy that written appraisals in permanent form are secured and reviewed prior to the beginning of acquisition and hearings in condemnation for all parcels or property rights to be acquired on federal-aid or state projects with an estimated value in excess of \$10,000.

The landowner or their designated representative is given an opportunity to accompany the appraiser during his inspection of the property when an appraisal is required.

Value finding estimates are made on property with uncomplicated acquisitions with an estimated value below \$10,000.

Any decrease or increase in the fair market value of real property, prior to the date of valuation, caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, is disregarded in determining the compensating for the property.

If the acquisition of only a part of the property would leave its owner with an uneconomic remnant, an appraisal to determine the before value will be made in order to tender an offer for the entire remnant.

Appraisal or Value Finding appraisal review procedures are a prerequisite to acquisition offers and are defined in detail in other parts of the Right-of-Way Manual. After the project has been appraised and reviewed and the fair market value determinations established by the review appraiser, Form R/W 57, Review and Authorization, is completed and forwarded to the Lands Management Administrator setting forth all the review appraiser's authorizations. If acceptable the "Summary Statement of Fair Market Value," is completed and signed by the Lands Management Administrator.

This Statement, along with copies of the Review and Authorization are forwarded to the Project Managers for notification of completion of the review and for a summation of the authorized amounts to be offered for each parcel to initiate an offer.

# Part II:

## Acquisition of Right of Way

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### **Conferences**

After the Engineering Technician has completed the right-of-way computations and the purchase plans, and the appraiser has completed the appraisal reports, the Acquisition Agent can begin contacting landowners. An office review is arranged by the Project Manager among the Engineering Technician, Acquisition Agent, Relocation Agent, and Appraiser. They review the project purchase plans in the office before the start of acquisition paying particular attention to access, real property interests, improvements to be taken or requiring relocation, location of major separations and interchanges, land severances, new takings and existing rights-of-way, cattleguards, status of and disposition of old rights-of-way, and all other design features that will affect the value of the takings and attendant damages.

A field inspection may be requested by the Acquisition Agent or the Project Manager. This would involve the Appraiser, Acquisition Agent and Resident Engineer.

### **Acquisition Services**

The Acquisition Agent assigned to the project begins their development process by preparing and/or assembling all the necessary forms and papers including the Summary Statement of Fair market Value, the Memorandum of Agreement, the right-of-way engineering plans by ownership, the deed or other conveyances, the right-of-way brochure, "Highways and Your Land," and the Official Receipt.

It is the Wyoming Department of Transportation policy to use the approved appraisal as the basis for a "one-price" offer to the owner. This cannot be changed except as provided within that policy. If settlement cannot be made with the owner on that basis, initially or after a limited number of follow-up visits, and there has been no reason presented to alter the appraisal or make an administrative settlement, the negotiation will be suspended with a mutual understanding that condemnation proceedings will be instituted to protect the State in pursuance of the public necessity and to protect the landowner's right to just compensation. Negotiations may continue up to a jury trial.



# Part II:

## Acquisition of Right of Way

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### **Administrative Settlements**

In most cases where there is an honest difference of opinion about the settlement during the negotiations, the landowner counters with an offer to settle which he believes represents fair market value. The Lands Management Administrator will compare this counter-offer with the original offer authorized by the review appraiser. Based on past experience and advice of personnel more familiar with the area, he will make a deduction which considers: (1) deficiencies in the appraiser's opinion of value, (2) deficiencies in the review appraiser's determination of value, (3) opinion of the State's legal counsel as to the nature of the State's testimony, (4) the range of the State's probable testimony should the case be condemned, (5) adjustment of review appraiser's determination of value to the date of taking, (6) valid appraisals which were not considered in establishing the fair market value, (7) interest payment to which an owner could be entitled if the case were condemned, (8) serious doubt as to the highest and best use of a property before and after the taking, (9) extremely complex severance damage or other valuation problems that necessarily produce uncertainties as to value, (10) recent jury awards for similar property in the area, and (11) new and valid information uncovered during negotiations with recommendations of the Project Manager.

The Acquisition Agent, with approval, can offer up to \$5,000. The Project Manager, with approval, can offer up to \$15,000 and the R/W Manager can, with approval, can offer up to \$50,000 for Administrative Settlements.

### **Final Offer**

If there has been no evidence presented to alter the approved appraisal or to make an administrative settlement, the acquisition agent will forward a registered "15 day letter" to the landowner asking for a reconsideration of the original offer. This letter is used as a follow-up after negotiations have failed and as another effort to effect a settlement before condemnation proceedings are instituted. As dictated by Wyoming Statute 1-26-509(e), the Landowner is allowed at least 15 days to respond to this written offer.

When the specified time has elapsed and the final offer is rejected or no reply received, the acquisition agent reports to the Lands Management Administrator through the Project Manager that a settlement cannot be reached. If the Lands Management Administrator authorizes condemnation after

# Part II:

## Acquisition of Right of Way

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consultations, the acquisition agent prepares Form R/W 31, Condemnation Request, with required attachments, for transmittal by the Lands Management Administrator to the Legal Division requesting the initiation of condemnation proceedings.

### 15. CONDEMNATION PROCEDURE

#### CONDEMNATION PROCEDURE

##### Highway Commission Authorization

Before the Right-of-Way Program or the Legal Division may proceed to condemn private real property for any transportation facility, it must have obtained prior authority from the Transportation Commission. This authority is given by resolution adopted by the Commission.

Transportation Commission authorization is obtained for the expenditure of funds for all projects contained in the State Transportation Improvement Program. This action authorizes the project and the total estimated cost of necessary planning studies, location determinations, surveys, plan preparation, right-of-way acquisition, relocation assistance, utility adjustments, and construction.

Form E-113, Project Authorization, is prepared by the Programming Division for any expenditure requiring a project authorization. The completed form is routed through the Director and Chief Engineer for consideration and approval. If the Executive Staff approves the total estimated cost as well as the intent and scope of the project, a Form E-113 is submitted to the Commission for final approval. Approval by the Commission constitutes authorization to proceed with the project through construction.

A resolution of condemnation is prepared by the Right of Way Engineering staff to be presented to the Commission. If the project involves a local public agency, their governing body will be asked to pass the resolution of condemnation.

Once a project authorization has been approved and a resolution of condemnation is passed by the Commission, it is not necessary to obtain additional Commission approval unless the total expenditures exceed the original total estimated cost as set forth on Form E-113.

##### Legal Division

The Special Assistant Attorney General, after receiving and reviewing the condemnation request and authority from the Lands Management Administrator, prepares and files a

# Part II:

## Acquisition of Right of Way

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complaint in the District Court asking for a right of entry hearing to establish the necessity for the taking of the land.

According to Rule 71.1, Wyoming Rules of Civil Procedure, a state warrant in the full amount of the approved appraisal of the fair market value of the property is deposited with the Court at this hearing after right of entry has been granted.

When the right of entry is granted by the Court, the Court appoints three appraisers who are disinterested freeholders in that County to assess the land and damages, less benefits, involved in the taking. Their Certificate of Award is returned to the Court.

A copy of the Certificate of Award is transmitted to the Lands Management Administrator by the Legal Division for acceptance or rejection of the award.

If the Certificate of Award is rejected by the Lands Management Administrator, the Legal Division files a Demand for Jury Trial within 30 days after the date of filing of the Certificate of Award.

Should the matter proceed to jury trial, the Legal Division requests the appraiser, and such other personnel as they deem advisable, to testify in behalf of the State. The Engineering Technician and the State Land Surveyor is also called upon for the preparation for whatever mapping and court exhibits the Legal Division requires for the trial.

The appraiser and acquisition agent must be prepared at all times to furnish the Legal Division such assistance and additional information as may be requested for processing court actions and for attempts of settlements out of court if requested by and concurred in by the Lands Management Administrator. They will also lend assistance in the preparation and checking of the legal documents used in the condemnation and subsequent settlement.

Negotiations may continue after the filing of a condemnation, and settlements may be made by the acquisition agent in the amount of the authorized offers up to the time the court appointed Appraisers file the Certificate of Award with the Court.

After the Certificate of Award is filed, it then becomes an administrative decision by the Lands Management

# Part II:

## Acquisition of Right of Way

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Administrator to (1) accept the award, (2) reject the award, or (3) make an administrative settlement.

When the amount of an award through court action differs from the fair market value established by the review appraiser, the settlement is supported in writing by the attorney who handled the case. A signed statement by the Lands Management Administrator is attached or affixed to the statement made by the attorney indicating his concurrence.

### 10. DESIGN-BUILD

#### **DESIGN-BUILD**

WYDOT has opted to not participate in Design-Build projects; therefore this type of project will not be described in this manual.

# FORMS ADDENDUM

Form A-40 – Expense Affidavit

Affidavit – One Day Meal Expense

Out of State Travel Request

Certification For Use of Private Automobile for Official Travel





# WYOMING DEPARTMENT OF TRANSPORTATION EXPENSE AFFIDAVIT

CITY OF: \_\_\_\_\_ EMPLOYEE ID: \_\_\_\_\_

I \_\_\_\_\_ an authorized employee of \_\_\_\_\_ branch of WYDOT do solemnly swear that the following is a true and just record of personal expenses paid by me while on official state business.

**\*\*Reimbursement for the first and last day of travel will be reimbursed at 75% of the daily reimbursable rate.\*\*Per diem for the day is based on where you are lodging that night and the return date is based on where you lodged the night before.**

## MEAL PER DIEM EXPENSES

			Provided Meals			
DATE	Lodging City	Federal M&IE Rate**	Bkfast	Lunch	Dinner	Total

## CHARTFIELD STRING

Acct	Dept	Prgm	Project or work order	Activity	Source Type	Category	Sub Category

## LODGING AND OTHER REIMBURSABLE EXPENSES/MILEAGE

Original itemized receipts must be submitted with a brief descr. for all claims of \$15 or more

DATE	Description	Amount
GRAND TOTAL FOR CHARGES		\$ -

## CHARTFIELD STRING

Acct	Dept	Prgm	Project or work order	Activity	Source Type	Category	Sub Category

Other Explanations

I do further swear that no part of the foregoing claim has been paid by the State of Wyoming, and that said claim is just & correct as per SEMM Policy 2-6.

District Engineer or Program Manager Signature

Date

Employee Signature

Date



### ONE-DAY MEAL EXPENSE - TAXABLE INCOME

EMPLOYEE # \_\_\_\_\_

EMPLOYEE NAME \_\_\_\_\_

CITY OF RESIDENCE \_\_\_\_\_

I, \_\_\_\_\_ an authorized employee of the \_\_\_\_\_  
\_\_\_\_\_ Program of the Wyoming Department of Transportation  
do solemnly swear that the following is a true and just record of meal expenses paid by  
me while on official business and for which I am legally entitled to reimbursement by the  
State of Wyoming.

DATE	LOCATION	LUNCH	DINNER	TOTAL
			<b>TOTAL</b>	

\* ITEMIZED RECEIPTS MUST BE SUBMITTED WITH A BRIEF DESCRIPTION FOR MEALS EXCEEDING \$15  
I do further swear that no part of the foregoing claim has been paid by State of Wyoming, and that said claim is just and correct.

Supervisor's Approval

Employee's Signature

RETURN TO PAYROLL OFFICE - CHEYENNE





WYOMING DEPARTMENT OF TRANSPORTATION  
TRAVEL REQUEST

Division \_\_\_\_\_

Date \_\_\_\_\_

Permission is hereby requested for \_\_\_\_\_ to  
Legal Name (Driver's Lic) & Emplid

travel by (mode - pool, private or commercial) \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_

Purpose of Trip \_\_\_\_\_ Departure \_\_\_\_\_ Return \_\_\_\_\_

Remarks \_\_\_\_\_

Requested by: \_\_\_\_\_ Interrupted Travel: Yes ☐ No ☐

Financial Coding: Dept \_\_\_\_\_ Prog \_\_\_\_\_ Project \_\_\_\_\_ Activity \_\_\_\_\_

Source \_\_\_\_\_ Category \_\_\_\_\_ Sub-Cat \_\_\_\_\_

OUT-OF-STATE

Previous Out-of-State Travel: \_\_\_\_\_

Estimated Airfare \_\_\_\_\_

Estimated Other Transportation \_\_\_\_\_

Estimated Meals & Lodging \_\_\_\_\_

Registration Fee\* \_\_\_\_\_

(\*pay with P-Card or send directly to A/P)

Estimated Other \_\_\_\_\_

Estimated Total Cost \_\_\_\_\_

Select one of the following:

☐ Federal M&IE Per Diem for Meals

☐ Actual for Meals

APPROVED ☐ DISAPPROVED ☐ \_\_\_\_\_  
Administrator/Supervisor

APPROVED ☐ DISAPPROVED ☐ \_\_\_\_\_  
Director or Executive Staff

*Note: Submit **prior** to any Out-of-State arrangements being made and **include the Agenda**. Original approved request & agenda must be submitted with Employee Expense form and submit a copy with P-Card statements.*



**INSTRUCTIONS:** Mileage should be calculated over the nearest practicable routes as shown by the latest Wyoming Official Highway Map. Chart mileage should be used when listed. For points traveled off main highways where mileage is not shown on the map, speedometer reading must be taken at the beginning and end of each trip and mileage claimed for the difference. In such cases, speedometer reading must be recorded in space provided. If map miles are claimed, no speedometer readings are necessary.

I certify, under penalty of perjury, that this statement and all items included thereon for payment are correct and just in all respects. **The dollar amount is to be brought forward to the miscellaneous column of the Expense Affidavit (Form) A-40.**

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# Part III

## Right-of-Way Engineering

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# Part III:

## Right-of-Way Engineering

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## Right-of-Way Engineering

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### A. GENERAL

This portion of the Right Of Way Program Procedures Manual is devoted to the development of right of way plans, right of way maps & exhibits, legal descriptions, right of way design, land surveying and other related right of way engineering activities.

The Right of Way Engineering Surveying crew's primary functions are the following:

1. Support of crews within the Right of Way Program. The Appraiser is supplied with land quantities, location exhibits and ownership. The Acquisition Agent is provided with exhibits, land descriptions and title information. The Relocation or Property Management agent is provided with exhibits, land descriptions and title information.
2. The Right of Way Administration, Highway Development and Field crews are supported with research, technical support, and project coordination.
3. The public and many private organizations are provided with research and technical support.
4. Right-of-way plan review and design.
5. Maintenance of active and inactive project files.
6. Right of Way engineering, land surveying, and title work administration.
7. State and Federal land transfers.
8. The Right of Way Engineering Section establishes many of the standards and specifications for producing right-of-way plans and the legal delineation of existing and proposed right-of-ways.
9. Right Of Way Program project closure.

### B. TYPICAL PROJECT

#### 1. PRELIMINARY RIGHT-OF-WAY REVIEW

##### **PRELIMINARY RIGHT-OF-WAY REVIEW**

Project Grading Plans which involve the Right Of Way Program are received and logged into a data base. A preliminary plan review report is compiled which incorporates comments from the Right Of Way Program Managers and Supervisors. The report is distributed to project Development for further action. The Grading Plans are generally checked for content using guidelines as follows:

1. Ownerships (no title work necessary, check to see if ownerships are indicated).

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2. Existing right-of-way (How it's held or established, Blue Folder reference, As-constructed Project reference).
3. U. S. Public Land Survey System references (correct designations).
4. U. S. Public Land Survey System lines (approximate location, correct symbology).
5. Alignment data (no mathematical checks: 4-decimal place coordinates for all PI.'s and Begin/End/Intermediate POT's, all pertinent curve data).
6. Dimensioning of R/W and Construction Permits (total width existing r/w, from alignment for proposed r/w, stationing and widths for permits).
7. Land Ties (no mathematical checks: bearings/distances to alignment, complete monument descriptions).

Defined Data (Project Design Flow Chart-Operating Policy 18-3):

1. Existing R/W.
2. Land Ties.
3. Ownerships.
4. Known Cultural Sites.
5. Wetlands Delineation.

Preliminary Data (Project Design Flow Chart-Operating Policy 18-3):

1. Proposed R/W.
2. Borrow Sources.
3. Wetland Impacts & Mitigation Sites.
4. Construction Impact Areas.

## 2. RIGHT-OF-WAY PLAN DEVELOPMENT

### RIGHT-OF-WAY PLAN DEVELOPMENT

Right-of-Way & Engineering Inspection Plans which involve the Right Of Way Program are received and logged into a data base. A Miscellaneous Project File is prepared and placed in the active project file system. The plans are assigned by the Right of Way Program Manager to a Project Manager. The Project Manager delegates plan review to a technician. The plans are examined by the technician for sufficiency as related to alignment data, land survey data, public land system reference, property lines, current ownership, existing and proposed right-of-way lines and proposed land use. This examination assures plan compliance with Road Design Manual Memorandum 04-02, date of issue December, 2004. All available related coordinate data (alignment & land survey points) will be

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compiled and then input for use in a coordinate geometry computer program. The plans are mathematically checked for consistency and accuracy. The plans are redlined with required revisions and a detailed plan review report (Deficiency Report) is generated. The report is submitted for final review and professional certification by the Land Surveyor, in compliance with Inter-Department Document Certification (WYDOT Operating Policy 18-1, December 3, 1997). The report is indexed and distributed to the Highway Development Engineer. During this process of plan development, the Right of Way Engineering Section will coordinate design aspects as related to the right-of-way project.

### 3. RIGHT-OF-WAY ACQUISITION PLANS

#### **RIGHT-OF-WAY ACQUISITION PLANS**

Upon the receipt of the Right of Way and Utility Plans (Right-Of-Way Acquisition Plans) the Technician is to review the plans for accuracy in reference to the previous plan review report based on the Right-of-Way & Engineering Inspection Plans. The Right of Way and Utility Plans are closely examined in order to isolate design changes impacting the right-of-way project. The Technician will coordinate any further right-of-way plan development as required. The Technician will assign parcel numbers to all definable areas which are impacted by the right-of-way project. The Technician will prepare a set of working plans based on the final Right of Way and Utility Plans. Each ownership is delineated by color and a designated parcel number. Coordinate points are set for describing and deriving areas for individual parcels. Draft acreage summaries are compiled consisting of parcel designations, general land descriptions and acreage. Property descriptions are drafted for all areas of acquisition. New highway monument locations are computed and a draft highway monument summary is compiled. The completed draft acreage summary, draft property descriptions, draft highway monument summary and working plans are provided to the Right of Way Land Surveyor for checking. The Land Surveyor will coordinate any corrections with the assigned Technician. Paralleling this process the Technician will prepare land owner exhibits and Official Right-Of-Way Acquisition Plans. Upon completion of the checking by the Land Surveyor the draft project is returned to the Technician for correction. The technician will format draft legal descriptions into appropriate instrument forms. The Technician prepares individual parcel folders containing processed instruments. The Land Surveyor and assistant



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personnel perform a final review of the proofed project. All final revisions are coordinated by the Technician. Official Right-Of-Way Acquisition Plans and final acreage summary are transmitted to the Project Manager. Official Right-Of-Way Acquisition Plans, final acreage summary, completed parcel folders containing original instruments and applicable exhibits are transmitted to the Project Manager. The Right of Way Land Surveyor professionally certifies the highway monument summary in accordance with Inter-Department Document Certification (WYDOT Operating Policy 18-1, December 3, 1997) and transmits to the appropriate Project Development Design Squad for inclusion to the Final Design Plans.

### C. HIGHWAY MONUMENTS

For projects requiring the placement of highway monuments, the Right of Way Survey Section, in conjunction with the assigned technician, will be responsible for determining proposed locations and for producing highway monument summaries all in accordance with Wyoming Department of Transportation Operating Policy 18-13.

Highway monuments will be established at all directional changes along highway right-of-way boundaries to include the following: R/W Jogs, Points of Curvature (PC), Tangent Points (PT), Tangent to Spiral (TS), Spiral to Curve (SC), Curve to Spiral (CS), Spiral to Tangent (ST) and Angle Points (AP).

### D. RESEARCH

Right of Way Program personnel are frequently called upon by the Right of Way Administration, Highway Development, Field Divisions, the public and private organizations to provide research information regarding highway right-of-way facilities and Wyoming Department Of Transportation land interests. The Right of Way Survey Section has traditionally been involved in many aspects of the research process. The Right of Way Survey Section is responsible for maintaining research filing systems and data bases and is responsible for many of the technical and land title related aspects of the right-of-way research process. As Right of Way Program personnel receive requests for research data, it is imperative that accurate information be logged regarding a specific inquiry. The minimum information should be noted as a "Research Request" in the form as follows:

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DATE \_\_\_\_\_  
CONTACT PERSON \_\_\_\_\_  
PHONE \_\_\_\_\_ FAX/E-mail \_\_\_\_\_  
address \_\_\_\_\_  
COMPANY \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
COUNTY \_\_\_\_\_ TOWNSHIP \_\_\_\_\_ RANGE \_\_\_\_\_ SECTION(S) \_\_\_\_\_

REQUESTED INFO \_\_\_\_\_  
REQUEST RECEIVED BY \_\_\_\_\_

Research requests will generally be processed as follows:

1. Completion of "Research Request" form by receiving person.
2. Transmit completed "Research Request" form to support staff person for entry into research data base. It is imperative that requests for information from attorneys be handled in a difference manner, and that the appropriate WYDOT personnel be notified of the request. Currently, that person is Cliff Spoonemore, and he must be notified in case there is any possible litigation concerning the request. The assigning supervisor is responsible for the notification.
3. Support staff person provides a copy of "Research Request" form to assigning supervisor.
4. The assigning supervisor prioritizes the research request and assigns research project to the appropriate research personnel for processing.
5. The assigned research person is responsible for all applicable updates to the data base during the course of processing the research project through completion.
6. The assigned research person is responsible for drafting a cover letter under their signature, detailing the completion, the provided research data and the transmittal of the research project information to the requesting entity.
7. A copy of the transmittal letter and all information sent out is to be kept for the file.
8. Said cover letter and compiled research data will be given to support staff for transmittal to the requesting entity and archiving in the Right of Way Program database.
9. There will be no cost associated with research projects for Federal, County, Municipal or other State of Wyoming Agencies. Charges for research projects executed on behalf of private individuals or firms will be charged according to the current

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Uniform Procedures for Producing Public Records, as described in Chapter 2, Administration and Information rules. All billing if deemed necessary will be turned in to the WYDOT Accounting Program for processing and transmittal. (Reference WYDOT Operating Policy 17-5, March 31, 2000).

General research sources are as follows:

**As-constructed plans:** As-constructed plans for previously constructed highway projects are on file in the Central Records Section of the Wyoming Department of Transportation in Cheyenne. These plans are also available through the District field offices. The plan and profile sheets contained within the as-constructed plans serve well as a beginning basis for delineation of right-of-way boundaries as established under the specific as-constructed project. The as-constructed plans should not be considered the sole source of reference for such determinations. The as-constructed plans in regard to right-of-way boundary location can be inconsistent with physical evidence and/or instruments of conveyance. As part of the as-constructed plans, it is common to find Right-of-Way Marker Summaries comprising of listed right-of-way monuments that were set under the specified project. These listings quantified the number of markers set and noted the location of each marker by station and offset direction. These summaries are useful in the recovery of highway (right-of-way) monument evidence.

**Old field books:** Some Districts have archived the old field books and have indexes of information by Project Number, Route, type of survey, etc. The information is available from the District Surveyor or the Resident Engineer, and may contain useful survey information. Not all of the old records exist, but is a resource for some information.

**Instruments:** The Right-of-Way Program maintains a data base of Project Numbers and Research requests. This database indicates sources of information maintained by the Central Records Section and contains documents by which existing rights-of-way were established and/or held and said files also contain useful plans and maps exhibiting existing rights-of-way. These files are commonly referred to as "Blue Folders" or "Agreement Folders". Each folder is assigned an "agreement number" and in

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some cases may contain documents from several projects. The folders are indexed in the Right of Way Program database by township, range and section and are cross referenced by project number.

**Abandonments:** The Right-of-Way Program maintains a database of departmental files containing information pertinent to highway right-of-way abandonments and relinquishments. These files are indexed by township and range and are cross referenced by county, section, project and system number. The files are number by county and system numbers.

**Snow Fence:** The Right-of-Way Program maintains files for existing snow fence agreements, leases, and easements. There are numerous snow fence locations obtained by field offices for which the Right-of-Way Program will not have a record.

**Project Coordinate Files:** Project coordinates may exist for projects completed before the Right-of-Way Program was responsible for retracement surveys. This information is filed by County and Project.

### E. COUNTY ESTABLISHMENT EVIDENCE

The following outlines the evidence and process necessary for county road establishment:

Minutes from the proceedings of the County

Commissioners covering the entire cycle of a road establishment beginning with the statement by the commissioners that a petition for the location of a road has been received by them, and from that point the appointment of a viewer by the Commissioners to view the requested road location; report of the viewers, and if the Commissioners are favorable to the report, appointment of a surveyor, then appointment of appraisers to affix land damages; newspaper publication (generally for (3) consecutive weeks) of Notice of Location of a Public Road to the public sometimes with a centerline description of the proposed road, and if all the damages and objections have been settled, the declaration of establishment of the road by the County Commissioners. The declaration of establishment by the Commissioners may or may not contain a centerline description of the established road. Many existing establishment

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declarations refer to a set of plans on file in the County Clerk's office, but generally these plans are non-existent for some reason. In researching an establishment of a road from county commission minutes most generally the petition for the location of the road through the declaration of establishment will be published in a local newspaper at about the same time the Commission minutes are taken. It is important to know what steps were followed in the establishment of a county road and if there is a definitive statement by the commissioners that a road is declared to be a county road, for without these items, a road could fail the test of a legal establishment.

Actual establishment documents, beginning with the Petition for Location of a Road with the petitioner's signatures, Report of the Viewers, Report of Appraisers, Surveyor Notes and Plats, and Declaration of Establishment as contained in the County road files are kept in either the office of the County Clerk, County Engineer, Road and Bridge Department or office of the county commissioners. As stated above it is important to ascertain the existence of the plans referred to in the establishment of a road. Also, underlying the county road establishment process, is the duty of the County Commissioners to provide notice to the Public of the location of a road, which is done thru a newspaper of general circulation with a time limit for objections to the road location. Obtaining the newspaper Notice of Location not only serves to indicate that the law of establishment was complied with, but in many cases the Surveyor's centerline description for a road will be shown, whereas the County Commission declaration of establishment only contains a general description of the location. Many times, such newspaper clippings have been retained in the County road file.

Other evidence would include the following:

- Right of way easements recorded and unrecorded, covering the existing county road right of way.

- Abandonments and relinquishment documents of an established county road as well as any evidence from the Commissioners about transferring the County's interest in the right of way to the State Highway System.



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County road plan or map sheets indicating a location drawing of a county road, plus any book and page numbers from the proceedings of the commissioners documenting a county road establishment. Generally this information would appear in a county surveyor's or engineer's plat book.

Evidence of occupation, maintenance and public use as well as documentation (i.e. right-of-way fence, grading and graveling, snow plowing, maintenance records, etc.) supporting some form of establishment and existence of a county road in the cases where no formal establishment has taken place.

In the case of a county road that crosses Federal Land, it should be determined if the County Commissioners have complied with Statute RS 2477 in acquiring such right of way. Items the County Commissioners must present to the Federal Agency their resolution of establishment; copies of documents and correspondence by and between the County and the Federal Agency should be obtained from that Agency during the research.

### F. LAND SURVEYS

All land surveys shall be in accordance with Wyoming Department of Transportation policies and procedures and applicable Federal or Wyoming State Laws, guidelines, and standards. All preliminary land surveying will be completed prior to the issuance of the "Grading Plans". Land surveys are made for one or more of the following purposes.

- To secure the necessary data to prepare property descriptions and for finding the area of designated tracts of land;
- To reestablish the boundaries of a tract for which a survey has previously been made and for which the description is known; or
- To monument the location of the right of way held by either fee simple or easement.

Whenever real estate is conveyed from one owner to another, it is necessary to know and identify the location and boundaries of the land conveyed. Land acquired for highway improvements changes either the ownership or use of the land, depending on the type of acquisition. It is important for all parties involved to have the same knowledge of the boundaries so that conflicts can be avoided. The maintenance of good relationships with landowners abutting

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the right of way is a prime concern of the Right-of-Way Program. It is the policy of the department that no right of way taking result in boundary dispute and that, as the consequence of the construction of a highway project, no preexisting legal landmarks be destroyed or obliterated. In case of inadvertent or neglectful destruction or obliteration of public or private survey monuments, steps shall be taken by the department to make correction without delay. When a right of way modification causes the loss of physical monuments marking the apparent corners of property, new monuments of equal or better quality shall be set at the intersection of the property line and the right of way by or under the direction of a Wyoming Professional Land Surveyor.

### I. LAND SURVEY STANDARDS AND LAND SURVEY CONTRACT ADMINISTRATION

#### **LAND SURVEY STANDARDS AND LAND SURVEY CONTRACT ADMINISTRATION**

The Right of Way Land Surveyor determines many of the departmental policies, procedures, and standards as related to land surveying. Land surveying standards are detailed at the end of this section. The Right of Way Land Surveyor develops surveying scopes utilized in consultant agreements and contracts. These scopes are based on the level of land surveying required for each specific project. This process is coordinated through respective District representatives and/or respective District Land Surveyors. The Right of Way Land Surveyor is frequently named as the WYDOT primary contact for land surveying contract administration on a state wide basis. As a primary contact the Right of Way Land Surveyor is responsible for coordinating all phases of the land surveying contract to include final reviews of land surveying work products, granting final approvals and authorizing contract payments.

### G. TITLE WORK STANDARDS

The importance of thorough and complete title work cannot be stressed enough. This research is the basis of the entire Right of Way Program's work, and affects the ownership of private land. Due diligence must be executed during this phase of a project. Any errors or oversights can be both costly and embarrassing. Complete documentation of a title search is a must and begins prior to the courthouse visit; a substantial amount of information is available on-line. Before beginning any title project, look over the latest set of plans to determine where all current acquisitions and

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permits are in relation to the project, and to determine where the impacts will take place. If time permits, physically inspecting the projects limits in person may be beneficial. You must exercise common sense, but the following list contains things to look for which may affect your title search:

1. Any visible roads or trails that are within the limits of the proposed takings and/or permits. This may indicate right of way easements that WYDOT will have to consider. It may also indicate more landowners to be compensated for project construction.
2. Look for recent earthwork within the project limits; this may indicate new rights of way, utility easements, septic systems or irrigation lines.
3. If you find irrigation ditches, pipes, diversion boxes, irrigation systems, etc., check for the possibility of these ditches and facilities having ownership by people or entities not related to the landowner affected by the project. Be on the look-out for ditch companies, easements, compacts and associations. Water is more important to these owners than the highway is. All of these items must be worked around or compensated for.
4. Look for wells and septic systems within the project limits.
5. Look for new building or utility construction. This may indicate new landowners and facilities not observed by Project Development or the Resident Engineer.
6. Look for staking that is not from WYDOT or any of its contracts. This may indicate new surveys and or construction.
7. Talk to the Resident or Project Engineer. They may have information that will let you know about possible present and future changes that may affect the title search.

Basic to all title examinations are source references such as assessment maps, assessment & tax schedules, instruments of conveyance (deeds, easements, decrees, etc.), un-released mortgages & liens, and subdivision plats. These references can be obtained from the public record as on file with applicable county offices.

Title companies may be utilized for full title project or for obtaining copies of title related source documents. Consultant land surveying firms may be utilized for

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obtaining copies of title related source documents and survey plats not of record.

In cases of recently deceased ownerships and in the absence of an officially issued probate court settlement or decree, a copy of the death certificate and any other related documents of the court indicating pending entitlement should be compiled. All recorded documents of the final distribution of interest to the subject property by the Probate Court, such as a Decree of Distribution should be obtained. Death Certificates should be obtained from the family of the deceased, or in person from the Wyoming Department of Health, Vital Records, Room 401, Hathaway Building, Cheyenne, WY 82002. Because of security concerns you will need to bring your personal documentation and letter and contact from your supervisor.

The Wyoming Secretary of State should be consulted and corporation information should be compiled for parcels suspected of being a part of, or an asset of a business, corporation, company, limited liability company or non-profit organization. This is to ensure the correct company or corporate officer is signing for the company, corporation or limited liability company (LLC). Also this is to make sure that the company is either active or defunct. Defunct companies may sign the conveyance as long as they re-instate their corporate documents or prove to WYDOT that another company or private individual is not now owning the property. This information from the Wyoming Secretary of State can be found on-line at:

<https://wyogix.wy.gov/Business/FilingSearch.aspx>.

Parcels involving moderate to comprehensive title examination will require a complete chain of title search with an abstract and percentages of undivided interests. The title search should begin with the patent or the creation of a platted and recorded subdivision as applicable. The title search should include all recorded and un-recorded instruments of conveyance and to include agreements and contracts. The U. S. Bankruptcy Court in Cheyenne, Wyoming should be consulted and documentation effecting the subject parcel(s) interest should be compiled. The Clerk of the U. S. Federal Court in Cheyenne, Wyoming and applicable Clerk of the District Court should be consulted with documentation referencing any actions or pending actions against the current ownership being compiled. Consult the County Clerk for documents involving unreleased federal tax liens and compile for reference. Obtain tax bill on subject parcels from the County Treasurer for the amount of State and County taxes for the current

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year. County Treasurer and County Assessment information is available online in most Wyoming Counties. However, court information must be obtained in person because of security concerns.

Sources for status and information about public lands can be found as herein described:

Bureau of Land Management Master Title Plats (MT Plats). MT Plats are indexed by township and range and available from the Bureau of Land Management Office in Cheyenne, Wyoming. MT Plats reference serial numbers specific to federal land grants, easements and patents. Specific case files as indexed by serial number can be ordered from the Bureau of Land Management on-line using the former Ir2000 system. Contact the local BLM office for access to these records.

State land references such as patents, grants, easements, plats and lessee information can be obtained from the Office of State Land and Investments, Cheyenne, WY, or on-line at <http://lands.wyo.gov/>.

The State Archives located in Cheyenne, Wyoming has on file micro film of various county records up to the year 1965. For certain counties records are available for later years.

### I. LEVELS OF TITLE WORK

#### LEVELS OF TITLE WORK

**Level I:** A Level I (Minimum )Title Examination shall be performed for temporary land use (i.e. construction permit, material site, borrow site) involving land values or damages of less than \$100,000.00 per parcel.

**Level II:** A Level II (Nominal) Title Examination is most commonly applied to partial acquisitions involving fee simple and easement interests (i.e. right-of-way widening acquired by Deed or Easement) with land values or damages less than \$150,000.00 per parcel.

**Level III:** A Level III (Comprehensive) Title Examination should be applied to all total acquisitions and to all partial acquisitions & temporary land use involving land values or damages more than \$150,000.00 per parcel.

**Note:** In many cases variations of the Level III Title Examination will be required for parcels with land values or damages less than \$100,000.00.



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### 2. TITLE WORK PRODUCTS

#### TITLE WORK PRODUCTS

**Level I Title Examination** shall include per parcel the minimum work products in order as follows:

1. Statement regarding the date the information was obtained, the level of examination performed and by whom.
2. Assessment Schedule.
3. Current instrument of entitlement and any documents referred to in record instruments.
4. Corporation Information (if applicable).
5. Death Certificate (if applicable).
6. Probate Documents (if applicable).
7. Subdivision/survey plats, etc. for the project.

The Chain of title is examined for the last five years.

**Level II Title Examination** shall include per parcel the minimum work products in order as follows:

1. Statement regarding the date the information was obtained, the level of examination performed and by whom.
2. Entitlement Summary or Report as applicable.
3. Determination of undivided interest percentages as applicable.
4. Assessment and/or Tax Schedule (to include assessed value, market value, mill levy, total acreage and land classification).
5. Current instrument of entitlement and any documents referred to in record instruments.
6. Corporation Information (if applicable).
7. Un-released Mortgages & Liens.
8. Death Certificate (if applicable).
9. Probate Documents (if applicable).
10. Subdivision/survey plats, etc. for the project.
11. All easements that may affect the project.

The Chain of title is examined for the last ten years or the most recent warranty deed if more than ten years are searched.

**Level III Title Examination** shall include per parcel the minimum work products in order as follows:

1. Statement regarding the date that information was obtained, the level of examination performed and by whom.
2. Title report detailing entitlement, encumbrances, defects, and merchantability of each parcel.
3. Determination of undivided interest percentages as applicable.

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4. Assessment and/or Tax Schedule (to include assessed value, market value, mill levy, total acreage and land classification).
5. Current and Supportive instruments of entitlement.
6. Recorded contracts and agreements.
7. If discovered un-recorded instruments, contracts and agreements.
8. Corporation Information (if applicable).
9. Un-released Mortgages, Liens and Federal Tax Liens.
10. U. S. Bankruptcy Court, U. S. Federal Court and District Court actions or filings.
11. County Treasurer Tax bill for current year.
12. Death Certificate & Probate Documents.
13. All easements which affect the Property.
14. Subdivision/survey plats, etc. for the project, and any documents referred to in record instruments.
15. Right of Way documents and County Road information as applicable
16. Assessor's map/Location map

**Project Title Book:** All title work must be scanned into BEM/Paectrack and all appropriate title fields filled in. One (1) hard copy of the project title book shall be provided containing a compilation of all title work references per the appropriate Level of Title Examination. Contents shall be formatted and copied to one sided letter size 8½" x 11" paper and bound in a binder fabricated for 8½" x 11" paper. The cover will be labeled with the date, project number, project name or roadway, project road section, county, level of title examination, and the person who conducted the examination. Individual parcel ownerships shall be separated by dividers with tab labeling for each, designated by parcel number. Written title reports shall be included as applicable to each specific parcel ownership.

Items listed per Level shall be collated in order for each parcel. Ensure that all documents contain all Book/Page/Recordation information on the document, and no hole punches obliterate this information. This can be hand-written information, with due diligence ensuring the information's accuracy and legibility. If photographing the documents while researching, a simple sticky note containing the recording information may be necessary.

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### H. R/W REVIEW PROCEDURES

#### I. RIGHT-OF-WAY PLAN REVIEW AND DEVELOPMENT

##### **RIGHT-OF-WAY PLAN REVIEW AND DEVELOPMENT**

The Right of Way Survey Section prepares a plan review report based on received Right-of-Way and Engineering Inspection Plans. The purpose of the plan review and written report is to assure that subsequent acquisition plans incorporate all required information needed to process the right-of-way project through the Right-of-Way Program. Corrections and/or additions to the plans are annotated in red on applicable plan sheets. The annotated plans and certified plan review memorandum are transmitted to Project Development. A general plan review check list is as follows:

1. North arrow.
2. Section, Township and Range designations on each plan sheet.
3. Section lines, quarter section lines, 1/16 lines, Tract Lines, property lines, Lot lines, etc.
4. Designation of Tracts, Lots, and aliquot divisions down to quarter- quarter section (i.e. NW1/4SE1/4).
5. Existing right-of-way lines should be verified.
6. Alignment data should be checked for accuracy in curve data, bearings and equations.
7. Sufficient land and/or property ties to write descriptions.
8. Proposed right-of-way line dimensioning.
9. Ownership shown on the plans should be consistent with current title work.
10. Proposed construction permits and approach locations.
11. Platted Subdivisions adjacent to the existing right of way within proposed right-of-way modifications.
12. Topographic features (fences, cattle guards, etc.).
13. Recorded and unrecorded easements.
14. Uneconomical remnants and effected landowner access.
15. Plan sheet continuity with respect to alignment, right-of-way widths, access control, property and land subdivision lines and topography.

**Right-of-Way Plan Data:** All Right-of-Way data should be in compliance with Road Design Manual Memorandum 04-02, date of issue December 1, 2004.

A more detailed deficiency review check list is as follows:

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### Deficiency Items for Project Development

1. Detail U.S.P.L.S.S. and r/w monuments from land survey file/record of survey.
2. Label all roads (ie. Street, county road, interstate, service roads, etc.)
3. Label curve data and coordinates of angle points (PIs).
4. Label land corner description and coordinates.
5. If a Section has been resurveyed, label lot, tract lines, etc.
6. Detail and label existing easements from subdivision plats.
7. Include leading zero in front of single digits for bearings, deltas, and angles.
8. Do not show construction permits overlapping buildings, jog around instead.
9. End construction permits, acquisitions, easements on nearest property line or lot line, PC, PT, or jog if nearby and reasonable.
10. Show break lines on section lines and land ties if associated land corners are off sheet. Label land corner designations.
11. Label purpose of construction permit. Dimension station (even station, not decimal) and width (even foot if possible).
12. Label non-right of way easements simply as "easement" with width.
13. Bearings, deltas, and angles need to be shown to the tenth of a second.
14. Label rivers, creeks, other bodies of water.
15. ADA corners – show dimensions along property lines, right of way boundaries, etc. instead of station/offset, coordinates.
16. Include non-operating right of way easements on plans. They need to be perpendicular and parallel to existing right of way – unless we don't know the right of way at that location, then dimension from centerline.
17. Use land hook when indicating continuous ownership across boundaries.
18. Label township, range, section, quarter-quarters, and government lots.
19. Label Subdivision, Plats, etc, with subsequent Block and Lot.
20. Label existing (actual, not measured) right of way widths.
21. Ensure that text does not overlap.

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22. Elements need to be on correct level/color/weight/linestyle.
23. Detail and label land ties.
24. Construction permit hatching needs to be snappable.
25. Ensure project scale is the same for the entire project regardless of rural or urban, or mixture of both.
26. Ensure that there are detail sheets for ADA corners, as well as any areas that need more detail.
27. Ensure existing right of way is drawn to, and scaled to monuments.

### 2. PREPARATION OF OFFICIAL RIGHT-OF-WAY ACQUISITION PLANS

#### PREPARATION OF OFFICIAL RIGHT-OF-WAY ACQUISITION PLANS

When Right-of-Way & Utility Plans have been received by the assigned Technician the following steps should be taken before beginning calculations and descriptions.

Check plans against the plan review report to assure all the items have been addressed. All items not acted upon should be noted. Corrective action should be initiated and coordinated with Project Development.

1. PaeceTrak and Falcon should be referenced for all applicable recommendations and reports. The ownership as shown on the plans should be checked against the title book. The title work should be updated, as applicable, by the title person. Check the status of any existing roads impacted by proposed right-of-way modification. Documents defining the existing rights-of-way should be secured and placed in the Title Book.
2. Determine the parcel numbers for the ownership of the entire project. A parcel is comprised of one or more definable areas of contiguous property contiguous with the existing right of way under a single ownership. Non-contiguous properties under the same ownership are to be considered as separate parcels and are numbered as such. Place the number assigned to each owner beside the owners name and within the proposed right of way at each end of the parcel for that owner. Place a small circle around each parcel number. Where one owner has more than one parcel use number letter combinations such as: 1, 1a, 1b, etc. Assign parcel numbers to construction permits as well.
3. Select colors for each ownership and color code the plans as applicable. Certain colors have been reserved for a particular use. These are: Yellow -



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All existing public road rights of way (State, County, dedicated streets), Blue - Railroad rights of way and other land, Orange - State owned lands, Red - U.S. Government lands. Avoid the use of colors of the same hue adjacent to each other. Use the same color for all parcels of the same ownership. Crosshatch construction permits with lines of the same color as that assigned to the land owner of the particular parcel. Color the circled parcel number by the owners name with the color assigned to that owner. Color only that portion of the private parcel that is between the existing and the proposed right of way.

4. The sheet numbers should appear in consecutive order on the purchase plans. If any intermediate plan sheets are dropped, the following sheets should be re-numbered. New sheets added to the plans such as acreage sheets may be assigned a number-letter combination such as 1a, 1b, etc.
5. Have file folders set up for each parcel on the job with project number, county, parcel number, name of project and owner of parcel on the label.

**Computation of Area:** Compute the area of the land to be purchased, the area of any existing public road rights of way lying within the proposed right of way limits and the total area of the land to be included within the description. Plan dimensions and survey data should be utilized. Base units for all area calculations are square feet. Area will be expressed in square feet-to the nearest foot, and acres to three decimal places. Final areas should be expressed in a unit of measure consistent with the method of appraisal. Mathematical closure sheets will be developed for each parcel being described.

**Parcel Summary:** The parcel summary should be headed with the project name and number, the date of issue and the sheet number. The parcel summary is filled out giving the parcel number, the plan sheet numbers on which the parcel appears, the name of the parcel owner as indicated by the title book, a general location of the parcel as referenced to the U.S. Public Land Survey System and/or in the case of record subdivision lots, Lot number, Block number and subdivision, town and county, the appropriate area per column headings including remainders if required and any remarks to clarify acreage figures or special conditions concerning a particular parcel.

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**Exhibits:** Parcel file - Each parcel of land for which there is either a taking or construction permits, will have two exhibits made for use in negotiation. More exhibits may be required in the case of land under contract for sale or of multiple ownership. The exhibits will consist of plan sheets showing the proposed right of way and/or construction permits to be acquired from a particular ownership. The additional land to be secured is colored solid red and the areas proposed for construction permits are crosshatched in red. The exhibits will be printed on 11" x 17" paper and folded to 8 1/2" x 11" in nominal size and placed in parcel file. For parcels on multiple plan sheets, a separate exhibit sheet, not utilizing the plan sheet, can be made to clarify the acquisition for the property owner.

**Property/Land Descriptions:** A property description is a portion of a conveyance document which quantifies a tract of land for conveyance purposes. The courts have held that a description is sufficient if it can be laid out on the ground by land surveying techniques. Conversely, if a description cannot be laid out on the ground, it is insufficient and may not serve as the basis for a legal conveyance. The description should be so clear that the land covered is unmistakable. There are many ways a parcel may be described. Generally speaking, the proper form for describing parcels of right of way is one which most concisely describes a tract of land, is simple in construction, provides little or no chance for errors or ambiguities and makes adequate reference to existing survey monuments, deed lines, aliquot lines, record documents, etc.

**Writing Property/Land Descriptions:** The first step in writing a description is determining the exact parcel of land which is to be described. Determine the nearest land monument from which to define the parcel location (public & private land corners and highway monuments) available and their relationship to the subject parcel. Study the parcel and determine the type of description which will be best suited for describing the parcel in a clear and concise way so that a surveyor can reproduce the parcel on the ground. There are three general types of descriptions used by Right-of-Way Engineering, listed as follows:

1. Parallel lines - a description of a strip of land lying between parallel lines measured from a described survey line. (Details outlined below).

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2. Metes and Bounds - a description of a parcel of land which traces all the boundaries of the parcel in order giving the direction and distance of each course and many contain referrals to existing monuments or adjacent documents. (Details outlined below).
3. Description by Reference - a description which refers to a record parcel or document.

Prior to the actual preparation of the description and after a general approach to a parcel description is determined, schedule a Pre-Engineering conference with the Land Survey staff to discuss your decisions and evaluate the best method to describe the parcels.

**Parallel Line Descriptions:** Close attention should be given to parallel line descriptions which meet a boundary line at an acute or obtuse angle with the described survey line. In many cases it may be necessary to begin the description prior to the property line in order to correctly describe the area of intended definition. It may also be necessary to extend the centerline or survey line past the boundary line to define a curved or widened right of way line where the right of way intersection with the boundary line occurs beyond the survey line intersect with the boundary line. When a parallel lines description is used and the center line begins on a curve it is necessary to give the bearing of the line tangent to said curve at the point of beginning of the description. The direction of the bearing should indicate the direction the following call heads. This type of description can get lengthy, but is occasionally simpler than a metes and bounds type of description.

**Metes and Bounds Descriptions:** The metes and bounds description lends itself to describing irregular shapes of land. It is therefore of great importance that proper construction of this type of description be understood by those writing descriptions for land acquisition activities and that the forms be adhered to as stated herein. The major parts of the metes and bounds descriptions are (1) the preamble, (2) the body, (3) the qualifying clauses and (4) a Basis of Bearings Statement (examples provided below).

**The preamble** of the description is a general statement which identifies the location of the land being described in relation to an existing land survey system. It may also contain statements identifying the purpose or intent of the description. Due diligence is necessary when assembling the

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preamble, with attention to current parcel designation; if the property being described lies within a record subdivision, that will be the first portion of the preamble, followed by Section/Township/Range/County, etc. (i.e. – A portion of Lot 1, Block 2, Keynote Minor Subdivision, situate in the Southeast Quarter of Section 16, T. 11 N., R. 59 W. . . .). Various County officials will index the parcel to the Subdivision, being the parcel designation listed first, and not necessarily the Section; if the information is reversed, there may be no index reference to the record Subdivision.

**The body** of the description defines in detail a particular tract as generally defined in the preamble. The points of commencement, of beginning and of termination are established, (described in more detail below), specific distances and directions around a tract are recited in a clockwise sequence, monuments are identified as termini of the lines, when applicable, and referrals to record lines or parcels are identified. When closing on the boundary of a section or other established property line, the boundary should be referred to in the description (ie - to a point on the west boundary of —). It is also good practice when traversing along a property boundary to say so (ie - thence along the west boundary of —).

**Qualifying clauses** are statements placed at the end and separated from the main body of the description. Such clauses are (1) to state the area described, (2) to exclude or take something away from the area described and (3) to add other explanatory notes and information.

**Basis of Bearings Statement:** The basis of bearings statement can either be a separate paragraph between the preamble and the body of the description, such as: “Bearings are based on the southerly line of the Southeast Quarter of said Section 16 having a bearing of S. 89°58’25”W. Said line being monumented by a 1968 3 ¼” BLM Brass Cap at the southeast corner and a 17”x4” granite stone at the South Quarter corner.”

Or be defined within the body of the description, such as: “Commencing at the Southeast corner of said Section 16, being a 1968 3 ¼” BLM Brass Cap, from which the South Quarter corner of said Section

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bears S. 89°58'25"W., a distance of 2639.89 feet, said corner being monumented by a 17"x4" granite stone;"

**Point of Beginning/Commencement:** The Point of Commencement and the Point of Beginning provide the real estate described with title identity. For this to occur, it is necessary to tie it to an existing land system. If one of the corners of the tract to be described is of sufficient reputation and quality, (of record), it may serve as the point of beginning without further title reference. When a point outside the tract described must be called for to control the location of the tract, such point of commencement shall be of the following qualities.

- Must be actual. Only physical monuments, actually recovered or established and in existence at the time of writing the description shall be utilized. Do not use a monument that is likely to be removed or destroyed during the construction process.
- Must be direct. A theoretical point such as "the intersection of the south line of the Southwest Quarter of said Section 5 and the existing southeasterly right of way line of FAP Route 406" is not directly established and should be avoided.
- Must be recoverable. A point in a lake, river or other inaccessible location is not recoverable and shall not be utilized.
- Must have simplicity. A stone or concrete monument, iron pipe, drill hole in rock, when described with sufficient detail, can be simply described and recovered and shall be utilized.

### I. STATE LAND USE ACQUISITION

All State land use applications are in accordance with Wyoming Board of Land Commissioners Rules and Regulations, Chapters III, IV, V, & XIV. The Right Of Way Program will be primarily concerned with the acquisition of permanent right-of-way corridors and adjacent temporary construction areas. The Right Of Way Program is responsible for securing and recording Grant of Easements involving permanent highway right-of-way and highway related facilities. The Right Of Way Program is responsible for securing Temporary Use Permits for temporary construction activities adjacent to existing or proposed permanent right-of-way. The Right Of Way Program is responsible for securing wetland mitigation sites. In most cases the Right Of Way Program will secure all State Land Temporary Use Permits as related to construction activities



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### I. STATE LAND USE APPLICATIONS

adjacent to the right-of-way construction corridor. The Survey Section reviews all final documents before submittal to any governmental agency.

#### STATE LAND USE APPLICATIONS

The State land application process is generally outlined as follows:

The Right-of-Way Program will prepare and provide for processing, under the direction of the Land Surveyor, a parcel file containing the following:

- Full size 11"x17" colored plan sheets indicating temporary use permit areas, existing right-of-way and new right-of-way.
- Acreage sheet (Easement & Temporary Use Permit)
- Reduced plan sheet exhibits 8 1/2"x14" indicating temporary use permit areas cross-hatched in red (Temporary Use Permit Only)
- Narrative land description of the right-of-way (Easement Only)
- A right-of-way plat, see OSLI Chapter 3 Rules-Survey plat Instructions (Easement Only)

Note: The right-of-way plat may be provided by a WYDOT or consulting professional land surveyor. An original reproducible copy (Mylar) of the right-of-way plat certified by a professional land surveyor is required for submittal with proof of construction.

The following should be submitted to Appraisal:

- Full size 11"x17" colored plan sheets indicating temporary use permit areas, existing right-of-way and new right-of-way. (Easement and/ or Temporary Use Permit)
- Acreage sheet (Easement and/or Temporary Use Permit)

Appraisal will provide the following:

- Value Finding Estimate.
- Summary Statement of Fair Market Value.
- Appraisal Review and Authorization (R/W Form 57).

Obtain and/or confirm lessee(s) information ( name, company, corporation, address, and lease number(s) ) by contacting the Wyoming Office of State Lands and Investments, (OSLI), with subject land description to include Section, Township and Range.

A notification letter requesting completion and return of the "Surface Lessee Notification and Comment Form" within

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fifteen days is sent to the lessee(s) informing them of the project and with notification that \$10.00 per acre or \$100.00, whichever is greater, surface damages will be transmitted to the OSLI for dispersement. Included with lessee notification letter is the following:

- Reduced Plans (8 1/2"x14") indicating the temporary use permit areas cross-hatched in red existing right-of-way hi-lighted solid yellow and new right-of-way hi-lighted solid red .
- Surface Lessee Notification and Comment Form (to be completed and returned by lessee within fifteen days).
- Self addressed envelope for return of Surface Lessee Notification and Comment Form.

After receiving returned and completed Surface Lessee Notification and Comment Form(s) and after receiving Appraisal data the application letter can be drafted and sent to the OSLI. The application letter should include as a minimum the following information and attachments:

- Request for "Preliminary Approval".
- Existing right-of-way reference (i.e. Grant of Easement number, County Establishment)
- Type of Right-of-Way/Easement requested (i.e. supersede, amendment, new)
- Aliquot part land descriptions and acreage (i.e. SE'4NW'4 Sec. 16, T16N, R72W, 4.2 acres)
- Lessee(s) numbers. (i.e. 2-7601, 3-1234 )
- Completed Easement & Temporary Use Permit Application Form. (As applicable)
- Three paper copies of the application right-of-way plat. (Easement Only)
- Three copies of the description of the right-of-way.(Easement Only)
- Three copies of reduced plan and profile sheets (8 1/2"x14") indicating the temporary use permit areas cross-hatched in red, existing right-of- way hi-lighted solid yellow and new right-of-way in solid red. (Easement & Temporary Use Permit)
- A copy of the appraisal.
- A copy of the Summary Statement of Fair Market Value.
- A copy of the Appraisal Review and Authorization (R/W Form 57).
- A copy of the transmittal letter(s) to the Surface Lessee(s). (Easement & Temporary Use Permit)

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- Completed Surface Lessee Notification and Comment Form (Easement & Temporary Use Permit).

Input the following information into the Government Application Database under the “New Application” option and place the automatically assigned index number on the parcel file folder label:

- Project Number:
- Agency:
- Type:
- Right-of-Way:
- Application:
- State Land Payment:
- Comments:

Normally “Preliminary Approval” will be received within three weeks with “Final Approval” occurring after the Board of Land Commissioners meet (normally the first Thursday of each month). A payment voucher is generated for full payment once preliminary approval is received.

After the State Land Office’s Final Approval Letter has been received, the following should be input/or edited within in the Government Application Database under the “Update by Index No. or by Project No.” options:

- R/W Approval Date:
- TU Approval:

Transmit preliminary approval and final approval letters to the RE, squad leader, DE and DCE as soon as received.

## 2. POST CONSTRUCTION

### POST CONSTRUCTION

1. Obtain or confirm right-of-way plat certification and update Government Application Database with date of “Plat Certification.”.
2. After receiving the As-Constructed plans effecting State Lands, the following should be performed:
  - Confirm that the right-of-way indicated on the As-Constructed plans, the certified right-of-way plat and the narrative property description of the right-of-way are all consistent.

Note: Discrepancies within the As-Constructed plans should be confirmed and/or resolved by the field and in most cases the certified right-of-way plat and the narrative legal description will control any subsequent revisions.

3. After confirming the As-Constructed plans, the certified right-of-way plat and the narrative property description of the right-of-way, the following should be submitted under letter to the OSLI:

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- Easement Post Construction Report
- Mylar of Certified Right-of-Way Plat
- Narrative Legal Description

At this time the Government Application Database should be updated with date that "Proof of Construction/Easement Deed Mailed:".

4. The State Land Office will provide an executed Grant of Easement with the narrative legal description as an attached exhibit. At this time the Government Application Database should be updated with date of "Executed Easement(s)".
5. Submit original executed Grant of Easement(s) for filing in the public record.
6. Transmit a copy of the recorded Grant of Easement(s) to the State Land Office.
7. Provide for project closure and inclusion into the "Blue Folder", the original executed and recorded Grant of Easement(s).

### STATE LAND PARCEL FILE CONTENT

#### **STATE LAND PARCEL FILE CONTENT:**

##### **Temporary Use Permits (Construction Permits):**

Exhibits: 4-copies of reduced (8 1/2"x 14") plan & profile sheets indicating pertinent State Lands with temporary construction areas cross hatched in red. All sets should include the title sheet.

- 1-copy retained for the file
- 1-copy for each lessee (normally only one lessee)
- 1-copy for submittal to the State Land Office
- 1-copy for submittal to Appraisal

##### **Easements (Permanent Right-of-Way):**

Exhibits: 4-copies of reduced (8 1/2"x 14") plan & profile sheets indicating additional. State Land Right-of-Way Easements in solid red and existing State Land Right-of-Way Easements in yellow. All sets should include the title sheet.

- 1-copy retained for the file
- 1-copy for each lessee (normally only one lessee)
- 1-copy for submittal to the State Land Office
- 1-copy for submittal to Appraisal

Right-of-Way Plats, 3-copies (see Section 13 Survey Plats, Chapter 3 Rules, Regulations and Policies of the Board of Land Commissioners.)

- 1-original mylar (for submittal to the State Land Office with Post Construction Report & final property descriptions)
- 1-paper copy retained for the file

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- 1-paper copy for submittal to the State Land Office with application letter

Note: Temporary Use Permits and Easements can be indicated on the same exhibits as applicable to the project.

Acreage Sheets: 2-copies of pertinent sheets with State Land Parcels only

- 1-copy retained for file reference
- 1-copy for submittal to Appraisal (if needed)

Note: Completed State Land Parcel files should be labeled and submitted to the processing Technician.

### J. U.S. GOVERNMENT LAND TRANSFERS

**Sections 107(d) and 317 of Title 23**, of the United States Code provide for the transfer of lands or interests in lands owned by the United States to State Transportation Departments or nominees thereof for highway purposes. The Right Of Way Program is primarily concerned with the transfer of permanent right-of-way corridors and adjacent temporary construction areas. The Right Of Way Program is responsible for the execution and recording of Highway Easement Deeds involving permanent highway right-of-way transfers and for the execution of Temporary Highway Easement Deeds, Temporary Use Permits and Special Use Permits required for all temporary construction and borrow areas adjacent to the highway right-of-way. The Survey Section reviews all final documents before submittal to any governmental agency.

### 1. FEDERAL LAND TRANSFERS

#### **FEDERAL LAND TRANSFERS**

The Wyoming Department of Transportation (WYDOT) may file an application with the Federal Highway Administration (FHWA), or can make application directly to the land-owning agency if the landowning agency has its own authority for granting interests in land. Applications shall include the following information:

- (1) The purpose for which the lands are to be used;
- (2) The estate or interest in the land required for the project;
- (3) The Federal-aid project number or other appropriate references;
- (4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
- (5) A map showing the survey of the lands to be acquired;



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- (6) A legal description of the lands desired; and
- (7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et seq.) And any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

WYDOT sends the application to FHWA, who concurs and sends the application on to the USFS Forest Ranger. For BLM, WYDOT sends the application with FHWA approval directly to the BLM District Office.

If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the four month reply period at the timely request of the land-owning agency for good cause.

Highway Easement Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by WYDOT. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After WYDOT prepares the deed, it will submit the proposed deed to the FHWA for review and execution.

Following execution, WYDOT shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.

When the need for the interest acquired no longer exists, WYDOT must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

### 2. OFFICE PROCEDURES FOR TITLE 23 APPLICATIONS

#### OFFICE PROCEDURES FOR TITLE 23 APPLICATIONS

1. Research existing right-of-way to determine how it is held and if existing government grants will be amended or superseded.

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2. Compose application letter requesting a Letter of Consent (i.e. The Transportation Commission of Wyoming submits herewith an application for right-of-way and for temporary construction areas, and requests issuance of a Letter Of Consent (LOC) to transfer federally controlled public lands under the jurisdiction of any Federal agency with the provisions of Section 317, Title 23, U.S. Code (Highways) approved August 27, 1958, (72 Stat.885), and nondiscrimination assurance according to Title VI, Civil Rights Act 1964. This application is in accordance with procedures in Memorandum of Understanding WY920-08-07-192.
3. Include with application letter (2) copies of environmental clearance, filing map, and temporary construction exhibits.
4. Filing Maps: For Highway Easement Deeds (Permanent Right-of-Way) Full survey data, land tie data and right-of-way configuration is shown. If any portion of a section of land is being applied for, the entire section must be shown. Any private land in the section will be crosshatched and the right of way lines shown for only that portion within the section that is actually government land. The centerline will be shown across the entire section. The map will be 1" = 1000' scale with detail sheets where necessary to clearly show the information required. The application filing map should show all information on the plans which pertains to the right of way desired such as: alignment data, right of way widths, station of right of way width changes, land ties (station, angle and distance), section, township and range, north arrow, scale, project number, legend, sheet number, total number of sheets, access control lines if any, Professional Land Surveyor's Certificate and signature, Statement of act or authority under which access control is acquired, initials of draftsman and date of drawing, date checked and initials of checker.
5. Submit application letter with FHWA concurrence directly to specific federal agency.
6. When the Letter of Consent is received transmit one copy to Project Development; the District Engineer and the Resident Engineer.

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7. Prepare Highway Easement Deed and/or Temporary Construction Easement Deed including special stipulations set forth in Letter of Consent.
8. Submit original and two copies of Highway Easement Deed or Temporary Construction Easement Deed by letter to Federal Highway Administration. Include copy of the Letter of Consent with this submission.
9. Send copy of Highway Easement Deed or Temporary Construction Easement Deed to Attorney General for review prior to securing WYDOT signatures.
10. Have Highway Easement Deed and/or Temporary Construction Easement Deed signed by WYDOT Chief Engineer or Assistant Chief Engineer. Notarize signature.
11. Submit original signed Highway Easement Deed to the county clerk in the appropriate county or counties for recording. Since a Temporary Construction Easement Deed is only temporary it is not necessary to record.
12. After recording, submit a copy of the recorded Highway Easement Deed to the appropriate federal agency with letter containing recording information and citing Interagency Agreement compliance. Copy of the letter only is transmitted to Federal Highway Administration.
13. In the case of a Temporary Construction Easement Deed not being recorded, send a copy of the signed original, fully executed by Wyoming Department of Transportation to the appropriate federal agency with letter containing citation of Interagency Agreement compliance. Copy letter to Federal Highway Administration.

### 3. FEDERAL LAND TRANSFER PARCEL FILE CONTENT

#### **FEDERAL LAND TRANSFER PARCEL FILE CONTENT**

##### **Temporary Use Permits (Construction Permits):**

Exhibits: 3-copies of reduced (8 1/2"x 14") plan & profile sheets indicating pertinent U.S. Government Lands with temporary construction areas cross hatched in red. All sets should include the title sheet.

- 1-copy retained for the file
- 2-copies for submittal to the FHWA

##### **Easements (Permanent Right-of-Way):**

Right-of-Way Plats, 3-copies

- 1-paper copy retained for the file

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- 2-paper copies for submittal with application letter
- Acreage Sheets: 2-copies of pertinent sheets with U.S. Government Parcels only
- 1-copy retained for the file
  - 1-copy for submittal with application letter
- Environmental Clearance: 3-copies of Categorical Exclusion (CE), or Environmental Assessment (EA), or Environmental Impact Statement (EIS)
- 1-copy retained for the file
  - 2-copies for submittal with application letter
- Note: Completed U.S. Government Land Transfer Parcel files should be labeled and submitted to Right Of Way Project Manager for processing.

### 4. BUREAU OF LAND MANAGEMENT / TERMINATION OF APPROPRIATION

#### **BUREAU OF LAND MANAGEMENT/TERMINATION OF APPROPRIATION**

Wyoming Department of Transportation (WYDOT) will notify the Bureau of Land Management (BLM) in writing through the Federal Highway Administration (FHWA) when an appropriation is requested for termination. If WYDOT has not started construction of the highway project or used a proposed material site within a 10-year period or within a previously agreed upon time period, the FHWA will notify the BLM of termination of the appropriation. FHWA is legally responsible for monitoring timely construction; there is no action required by the BLM. Prior to abandonment of a highway project that exists on public lands by WYDOT, a joint inspection of the facility will be made by the appropriate Area Manager, BLM, and the District Engineer, WYDOT. The purpose of the inspection will be joint development of an abandonment and rehabilitation plan, including the removal of drainage structures, removal of surfacing, re-contouring, and reseeding. The BLM will assist WYDOT when requested, and within their capability, in finalizing abandonment and reclamation. Unless unique environmental conditions warrant otherwise, obliteration and reclamation in conjunction with abandonment shall be accomplished in accordance with Section 208, of WYDOT's Specifications for Road and Bridge Construction, latest edition and any special terms and conditions as stipulated in the original Letter of Consent. The BLM will not approve abandonment or disposal of, nor except jurisdiction over the highway project until adequate measures have been taken to eliminate any hazards existing on that portion of the appropriation on public lands and satisfactory rehabilitation has been completed, if required. FHWA will be responsible

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for ensuring that the final record-clearing actions are accomplished. Acceptance of reclamation is accomplished by issuing a decision document accepting the termination. This decision document is issued to the FHWA by the BLM.

### 5. BUREAU OF INDIAN AFFAIRS (B.I.A.) APPLICATION MAP FOR GRANT OF RIGHT-OF-WAY

#### **BUREAU OF INDIAN AFFAIRS (B.I.A.) APPLICATION MAP FOR GRANT OF RIGHT-OF-WAY**

All maps accompanying application for rights-of-way granted by the Bureau of Indian Affairs are subject to the provisions set forth in Section 169.6 Maps, Title 25, and United States Code.

The "Map of Definite Location" required to accompany the right-of-way application is drafted at 1"=1000' scale on 18" x 24" Mylar, with (2) two permanent reproducible copies. The approval of the Department of Transportation Director and the Superintendent of the Indian Agency is required on the map.

The Map of Definite Location will contain the following information, in addition to CFR or BIA requirements:

1. Alignment data.
2. Proposed right-of-way widths and stations.
3. Land corner and property corner ties.
4. The station of intersection, and the distance to a property corner/subdivision corner.
5. Section(s), Township(s) and Range(s).
6. North Arrow, Map Scale and Legend.
7. Major topographic features (railroads, rivers, canals, existing public right-of-way, etc.)
8. Tribal lands and allotments.
9. Professional Land Surveyors Certificate.
10. Department of Transportation Director and Indian Agency Superintendent Affidavit.
11. Statement of authority under which the application is being made.

### 6. CHECKING, PROOFING AND FINAL REVIEW

#### **CHECKING, PROOFING AND FINAL REVIEW**

Compiled coordinate data, annotated working plans, draft acreage summary, parcel files containing draft descriptions and exhibits, draft monument summary and pertinent title work are submitted to the Right of Way Land Survey team for initial checking. The initial checking process involves a independent check of the following:

1. Accuracy (coordinates, acreage, bearings, distances, curve data, stationing).



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2. Land system(s) references (United States Public Land Survey System, City & County Subdivisions, Lots/Blocks)
3. Ownership verification, including deed/property/section/ subdivision line location.
4. Land descriptions (meaning, content, method).
5. Parcel numbering.
6. Title references.
7. Record calls.
8. Monument summary.

The Land Surveyor returns found discrepancies to the assigned Technician for confirmation and correction. Corrected draft documents and summaries are resubmitted to the Land Survey team for final approval.. All final documents and summaries are proofed independent of the initial review checking. The proofing process is the responsibility of the assigned Technician. The final proofing process involves a verbal-visual check by which one individual reads verbally the contents of the corrected draft documents and summaries while one or more individual(s) visual checks the verbal reading with respect to the final documents and summaries. These checking and proofing processes are performed for all right-of-way surveying work products. The Right of Way Land Surveyor and Project Manager perform a final review of projects involving significant right-of-way modification. Emphasis is placed on land & legal description content, meaning, intent and interpretation.

## K. PROJECT CLOSURE

**Blue Folders:** The Right Of Way project closing process is the last check point regarding documentation and referencing of the Right-Of-Way Program's involvement with a specific highway project or facility. This process is usually not begun until after the project has been constructed.

A permanent file number (blue folder) is requested from the Transportation Department Central File office. All legal documents such as deeds or easements are recorded in the appropriate county and placed in the blue folder. Documents to be placed in the Blue Folder are as follows:

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- Original Approval Letters, Decision Letters, Letters of Consent and maps or plats associated with State and Federal land transfers.
- The Official Right-Of-Way Plans are reduced in color to 8½" x 11".
- Parcel Summaries and Revisions.
- Any other miscellaneous documents pertaining to acquisitions (see Project Manager or Administrator for pertinent documents.) Correspondence, appraisals, MOA's, etc. are recorded in BEM and need not be put into the Blue Folder, only final record documents.

The blue folder is returned for file with the Central File.

### Falcon Database Management:

**Project Files:** The Right Of Way project files are stripped of all extraneous material by discarding such items as transmittals, vouchers, preliminary correspondence, reports, etc. The project file is condensed to an inactive status with remaining documents such as agreements, records of conversation, appraisal documents, approval letters, letters of consent, etc. The Official Right-Of-Way Plans are copied in color and placed in the inactive file. Hard copies of the inactive file are placed in the Right of Way Program Archival file drawers by project team. 23 CFR 710.201(e) requires that adequate records of acquisitions and property management be retained for at least 3 years. This year period begins the date federal reimbursement of the final payment made to each owner is received. Retention of record acquisition documents in the Blue Folders is ad infinitum.

### PROJECT CLOSURE ITEM LIST

**The list of items to be retained as part of the project closure are as follows:**

- A-11 Inter Office Correspondence
- Abandonment/Relinquishment Excerpts w/ exhibits
- Acreage Sheets/Parcel Summaries Administrative Settlement
- Agreement of Acceptance
- Bill of Sale
- Certificates
- Certificate of Award of Appraiser Certificate of Right-of-Way Costs
- Claim for Replacement Housing Payment Concurrence Letter

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Condemnation Authorization  
Construction Permits  
Cooperative Agreements  
County Establishment Correspondence Deeds  
Deficiency Reports Documents Easements  
Excess Land Sales  
Exhibits  
Extension Rider  
Federal Documents/Correspondence Grants  
Indenture Agreement/Release  
Inspection Reports  
Land or Parcel Land Release  
Letter of Final Approval  
Letters  
Letters of Consent  
Letters of Decision  
License Agreement  
Maps  
Materials Agreement  
Memorandum of Agreement - MOA Memos  
Modification of Access Control  
Office of State Lands Approval Letter Option Agreement  
Order of Confirmation of Award Order of Conveyance  
Parcel Summaries  
Plan Sheets  
Proof of Construction  
Record of Conversation  
Reports  
Resolutions/Commission Meetings Review and Authorization (Form 57) Snow Fence Agreements & Easements Special Use Permits (Federal)  
State Land Grant of Easement  
State Plats  
Stipulations  
Supplemental R/W Agreement  
Surface Lessee Notification & Comment Form  
Temporary Construction Highway Easements Vouchers (Final)  
Title History/Title Work/Title Records Transmittals.

**The list of items not to be retained as part of the project closure are as follows:**

Abandonment/Relinquishment Excerpts (Copies)  
Acknowledgment of Receipt  
Affidavit of Survivorship  
Appraisal Review

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Assessments  
Assurance of Compliance  
Audit Reports  
Authority for Expenditure  
Authority for Rendering Special Service  
Certificate of Cost/Land Management  
Claim for Actual Moving Expenses  
Closing Statements  
Condemnation Request  
Copies of Deeds  
Corp of Engineers Report  
Death Decree/Certificates  
Dwelling Inspection Reports  
Environmental  
Estimate Sheet (Yellow, handwritten) Fee Appraiser  
Contract  
Fee Appraiser Contract Estimate Five Year Ownership  
Check  
Geology Report  
Invitation/Proposal/Conditions Bids Land Use Facility  
Justifications  
Ledger Pages/copies  
Mortgage Release  
Newspaper Items  
Official Receipts  
Order Granting Immediate Possession Outdoor  
Advertising Sign Estimate Payment Voucher Input  
Form  
Permit to Appraise  
Petition for Condemnation  
Petition for Fee Appraiser  
Pro-Rata Tax Computation  
Public Hearing Package  
Request for Project Authorization Request for  
Relocation  
Resolution for Condemnation  
Schedule of Ownership or Exception State Right-of-  
way Appraisal Form Statement of  
Consideration/Confidential  
Statement of Reviewing Official (Appraisal) Summary  
Statement of Fair Market Value Tax Receipts  
Temporary Use Permits  
Title History/Title Work/Title Records Transmittals

2. FALCON

### FALCON

The Right of Way Engineering Section maintains a digital imaging system by which the above noted documents

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retained as part of the project closure process can be stored electronically. The imaging system has created file categories indexing documents by township, range, project number and parcel. All existing blue folder files and inactive file documents will be digitally imaged for retrieval. This will include abandonment and relinquishment files, land surveying plats, property management documents and future project closures. Basically all retained documents generated by or through the Right Of Way Program will have the capability to be digitally imaged and stored.



# Part IV

## Land Surveys

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### A. GENERAL

This section is intended to serve as a guide for the practice of land surveying activities as pertinent to the Wyoming Department of Transportation.

The Wyoming Surveyors and Engineers Practice Act 33-29-201(a)(viii) and the Board of Professional Engineers and Professional Land Surveyors Rules and Regulations Chapter 5, Section 4 defines the Practice of Professional Land Surveying, and are the governing rules and laws which apply to any Wyoming Department of Transportation land surveying operations. Also, land surveys shall be in accordance with Wyoming Department of Transportation policies and procedures.

#### Definitions:

- Land Monument - Any Government or private monument representing a corner of the Public Land Survey System, (PLSS).
- Property Corner – Any monument representing a boundary of an ownership division line, record parcel or subdivision lot, whether on or near a highway right of way
- Highway Monument – Any monument representing a boundary of a public right of way

### B. LEVELS OF LAND SURVEY

#### 1. LEVEL I

##### Level I

Projects involving significant right-of-way boundary modification will as part of the survey require a Level I Land Survey for the entire project. Projects involving isolated areas of right-of-way boundary modification will as part of the preliminary survey require a Level I Land Survey for those specific areas. As determined by the Districts, projects with deficient right-of-way should utilize the Level I Land Survey for upgrade and correction.

A Level I Land Survey will satisfy the requirements of Level II Land Surveys. A Level I Land Survey will consist of complete retracement and monumentation of WYDOT's controlling highway right-of-way interests. A Level I Land Survey requires that professionally certified Record of Survey Right-Of-Way Boundary Plats be filed in the public record. Said plats apply to both existing right-of-way and post construction right-of-way conditions.

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As a minimum a Level I Land Survey should consist of activities as follows:

1. Locate boundary evidence as required for retracement and monumentation of right-of-way boundaries.
2. Locate, accept or reject all existing highway monument evidence.
3. Locate, accept or reject existing property corners which define adjoining and/or intersecting property lines with right-of-way boundaries.
4. Locate, accept or reject existing land monuments which define adjoining or intersecting political, property, subdivision and addition boundaries with right-of-way boundaries.
5. Reset or rehabilitate all accepted highway and land corner monuments which are found damaged and/or deteriorated.
6. Locate and reference existing land monuments within the right-of-way corridor which have the potential to be disturbed.
7. As applicable to rural lands: Establish highway monuments at all changes in direction or width of existing right-of-way boundaries and provide calculated positions for intersections of existing PLSS land lines with existing right-of-way boundaries.
8. As applicable to urban lands (Record Subdivision Lot & Block): Establish highway monuments at all changes in direction or width of existing right-of-way boundaries and at all block corners which control and are in coincidence with the existing right-of-way boundaries.
9. Re-establish lost or obliterated land corners which define intersecting land lines of the PLSS with right-of-way boundaries.
10. Produce and file in the public record certified Record of Survey Right-Of-Way Boundary Plats to include recorded and unrecorded document references establishing WYDOT's right-of-way. Required information is more particularly defined in the Right of Way Boundary Plat Standards Section.
11. Produce a certified coordinate listing of all highway monument evidence, land and property corner monuments, calculated positions and survey control utilized in the survey.

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The listing will consist of final coordinate positions, referenced survey datum, complete and detailed monument and evidence descriptions and a Professional Land Surveyor's certification.

12. Produce an electronic submittal of the coordinate information and the associated line work as shown in the Record of Survey.
13. Produce and file in the public record all applicable State of Wyoming Corner Records and provide copies to WYDOT after filing.
14. Land survey work products shall be submitted concurrently to the respective District Land Surveyor and to the Right-Of-Way Program for review, comments, revision and final approval.

### 2. LEVEL II

#### **Level II**

Projects with anticipated right-of-way boundary modification and/or land use adjacent to the existing right-of-way will as part of the preliminary survey require a Level II Land Survey. Level II Land Surveys will generally not include any land corner, property corner or highway monument establishment. The primary intent is to locate all existing land corner, property corner and highway monument evidence. The Level II Land Survey will satisfy requirements of the Level III Land Survey.

The Level II Land Survey will require coordinate positions and described evidence for all existing land corners, property corners and highway monuments within or adjacent to the project right-of-way and/or construction limits and in areas of potential land uses. Evidence of property/ownership lines which extend from the right of way boundary must also be gathered and shown.

This should include but is not limited to the following activities:

1. PLSS land corners which define intersecting land lines with existing right-of-way boundaries.
2. Property corners which define adjoining and/or intersecting property lines with existing right-of-way boundaries.
3. Land corners which define adjoining or intersecting political, property, subdivision and addition boundaries with existing right-of-way boundaries.
4. Right of way, reference, and median markers (Highway Monuments).



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5. Produce a certified coordinate listing of all highway monument evidence, land and property corner monuments, calculated positions and survey control utilized in the survey. The listing will consist of final coordinate positions, referenced survey datum, complete and detailed monument and evidence descriptions and a Professional Land Surveyor's certification.
6. Produce and file in the public record all applicable State of Wyoming Corner Records and provide copies to WYDOT after filing.
7. Produce an electronic submittal of the coordinate information and the associated line work as shown in the Record of Survey.
8. Land survey work products shall be submitted concurrently to the respective District Land Surveyor and to the Right-Of-Way Program for review, comments, revision and final approval.

### LEVEL III

#### **Level III**

Projects which will potentially disturb existing land monuments within and along the existing right-of-way construction corridor and do not include any anticipated new right of way acquisitions, will as part of the preliminary survey require a Level III Land Survey consisting of the following activities:

1. Locate, witness or reference all existing land corners, property corners and highway monuments within and along the existing right-of-way construction corridor which potentially could be disturbed.
2. Produce a certified coordinate listing of all highway monument evidence, land and property corner monuments, calculated positions and survey control utilized in the survey. The listing will consist of final coordinate positions, referenced survey datum, complete and detailed monument and evidence descriptions and a Professional Land Surveyor's certification.
3. Produce and file in the public record all applicable State of Wyoming Corner Records.
4. Produce an electronic submittal of the coordinate information and the associated line work as shown in the Record of Survey.

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5. Land survey work products shall be submitted concurrently to the respective District Land Surveyor and to the Right-Of-Way Program for review, comments, revision and final approval.

### C. RIGHT-OF-WAY RETRACEMENT

#### 1. GENERAL

**General:** Highway right-of-way retracement surveys are performed to accurately locate, describe and record lands acquired for transportation purposes. Highway rights-of-way Records of Survey will be recorded in the appropriate public offices. These Surveys may be used as evidence in Court and will represent a legal and official delineation of highway right-of-way boundaries. Boundary retracements should be based on a combination of physical evidence, recorded documentation, unrecorded documentation and unwritten rights. All highway right-of-way surveys shall be conducted under the responsible charge of a Professional Land Surveyor.

#### 2. HISTORY

**Historical:** The Wyoming State Highway System has approximately 6,500 miles of roadway that affect private and public ownership. Highway rights-of-way in Wyoming, for the most part, have been acquired or established by fee purchase (ownership), by easements (rights granted by the state, federal government, or by private entities), by condemnation (court action), and by County Establishment/Highway Commission Resolution (the right-of-way was established by the county and then transferred to the state highway system).

When the Department of Transportation first came into existence as the Wyoming Highway Department in the 1920's, highway rights-of-way were secured by the Counties. These rights-of-way were predominantly secured by various forms of legal county establishment. During this time period the Counties rarely acquired deeds or easements for these establishments. The State Highway Commission under statutory authority would by resolution designate county-established highway rights-of-way as state highways. In the late 1930's and early 1940's the department began to secure its own rights-of-way by fee purchase (deeds) and by grants (easements). The Counties continued to establish highway right-of-way and the State Highway Commission continued the designations of state highways. During the 1950's to the present and with the onset of the interstate system in the late 1950's most highway right-of-way were secured by the Department of Transportation or its predecessor the Wyoming Highway Department.

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### 3. RESEARCH

**Research:** Research is essential to performing an accurate and legally defensible highway right-of-way retracement. All relevant historical data, legal public record, quasi public record, and unrecorded data should be compiled prior to commencing the highway right-of-way retracement survey. This compilation should continue to be updated throughout the course of the survey.

As-constructed plans for previously constructed highway projects are on file in the Office Services Program of the Wyoming Department of Transportation in Cheyenne. The plan and profile sheets contained within the as-constructed plans serve as a beginning basis for determination of right-of-way boundaries as established under the specific project. The as-constructed plans should not be considered the sole source of reference for such determinations. The as-constructed plans in regard to right-of-way boundary location can be inconsistent with physical evidence and/or instruments of conveyance. As part of the as-constructed plans, it is common to find Right-of-Way Marker Summaries comprised of listed right-of-way monuments that were set under the specified project. These listings quantified the number of markers set and noted the location of each marker by station and offset direction. These summaries are useful in the recovery of highway (right-of-way) monument evidence.

Office Services maintains a data base of departmental survey field books that have been sent in as part of the project finals. These books are indexed by project number, book number, type of survey, date received and project location. These books commonly contain useful survey information such as horizontal alignments, land corner ties with monument descriptions and right-of-way monument placement. Some of the records have been disseminated to the Districts and some destroyed; consultation with the District Land Surveyor may provide some information.

The Wyoming Department of Transportation Central Files in Cheyenne maintains a data base of departmental files containing legal documents by which existing rights-of-way were established and/or held and said files also contain useful plans and maps exhibiting existing rights-of-way. These files are commonly referred to as "Blue Folders" or "Agreement Folders". Each folder is assigned a "agreement number" and in some cases may contain documents from several projects. The folders are indexed by project number and cross referenced by

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township, range and section. The Right-of-Way Program also maintains a data base of departmental files containing information pertinent to highway right-of-way acquisitions. Abandonments and relinquishments files are also maintained by the Right of Way Program and are index by county, section, project and system number. These files may be cross referenced township and range, also. In addition, the Right-of-Way Program maintains files for existing snow fence agreements, leases, and easements. There are numerous snow fence locations obtained by field offices for which the Right-of-Way Program will not have record.

The Photogrammetry and Surveys Section maintains files of all aerial photography and control survey information. The project area may have been photographed several times over a period of years and a comparison of earlier and current photography can become a valuable research tool. Individual photos may be enlarged to practically any scale for improved detail of a specific area.

There are also the government agency offices which have land information such as BLM, USFS, County Road and Bridge, and where applicable, the County Surveyor's office or former records.

### 4. EXISTING HIGHWAY MONUMENTS

**Existing Highway Monuments:** In many cases existing highway monuments are the best and closest available evidence for retracement and establishment of highway right-of-way boundaries. Unless proven to be in gross error or originally established under blunder, all existing highway monuments should be considered in the process of a legal right of way boundary retracement. Highway monuments are prima facie evidence of legal right of way boundaries with primary intent to serve as control of such. Care should be taken to verify that existing monuments represent the acquired right of way, not necessarily the as-constructed conditions.

### D. RIGHT-OF-WAY BOUNDARY PLAT STANDARDS

#### 1. GENERAL

**General:** Wyoming Department Of Transportation Right-Of-Way mapping standards have been developed for 11"x17" drawing size, and is the required size for all drawings. Other sizes may be acceptable for certain counties, but any variation from the required size should be discussed with and approved

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by the Right of Way Program prior to creation of the Record of Survey. All Right-Of-Way Plats will be submitted concurrently to the respective District Land Surveyor and the Right-Of-Way Program for review and approval prior to recording. Once the Record of Survey is finalized, a copy containing an original seal and signature will be recorded with the appropriate County Clerk's Office.

One copy of the recorded Record of Survey will be provided to the Wyoming Department Of Transportation and will contain the appropriate County recording information. All text and graphics will be the colored black. Copies will be legible, reproducible and with accurate scales as applicable. All Wyoming Department of Transportation Records of Survey will be dimensioned in units of U.S. Survey Feet.

The organization of the Record of Survey shall be in accordance with the following guidelines:

### 2. TITLE SHEET

**Title Sheet** The Title Sheet will include the following:

- a) Plat title to read: (i.e. "Record Of Survey Plat Showing Right-of-Way Boundary For Wyoming State Highway-50(route designation), Located in Sections 4, 5, 8, 9, 17, 18, 19, & 20, Township 45 North, Range 74 West, Resurvey of the 6th Principal Meridian(U.S. Public Land Survey System Description), Campbell County, Wyoming.
- b) Professional seal and signature as defined by Wyoming State Statute and Board of Professional Engineers and Professional Land Surveyors Rules and Regulations.
- c) Indexing of all sheets within the plat.
- d) Standard Wyoming Department of Transportation title block in the upper right-hand corner to include project number(s), sheet number(s), and total sheet number(s). Note: Sheets will be numbered alpha-numerically with a "R" alpha character for "Right-Of-Way" (i.e. R3 of R10)
- e) Legend consisting of all utilized points and line symbols. All utilized abbreviations should be indicated in the legend.
- f) "Vicinity Map" indicating the general area covered by the plat.
- g) North arrow.

### 3. LOCATION MAP

**Location Map** to contain the following:

- a) The Record of Survey will include a Location Map that sufficiently references the local land systems to include any PLSS aliquot parts down to quarter-quarter sections, political boundaries and subdivisions traversed by the Right-of-Way.



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- b) The Location Map will follow the Title Sheet in sequence.
- c) Indicate by point number and appropriate symbol for all recovered or calculated land corners and all control points which cannot be directly shown on the Boundary Control sheets.
- d) Show the right-of-way corridor without dimensions.
- e) Have a scale not to exceed 1"=1000'.
- f) North arrow and scale.

### 4. COORDINATE LISTINGS

**Coordinate Listings** to contain the following:

Coordinate Listings will be on separate sheet(s) from the Title Sheet, the Location Map and the Boundary Control Plat sheets and will follow the Location Map in sequence.

- a) Have the survey datum clearly stated. The Basis of Bearings Statement can be a separate statement or part of the survey datum statement.
  - b) List all existing and established survey control points utilized in the right-of-way retracement and/or establishment
  - c) List all PLSS monuments recovered or positions calculated
  - d) List all found, set, reset and calculated highway monuments
  - e) List all found, set, reset and calculated property corners, accessories, witnesses or references
- Land corner, property corners, highway monuments and control points, with their respective accessories, witnesses, and references, will be in separate tables or summaries according to the type of monument listed.

All listed coordinates will be indicated to (4) decimal places.

Coordinate Listings will contain the following in order left to right across the tables or summaries in columns:

POINT NUMBER: Point number which coincides with that which is on the Boundary Control Plat sheets or Location Map.

NORTHING: North coordinate.

EASTING: East coordinate.

DESCRIPTION: Description of what the point is intended to represent (i.e. ¼ Corner S2/S11, T. 42 N., R.106 W. or R/W PC, 100 ft. Lt.)

REMARKS: Monument classifications such as found, set, reset and retain. Details of the Land & Property Corner and Highway monument evidence and any accessories, witnesses, and references thereof. Monument composition, existing marks or stamping, dates, registration numbers, etc. (i.e. Found: 3 ¼" GLO Brass Cap on 2 ½" iron pipe, 1916 or Set: Standard Wyoming Department Of Transportation Highway Monument, Stamped: PROJ P551021, PC, PT, AP as appropriate, DATE 5/99, P.L.S. 0000)

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Note: All existing highway monuments regardless if stamped, will have remarks to indicate the original project number under which the monument was set and the station & offset for which it was originally intended to represent. (i.e. found standard highway monument, no stamping, PC 50+12.3, 100 ft. Rt., set under Project 601(7) )

STATUS: A "STATUS" column for acceptance or rejection of found evidence will be provided for each point. The column will be marked "Accept" in cases of acceptance of the found evidence or as "Reject" in cases of rejection.

### 5. RIGHT-OF-WAY DOCUMENT SUMMARY

#### **Right-Of-Way Document Summary**

A summary of the Record Documents will be on separate sheet(s) from the Title Sheet, the Location Map, Coordinate Listing and the Boundary Control Plat sheets and will follow the Coordinate Listing in sequence.

References to the Public Record and to quasi Public Records such as those contained within Wyoming Department Of Transportation which were utilized in any retracement, establishment, and measurement comparisons associated with the production of the Record of Survey should be compiled into a table format consisting of the following types of reference: Book, page, instrument number(s), indexing number(s), document type, project number(s).

### 6. BOUNDARY CONTROL PLAT SHEETS

#### **Boundary Control Sheets**

General: The Boundary Control sheets of the Right-of-Way Plat are intended to detail the monuments and lines that control and delineate Right-Of-Way Boundaries as retraced and established. In all cases, only one definable and monumented Right-Of-Way Boundary line for each side of the Right-Of-Way corridor should be indicated. Areas of unresolved conflict or encroachment should be indicated in relationship to the Right-Of-Way Boundary.

Boundary Control sheets will be on separate sheets from the Title Sheet, the Location Map, the Coordinate Listings, the Right-Of-Way Document Summary and will follow the Right-Of-Way Document Summary in sequence.

Sheet Scales will not exceed the following criteria:

Rural 1"=400'    Urban/Suburban 1"=100'    City Streets  
1"=50'

Note: Scales will be expressed as equivalence scales (i.e. 1"=400') and not as representative fractional scales (i.e. 1:2400).

All text heights & widths will be a minimum of 8% plat scale.

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Boundary Control sheets will include the following:

- a) Right-Of-Way Boundaries will be indicated with the Wyoming Department of Transportation's standard line symbol for Highway R/W Line-Existing No Fence.  
Note: Right-Of-Way Boundary lines should be indicated without contiguous fences or topography and without references or indications of survey or construction centerline alignments. Areas of physical encroachment should be detailed as necessary.
- b) Measured bearings, distances and curve data and record bearings, distances and curve data as applicable will be labeled along each monumented or calculated segment of the Right-Of-Way Boundary and along each PLSS line which intersects the Right-Of-Way Boundary. Record and measured dimensions will be indicated as such.
- c) Line and curve tables may be utilized. Tables should be placed on applicable Boundary Control Plat sheets only.
- d) All highway monuments, land & property corner monuments, accessories, and control points will be indicated with the point number and appropriate symbol.
- e) All witnesses, reference and accessory points will be indicated with associated bearing and distance calls.
- f) Point numbers will be labeled adjacent to all indicated highway monuments, land & property corner monuments, and control monuments. Associated notes and details should be labeled next to the points as applicable.
- g) Each Boundary Control Plat sheet will indicate all monumented and protracted PLSS land lines to include: Townships, Ranges, Sections, Tracts, Lots, Quarter Sections and Quarter-Quarter Sections.
- h) Pertinent Local Land Survey System lines should be indicated, to include city & county subdivisions and private tracts.
- i) Each Boundary Control Plat sheet will be labeled with pertinent PLSS designations for: Townships, Ranges, Sections, Tracts, Lots, and Quarter-Quarter Sections.
- j) Boundary Control Plat Sheets will indicate all existing and established survey control points within the scale of the plat that were utilized in the right-of-way retracement and/or establishment.
- k) Professional comment, judgment and analysis associated with the specific right-of-way boundary retracement and establishment should be noted on the applicable Boundary Control Plat sheet.
- l) Retracement curve and spiral data will be labeled adjacent to each specific right-of-way boundary curve or spiral as applicable. Right-of-way boundary curves will be labeled as "NON-TANGENT" as applicable.
- m) Detail views are required as applicable.

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n) North arrow and scale on each sheet.

### 7. COMBINED RIGHT-OF-WAY PLAT ELEMENTS

#### **Combined Right-Of-Way Plat Elements**

Records of Survey that encompass isolated segments of Right-Of-Way Boundary and/or survey areas which do not exceed ½ mile may consolidate the platting elements (Title Sheet, Location Map, Coordinate Listings, Right-of-Way Document Summary, and Boundary Control Sheets) as appropriate. Combining of platting elements will be subject to all previously outlined standards.

### E. HIGHWAY MONUMENTS

#### 1. GENERAL

**General:** Right of way, reference, and median markers (Highway Monuments) set under the jurisdiction of the Wyoming State Highway Department and its successor the Wyoming Department of Transportation are prima facie evidence of legal right of way boundaries with primary intent to serve as control of such. In this case prima facie evidence means the monument itself will establish the fact of location of the point that it is purported to mark, unless the monuments are proven to be in error. Highway monuments have been and are set by personnel in pursuance of their official duties under the direction and supervision of the superintendent or his designated representative. Highway Monuments have historically been established using acceptable surveying practices, procedures and accuracies for the time. The establishment of Highway monuments will be in compliance with all federal, state and local laws, the current Rules and Regulations set forth by the Board of Professional Engineers and Professional Land Surveyors (BPEPLS) and the current Memorandum of Understanding between WYDOT and BPEPLS.

Unless impractical all highway monuments will be in accordance with Wyoming Department of Transportation Standard Plan 611-1A. The use of non standard monuments shall require the prior approval of the District Land Surveyor or the Right of Way Program Land Surveyor.  
(Reference Appendix P for Standard Plan 611-1A )

#### 2. LOCATION

##### **Location:**

Highway monuments will be established at all directional changes along highway right-of-way boundaries to include the following: R/W Jogs, Points of Curvature (PC), Tangent Points (PT) and Angle Points (AP).

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### 3. STAMPING

#### **Stamping:**

All highway monument stamping will be 1/8" in size.

All highway monuments confirmed and/or established by a professional land surveyor will be stamped with the responsible professional land surveyor's registration number and the year of monument confirmation and/or establishment.

The stamping of project number, station and offset is dictated by a particular highway monument's referencing in time to a specific project and alignment. This is directly related to the right-of-way boundary by which the particular highway monument is intended to represent.

Prior to commencing the stamping process of highway monuments, the District Land Surveyor or the Right Of Way program should be consulted.

Highway monuments should be stamped as applicable with the following elements:

- a) project number under which monument was originally set.
  - b) station and offset for which the position was originally intended to represent.
  - c) current project number under which the monument was set.
  - d) current project survey point number.
  - e) monument designation (i.e. PC, PT, AP., REF., WC, RESET, etc.).
  - f) year and PLS registration number.
- (Reference Appendix P for stamping examples and "Highway Monument Stamping Guidelines Table")

### F. SNOW FENCE SURVEYS

#### 1. PROFESSIONAL REQUIREMENTS

##### **Professional Requirements:**

All snow fence locations requiring easements or easement modifications are required to be surveyed by a professional land surveyor or under the supervision of a professional land surveyor. Professionally certified exhibits are required to be produced for all new or modified snow fence easement surveys.

#### 2. LAND SURVEY REQUIREMENTS

##### **Land Survey Requirements:**

1. The survey shall be in accordance with Wyoming Department of Transportation policies and procedures and applicable Federal or Wyoming State Laws, guidelines, and standards.



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2. Determine ownership of subject lands and obtain or confirm permission to survey. Permissions may have been previously obtained by the Department.
3. A minimum 20 ft. width will be utilized for all snow fence easements, or as dictated by design requirements.
4. Individual snow fence sites will have monuments placed at the beginning, end and at directional changes along the center line. The easement end points will be set on 5-foot offsets, with the caps marked accordingly. Unless otherwise impractical all monuments should be an iron rod not less than 24" length, 5/8" diameter or a nonferrous monument of the same dimensions, which has a ferromagnetic insert for electronic or magnetic detection. An aluminum or brass cap with a diameter not less than 1½" should be securely fastened and stamped with registration number, year, and identifiers (i.e. "SF ESMT" for Snow Fence Easement) clearly stamped.
5. Bearings, distances and curve data should be determined along individual snow fence site center lines.
6. As a minimum one end of each individual snow fence site centerline should be tied to the nearest acceptable PLSS corner by bearing and distance, not to exceed two miles.
7. Produce a certified exhibit illustrating the complete snow fence land survey with the easement centerline description.
8. Produce a certified coordinate listing of all highway monument evidence, land and property corner monuments, calculated positions and survey control utilized in the survey. The listing will consist of final coordinate positions, referenced survey datum, complete and detailed monument and evidence descriptions and a Professional Land Surveyor's certification. Separate coordinate listings are not required if indicated in sufficient detail on a certified plat.
9. Produce and file in the public record all applicable State of Wyoming Corner Records and provide copies to WYDOT after filing.
10. Land survey work products shall be submitted concurrently to the respective District Land Surveyor and to the Right-Of-Way Program for review, comments, revision and final approval.

### 3. EXHIBIT REQUIREMENTS

#### **Exhibit Requirements:**

General: Exhibits are to be provided to the WYDOT Right-of-Way Program to serve as basis for snow fence easement descriptions. The plats will be made part of the easement instruments as an attached "Exhibit A". Separate Exhibits will

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be produced for each individual ownership. This may consist of multiple sites with multiple sheets per exhibit.

(Reference Appendix P for example "*Snow Fence Exhibit*")  
Standard sheet size of 8½" x 14".

1. Professional seal and signature as defined by Wyoming State Statute and BPEPLE Rules and Regulations.
2. A basis of bearings will be stated for each site as applicable.
3. Legend consisting of all utilized point and line symbols. All utilized abbreviations should be indicated in the legend.
4. North arrow and scale on each sheet.
5. The minimum plat scale: 1"=1000'.
6. Unit of measure: U.S. Survey Feet.
7. Surveyed and/or protracted land system lines sufficient to delineate ownership(s).
8. PLSS aliquot part designations labeled.
9. Land system ties: bearing and distance.
10. Bearings, distances and curve data for each centerline course.
11. Easement width indicated (standard 20 ft. width).
12. Easement centerline description with area indicated (acreage indicated to the nearest hundredth of an acre).
13. Current ownership indicated.

The exhibit will have a title block with the following: (i.e. "Exhibit Showing Snow Fence Easement(s) For Wyoming State Highway-487(route), Located in the NW¼ NE ¼ of Section 28, Township 23 North, Range 78 West, Original Survey of the 6th Principle Meridian(USPLSS Description), Carbon County, Wyoming.

In cases of State Land easements the exhibit will meet the above noted standards and also comply with instructions outlined in Chapter III Rules, Regulations and Policies of the Board of Land Commissioners "Survey Plat Instructions".

## 7. MISCELLANEOUS LAND SURVEY

### 1. GENERAL

#### **General:**

Miscellaneous land surveys are most commonly associated with existing and proposed WYDOT facilities outside of the operating highway right-of-way and in some cases involve excess existing right-of-way. This may involve modification, acquisition, conveyance and transfer of land parcels identified as but not limited to; Communication Sites, Shop Sites, Rest Areas, Material & Pit Sites, State & U. S. Government Land Transfer, Abandonment, Relinquishment and Land Disposal by Sale.

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State and U. S. Government land surveys are generally associated with proposed modification to the operating highway right-of-way by which easements are granted to the Wyoming Transportation Commission. This may involve complete new land transfers, existing right-of-way grant amendments and existing right-of-way grant replacement.

### 2. PROFESSIONAL REQUIREMENTS

#### **Professional Requirements:**

All miscellaneous land surveys involving legal subdivision of land, delineation of easements and retracement or establishment of property lines shall be surveyed by a professional land surveyor or under the supervision of a professional land surveyor. All land surveying shall be in accordance with Wyoming Department of Transportation policies and procedures and applicable Federal or Wyoming State Laws, guidelines, and standards.

### 3. LAND SURVEY REQUIREMENTS

#### **Land Survey Requirements:**

1. Determine ownership of subject lands and obtain or confirm permission to survey. Permissions may have been previously obtained by the Department.
2. Pre-existing conditions such as easements and access roads shall be located.
3. Produce a certified plat illustrating the complete land survey.
4. Produce a certified coordinate listing of all highway monument evidence, land and property corner monuments, calculated positions and survey control utilized in the survey. The listing will consist of final coordinate positions, referenced survey datum, complete and detailed monument and evidence descriptions and a Professional Land Surveyor's certification. Separate coordinate listings are not required if indicated in sufficient detail on a certified plat.
5. As applicable to State Land transfers only provide WYDOT with a certified legal land description of the proposed right-of-way land transfer(s).
7. Produce and file in the public record all applicable State of Wyoming Corner Records and provide copies to WYDOT after filing.
8. Land survey work products shall be submitted to the Right-Of-Way Program for review, comments, revision and final approval.

### 4. PLAT REQUIREMENTS

#### **Plat Requirements:**

General: Plats are to be produced for the WYDOT Right-of-Way Program to serve as basis for land descriptions. The plats will be made part of the conveyance instruments in the form of

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exhibits. Standard sheet size of 8½" x 14" and shall contain the following:

1. Professional seal and signature as defined by Wyoming State Statute.
2. A basis of bearing will be stated for each sheet as applicable.
3. Legend consisting of all utilized point and line symbols. All utilized abbreviations should be indicated in the legend.
4. North arrow and scale on each sheet.
5. The minimum plat scale: 1"=1000'.
6. Unit of measure: U.S. Survey Feet.
7. Surveyed and/or protracted land system lines sufficient to delineate ownership(s).
8. U.S. Public Land Survey System aliquot part designations labeled.
9. Land system ties: bearing and distance.
10. Bearings, distances and curve data as applicable.
11. Existing easement and widths.
12. Proposed access if applicable.
13. Pre-existing conditions such as utilities and access roads.
14. A description of the area/site being surveyed to include the area of the surveyed site.
15. Current ownership indicated.

The plat will have a title block with the following: (i.e. Waltman Hill Communication Site & Access Road, Located in Lot 1 of Section 5, Lot 4 of Section 4 and Lots 1, 2 & 3 of Section 3, Township 35 North, Range 87 West, all of the 6th Principle Meridian(USPLSS Description), Natrona County, Wyoming.

In cases of State Land easements the exhibit will meet the above noted standards and also comply with instructions outlined in Chapter III Rules, Regulations and Policies of the Board Of Land Commissioners "Survey Plat Instructions".

# Part V

## Appraisal Guidelines for Estimating Fair Market Value of Real Property

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### A. PURPOSE

Part IV contains the responsibilities, duties and techniques to be followed in the actual appraisal process. The purpose of this manual is to provide a summary and quick reference to anyone interested in the appraisal functions. It should provide a source for the appraiser, review appraiser or the project manager to check on how to handle situations so that all the applicable laws, rules, standards and regulations are followed.

### B. STATUTORY AUTHORITY

#### 1. W.S. 24-2-102

##### **W.S. 24-2-102**

Under the statutory provisions of W.S. 24-2-102, the Department is authorized to acquire, hold and manage real property in the name of the Transportation Commission of Wyoming and to develop, improve, operate, and maintain the same for any necessary public purpose.

This includes lands for right-of-way, road building materials, depositing waste material, embankments, excavations, maintenance, parking facilities, rest areas, wetlands, scenic areas, shop and building sites.

The Commission has the authority to acquire by purchase or gift, the parcel or parcels of property that may be severed or damaged as a result of the acquisition of the highway right-of-way; provided, that the Commission shall not acquire any such parcel or parcels of land by purchase or gift until full settlement has been made for the damages to the landowner as otherwise provided by law.

The Commission has the authority to acquire by purchase or gift, title to property containing deposits of sand, gravel, shale, rock and other road building material or storage sites for these materials, for use on the roads of Wyoming when, in the opinion of the Transportation Commission of Wyoming the interest of the public, or the expediting of a project, demands such acquisition. To date the Commission has made it a policy not to condemn property for scenic roadside areas, wetlands and roadside rest areas.

Real property includes land, water and improvements.

#### 2. WYOMING EMINENT DOMAIN ACT

##### **WYOMING EMINENT DOMAIN ACT**

If rights-of-way cannot be acquired by purchase or gift, the Commission has authority to acquire rights-of-way according to the Wyoming Eminent Domain Act, W.S.1-26-501 through 1-26-

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817. This is the most applicable law to the function of the appraisal function. This act establishes the definitions for compensation and market value as well as the general requirements to acquire property by eminent domain.

### 3. TITLE II OF PUBLIC LAW 91-646

#### **TITLE II OF PUBLIC LAW 91-646**

This act is titled Uniform Real Property Acquisition Policy. It sets some minimum standards in the way real property is acquired by a federal agency. It applies to the Wyoming Department of Transportation whenever federal money is involved in a project. This is federal law rather than state statute.

### 4. TITLE XI OF FIRREA

#### **TITLE XI OF THE FINANCIAL INSTITUTE REFORM RECOVERY AND ENFORCEMENT ACT OF 1989**

This section is titled “Real Estate Appraisal Reform Amendments.” The law is part of what is referred to as the savings and loan bailout bill or FIRREA. This section creates the Appraisal Subcommittee of the Financial Institutions Examinations Council (FFIEC). This committee enforces and administers the appraisal reform section of the law. This section of the law sets up requirements for state certified and state licensed appraisers. Though this law is specifically designed for lending institutions, the requirements of this law are far reaching as the Office of Management and Budget (OMB) has required the Federal Highway Administration (FHWA) to make sure their requirements are in line with this law. The law requires that appraisers conform to the Uniform Standards of Professional Appraisal Practice.

### 5. WYOMING CERTIFIED REAL ESTATE APPRAISERS ACT

#### **WYOMING CERTIFIED REAL ESTATE APPRAISERS ACT**

**Authority.** Vested in the Certified Real Estate Appraisal Board by virtue of W. S. 16-3-101 through 16-3-115 and W. S. 33-39-101 through 33-39-130. This law creates the Wyoming Certified Real Estate Appraiser Board. The board will administer and enforce the law. This law sets standards for appraisers who wish to be state certified. If an appraiser is state certified this law indicates that he must follow the Uniform Standard of Professional Appraisal Practice. The law is voluntary in that anyone can appraise in the state, however, if they wish to become state certified, they must follow the rules and regulations created by this law. Though neither the FHWA or the Wyoming Department of Transportation requires staff appraisers to be state certified at this time, appraisers are encouraged to become certified to add credibility to their work product. FHWA now requires the use of only state certified fee appraisers on contract projects.

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### C. ADMINISTRATIVE

As mentioned in the Purpose statement, there are several rules and regulations which form the framework for the appraisal duties and responsibilities as well as the minimum requirements for estimating value. The following is a list with a short description of the formal rules and regulations which have been incorporated into this manual.

#### 1. UNIFORM APPRAISAL STANDARDS FOR FEDERAL LAND ACQUISITIONS

##### **UNIFORM APPRAISAL STANDARDS FOR FEDERAL LAND ACQUISITIONS (YELLOW BOOK)**

This is a comprehensive guide for appraisers and review appraisers involved in federal land acquisitions. These standards and many of the requirements are still applicable.

#### 2. CODE OF FEDERAL REGULATIONS

##### **CODE OF FEDERAL REGULATIONS (CFR)**

1. 23 CFR Part 710, 49 CFR Part 24, 23 CFR 635, and 23 CFR 1.23. These regulations deal with all aspects of the Federal-aid Highway Program. The portion which is applicable to the appraisal section is that portion which deals with the contracting of fee appraisers services.

2. 49 CFR, Section 24.102(c)(2) indicates that an appraisal is not required if: 1) The owner is donating the property and releases the Agency from its obligation to appraise the property; or 2) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on the review of available data. However, the federal agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the agency acquiring the real property offers the property owner the option of having the agency appraise the property.

#### 3. POLICY AND PROCEDURE MEMORANDUMS

##### **POLICY AND PROCEDURE MEMORANDUMS & FEDERAL HIGHWAY PROGRAM MANUAL**

These policy statements and memorandums set policy on specific situations dealing with the acquisition of land for federal aid programs.

#### 4. UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

##### **UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE**

These standards have been accepted as the required standards for the appraisal industry in general. The Wyoming State Certified Appraiser Act requires state certified appraisers to complete appraisals which meet these standards. November 1, 1990 a memorandum from the Chief, Operations Division of the Federal

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Highway Administration stated that the Appraisal Foundation had determined that the appraisal provisions of 49 CFR Parts 24.103 and 24.104 were consistent with the Uniform Standards of Professional Appraisal Practice. The request for clarification of the compatibility of the regulation to the standards, was made when the Office of Management and Budget notified the Federal Highway Administration that they should follow the Uniform Standards.

### 5. WYOMING DEPARTMENT OF TRANSPORTATION OPERATING MEMORANDUMS

#### **WYOMING DEPARTMENT OF TRANSPORTATION OPERATING MEMORANDUMS**

These memorandums are used to clarify specific situations and to set policy where a specific law or regulation does not apply. These memorandums may be from the Attorney General's Office, the Lands Management Administrator, or the Review Appraiser and deal with daily functions of the Wyoming Department of Transportation appraisal staff. These memorandums are constantly being updated on policy changes.

### D. JUST COMPENSATION

The Fifth Amendment of the United States Constitution and Article 1, Section 33, of the Wyoming Constitution, provides that private property shall not be taken or damaged for public use, without just compensation. Acquisition of private property for public use frequently generates elements which cannot be translated into monetary equivalents. It has, therefore, been necessary for the courts to evolve practical guides to be applied with some reasonable degree, whereby just compensation can be ascertained. The solution adopted by the courts in determining just compensation, is the "Fair Market Value" concept.

### I. MARKET VALUE AS A MEASURE OF JUST COMPENSATION

#### **MARKET VALUE AS A MEASURE OF JUST COMPENSATION**

Wyoming state statute indicates under W.S. 1-26-702. Compensation for taking, that the measure of compensation for a taking of property is its Fair Market Value. In the case of a partial taking this section defines how compensation is to be determined. The section is quoted below.

*W.S. 1-26-702 COMPENSATION FOR TAKING. (subsection b)  
"If there is a partial taking of property, the measure of compensation is the greater of the value of the property rights taken or the amount by which the fair market value of the entire*



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*property immediately before the taking exceeds the fair market value of the remainder immediately after the taking."*

This method is used to estimate compensation for damages as well as the taking itself. In the case where it is obvious there are no damages to the remainder, only the value of the property rights taken is estimated by the appraiser. (Appraisal or Waiver Valuations). In Wyoming the taking must be paid for and only damages can be offset by benefits.

### 2. MARKET VALUE DEFINED

#### **FAIR MARKET VALUE DEFINED**

Fair market value is defined in the " Wyoming Eminent Domain Act." The pertinent section of this act is quoted below.

*W.S. 1-26-704.1 FAIR MARKET VALUE DEFINED. (subsection a, paragraph i) "The fair market value of property for which there is a relevant market is the price which would be agreed to by an informed seller who is willing but not obligated to sell, and an informed buyer who is willing but not obligated to buy;" (paragraph ii) "The fair market value of property for which there is no relevant market is its value as determined by any method of valuation that is just and equitable."*

### E. STANDARD PROPERTY RIGHTS ACQUIRED

#### 1. SURFACE RIGHTS

#### **SURFACE RIGHTS**

Surface rights are acquired by deed or easement on all highways regardless of access control.

#### 2. ACCESS RIGHTS

#### **ACCESS RIGHTS**

Access rights, with or without additional land acquisition, are acquired by deed or easement on all access facility highways, whether established as partial or full control of access.

#### 3. MINERAL RIGHTS RESERVED

#### **MINERAL RIGHTS RESERVED**

Mineral Rights are not generally acquired in our right-of-way transactions. An attempt is made to obtain mineral rights in excess land purchases and whole acquisitions when possible in order to maximize the resale and disposal potential of these lands.

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### F. APPRAISAL DUTIES

#### 1. APPRAISAL PROCESS

##### APPRAISAL PROCESS

1. **Assemble Preliminary Data** - The assigned appraiser gathers, examines and becomes familiar with the appraisal plans, ownership maps, reports, memorandums, miscellaneous file, public hearing transcripts, aerial photographs, and other documents that may be helpful to fully understand the assigned project and the parcels involved.

2. **Determination of the Larger Parcel** - A determination of the larger parcel by the appraiser is required in every appraisal assignment for federal acquisitions. The UASFLA states:

“The larger parcel, for purposes of these standards, is defined as that tract, or those tracts, of land which possesses a unity of ownership and has the same or integrated, highest and best use. Elements of consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.”

The larger parcel concept must be considered in partial acquisitions. The larger parcel is the total tract from which the partial acquisition is taken. The whole tract must meet three tests. The tests are unity of ownership, unity of use, and be contiguous. In special cases where two or more physically separated properties are economically interdependent, they may be joined through the concept of constructive contiguity. In this manner, they could be determined to compose a single larger parcel, even though they do not share common boundaries. The determination of the larger parcel should be made in the highest and best use analysis by the appraiser. Since many of the partial takings are long thin shaped pieces of unusual shape and size, they often have no feasible use. The acquisitions must be valued as part of the larger parcel. The determination of the larger parcel is also necessary to estimate the possibility of damages.

3. **Initial Gathering of Data and Ownership Verification** – The appraiser attempts to gather as much data as possible to develop credible results. The process of gathering comparable sales, listings, comparable leases, contracts etc. is ongoing throughout the appraisal process. Interviews are conducted with local realtors, bankers, lenders, appraisers and other informed and knowledgeable market participants to gather comparable information and market trends. It is required that all sales and leases used in an appraisal be confirmed, are “arms length” transactions and are physically inspected. Photographs of the

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comparable properties are taken if possible. Land classifications are identified on agriculture sales and any improvements are considered. The compiled data is input into the sales database.

The ownership information for each parcel is given to the appraiser for use in the appraisal process. The appraiser checks the records at the county courthouse to determine if subsequent transactions have taken place to ensure the ownership information is correct and current. Copies of any changes are given to the Right-of-Way Engineering Technician and the employee responsible for the title report. During this process, the appraiser also searches county records for possible comparable information and market trends.

**4. Cost Estimate** – An estimate is completed by the appraiser to ensure the AFE (Authorization for Expenditure) for the 141 appraisal function is issued. The estimates are submitted to the Right-of-Way Manager for processing. The appraiser uses available data to make a reasonable estimate of the cost of the right-of-way based on previously gathered information. Contingency costs such as appraisal fees, negotiation costs, travel expenses, etc. are included. The Review Appraiser keeps a file of the estimates. The Federal Highway Administration is sent a copy of the estimate along with a copy of the Right-of-Way Plans. The Federal Highway Administration responds to WYDOT by letter either approving or disapproving the right-of-way costs.

**5. Landowner Contact and Appraisal/Resident Engineer Meeting** – Certified letters are sent to each impacted landowner giving a brief description of the project and proposed acquisitions. Copies of the engineering exhibits and a Permit-to-Appraise form are sent with the initial contact letter. The appraiser must acquire written permission from the landowner for access to the property on all permanent acquisitions and any permits where the appraiser must physically enter on private property. By law, the landowner or a designated representative is given an opportunity to accompany the appraiser during the inspection of the property. The requirement applies to all owners of any interest, including tenant owners of buildings or improvements. The requirement does not apply to Waiver Valuations. The appraiser should have the signed permit by the landowner or representative before entry is made upon the property. The landowner must be informed of what activities are planned for that particular entry and how long the activity will take, in accordance with the language in W.S. 1-26-506.

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The appraiser conducts follow up phone calls with each landowner to verify receipt of the letter, answer any initial questions, and set up meetings with each landowner. The appraiser confirms the total ownership, including leased land, the existence of any unrecorded contracts or other encumbrances on the property and makes an effort to obtain details of any transactions. The landowner is asked of any knowledge of any comparable sales that could be used in the appraisal process. Discussions with the landowner should also include the current and proposed operation of the subject concerning land usage, carrying capacity, crop plan, irrigation/water facilities etc. The appraiser discusses issues such as lease data, recent repairs, landscaping, parking problems, site improvements and business impact on commercial or residential properties. A complete review and explanation of the plans and proposed acquisitions is presented to the landowner during these interviews. The appraiser should not make commitments on design or construction features beyond those presently on the plans and should not disclose the values to be used in the appraisal in the interviews. Each conversation with the landowner is documented on a Record of Conversation form. The form is retained in the appraisal work file for future reference and included in the appraisal report.

The appraiser sets up a field review meeting with the R.E., assigned to the project. The project is driven and observed during this meeting. Issues such as possible damages and cost-to-cure items are discussed in the meeting. The appraiser passes along any information or concerns from the landowner interviews that could affect the development of the project. An Appraiser/Resident Engineer Meeting form is filled out by the appraiser addressing each proposed acquisition. The form is then forwarded via email to the R.E., to ensure that the appraiser and the engineer agree on discussed issues. The R.E. sends a signed copy or confirmation back to the appraiser that is retained in the appraisers work file and appraisal report.

**6. Project Scope Meeting** – The appraiser, review appraiser, and project manager conduct a scope meeting to determine the type of analysis and extent of report that needs to be developed for a particular project. The appraiser presents information gathered to date regarding estimates of land value throughout the project. Information obtained from landowner interviews and the Appraiser/Resident Engineer Meeting is presented to determine the level of complication of the project. The Review Appraiser guides the appraiser as to the type of analysis, type of report and scope of the indicated report. There are two types of analysis

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used in right-of-way acquisitions. They are Waiver Valuations and Appraisals.

**7. Waiver Valuations** – Waiver Valuations are designed to be used for small, uncomplicated acquisitions or construction permits to expedite the acquisition process. They are not appraisals and are not intended to be used as an appraisal. Waiver Valuations do not meet the Uniform Standards of Professional Appraisal Practice (USPAP) and are not intended to meet these requirements. The United States Department of Transportation through the Federal Highway Administration defines waiver valuation as the valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to 49 CFR Section 24.102(c)(2) waiver valuation provisions.

The report should include a title page with project information, parcel information, owner of record, date of the report, and the name of the author. The following is the minimum information that must be included in the Waiver Valuation report.

*Legal Description* – This section contains a brief legal description of the acquisition area. The information needed is found on the Parcel Summary provided by the Engineering Technician.

*Description of the Subject* – This section contains a description of the subject and the acquisition area. A brief description of the project is also included in this portion of the report.

*Discussion of Value* – The appraiser presents a discussion of how the amount of compensation due to the landowner was derived. The amount of supporting evidence depends on the complexity of the assignment. A statement of the Highest and Best Use can be included in this portion of the report, but is not required.

*Permanent Taking(s)* - The appraiser reports the size of the permanent acquisitions and the indicated amount of compensation to calculate a total amount of compensation. (example. 2 acres x \$300/acre = \$600 total compensation) Permanent acquisitions can be acquired by easement or warranty deed. They can be small and located in areas where land value is relatively low. Minimum payments are used in these situations. These payments are meant to compensate the landowner for the time and effort involved in dealing with the Department when the estimated market value of the acquisition is low. The appraiser must be familiar with the operational memorandum



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dated April 10, 2009 outlining the minimum payment policy for the Right-of-Way Program. A copy of the memorandum is contained the addendum portion of the manual.

*Temporary Taking(s)* – Temporary Takings, or construction permits, are acquisitions that the Department needs for a determined amount of time. The ownership of the property remains with the landowner. The Department is paying a rental fee for the temporary use of the property. The typically fair rental fee used by WYDOT is 10%. The rental fee considers no damages, but assumes that the Department will reshape, restore or reseed the area after construction. The appraiser must compare the loss of crop to a rental fee in valuing a permit on farm ground, always using the greater of the two. The appraiser reports the size of the temporary acquisitions, the indicated amount of compensation, the length of time the permit is needed and the rental fee to calculate a total amount of compensation. (example, 2 acres x \$3000/acre x 10% rental fee x 2 years = \$1,200). They can be small and located in areas where land value is relatively low. Minimum payments are used in these situations. These payments are meant to compensate the landowner for the time and effort involved in dealing with the Department when the estimated market value of the acquisition is low. The appraiser must be familiar with the operational memorandum dated April 10, 2009 outlining the minimum payment policy for the Right-of-Way Program. A copy of the memorandum is contained the addendum portion of the manual.

*Improvements* – This section contains a discussion of any improvements located within the acquisition areas that will be purchased because of the proposed acquisition.

*Damages* – Damages are typically minor in Waiver Valuation analysis. Cost-to-Cure damages and replacement costs are discussed in this section. Damages to the existing improvements are also discussed.

*Summary of Compensation* – This section of the report outlines the derived compensation due to the landowner. It is broken down into land, temporary taking, damages, improvements, and total compensation.

**8. Appraisals** – Proposed acquisitions that are large, complicated and exceed \$10,000 require appraisals that are compliant with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser must be familiar with USPAP report requirements to ensure that appraisal reports meet these

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standards. Each written appraisal report must be prepared under one of the following three options and the appraiser must state which option is used. Appraisal Report, or Restricted Appraisal Report. The difference among the type of report is the content and level of information provided. The reporting option and level of information necessary in the report are dependent on the intended use and the intended users. Typically, Appraisal Reports are sufficient for use in the acquisition of right-of-way.

Most projects involve multiple parcels of land for proposed acquisition. A Basic Data section is developed to streamline the appraisal process of multiple landowners. This section is a general discussion of the project and market area. Individual Summary Reports are prepared for each specific parcel. For smaller projects or assignments involving only one property, a stand alone report is developed. This type of report incorporates the basic data into the discussion of the individual property.

The report should include a title page with project information, the clients name, date of the report, a photograph and the name of the appraiser(s). Following is the minimum information that must be included in the Basic Data Section.:

*Letter of Engagement* – The appraiser writes a letter to the Lands Management Administrator and Project Manager. The letter includes a brief description of the project and the work performed.

*Area and Project Maps* – Maps of the geographic area and project area are included to inform the reader of the location of the project.

*Table of Contents* – The Table of Contents gives page numbers to each section of the report for quick reference.

*Summary Salient Facts and Conclusions* – This section summarized facts about the project including but not limited to project information, number of parcels, resident engineer, development squad, right-of-way technician, date of value, date of report, general zoning, general highest and best use, fencing, wetlands, irrigation ditches, approaches, cattle guards and comments.

*Ownership List* – A list of the landowners affected by the proposed project including parcel numbers.

*Assumptions and Limiting Conditions* – This section states the assumptions and limiting conditions set by the appraiser for the report.

*Wyoming Department of Transportation Certificate of Appraiser* – USPAP requires that a signed certification be included in

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appraisal reports. A copy of the certification is also retained the appraisers work file.

*Competency Provision* – The appraiser describes their experience and discusses any aspects of the project that he/she is not qualified to perform. A list of steps taken to ensure the appraiser becomes competent in these matters is also provided.

*Definition of the Problem* – The appraiser identifies the client, the intended users, intended use of the appraisal, the type of report, the type and definition of value, the rights and interests appraised and the jurisdictional exceptions used in the report. The appraiser also discloses any assignment conditions dealing with extraordinary assumptions or hypothetical conditions that could impact the assignment results.

*Definitions* – The appraiser includes definitions that are used in the report that could be considered complicated. Some terms used in acquisition appraisals are specialized and need to be explained to help the reader understand the analysis.

*Scope of Work* – The appraiser must identify the problem to be solved, determine and perform the scope of work necessary to develop credible assignment results and disclose the scope of work in the report.

*Market Analysis* – The appraiser collects market area data including population estimates, housing trends, employment statistics, tax collections, and other information to interpret the status of the local market. Trends are analyzed by the appraiser and an opinion of the stability of the market is reported.

*Description of the Project* – A description of the project and information collected from appraisal plans, ownership maps, reports, memorandums, miscellaneous files, public hearing transcripts and other project based information is discussed.

*Zoning* – A generalized description of the city or county zoning regulations is discussed in this section of the report.

*Highest and Best Use* – This section of the report is intended to be an introduction to the highest and best use analysis. Property specific highest and best use is developed in the property specific sections of the report.

*Appraisal Process* – This section of the report is intended to be an introduction to the appraisal process and the three approaches to value. The appraiser states why an approach was or was not developed in this section. The applicable approaches are developed and analyzed in the property specific sections of the report.

*Addendum* – This section of the report includes but is not limited to the Appraisal/Resident Engineer Project Review Form, Qualifications of the Appraiser(s), Copy of Zoning Regulations, Permit-to-Appraise forms, and any other information the appraiser feels is pertinent to include in the report.

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*Sales Sheets and Location Map* - Sales and lease information that are used in the development of the appraisal are briefly described in this section of the report. Photographs are included when applicable. A map is presented to identify the location of the comparable properties in the market area.

Property specific analysis is presented next in individual sections of the report. Each section has a cover page that includes project information, parcel number, owner of record, the date of value, and the appraiser(s) name. Following is the minimum information that must be included in the parcel specific sections of the report.

*Appraisal Summary* - The Appraisal Summary is a form developed to summarize the information in the individual property sections. It includes project information, landowner identification, a legal description, type of interests acquired, identification of improvements, fixtures acquired, personal property acquired, summary of the fair market value and limiting conditions.

*Description of the Subject* - The appraiser presents a detailed description of the subject. The analysis is focused on the individual property and describes the characteristics of the property.

*Zoning* - A discussion and analysis of the zoning regulations impacting the subject are presented in the section of the report.

*Five Year Sales History* - A history of the previous five years for the subject is presented. The appraiser should pay close attention to any transfers of the subject and should verify the transaction details if possible for use in the analysis.

*Improvements* - Improvements located within the proposed acquisition area are included in the appraisal. A detailed description is included along with a sketch of the improvements if possible. Improvements can include buildings, landscaping items and site improvements. Any Furniture, Fixtures and Equipment included in the acquisition are also described in this section. When relocation is involved, the appraiser will contact the relocation agent assigned to the project to assist in the inspection of the property and complete a detailed inventory when applicable. Improvements not owned by the landowner are valued as part of the real property based on their contributory value as if they could remain in place.

*Personal Property* - The appraiser identifies any personal property that will or will not be included in the analysis of the subject.

*Highest and Best Use* - A highest and best use analysis is completed for each individual property. The analysis is detailed and specific to the subject involved in this section of the report.



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*Approaches to Value* – The three approaches to value are discussed. The approaches are the Cost Approach, the Income Capitalization Approach, and the Sales Comparison Approach. The appraiser must state why an approach was or was not developed.

*Discussion of Value* – The appropriate approaches to value are developed to derive an opinion of fair market value for the subject. A reconciliation of the approaches is also contained in this section of the report. The opinion of value is used to develop amounts of compensation due to the landowner.

*Permanent Taking(s)* - The appraiser reports the size of the permanent acquisitions and the indicated amount of compensation to calculate a total amount of compensation. (example. 2 acres x \$300/acre = \$600 total compensation) Permanent acquisitions can be acquired by easement or warranty deed. They can be small and located in areas where land value is relatively low. Minimum payments are used in these situations. These payments are meant to compensate the landowner for the time and effort involved in dealing with the Department when the estimated market value of the acquisition is low. The appraiser must be familiar with the operational memorandum dated April 10, 2009 outlining the minimum payment policy for the Right-of-Way Program. A copy of the memorandum is contained the addendum portion of the manual.

*Temporary Taking(s)* – Temporary Takings, or construction permits, are acquisitions that the Department needs for a determined amount of time. The ownership of the property remains with the landowner. The Department is paying a rental fee for the temporary use of the property. The typically fair rental fee used by WYDOT is 10%. The rental fee considers no damages, but assumes that the Department will reshape, restore or reseed the area after construction. The appraiser must compare the loss of crop to a rental fee in valuing a permit on farm ground, always using the greater of the two. The appraiser reports the size of the temporary acquisitions, the indicated amount of compensation, the length of time the permit is needed and the rental fee to calculate a total amount of compensation. (Example: 2 acres x \$3000/acre x 10% rental fee x 2 years = \$1,200). They can be small and located in areas where land value is relatively low. Minimum payments are used in these situations. These payments are meant to compensate the landowner for the time and effort involved in dealing with the Department when the estimated market value of the acquisition is low. The appraiser must be familiar with the operational memorandum dated April 10, 2009 outlining the minimum payment policy for the Right-of-Way Program. A copy of the



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memorandum is contained in the addendum portion of the manual.

*Damages* – Damages are involved with proposed acquisitions in many cases. Benefits are rare and can only be used to offset damages. Benefits cannot reduce the compensation for the acquisition. Wyoming law states that benefits must be special to the individual property and not to the public. Benefits accrue to the remainder of the property after the taking. They must be valued in monetary terms. The benefits must be explained in a reasonable and properly documented manner to show comparable benefits which have accrued to a similarly located and comparable property.

Before and after analysis is used when damages are involved. By law, they are measured by the difference between the value of the subject before the acquisition and the value of the subject after the acquisition, less the value of the acquisition. To estimate damages by this method the appraiser has to complete two appraisals, one of the property before the acquisition and one of the property after the acquisition. This method is appropriate when the assignment is complicated and damages are substantial.

Cost to cure estimates can be used when the damages are minor. The appraiser obtains estimates of what it would cost to cure the problem creating the damages. If the cost is less than the loss in value to the subject with the problem not cured, then the cost to cure can be used.

Damage to improvements located within the proposed acquisition is another issue the appraiser must address. Quotes for the replacement of items damaged are obtained and the landowner is compensated the amount of the replacement cost plus labor.

The severing of a parcel may cause an uneconomic remnant. If a parcel is determined to be an uneconomic remnant by the appraiser, two value opinions must be provided to the Review Appraiser. One, with the value of the remnant included (Purchase of the Remnant), and the other includes damages to the remnant (Damage to the Remnant). The landowner will be given the option of the selling the remnant or retaining it. The factor in determining if a parcel is an uneconomic remnant is based on the use to the present owner. If the parcel has no utility or can no longer be used or used as well by the landowner after the acquisition, it is an uneconomic remnant. Factors such as size, shape, and physical terrain can determine if a severed tract should be considered uneconomic.

Several items have been determined to be noncompensable in condemnation situations based on case law. The noncompensability of an item changes with each court

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discussion. The following list includes items that are generally considered noncompensable.

1. Diversion of traffic away from present business.
2. Changes involving circuitry of travel.
3. Center of median strip that prevents a turn off.
4. The cost of moving business fixtures. (These items are reimbursable through relocation)
5. Business and prospective business losses.
6. Loss of Profits during a move.
7. Fumes or noise due to traffic.
8. Nuisance suffered by the general public.
9. Other types of losses that are considered remote or speculative.

*Summary of Compensation* - This section of the report outlines the derived compensation due to the landowner. It is broken down into land, temporary taking, damages, improvements, and total compensation.

*Photographs* – Photos of the subject, acquisition area, damages, and improvements are presented in the report.

## 2. SPECIAL APPRAISALS

### SPECIAL APPRAISALS

**1. Access Rights** – Access is a property right which may be affected by an acquisition. These rights are normally addressed as a damage item in an appraisal. These would apply whether the access is a part of a regular acquisition or if only an access right is being acquired. This is usually best valued by using a before and after analysis.

**2. Department Granting Access Rights from owned access control areas.** – Granting of access from controlled areas is sometimes the subject of special assignments. The reverse of damages or actual property enhancement with contributory value, should be valued using the Before and After method.

**3. Outdoor Advertising Signs.** – Sign appraisals are required in two situations. The first is when existing signs occur on lands needed for additional right of way and second when the Department acquires signs through a sign acquisition program. All signs are valued by an employee assigned this activity. The value is provided and authorized and becomes part of the authorized offer. Occasionally it is provided and incorporated into a regular appraisal, but is usually provided by an outside source.

**4. Special Assignments.** – Appraisers may sometimes be used to make offers and negotiate on properties they have not appraised. Appraisers may also be assigned to negotiate with landowners,

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pursuant to 49CFR Section 24.102(n)(3), which states that an appraiser, review appraiser or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000 or less.

**5. Non-Project Appraisals.** – Occasionally the appraiser is requested to complete special appraisal assignments which do not correspond to a specific project. Acceptable appraisal methods are to be used to cover the scope and purpose of the assignments. These can be future or existing shop sites, rest area sites, gravel sources, stock pile sites, radio tower sites, etc. Generally these special assignments come from the field or headquarters staff.

- a. Other Agencies.* – Other state and county agencies may request the appraisal section to complete an appraisal of property which the other agency wishes to acquire. The nature of the property and the requirements of the specific agency will determine the type of appraisal required.
- b. Excess Lands.* – At the request of the right of way administration, the appraiser will complete appraisals on property which has been determined to be excess land to establish a minimum bid price or to help in administrative decisions on disposal of the property. Generally, this type of property is vacant land and a Appraisal Report is required.
- c. City, County or Other Agency Reviews.* – Other governmental agencies may request the appraisal section to review reports acquired by the other agency. The criteria for these reviews will depend on the requirements of the agency requesting the review.

## G. REVIEW OF APPRAISALS AND SPECIALTY REPORTS

The objective of the appraisal review is to certify an estimate of market value of the property to be acquired based on an appraisal or appraisals made in accordance with WYDOT specifications. The market value so estimated shall be the basis of negotiations and, if necessary eminent domain proceedings.

A review will be made of all appraisals and reports. The scope of the review process will be determined by the complexity of the report. However, at a minimum the review will comply with the Uniform Standards of Professional Appraisal Practice (USPAP), and the requirements of the Wyoming Department of Transportation. These standards can be met by using the Appraisal Review Check Sheet.

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### 1. DUTIES OF REVIEWER

#### **DUTIES OF REVIEWER**

Determine if the appraisal report was prepared in accordance with the requirements of the Wyoming Department of Transportation, State Statute, the Federal Highway Administration, and the *Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)*, which are compatible with the standards and practices of the *Uniform Standards of Professional Appraisal Practice (USPAP)*.

Determine that the appraisal represents the market value of the property.

Determine if the appraisal reports on and analyzes current market data and if the adjustments to that data are supportable and appropriate.

Determine if the appraisal contains adequate, relevant, and meaningful discussion, analysis, and rationale so that it can be readily understood and leads to a credible value conclusion.

Determine if the appraiser used applicable value approaches, explained any approaches omitted, uses appropriate methods and techniques, and shows a reasonable rationale for the reconciliation of the approaches.

Determine if the appraisal contains sufficient supporting documentation to indicate the reasonableness of the opinions and conclusions cited.

Determine if the appraisal report includes compensable items, damages and benefits under Wyoming law and excludes non-compensable items.

Determine if the appraisal separately values personal property, equipment, or fixtures.

Determine whether the report contains an estimate of value separately stated for the land, improvements, and damages.

A field review is an essential part of the review process and should be made on most projects. The reviewer shall make an examination of the entire project in the field, and analyze the general neighborhood data, view the comparables listed in the appraisal report(s) and those found through other sources, analyze the appraiser's reasoning used to arrive at his estimate of

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value. If a field review is not made, the reason must be presented on the Form 57.

### 2. MINOR ERRORS

#### **MINOR ERRORS**

When a report is in error or lacking in requirements, corrections or revision supplements will be made to the original report by the appraiser. The reviewing appraiser is authorized to personally supplement reports with corrections of minor mathematical errors or with factual data concerning project and/or parcel information, owners and/or tenant names, parties to transactions, purchase dates, recording data, location, zoning, present use and sales history of the subject or comparable. If these types of corrections are made the review appraiser shall initial and date any such correction and advise the appraiser of the correction(s) made.

### 3. MAJOR ERRORS

#### **MAJOR ERRORS**

The reviewing appraiser has full authority to return any report for correction or supplemental information. If major errors, omissions are discovered or the final value estimate is determined to be in error, the original copy of the appraisal shall be returned to the appraiser for correction. If major changes are indicated, a new appraisal can be recommended by the reviewer.

If the reviewing appraiser disagrees with a report he may complete an independent report. In doing so, the reviewer substitutes his appraisal for any others and agrees to justify his position in court. This report must conform to all requirements and becomes part of the project file.

### 4. AUTHORIZATION

#### **AUTHORIZATION**

After the reviewer has completed the review process, the reviewing appraiser makes an independent determination of just compensation utilizing the Review and Authorization (Form 57), Summary Statement of Fair Market Value, and the Review Appraisers Certificate and Assumptions (one per parcel). The Review and Authorization (Form 57) contains the estimate of just compensation and the allocation of the compensation for the real property acquired and any damages to the remainder plus identification or listing of improvements and fixtures considered part of the acquisition. The Review Appraisers Certificate and Assumptions indicates that a field inspection of the acquisition and comparables used was/was not a part of the review process. The form also certifies that the estimate was reached independently without collaboration or direction and the reviewing appraiser has no direct or indirect, existing or future interest in the property or the monetary benefit from the



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acquisition. The Review and Authorization (Form 57) and the Review Appraisers Certificate and Assumptions are signed and dated by the reviewer and the Summary Statement of Fair Market Value is signed and dated by the Lands Management Administrator or designated representative.

The forms are then distributed as follows.

- Original of Review and Authorization (Form 57) & Summary Statement of Fair Market Value is retained in the R/W Project Management Systems parcel file.
- 1 copy of Review and Authorization (Form 57) & Summary Statement of Fair Market Value is retained in review appraiser's project book.
- 2 copies of the Summary Statement of Fair Market Value + 1 copy of the Review and Authorization is transmitted to the Project Manager.

### 5. REVISIONS

#### REVISIONS

Many times after the initial review has been completed a parcel will be returned to the review appraiser because of plan revisions. These changes may be acreage revisions, increased acquisitions, title or ownership changes, adding or deleting construction permits, additional damages, etc. Whatever the changes may include they usually makes the initial review invalid and requires the reviewing appraiser to complete a new Review and Authorization (Form 57) & Summary Statement of Fair Market Value. Once the new Review and Authorization (Form 57), noting that is a revision of the previous form, & Summary Statement of Fair Market Value has been completed and distributed the old forms should be marked void.

If 6 months has elapsed between the Review and Authorization (Form 57) and offer to landowner, the review appraiser will be required to investigate current market conditions to determine if an update to the estimated market value is warranted.

### 6. ADMINISTRATIVE SETTLEMENTS

#### ADMINISTRATIVE SETTLEMENTS

Administrative and legal settlements are not left to the determination of the reviewing appraiser, although he may be consulted and asked to provide input in these determinations. The reviewing appraiser must be guided by fair market value and what is compensable and non-compensable under law when determining just compensation. Administrative and legal settlements are initiated by the project managers, right of way administrators or the legal branch of the state. These settlements go beyond what is available under the law and are based on considerations unavailable to the reviewer.

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### 7. AIRPORT REVIEWS

#### AIRPORT REVIEWS

When WYDOT is engaged to perform appraisal reviews for airport projects a letter from the Airport entity requesting services will suffice. When acquisition and/or relocation services are required a MOU between WYDOT and the Airport entity must be obtained.

When doing appraisal reviews regarding the acquisitions of land/improvements needed for airport expansions, the above described duties and any additional requirements noted in Chapter 2, Section 3 of the FAA Order 5100.37B – Land Acquisition and Relocation Assistance for Airport Projects apply. After the reviewer has completed the review process, the reviewing appraiser shall report the approved appraised value as the recommended amount of just compensation to be offered the property owner utilizing the FAA Appraisal Review Report.

The report is then distributed as follows.

- Original of FAA Appraisal Review Report and cover letter sent to the Airport controlling entity and FAA contact person.
- 1 copy of FAA Appraisal Review Report and cover letter is retained in review appraiser's airport project book.
- If WYDOT is acquiring property then 1 copy of FAA Appraisal Review Report and cover letter and copy of appraisal is transmitted to project manager.

### H. FEE APPRAISERS

Fee appraisers are used to supplement the appraisal staff, when heavy workloads prohibit staff personnel from meeting letting deadlines or special experience is needed for a particular appraisal problem. Use of fee appraisers is optional on any project and need is usually determined by the Project Manager, Review Appraiser and Lands Management Administrator. They are usually employed as noted above or when more than one appraisal is required or condemnation has been declared. Two appraisals may be required when the value of an acquisition is expected to exceed \$250,000. Fee appraisers may also be utilized to accomplish any phase of the right-of-way investigative process.

Fee appraisers employed by the Right-of-Way Program are usually chosen from an approved list which is compiled from various sources. Prospective fee appraisers should submit Form R/W 20A, Fee Appraisers Qualifications, and a sample of their

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work to be considered for the approved list. The list is compiled from this information and recommendations from the Lands Management Manager, Project Manager, Review Appraiser, staff appraisers and any other knowledgeable sources. All recommendations are reviewed by the Lands Management Manager, Project Manager, and Review Appraiser.

Considerable latitude is allowed in contracting fee appraisers, due to the numerous types of properties and appraisal problems that may be encountered. When the Project manager or an authorized representative determines a fee appraisal is required or desired, he selects the appraiser(s) on the basis of information contained in Form R/W 20A, experience for the particular appraisal project, and personal knowledge. He then completes Form R/W 6A, Request for Fee Appraiser Services, estimating the appraisal costs on a parcel by parcel basis. The request must then be approved by the Lands Management Administrator. Two signed copies of this form are needed, one for the appraisal file and one for the general file. The fee appraiser is then contacted to see if he would be available for an assignment and if so given an opportunity to review the plans and subject properties and made aware of any appraisal problems that may be encountered. The fee appraiser is then requested to complete Form R/W 63A, Fee Appraiser's Contract Estimate, on a parcel by parcel basis with a total of the entire cost, he should keep a copy. Two copies of the form are submitted to the Project Manager or Review Appraiser for review, with one going to the appraisal file and the other to the general file. If wide divergences exist in the estimates, an effort is made to arrive at a fair and equitable fee. Once a fee is agreed on, the Project Manager completes two copies of Form R/W 7A, Fee Appraisers Contract, has it signed and submits it to the Lands Management Administrator for review and recommendations. He in turn forwards it to the Director of Engineering for approval.

Based on the Attorney General's Office, no formal contract is required for services if the services are \$1,500 or less. This allows the Appraisal Section to engage Fee Appraisers for smaller projects where the estimated fee will be less than \$1,500.

After approval, the original goes to the appraisal file, one copy to the general file, and one signed copy returned to the fee appraiser. Fee appraisers are furnished the same information and data as staff appraisers to assist them in their appraisal project. This information could include construction plans, acreage sheets, maps, title work, comparable sales, engineering reports, appraisal bulletins, procedure changes, memorandums, appraisal

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guidelines, or legal interpretations which revise, alter, or affect appraisal procedures. This material is routed and forwarded through the Project manager.

The fee appraiser may use his own format for the report providing it conforms to WYDOT procedures, the Uniform Standards of Professional Appraisal Practice, and the appraisal contract. WYDOT will provide the fee appraiser with any necessary forms required such as, R/W 13A Appraisal Summary, R/W 26A Certification of Appraiser, R/W 8A Record of Conversation, and R/W 1A Permit to Appraise to use in his report. Fee appraisers may also be contracted to provide comparable sale data, lease data, market studies or other market data needed by Right of Way.

### I. SPECIALTY REPORTS

When a separate valuation of machinery, fixtures, equipment or other specialty items are required, the value of such items shall not be arbitrarily added to the valuation of other realty, but considered to the extent of the contribution to the value of the whole property. Each acceptable estimate will be made available to all appraisers for analysis and incorporation into their reports, if applicable, by the individual appraiser. Prior to its distribution it will be reviewed by the Review Appraiser. In most instances, engineering information can be developed from the Department's own engineering studies. Where a consultant engineer's services are required, prior concurrence must be obtained from the Department on any service requiring separate billing.

**A specialty report must contain, but is not limited to, the following data.**

1. The project and parcel numbers.
2. Statement of purpose of the report.
3. Definition of value (such as fair market value, value in place, salvage value, etc.)
4. Identification and description of the property or items and their ownership.
5. Statement of contingent or limiting conditions.
6. Identification of the value problem.
7. The estimate of value arrived at.
8. The data and analysis to explain, substantiate and, thereby, document the estimate of value.
9. Any other descriptive material such as maps, charts, plans, photographs, etc.

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10. The date the estimate of value is made.
11. The certification, signature, and date of signature of the specialist. (Form R/W 26A)

A copy of all specialty reports will be retained by the WYDOT in the same manner as appraisal reports.

## J. CONDEMNATION

### 1. APPRAISERS AND REVIEW APPRAISERS

#### **APPRAISERS & REVIEW APPRAISERS**

The appraisers and review appraisers are important in any contemplated condemnation action as their determinations of value are the foundation of the state's case. The Reviewing Appraiser may also make an appraisal and determination of just compensation when deemed necessary. His appraisal is then substituted for the other(s) and the Reviewing Appraiser thereby agrees to justify this position in court. This report must conform to the same requirements as any other appraisal. These reports must be documented and retained as part of the project files. Both the project appraiser, review appraiser and project manager must work closely with the legal staff to assist in any court preparation, preparing of exhibits or obtaining list of court appointed appraisers. Court appointed appraisers must be selected from the county where the legal action is filed.

### 2. PREPARATION FOR CONDEMNATION

#### **PREPARATION FOR CONDEMNATION**

When appraisal reports are completed, reviewed and authorized for payment they are turned over to the Project Manager and Acquisition Agent. The Acquisition Agent will contact the landowner in an effort to secure the needed right-of-way. After reasonable attempts to negotiate have failed, it may be necessary to initiate condemnation proceedings in the District Court having jurisdiction. The Review Appraiser, however, must first check to see if any changes in value have occurred and a new authorization is needed. If there are indications of major changes in market value, then an update, new appraisal or additional appraisal may be required. Once this is done, they will be reviewed, authorized and the new offer will be negotiated. If negotiations are again unsuccessful, a conference with the legal staff will be held to decide if condemnation proceedings should be initiated and a letter of notice sent by the negotiation staff. Administrative settlements may be made at any time prior to the filing of Condemnation. After condemnation is filed, any settlements made must be jointly agreed on between the Lands Management Administrator and the state's attorney. If condemnation proceedings are filed, a right of entry hearing in



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## Appraisal

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court is scheduled to determine the necessity of the project and to get possession of the property for the state. At this time the state's offer is deposited with the courts and may be used by the landowner at any time, regardless of any future jury trial which may occur. Often the project appraiser or Reviewing Appraiser may be asked to attend these hearings. Once the right of entry is received from the judge, the project may be let and construction begun. Next, both sides recommend possible appraisers in the county and the court appoints three appraisers to appraise the property and submit their values to the court. The parties again confer and determine if they will accept this value or request a hearing or jury trial. If a hearing before a judge or trial by jury is required, the Right-of-Way Branch and legal staff will coordinate efforts in arranging for and obtaining the necessary expert witnesses, exhibits, reports, maps, etc. needed for the court trial. During these preparations, the appraiser will rely on counsel from the Project manager, Review Appraiser and attorney representing the Wyoming Department of Transportation. Relatively few right-of-way acquisitions reach the District Court, however; the appraiser should make all his reports in such a manner that they can be used as the basis for his "expert" testimony.

# FORMS ADDENDUM

Appraisal Letter  
Permit to Appraise  
Right-of-Way Estimate with Labor & Travel Estimate  
Operational Memorandum April 10, 2009  
Fee Appraiser Engagement Letter  
Fee Appraiser's Contract



Matthew H. Mead  
Governor

# WYOMING Department of Transportation

"Providing a safe, high quality, and efficient transportation system"

5300 Bishop Boulevard, Cheyenne, Wyoming 82009-3340



William T. Panos  
Director

September 28, 2018

Landowner Name  
Address  
City, State, Zip

Project: XXXX  
Road: XXXX  
Section: XXXX  
County: XXXX  
Parcel No.: X

Dear XXXX:

The Wyoming Department of Transportation (the Department) is planning a road construction project at three separate locations in Gillette, Wyoming. The first location is at the intersection of US 14/16 and 4th Ave. The second area is at US 14/16 and Warlow Dr. intersection, and the final location is at 2nd St. and Brooks Ave. At this time the plan of work includes replacement of signals, poles, and Americans with Disabilities Act (ADA) improvements at all three intersections. In order to construct this project, the Department is proposing to acquire a Warranty Deed with Mineral Clause from you.

Any permanent acquisition(s), shown in solid red on the enclosed plan sheet, will be required for additional right-of-way.

XXXX, Staff Appraiser, has been assigned to complete the appraisals for this project. Enclosed you will find a Permit to Appraise form. This document allows the appraiser permission to enter upon, inspect, and take any necessary photographs needed for the appraisal process. Please complete and sign the enclosed Permit to Appraise form and return it in the enclosed postage paid, green envelope.

Should you have any questions or concerns regarding this project, or would like to accompany the appraiser or a Department representative on an inspection of the property being acquired, please contact XXXX toll free at 1-888-570-9908, direct at (307) 777-XXXX, or by email at XXXX.

This letter informs you of the proposed project prior to the final valuation of your land. The valuation report will then be reviewed and upon acceptance turned over to XXXX, at (307) 777-XXXX, who will be the next person to contact you.

Sincerely yours,  
XXXX  
Project Manager

By: XXXX  
Staff Appraiser

Enclosures:  
Plan Sheet  
Permit To Appraise  
Return Envelope





Matthew H. Mead  
Governor

# WYOMING Department of Transportation

"Providing a safe, high quality, and efficient transportation system"

5300 Bishop Boulevard, Cheyenne, Wyoming 82009-3340



William T. Panos  
Director

## PERMIT TO APPRAISE

Project: XXXX  
Road: XXXX  
Section: XXXX  
County: XXXX  
Parcel No.: X

I, \_\_\_\_\_ Landowner(s) or duly authorized agent grant the  
**{PRINT NAME}**

Wyoming Department of Transportation the right to enter upon my property for the purpose of making a highway appraisal and/or land studies. Appraisal operations could include the use of men, passenger vehicles and any other equipment needed for the completion of the appraisal. Entry will be coordinated with the landowner whenever possible as to not interfere with their operation.

\_\_\_\_\_  
Signature

/\_\_\_\_\_  
Date

Please provide the following information so that we can better serve you:

\_\_\_\_\_ Best phone number to reach you.

\_\_\_\_\_ Best time to contact you





**WYOMING DEPARTMENT OF TRANSPORTATION**  
**RIGHT-OF-WAY ESTIMATE**  
**( Permits Calculated on a 1 year construction period )**

Estimate By: XXXX

Project: XXXX

Date of Estimate: 09/28/2018

Road: XXXX

Federal Participation? Yes

Section: XXXX

County: XXXX

Parcel	Owner	Type of R/W	Size	Value/Unit	Percent	Total
1	XXXX	Fee Taking(Addl.)	165 (Sq. Ft. )	10	10	\$1,650.00
1A	XXXX	Fee Taking(Addl.)	91 (Sq. Ft. )	10	10	\$910.00
1B	XXXX	Fee Taking(Addl.)	111 (Sq. Ft. )	10	10	\$1,110.00
2	XXXX	Fee Taking(Addl.)	144 (Sq. Ft. )	10	10	\$1,440.00

<b>Value of Additional R/W</b>	\$5,110.00	<b>Value of Existing R/W</b>	\$0.00
<b>Value of Improvements</b>	\$0.00	<b>Value of Damages</b>	\$0.00
<b>Value of Temporary Taking</b>	\$0.00	<b>Value of Permanent Easements</b>	\$0.00
<b>Travel &amp; Labor</b>	\$11,200.00	<b>Contingency</b>	\$3,690.00
<b>Relocation</b>	\$0.00	<b>Signs</b>	\$0.00
<b>TOTAL</b>			<b>\$20,000.00</b>



Right-of-Way Estimate - Labor & Travel Expenses			
LABOR	# of Days	Cost per day	Total
Appraiser		\$ 400.00	\$ -
Acq. Agent		\$ 400.00	\$ -
Project Manager		\$ 500.00	\$ -
Reviewer		\$ 500.00	\$ -
Admin.		\$ 600.00	\$ -
<b>TOTAL LABOR</b>			<b>\$ -</b>
TRAVEL	# of Days	Avg. Cost per night	Total
Hotels		\$ 100.00	\$ -
Meals		\$ 50.00	\$ -
		<b>TOTAL COST ESTIMATE</b>	<b>\$ -</b>
		# of Parcels	1
		Cost per Parcel	\$ -







# Department of Transportation

State of Wyoming



Dave Freudenthal  
Governor

John F. Cox  
Director

## OPERATIONAL MEMORANDUM

DATE: April 10, 2009  
TO: Appraisers, Project Managers, Right-of-Way Administration  
FROM: Scott Henderson, Review Appraiser  
SUBJECT: Revised Minimum Payments

Based on a Memorandum dated October 30, 2007 from myself to the project managers, and right-of-way administration, the minimum payment guidelines were adjusted to their current levels. Due to the implementation of PAECTRAK, some changes to the minimum payment guidelines for Temporary Takings were necessary. Therefore, the following recommendations are made:

- ▶ **Additional Right-of-Way** ----- Minimum Payment = \$500  
(Example. 1.1 acres @ \$100/acre = \$110 – Rounded to Minimum Payment of = \$500)
- ▶ **Existing Right-of-Way** ----- Minimum Payment = \$250  
Note: If there is additional right-of way there is no minimum payment for the existing right-of-way. Payment for the existing right-of-way is included in the additional right-of-way minimum payment.  
(Example. Additional Right-of-Way 1.1 acres @ \$100/acre = \$110  
Existing Right-of-Way 2.0 acres @ \$10/acre = \$20  
TOTAL = \$130 ——— Minimum Payment of \$500)

The above recommended minimum payments are for each individual ownership, *not each parcel*.

- ▶ **Temporary Taking** ----- Minimum Payment = \$250  
Note: One permit only, minimum payment = \$250. For more than one permit on the same ownership the recommended minimum payment shall be no less than \$125 for each permit.  
  
Example. 1 Temporary Taking,  
1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$250.)  
  
Example. 2 Temporary Takings  
1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)  
1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)  
  
TOTAL = \$250 (This assumes that \$125 exceeds the actual permit value.)

5300 Bishop Blvd.  
Cheyenne, Wyoming 82009-3340



**Example. 3 Temporary Takings**

1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)

1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)

1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)

**TOTAL = \$375 (This assumes that \$125 exceeds the actual permit value.)**

► **State Land Office Minimum Payments: ( *These are to remain at the current levels* )**

**Consideration for Easements:**

Under Chapter 3, Section 6(b) - The minimum payment for any easement shall be \$250.

**Temporary Use Permits:**

Under Chapter 14, Section 6(a)(I) - The minimum payment for construction activity is \$10/acre or \$100, whichever is greater.

(Example. 2.00 acres x \$10/acre = \$20

1.00 acre x \$ 10/acre = \$10

Rounded to minimum payment of \$100.00).

These new minimum payment guidelines will take effect for appraisals with an effective date after April 1, 2009.







Matthew H. Mead  
Governor

# Wyoming Department of Transportation

"Providing a safe, high quality, and efficient transportation system"

5300 Bishop Boulevard  
Cheyenne, Wyoming 82009-3340



William T. Panos  
Director

October 25, 2017

Andrew Cornish, MAI, SRA  
Rocky Mountain Appraisals  
155 E. Pearl Ave., Suite 10  
Jackson, WY 83002

**Re: Project N104066 Hoback Jct. – Jackson (Snake River South) – Parcels 4-54 (51 individual appraisal reports)**

Dear Mr. Cornish:

You are hereby authorized to prepare individual appraisal reports on the above referenced properties. Please provide an appraisal report as defined by USPAP which will include before and after the acquisition value estimates. Also, the value of the acquisition will be estimated. This report will be prepared in conformance with the Uniform Standards of Professional Appraisal Practice as promulgated by The Appraisal Foundation and the Code of Professional Ethics and Certification Standard of the Appraisal Institute, Wyo. Stat. 1-26, and federal requirements outlined in 49CFR Part 24, and WYDOT guidelines presented in this scope of work. Parcel 52 will be developed and reported in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), as required by the landowner. In addition, Parcel 52 will name the U.S. Fish and Wildlife Service and the Wyoming Game and Fish Department as Intended Users of the report.

## MARKET VALUE DEFINITION:

W.S. 1-26-704 FAIR MARKET VALUE DEFINED: (subsection a, par. 1) "The fair market value of property for which there is a relevant market is the price which would be agreed to by an informed seller who is willing but not obligated to sell and an informed buyer who is willing but not obligated to buy;"

The purpose of the appraisal is to estimate the current fair market value of the fee simple interest of the subject properties. The client for the appraisal is the Wyoming Department of Transportation, and the report should be prepared for and addressed to XXXX, Right of Way Staff, WYDOT – R/W Section, 5300 Bishop Blvd, Cheyenne, Wyoming 82009. Please provide one hard copy of each report and one electronic version.

Authorization to proceed with the above described appraisal work is granted on **October 23, 2017**, and the completed report(s) is to be delivered to the Department on or before **January 5, 2018**. The date of delivery of the report may not be extended without written authorization of the Department.

In consideration for services the Fee Appraiser is to be paid the sum of **XXXX and 0/100 Dollars (\$XXXX)** for the completed report(s). The Department will pay the total consideration of the contract upon acceptance and fulfillment of the terms and conditions set forth herein. Neither the Fee





Appraiser's employment nor compensation shall be contingent upon the values which may be estimated within the appraisal report.

A fee of **(\$200.00)** per normal working day as liquidated damages will be assessed against and deducted from the agreed fee of **(\$XXXX)**, for each normal working day that the completed assignment is overdue. A normal working day is defined as Monday through Friday. Any extension beyond the completion date of **January 5, 2018** will be only by mutual written agreement between the parties.

Thank you for your cooperation and assistance. Please feel free to contact me at (307) 777-XXXX, if you have any questions or need additional information regarding this assignment.

Sincerely,

XXXX  
R/W Administrator

By: XXXX  
Project Manager



**WYOMING DEPARTMENT OF TRANSPORTATION  
FEE APPRAISER'S CONTRACT**

THIS AGREEMENT is entered into by and between the Wyoming Department of Transportation hereinafter called the "Department," and Andrew Cornish, MAI, SRA, of Rocky Mountain Appraisals, 155 E. Pearl Ave., Suite 10, Jackson, WY 83002, hereinafter called the "Fee Appraiser."

WITNESSETH: that

The parties do hereby agree as follows; the Fee Appraiser, for and in consideration of the covenants, conditions, agreements, and stipulations hereinafter expressed, agrees to furnish the services as follows on Project No. N104066, Hoback Jct.-Jackson Snake River, Teton County, Wyoming, in connection with the following described parcels in the amount indicated:

Parcel No.	Owners	Amount
4	Marvin E. Davidson and Mona Davidson, husband and wife as tenants by the entireties	\$XXXX
5	Snake River Retreat, LLC, a Wyoming limited liability company	\$XXXX
6	Nicholas A. Shidner and Bethany D. Shidner, husband and wife as tenants by the entireties	\$XXXX
7	Robin S. Thoenig, as Trustees of the Robin S. Thoenig Trust established u/t/a dated August 1, 2000, as amended hereafter, and her successors in trust	\$XXXX
8	Matthew Jacob Bowers and Alyson Christa Bowers, husband and wife, as joint tenants with right of survivorship	\$XXXX
9	Teton County, a duly organized county of the State of Wyoming	\$XXXX
10	Rental Property No. 1 LLC	\$XXXX
11	Camp On, a Wyoming corporation	\$XXXX
12	Wesley S. Murdock and Mia M. Murdock, husband and wife as tenants by the entireties	\$XXXX
13	Cattywampus, LLC	\$XXXX
14	Caroline Howell Lee, trustee of the Caroline Howell Lee Trust, dated June 9, 2010, and all successor Trustees	\$XXXX
15	Juan S. Sanchez and Ma Joana Zarate-Gomez, husband and wife as tenants by the entireties	\$XXXX
TOTAL		\$XXXX

Authorization to proceed with the above described appraisal work is granted on October 23, 2017, and the completed report(s) is to be delivered to the Department on or before January 05, 2018. The date of delivery of the report may not be extended without written authorization of the Department.

The Department agrees to pay the Fee Appraiser for the services described herein. The total payment under this Contract shall not exceed \$XXXX for the complete report(s). The Department will pay the total consideration of the contract upon acceptance and fulfillment of the terms and conditions set forth herein or may at its option pay 75 percent of the consideration upon initial acceptance if final review is anticipated to be delayed substantially. The remaining 25 percent would then be paid on final acceptance. The appraiser shall be paid an additional sum at the rate of





(\$150.00) per day, or fraction thereof, plus ordinary and reasonable expenses, if called upon for pretrial conferences or disposition with the Department's attorneys or for additional services not within the scope of the original report. The Fee Appraiser agrees to defend the appraisal in court, if required, or to testify on the Department's behalf, in which event the Appraiser will be paid at the rate of Three Hundred and 0/100 Dollars (\$300.00) per day or fraction thereof, in addition to ordinary and reasonable expenses which might be incurred in connection thereto. If work extends beyond appraisal delivery date by more than two years, day rate subject to negotiation.

Any additional landowners identified and needing an appraisal, after this agreement as been executed will be appraised at a rate to be determined; unless there are special circumstances which the appraiser feels warrants additional work above and beyond the original appraisal reports.

Neither the Fee Appraiser's employment nor compensation shall be contingent upon the values which may be estimated within the appraisal report.

A fee of Two Hundred and 0/100 Dollars (\$200.00) per normal working day as liquidated damages will be assessed against and deducted from the agreed fee of \$XXXX for this contract, for each normal working day that the completed assignment is overdue. A normal working day is defined as Monday through Friday. Any extension beyond the completion date of January 05, 2018 will be only by mutual written agreement between the parties of this contract.

## **RESTRICTIONS AND CONDITIONS**

The Fee Appraiser agrees to furnish the Department an acceptable appraisal in conformance with the attached Scope of Work.

All possible assistance will be given to the Fee Appraiser by the Department, including, but not limited to, the following items: ownership maps, R/W forms, economic studies, Land-use Facility reports to be included within the project and/or parcels, various legal concepts as would be applicable to the State, irrigation studies, etc., as would be beneficial to the Fee Appraiser, but in no way affect the Appraiser's final estimate of value.

The Fee Appraiser warrants that no company or person has been employed or retained, other than a bona fide employee working solely for the Fee Appraiser, to solicit or secure this agreement, and that no payment or agreement has been made with any company or person, other than a bona fide employee working solely for the Fee Appraiser, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach of violation of this warranty, the State shall have the right to annul this agreement without liability.

In the event the Department makes any alterations, changes or revisions of this contract which require any substantial additional work for the Fee Appraiser, compensation shall be at a written predetermined rate that will not be in excess of, but which may be less than, the declared rate in paragraph 2 supra, plus reasonable and ordinary expenses. Any equitable changes, either increases or decreases, in the amount of compensation set forth in this contract, or any reason for cancellation or modification shall be approved by the Department.

If, for any reason, the Department finds the services of the Fee Appraiser are nonconforming or otherwise unsatisfactory, written notice of such fact shall be given to the Fee Appraiser and 10 days shall be allowed for the Appraiser to conform to the terms of this contract. If such corrective measures are not so taken, the Department, in its discretion, may terminate this contract upon written notice to the Fee Appraiser. In the event of termination, all work, services, and appraisals done by the Fee Appraiser will become the property of the Department, and the same shall be immediately turned over to the Department. Payment for the work and services performed shall be made on a prorated scale as the value of said work is adjusted to the agreed upon compensation.

Time is of the essence in each and all of the provisions of this agreement. The Department may terminate this agreement or be relieved of the payment of any consideration to the Fee Appraiser should there be failure to perform the contract herein contained at the time and in the manner herein provided.



Any dispute concerning a question of fact in connection with the work performed under the terms of this contract will be handled as provided by existing rules and regulations of the Wyoming Department of Transportation as to appeal and hearing before the Wyoming Transportation Commission; said rules and regulations being in conformity with § W.S. 16-3-101 et seq., known as the Wyoming Administrative Procedure Act.

This agreement is not assignable by the Fee Appraiser either in whole or in part.

The Fee Appraiser agrees to conform to all provisions of the Civil Rights Act of 1964, Appendix A, a copy of which is attached.

The Fee Appraiser agrees to indemnify and hold harmless the Department, its officers, agents and employees from any and all claims and losses accruing or resulting to the Department in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Fee Appraiser in the performance of this contract.

The Fee Appraiser agrees that his or her report and conclusions are for the confidential information of the Department or its authorized agents and will not disclose conclusions in whole or in part to any person whatsoever other than as provided in this contract or under a court order.

The Fee Appraiser warrants that he or she has no interest, present or contemplated in the properties being appraised under this contract.

It is mutually agreed and understood that no alteration or variations of the terms of this contract shall be valid unless made in writing between the parties hereto.

If the above Fee Appraiser is incorporated or a partnership in the State of Wyoming, Andrew Cornish, MAI, SRA will perform the valuation and if necessary, testify in a condemnation action.

The relationship between Fee Appraiser and the Department shall be that of an Independent Contractor and Department shall not be responsible for, nor shall Fee Appraiser receive, benefits as are available to State of Wyoming employees.

Department shall not provide close supervision or exercise discretion over Fee Appraiser during the course of this contract.

Department does not waive its sovereign immunity by entering into this contract and fully retains all immunity and defenses as provided by law.

The construction, interpretation, and enforcement of this contract shall be governed by the laws of the State of Wyoming.

Nothing in this contract, actions or understandings of the parties shall be interpreted or deemed to create an expectation of continued contractual relationship beyond the terms of this contract.

Remainder of Page Intentionally Left Blank



Reviewed and Recommended

^^Elect\_Sign1^^

By: \_\_\_\_\_  
Kevin Lebeda  
R/W Administrator

\_\_\_\_\_  
Date

**WYOMING DEPARTMENT OF TRANSPORTATION:**

\_\_\_\_\_  
Keith Fulton, P.E.  
Assistant Chief Engineer

\_\_\_\_\_  
Date

**CONTRACTOR:**

\_\_\_\_\_  
Andrew Cornish, MAI, SRA  
Rocky Mountain Appraisals  
155 E. Pearl Ave., Suite 10  
Jackson, WY 83002

\_\_\_\_\_  
Date





## SCOPE OF WORK

- **Project Inspection:**

The appraiser shall inspect the project with the Resident Engineer and other WYDOT employees as necessary to determine the specific impacts of construction on the subject property(s). A detailed record of this inspection will be completed in writing by the appraiser and included in the report.

- **Subject Inspection:**

The appraiser will personally inspect the subject property(s) and provide several photographs of the subject total property and acquisition area. If there are improvements on the subject property, which are included in the value estimate, the appraiser will inspect the interior as well as the exterior of the subject improvements and will provide photographs of both the interior and exterior. The appraiser will analyze and determine the impacts the acquisition has on the total property.

The appraiser will investigate and analyze any pertinent easements or restriction, on the fee simple ownership of the subject property. WYDOT is responsible to supply the appraiser with a title report. (If a title report is not available, the appraiser will rely on a visual inspection to identify any readily apparent easements or restrictions).

- **Landowner Contact:**

The appraiser will contact the landowners involved and give them the opportunity to inspect the acquisition with the appraiser. The appraiser will also interview the landowner to identify specific subject property characteristics and to determine if the landowner is aware of any comparable sale or listing information which may be helpful. If the landowner is located on or near the project it is preferable that the appraiser meet the landowner on site. A record of conversation detailing the information provided by the landowner during the interview is required. This document must include the time and place of the meeting along with the names of all individuals present. If the landowner does not inspect the property with the appraiser a copy of a record of conversation or a letter giving the landowner that opportunity shall be in the appraisal.

- **Comparable Sales:**

The appraiser shall complete an extensive search for comparable sale information in the subject area as well as competing areas. The search should include researching courthouse records as well as contacting other real estate professionals and multi-list services. The appraiser will review the title book to locate comparable sales of the subject. Any prior sales of the subject property in the last five years shall be confirmed if possible and details of the transaction including sale price shall be presented in the history of the subject. These transactions should be reconciled with the comparable sale information. The comparables used in the report shall be independently verified by the appraiser, inspected and photographed by the appraiser, and illustrated in such a manner that the sale can be located by anyone reading the report. In addition the appraiser will consider any appropriate listings of properties found during the data gathering phase of the appraisal, including listings of the subject property.

- **Appraisal Report:**

The appraisal report shall be self-contained as defined in USPAP which will include before and after the acquisition value estimates. Also, the value of the acquisition will be estimated. This report will be prepared in with the Uniform Standards of Professional Appraisal Practice as promulgated by The Appraisal Foundation and the Code of Professional Ethics and Certification Standard of the Appraisal Institute, and federal requirements outlined in 49CFR Part 24 and WYDOT guidelines presented in this scope of work.

Or

The appraisal report shall be self-contained as defined in USPAP This report will be prepared in with the Uniform Standards of Professional Appraisal Practice as promulgated by The Appraisal Foundation and the Code of Professional Ethics and Certification Standard of the Appraisal Institute, and federal requirements outlined in 49CFR Part 24 and WYDOT guidelines presented in this scope of work.

Deliver two individually bound reports of each parcel to WYDOT.

Deliver one electronic copy of the report including addendum in PDF format to WYDOT.

- **Approaches to Value:**

The direct sales comparison approach shall be completed. The cost and income approaches shall only be developed if determined to be necessary to produce a credible value estimate.

- **Definition of Value To Be Used:**

As stated earlier, the purpose of this report is to estimate "compensation" due the landowners on this project. The term compensation, as used in this context, originates in the Fifth Amendment to the United States Constitution. The pertinent portion of this amendment is quoted as follows "... *nor shall private property be taken for public use, without just compensation* ...". Modeled after the Fifth Amendment, Section 33 of the Wyoming State Constitution indicates that: "Private property shall not be taken or damaged for public or private use without just compensation."



It is generally understood that pure "Just Compensation" can only be determined by a jury or judge. The term "compensation" is used in this report to refer to the amount estimated to be fair payment for the property rights taken as part of the project. Compensation is defined in the "Wyoming Eminent Domain Act". The pertinent sections of this act are quoted below:

W.S. 1-26-702 COMPENSATION FOR TAKING: (subsection b) "If there is a partial taking of property, the measures of compensation is the greater of the value of the property rights taken or the amount by which the fair market value of the entire property immediately before the taking exceeds the fair market value of the remainder immediately after the taking."

Where takings are small and uncomplicated and it is clear that the after value will not be significantly different than the before value, the appraiser may estimate the "Fair Market Value" of the taking as part of the whole only. This eliminates the need for an after the taking appraisal.

Fair market as defined by Wyoming State Statute:

W.S. 1-26-704 FAIR MARKET VALUE DEFINED: (subsection a, par. 1 ) " The fair market value of property for which there is a relevant market is the price which would be agreed to by an informed seller who is willing but not obligated to sell and an informed buyer who is willing but not obligated to buy;"

The use of this definition is required by law. Although this definition does not conform to the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-2, Section b; which indicates that if the value to be estimated is market value, the type of financing which will be considered to be "market", must be stated. The use of the legal definition falls under the Jurisdictional Exception of the Uniform Standards.

Or

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

• **Damages:**

The appraiser will analyze the impacts of the acquisition to determine if there are damages to the remainder. Any estimate of damages caused by the project will be supported by a before and after analysis or cost to cure estimates supported by professional contractor bids.

• **The Appraiser Shall Complete The Following Forms:**

Certificate of Appraiser  
Permit to Appraise

• **Reviews:**

The appraiser will accompany the review appraiser and other WYDOT employees on a review inspection of the project and comparable sales after the completion on the report.

• **Other Items Specific to this Appraisal Assignment:**

Individual parcel amounts shall be rounded to the nearest \$5

**Example:**

Parcel #	Usage	Size	Value Per Square Foot	%	# Years	TOTAL
9A	SIDEWALK RECONSTRUCTION	1,135 SQ. FT.	\$2.14	10	1	\$245 (R)

Minimum Payments:





**Additional Right-of-Way** ----- Minimum Payment = \$500  
(Example. 1.1 acres @ \$100/acre = \$ 110 – Rounded to Minimum Payment of = \$500)

**Existing Right-of-Way** ----- Minimum Payment = \$250

Note: If there is additional right-of way there is no minimum payment for the existing right-of-way. Payment for the existing right-of-way is included in the additional right-of-way minimum payment.

(Example. Additional Right-of-Way 1.1 acres @ \$100/acre = \$110

Existing Right-of-Way 2.0 acres @ \$10/acre = \$ 20

TOTAL = \$130 - Minimum Payment of \$500)

The above recommended minimum payments are for each individual ownership, *not each parcel*.

**Temporary Taking** ----- Minimum Payment = \$250

Note: One permit only, minimum payment = \$250. For more than one permit on the same ownership the recommended minimum payment shall be no less than \$125 for each permit.

Example. 1 Temporary Taking,

1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$250.)

Example. 2 Temporary Takings

1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)

1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)

TOTAL = \$250 (This assumes that \$125 exceeds the actual permit value.)

Example. 3 Temporary Takings

1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)

1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)

1.0 acre @ \$100/acre x 10% x 1 yr = \$10 (Rounded to Minimum Payment of \$125.)

TOTAL = \$375 (This assumes that \$125 exceeds the actual permit value.)

#### **State Land Office Minimum Payments:**

Consideration for Easements:

Under Chapter 3, Section 6(b) - The minimum payment for any easement shall be \$250.

Temporary Use Permits:

Under Chapter 14, Section 6(a)(I) - The minimum payment for construction activity is \$10/acre or \$100, whichever is greater.

(Example. 2.00 acres x \$10/acre = \$20

1.00 acre x \$ 10/acre = \$10

Rounded to minimum payment of \$100.00).



## SPECIAL PROVISION

### Compliance with Title VI of the Civil Rights Act of 1964 Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to the contractor under the contract until the contractor complies,

and/or

(b) Cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.



**WYOMING DEPARTMENT OF TRANSPORTATION  
CERTIFICATE OF APPRAISER**

I certify to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, impartial, unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report and no personal interests with respect to the parties involved, and have not performed services regarding the subject property within the 3 year period immediately preceding acceptance of the assignment, as an appraiser or in any other capacity.

I have no bias with respect to the property that is the subject of this report or to the parties involved with the assignment.

My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the Wyoming Department of Transportation, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

I have made a personal observation of the subject properties of this report.

No one provided significant professional assistance to the persons signing this report.

**Special Certifications:**

I prepared this report in conformity with the appropriate state laws, regulations, policies, procedures applicable to appraisal of right-of-way for such purposes, and that no portion of the value assigned to such property consists of non-compensable items under the established law of said state.

I understand this report may be used in connection with the acquisition of right-of-way for a project to be constructed by the State of Wyoming with the assistance of federal-aid highway funds, or other federal funds.

I have not revealed the findings and results of this report to anyone other than the proper officials of the acquiring agency of said state or officials of the Federal Highway Administration, and will not reveal the information until duly authorized by said officials, required to by due process of law, or released from this obligation by publicly testifying as to such findings. The exception to this confidentiality certification concerns that of the duly authorized representatives from the Wyoming State Board of Certified Real Estate Appraiser. If reviewed by said board, they must abide by the above stated confidentiality requirements.

I provided the owner(s) or the designated representatives of the subject property an opportunity to accompany me on an inspection of their property.

My opinion of compensation for the acquisitions as of \_\_\_\_\_ is as stated in the attached appraisal report

\_\_\_\_\_  
Appraiser





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### A. PURPOSE

Part III of this manual defines the overall administrative responsibilities, processes and procedures to be followed by Right-of-Way personnel. The purpose of Part VI is to define, in more detail, the responsibilities, duties and techniques to be followed in the actual conduct of negotiations. For this manual the terms “negotiator” and “Acquisition Agent” used throughout the manual are synonymous.

### H. STATUTORY AUTHORITY

W.S. 24-2-102 gives the Transportation Commission of Wyoming the authority to acquire the necessary rights-of-way, by purchase, gift, or condemnation, in the manner set forth in Rule 71.1, Wyoming Rules of Civil Procedure not in conflict with the Wyoming Eminent Domain Code (W.S. 1-26-501 to W.S. 1-26-817).

Such acquisition can take any of several forms including fee simple estate, joint estate, life estate, estate for years, leasehold interest, easements or temporary construction permits.

The Commission has the authority to acquire, by purchase or gift, the parcel or parcels of property that may be severed or damaged as a result of the acquisition of the highway right-of-way, provided that the Commission shall not acquire any such parcel or parcels of land by purchase or gift until full settlement has been made for the damages to the landowner. *The Commission has no statutory authority to condemn severed parcels, but must offer to purchase uneconomic remnants.*

The Commission also has the authority to acquire by purchase or gift property containing deposits of sand, gravel, shale, rock or other road building material, or storage sites for these materials, for use on the roads of Wyoming when, in the opinion of the Commission, the interest of the public or the expediting of a project demands such acquisition. The Commission authorized and empowered the Director to permit members of the Right-of-Way Program to sign memorandums of agreements, entry permits, and other instruments by Commission Resolution on April 19, 1962.



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### C. JUST COMPENSATION

The Fifth Amendment of the United States Constitution and Article 1, Section 33, of the Wyoming Constitution, provide that *private property shall not be taken or damaged for public use, without just compensation.*

Acquisition of private property for public use frequently generates elements which cannot be translated into monetary equivalents. It has, therefore, been necessary for the courts to evolve practical guides to be applied with some reasonable degree, whereby just compensation can be ascertained.

Questions on statutory interpretation should be discussed with your supervisor or with counsel.

### I. DONATIONS

#### DONATIONS

Nothing in the regulations shall prevent a person, after being informed of the right to receive just compensation, based on an appraisal of the real property from asking a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefore, to the Department. The Department is responsible for assuring that the landowner is informed of the right to receive just compensation based on an appraisal and securing an appropriate donation form signed by the landowner acknowledging this right.

### D. MARKET VALUE AS A MEASURE OF LOSS

The solution adopted by the courts, in determining just compensation, subject to exception in isolated cases, is the "Fair Market Value" concept. If there is a partial taking of property, the measure of compensation is the greater of the value of the property rights taken or the amount by which the fair market value of the entire property immediately before the taking exceeds the fair market value of the remainder immediately after the taking. (W.S. 1-26-702(b)).

### I. FAIR MARKET VALUE

#### FAIR MARKET VALUE

Fair Market Value may be broadly defined as being "(i) The fair market value of property for which there is a relevant market is the price which would be agreed to by an informed seller who is willing but not obligated to sell, and an informed buyer who is willing but not obligated to buy," as defined by W.S. 1-26-704(a).

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### E. REQUIRED PROCEDURE

W.S. 1-26-509 requires the Condemnor to make a reasonable and diligent effort to acquire by good faith negotiation. It is the established policy of the Transportation Department that good faith negotiations will be undertaken with each and every property owner and that a diligent attempt at settlement will be made in the amount of the review appraiser's determination of fair market value. (WYDOT Basic Policy 19)

Assigned personnel have the responsibility of conducting negotiations in a businesslike manner satisfactory to the State and the landowner, and to successfully conclude these negotiations within the time objective specified by the assignment.

It is recognized that not all matters will result in amicable settlements. Conversely, it is expected that properly conducted negotiations, with adequate explanation of policy and procedures, will result in the majority of these matters being amicably settled without resorting to condemnation. In the negotiation process, the telephone may be utilized to arrange for conferences and appointments. Formal negotiations may be initiated and consummated by certified mail.

### F. NEGOTIATION TECHNIQUE

With several notable exceptions, it can be said that the process of negotiations is similar to that of salesmanship. The more successful professional salesmen are known to have a high degree of "drive" and to be highly trained in the various technical phases relevant to their particular product or organization.

In addition to essential personal traits and conduct, the successful negotiator must be able to intelligently and adequately explain to landowners the engineering, legal and appraisal factors of the property for which they are negotiating. They must have a basic understanding of the correct sales techniques to use.

Most successful professional negotiators follow a basic pattern or process of steps, which may be outlined:

Preparation

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Demonstration

Close

Follow-up

In planning and conducting negotiations, the negotiator should follow the defined pattern of these steps as closely as possible.

### G. PREPARATION

#### 1. ORGANIZING TIME

##### **ORGANIZING TIME**

Many otherwise technically proficient negotiators fail to achieve prompt and amicable settlements because they have not properly prepared themselves to answer the landowner's questions, or to adequately explain the proposed acquisition and the effect it will have on a landowner's property. Others fail because they have not properly organized their time, "dropping in" on landowners hit-or-miss, often finding them not at home, and consequently wasting time and mileage by doubling back over their route.

Studies indicate that many persons in the sales and customer relations fields are in actual personal contact with their customers and clients only a small part of their field work week. This has been attributed primarily to poor management of their time.

It is a requirement of the Right-of-Way Program that negotiators maintain close personal contact with landowners; thereby, increasing their potential without an increase in the regular work week.

During preparation, negotiators should plan and organize their time to prepare themselves to anticipate and answer the landowner's questions. This will require conferences prior to negotiations with Project Development personnel, and other Right-of-Way personnel, to make sure plans, severance's, etc., are understood. It is imperative that negotiators meet with the appraiser and discuss the project before contacting landowner.

#### 2. REVIEWING THE PROPOSED ACQUISITION

##### **REVIEWING THE PROPOSED ACQUISITION**

After the project has been authorized for acquisition by the State and/or Federal Highway Administration and after the appraisal review has been completed by the Review Appraiser, the assigned Negotiator reviews the project in the office and the field, in conference with the Project Manager, Review Appraiser and Appraiser. The design squad leader should also be called in for clarification of design features.

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Before commencing negotiations, the negotiator shall familiarize themselves with each particular parcel, and the property itself, by a personal review of the site. They should study the ownership map, construction plans, and the appraisal sufficiently to understand the nature of the acquisition. They should be able to explain to the landowner how the acquisition will affect them, and be able to support the logic of the appraised value.

The Project Manager should pre-brief the staff negotiator on the particulars concerning the assignment. At that time, or after negotiations have started, if there are any questions about the appraisals, the negotiator should consult the Project Manager for clarification. When necessary, the appraiser and review appraiser are also consulted.

The negotiator should have with them for all visits the original and the landowner's copy of the necessary property maps, the approved Memorandum of Agreement, and the approved conveyance instrument. They should also have a copy of the Right-of-Way brochure "Highways and Your Land" for the landowner, as well as a copy of the Official Receipt, for the landowner to sign when these papers are delivered. A copy of the W-9 taxpayer Identification will also be needed.

The original of the Summary Statement of Fair Market Value shall be delivered to the landowner at the time of the first discussion of the offer submitted. Copies of each document must be retained in the parcel file. This maintains a complete auditable paper trail in the file throughout the negotiation. The referenced forms are contained in the Addendum to this section.

### 3. FILE AND ACQUISITION CHECK LIST

#### **FILE AND ACQUISITION CHECK LIST**

Once the Acquisition Agent has all documents in order in the file, the Agent should ask the Project Manager or another Acquisition Agent in the office to review the file to ensure all documents are correct. If all documents are correct, the Reviewer will sign off and date the "File and BEM Acquisition Check List" document. The Acquisition Agent is responsible to place an electronic copy of the signed document into the Right-of-Way document management system.

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### 4. FIRST NEGOTIATION CONTACT

#### FIRST NEGOTIATION CONTACT

After reviewing the parcel files and assuring that they are fully prepared, and after making a last minute *check of the county records to assure against any recent ownership changes*, negotiators are then in a position to organize a schedule of visits. First, telephone calls should be made to arrange orderly appointments so maximum time may be devoted to efficient negotiations. All appointments are to be made at the reasonable convenience of the landowner, including evenings or such other times as may be required for personal contact. It should be determined if all the owners of a property wish to be present when the offer is made. It is preferable that all owners and spouses be present when the offer is made.

### H. INTRODUCTION AND DEMONSTRATION

#### I. INTRODUCTORY STEPS

#### INTRODUCTORY STEPS

Introductory Steps: Having arranged an appointment, the negotiator will always meet with the owner or owners at the appointed time and landowners convenience.

Negotiation conferences are similar to the Demonstration Step in the professional sales process and consist of two primary steps, the introductory and the explanatory phases.

No two negotiations follow identical patterns. However, it is the duty of the negotiator to lay proper foundations, by the exercise of those elements of public relations which are directed toward the establishment of mutual understanding, and/or common ground on which they and the property owner can best conduct business. In the introductory phase of the conference, he/she must convince the landowner of their sincerity and that they know their subject. Without this common ground of understanding, the likelihood that the negotiations will succeed is considerably lessened.

Most owners are reasonable and understanding if given satisfactory explanations as to the how, why, when and where of the acquisition process. While they have received advance information from the Transportation Department as to the steps they can expect in the acquisition process, they may be apprehensive. The negotiator should make every effort to relieve the landowner's anxiety.



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In the introductory phase of their conference, the negotiators can do much to establish common understanding by explaining that they act as a liaison between the landowner and the State, and it is part of their duty to be concerned with the property owners, their rights and entitlements, just as much as it is their duty to also protect the interests of the public.

During this introductory phase, the negotiators can frequently improve their reception by reviewing the overall public need for the subject improvement and by assuring the owner that while their property is required for public usage, it is the intention of the State to justly and fully compensate them for the property or rights they will lose, within all legally permissible limits.

This would be a good time to review the brochure "Highways and Your Land" with the owner to explain the steps in acquisition, as well as their alternate recourse at law, and to outline the mutual advantages of amicable negotiations.

At this point, it is also best to explain to the owner all of the advantages and benefits involved, such as (1) this being a public acquisition there will be no brokerage fees; (2) the State has assumed all costs in the preparation of the contract, deed and appraisal; (3) the State will assume the responsibility and cost of abstracting the title and will quiet title to the lands being acquired, if required; (4) the State will pay for reasonable mortgage release fees, and prepayment penalty costs; and (5) the State can allow retention of improvements for salvage value.

The features regarding better access, new right-of-way fencing, drainage pipes, restoration of irrigation systems, partial payments, and any and all other beneficial features of the highway facility and acquisition policies, should also be explained. Care should be taken with respect to promises to replace irrigation systems, the owner should clearly understand what is being promised.

During construction there may be items owned by the adjacent landowners to the construction site which are damaged or obliterated by the construction equipment. *It is the Department's policy to replace in kind those items which are affected if an in lieu of payment is not acceptable.* A landowner may request additional construction items to be



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completed for his property during construction instead of receiving the appraised consideration. This is *acceptable if the appraised compensation to the landowner is equal to the construction items requested.*

Above all, if common understanding is to be reached, the negotiator must be a good listener and be able to patiently answer any initial questions that the introductory phase may have prompted, greatly relieving the owner's apprehensions and facilitating an atmosphere of mutual trust and understanding.

Negotiations are now ready to move forward to the demonstrative and explanatory phase and to the offer, based on the fair market value appraisal.

### 2. Demeanor

#### **DEMEANOR**

This manual outlines the steps to be followed in negotiations, but makes no attempt to detail all the elements in the actual conduct of negotiations. Such items as length of interview, whether or not the offer is made on the first call, how many calls to make before insisting on a final determination, and like matters, are all intangibles but incidental, to the conduct of negotiations. These require the employment of good judgment and for adherence to the negotiation time schedule.

The Right-of-Way Program requires its negotiators to exercise common sense in all contacts with landowners. Undue haste in attempting a settlement by the exercise of superior or patronizing attitudes or, conversely, unnecessarily protracted interviews, by showing servile demeanor toward owners, are undesirable and to be avoided.

In final analysis, the conduct of negotiations, subject to the basic general direction defined in this manual, becomes an individual matter subject to the attitudes and mannerisms of each negotiator. The basic and fundamental tool is the exercise of good judgment. Every negotiation presents different landowners and conditions with which the negotiator must learn to cope.

### 3. Explanation of Proposed Acquisition

#### **EXPLANATION OF PROPOSED ACQUISITION**

The explanation the negotiator presents to the landowner includes, but is not necessarily limited to, the following legal, engineering, and physical details:

- Extent of Acquisition.

- Improvements in the Acquisition with rights to reserve.

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Drainage, irrigation, slope or other easement areas.  
Areas subject to access controls.  
Temporary, permanent and/or revertible easement areas.  
Approaches and other access provisions.  
Differences between the existing road and any changes proposed, as regards changes in the grade affecting the property.  
Fencing and maintenance.  
Limits of the right-of-way, and the reasons for the established widths.  
Structures proposed for construction, and their effect on land usage.  
Old road obliteration.  
Private utilities affected, as well as public utilities.  
Relocation Assistance.  
Rights to payment.  
Methods of determining and acquiring uneconomic remnants.  
Wetland Areas  
Damage items  
Appraisal Process and values  
Ownership and title  
Condemnation Areas

To substantiate their explanations, the negotiator is to provide the landowner with pertinent right-of-way property maps and other essential supporting material. This phase of the conference shall not be terminated until the negotiator is certain that the landowner and/or their representative, fully understands the nature of the acquisition and its effects on the remainder of the property.

As a matter of Transportation Department Policy, the *landowner is entitled to as full an explanation of the effects the acquisition will have on his property as can be furnished.* The greatest share of these questions are answered by the negotiator when he and the landowner read and interpret the provisions of the Memorandum of Agreement or Construction Permit item by item as they are instructed to do in all instances prior to landowner's signing. The Memorandum of Agreement will be read out loud and each clause explained with the landowner unless the landowner objects.

The Transportation Department believes that although acquisition under amicable circumstances is preferable to

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condemnation, condemnation is preferred to lack of understanding.

Consistent with this policy of clear understanding, prior to requesting condemnation, the negotiator forwards a certified letter to the owner confirming the State's offer, and other pertinent matters, in order to alleviate the possibility of any misunderstanding as to the points discussed or agreed.

### 1. CONSIDERATIONS

#### 1. IMPROVEMENTS

##### **IMPROVEMENTS**

There is little difference between negotiations for improved property and unimproved property, except for the time needed for orderly relocation of the owners and/or their tenants, and the statutory provisions on highway projects concerning relocation assistance for families, businesses, farms, and non-profit organizations.

#### 2. RELOCATION ASSISTANCE

##### **RELOCATION ASSISTANCE**

The responsibility of the negotiator ends with the acquisition of the property for right-of-way purposes and dovetails the negotiations and relocation together by the completion of Item 4 of the Memorandum of Agreement. When excess property is acquired, the negotiator organizes all information and transmits to the Project Manager, who forwards to the assigned relocation agent.

#### 3. OWNER RETENTION OF IMPROVEMENTS

##### **OWNER RETENTION OF IMPROVEMENTS**

Landowners may retain their buildings and other improvements, if provided in the appraisal. The negotiator shall remind the owner of an improved property they have first option to retain and remove their buildings and other improvements from within the acquisition area for the salvage value stipulated in the appraisal or as determined by the Right-of-Way Administrator.

*Where improved property is to be acquired, the negotiator will prepare one Memorandum of Agreement with two options clearly shown for the landowner to choose from. The first option will be for the conveyance of the real property, together with all improvements located thereon. The second option will be the alternate agreement for the conveyance of the real property, with the owner reserving the improvements.*

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Major improvements which the landowner has elected to retain, are to be removed from the right-of-way prior to the limiting date of removal stated within the Memorandum of Agreement. The Right-of-Way Administrator may grant an extension of the time limitation provided by the agreement. If items have not been removed in the allotted time, the Department will remove and dispose of improvements.

### 4. FIXTURE CLASSIFICATIONS

#### **FIXTURE CLASSIFICATIONS**

When the State acquires dwellings, it is customary and accepted legal practice in most areas that it also acquires all parts of the dwelling considered as fixtures. These include: heating plants, plumbing, tubs, washstands, piping, electrical and lighting fixtures. It is also common practice to include built-in kitchen cabinets, fixed- cabinets and shelving, venetian blinds, screens, storm doors and storm windows, pumps for wells, hot water tanks, water storage tanks, and built-in stoves and ovens.

Exterior items which are considered fixtures to the property include: walkways, patios, trees, shrubbery, bushes, lawn, fencing, barbecue pits, lampposts, gateposts, and other such items which are generally accepted as part of the real property. A problem that arises frequently during negotiations is whether the owner is allowed to remove both inside and outside fixtures. The negotiator must be alert when discussing these items and be firm in denying the right to take many of the items owners often desire to keep, if the landowner has been compensated for the acquisition of said fixtures.

The two controlling factors determining whether a fixture is or is not a realty item are: (1) whether the fixture or improvement is actually physically attached to the land or building and (2) whether it can be removed without disturbing the ground or injuring the building.

Frequently, the negotiator will be confronted with the problem of deciding whether an item of fixtures can in fact be relinquished by the State. They will be guided chiefly by the appraisal. If the appraisal includes a value for the item, or includes it in the overall contributing value, then it cannot be retained by the owner without special arrangement and a consequent reduction in the compensation.

Conversely, if the appraisal fails to mention the item as having been considered as a part of the realty or has mentioned it as being personal property, it is not part of the real estate. Other items frequently in this latter category are

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clothes washers, dryers, full length mirrors attached to doors, refrigerators, exterior television antennas, etc. All fixtures shall be itemized on the Agreement.

### 5. FIXTURE RETENTION

#### **FIXTURE RETENTIONS**

If an owner insists on retaining an item of realty, or a fixture, the negotiator shall consult the approved appraisal to determine an amount to be deducted for the item.

Care should be taken in the negotiated agreement, that the retention is limited to the concerned item, and that the owner will not damage any other part of the building by removing it, thereby adversely affecting its resale potential. Where it is obvious that such retention cannot be accomplished without resulting in those undesirable conditions, it shall be politely explained to the owner why the item cannot be removed.

### 6. MAKING THE OFFER

#### **MAKING THE OFFER**

Presenting the offer of just compensation which has been determined most representative of fair market value, is the element of negotiations which requires not only the most thought, but also the maximum exercise of diplomacy and professional skill on the part of the negotiator.

### 7. ONE-OFFER POLICY

#### **ONE-OFFER POLICY**

It is Basic Policy Number 19 - 6 item IV that negotiations shall be conducted on the basis of the one-offer system. This system has been in effect since June 20, 1958, by Transportation Commission of Wyoming resolution. The primary objective of the one-offer requirement is to provide that all owners are treated equally and fairly. Its adoption was brought about because of the undesirability of putting the landowner in a position of having to bargain with a public agency in order to receive just compensation. Waivers in any special and rare instances, where it is in the public interest to deviate from this policy, require prior approval of the Right-of-Way Administrator, and/or where applicable, of the Federal Highway Administration.

When the Department's evaluations and review determinations have been properly prepared and reflect fair market value, no procedure could be more equitable to the owner than the one-offer method. Properly presented and explained, it should be welcomed by all landowners as a businesslike and proper procedure. To make a sincere presentation, the negotiator should understand the appraiser's concepts, particularly as to the amount of



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compensation to be offered. Should the negotiator feel that the amount offered is not equitable, they should discuss the matter with the Project Manager and should not continue negotiations for that particular parcel until their questions have been fully resolved. Discussions with the appraiser should take place as soon as possible in the acquisition process.

### 8. DATA ACCOMPANYING OFFER

#### **DATA ACCOMPANYING OFFER**

The amount to be offered is the full amount of the Review Appraiser's determination of fair market value, which is summarized in Review and Authorization. When the offer is made, the agent will furnish the owner with a copy of the Summary Statement of Fair Market Value, the Memorandum of Agreement, a copy of the right-of-way ownership plans marked Exhibit 'A' a copy of the Deed or conveyance, a copy of the right-of-way brochure "Highways and Your Land", and Official Receipt. The latter is to be signed by the owners or their legal representative at that time. The signed receipt is documentation and written confirmation of the fair market value offer that has been made by the negotiator. Should the owner refuse to sign the Official Receipt, the negotiator is to write on the Official Receipt that owner would not sign receipt and place in parcel file.

### 9. 65 DAY LETTER

#### **65 DAY LETTER**

W.S. 1-26-509 (iii) (E) requires that prior to instituting condemnation proceedings, the Department must send out a written offer by certified mail to the landowner and allow the landowner at least 65 days to respond in writing to the Department's offer. If the Acquisition Agent is unable to set up a meeting with the landowner, or the landowner declines to sign the documents at the initial meeting, the Acquisition Agent should send out a 65 Day Letter packet with the offer by certified mail as soon as possible. The 65 Day Letter packet should include the following:

1. Original and copy of the Memorandum of Agreement or Permit.
2. Original and copy of the conveyance document(s).
3. Original and copy of the Official Receipt.
4. Copy of the Engineering Plans marked Exhibit "A".
5. Copy of the Right of Way Brochure "Highways and Your Land."
6. Copy of the Valuation Report.
7. Summary Statement of Fair Market Value, and



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### 8. Request for Taxpayer Identification Number (W-9 Form).

This letter can be generated from the Right-of-Way document management system.

## J. DISCUSSIONS

Frequently, after an offer has been made, it will be necessary to discuss and support the appraiser's valuation concepts and the basis of the offer. This is a permissible and an accepted negotiation practice, subject to the following applications.

### 1. DISCLOSURE OF APPRAISALS

#### **DISCLOSURE OF APPRAISALS**

Based on W.S. 16-4-203, "...The contents of the appraisal shall be available to the owner of the property or property interest at any time;..." The Acquisition Agent will send a copy of the valuation report to the landowner along with the initial offer.

### 2. DISCUSSION OF APPRAISAL ELEMENTS

#### **DISCUSSION OF APPRAISAL ELEMENTS**

In every acquisition the negotiator must be familiar with the appraiser's statement as to the highest and best use of the property. This is the key element underlying any appraisal. The negotiator should reach agreement with the owner on this item. They may then proceed to a discussion of the various appraisal elements, but should always use care and discretion in discussing individual items of damage.

Basic land values are always supported by comparable sales and the negotiator is required to be familiar with the applicable ones and be able to explain them to the owner. It is the best selling point for supporting the land valuations used for the offer. The negotiator should discuss any questions about the appraisal with the appraiser. However, the damages are an entirely different matter, since they are subject to varying opinions.

The discussion with the owner of the appraisal approaches to value used requires knowledge of the steps taken by the appraiser in developing the appraised values. Such discussion will frequently be educational to the owner and must be presented simply and logically. Generally speaking, the negotiator must take care to be certain that the owner understands the principal concepts of the appraisal process

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and the overall reasoning which supports the authorized offer.

Owners have a tendency to accept the "highs" and question the "lows", and yet in the final analysis, if slight differences of opinion on certain items are disregarded, there would perhaps be relatively little conflict in the overall values derived.

### 3. COMPARABLE SALES DATA

#### **COMPARABLE SALES DATA**

It is the comparable sales or market data approach which should be emphasized by the negotiator as the basis for explaining values. This market data or comparable sales emphasis applies with equal force to whichever of the three approaches to value have been applied by the appraiser. The degree of comparability, the location, the time of the sale, and the underlying motivating factors are the major elements to be emphasized.

The negotiator should avoid discussing the replacement value of the property as a whole or any of the individual parts, but rather should emphasize what the property would bring if advertised for a reasonable time in the open market under the fair market value concept.

### 4. OMISSIONS OR ERRORS IN APPROVED APPRAISAL

#### **OMISSIONS OR ERRORS IN THE APPROVED APPRAISAL**

In rare instances during discussion of appraisals with an owner, it may develop that compensable elements of value or damage have been omitted, or that assumptions have been made which appear to have resulted in improper valuations. In such cases, the negotiator is to advise the owner that the questions will be referred to the Project Manager and Review Appraiser and that they will be given objective consideration. Then conclude the interview as soon as practical, consistent with good manners. The negotiator will then discuss such omissions, errors, or doubtful factors with the Project Manager, who after an examination of the situation and verification of the existence of a probable error or omission, will refer the matter to the Review Appraiser. No further negotiations shall take place on that parcel until the Review Appraiser has made a decision, and taken any necessary action to confirm the original findings, or to make such adjustments as might be necessary. Any adjustment requires a new Summary Statement of Fair Market Value.

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### 5. CROP DAMAGES

#### **CROP DAMAGES**

Compensation for crops growing on the property on the date of acquisition, if not set out in the appraisal, is the higher valuation of the current market value of the crops in place, assuming the right to bring them to maturity and to harvest them, or the amount by which the existence of the crop enhances the fair market value of the property.

Every attempt will be made to allow the owner or tenant to bring the crops to maturity and to harvest same. In the event the Department's need precludes this action, the Department will pay damages for the loss of crops based on the average production yield and production costs. Damages for crop loss will be paid in addition to any market value compensation for the land.

### 6. CONVINCING THE OWNER

#### **CONVINCING THE OWNER**

Negotiators should have a well-founded understanding of the basic prerequisites to good oral communications and should be fairly well versed in the psychological factors of human motivation. If the negotiator has followed instructions concerning attitude, sincerity, and the progressive steps, there should be little difficulty in having the owner or their representative accept the sincerity of purpose, and the fairness and reasonableness of the presentation of the supporting data.

Psychologically, use of the "I" and "we" applications should be avoided as much as possible. Owners usually care little as to the desire of the State and negotiator to consummate the negotiations so as to clear the right-of-way, etc. It is more convincing when the presentation is made on the basis of the "you" premise, or what the advantages are to the owner in signing up early, etc., rather than the advantages are to the progress of the project and what it will mean to the State and the traveling public.

### 7. NUMBER OF CONFERENCES

#### **NUMBER OF CONFERENCES**

Negotiations vary from property to property, depending on the nature of acquisition and to some extent on the personalities involved. There is no set pattern as to the number of necessary negotiation conferences. Certain cases will require many conferences over a long period of time, while many others can be satisfactorily concluded with only one or two conferences.

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It is the negotiator's judgment and common sense as to what is an adequate number of conferences. Ordinarily however, by the second or third conference, the negotiator should be able to recognize the trend, and to determine whether there is any advantage in continuation of the meetings. Complete objective discussion should be held with the Project Manager and Administration as to necessity for further contact.

### 8. POINT TO TERMINATE DISCUSSIONS

#### **POINT TO TERMINATE DISCUSSIONS**

Many otherwise competent negotiators, having made a technically competent explanation of all negotiation details fail because they do not properly conclude the matter. Either they do not recognize when the appropriate point has been reached in their presentation or they are fearful the owner will reject their proposal. It appears that they sometimes incorrectly think rejection would cast a reflection on their ability.

### K. CLOSING

Conversely, experienced negotiators are quick to recognize the proper point to "close". Usually, such recognition is made from observation in the manner of the owner's reception of the information, or from the manner and nature of the owner's questions about the negotiations. When this trend is recognized, it is best to close the discussion by either asking the owner outright if they wish to execute an agreement, or by making a point by point summation of the agreement until the matter of price has been covered.

### L. EXPLANATION OF CONDEMNATION PROCESS

#### **EXPLANATION OF CONDEMNATION PROCESS**

If the original and the "follow-up" offers have been rejected, and the owner still insists they have not found the State's offer to be satisfactory, the negotiator should then make sure the owner and/or their representative understands the condemnation process. To do this, reference should be made to the brochure "Highways and Your Land", page 8, and discussion held to cover the explanations therein.

In no instance should condemnation be used as a threat or referred to as the only remaining recourse. The owner should be made to understand that condemnation protects their interest as well as the State.

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### 2. NEGOTIATOR NOT AN ATTORNEY

#### **NEGOTIATOR NOT AN ATTORNEY**

In the course of such condemnation explanations, negotiators are further cautioned not to discuss legal questions in such a manner as to give the owner any impression whatsoever, that he is dealing with an authority in matters of the law.

### 3. RIGHTS OF LANDOWNERS VS. RIGHTS OF THE STATE

#### **RIGHTS OF LANDOWNER VS. RIGHTS OF STATE**

The State has the right to take private property for public purposes upon proving necessity to the court. At the same time, the owner has the right to be fully compensated for all takings and any damages, less special benefits, which are a result of the taking. Special benefits are those peculiar to a specific property only. The condemnation process actually protects the landowner, in that it is their recourse if they are dissatisfied with the State's offer. In such an instance all admissible evidence by the owner, as well as that of the State, will be presented to the Jury, which will then objectively establish just compensation.

### 4. CONDEMNATION PROCEDURE

#### **CONDEMNATION PROCEDURE**

As previously explained under the Requirements and Procedures portion of the manual, condemnation is initiated by the Attorney General's Office on behalf of the Transportation Commission of Wyoming, through the filing of a complaint in condemnations with the district court of the county in which the property is located. The attorney general's representative will, through the court, establish a date for a show cause hearing for right of entry if necessary at which time the State files its summons and the request for the taking.

Condemnation actions on county projects will be initiated by the County Attorney and city projects by the City Attorney.

### 5. DECLARATION OF TAKING

#### **DECLARATION OF TAKING**

The matter is heard by the court, and after the State has successfully established the necessity for the taking, the court grants immediate possession of the property to the State. The court then appoints three disinterested freeholders of that county to act as appraisers and to fix compensation to be paid by the State.

The three court-appointed appraisers file their estimate of value with the court. If an appeal is filed by either party, the case goes to jury trial in the district court of that county.



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Either party to this action may appeal the decision of the jury to the State Supreme Court.

### J. DEPOSIT IN COURT

#### DEPOSIT IN COURT

If acceptable to the court, a state warrant in the full amount of the authorized offer is deposited with the court at the right of entry hearing. The landowner has the right to receive this amount by law, and may take the full amount, subject to the condition that if the jury's verdict showed this to be an overpayment, then the property owner would be required to reimburse the State to equal the final settlement stipulated by the court. However, the State Attorney General must approve release of the money to the condemnee.

### K. USE OF ATTORNEY OR BROKER

Occasionally, the landowner will ask advice about the use of an attorney to represent them during negotiations. The negotiator must remain neutral to any such question, and should inform the owner that the option rests with them.

The same would apply if the owner should inquire as to the use of a licensed Real Estate broker, the negotiator should make it clear that no one is compelled to use a broker, or need pay a broker's fee, in conveying a parcel to the State. Again the decision must remain entirely with the landowner.

### M. NEGOTIATIONS WITH PARTIES OTHER THAN OWNER

When applicable, negotiations may be conducted with appropriate or designated officers of any corporation or company, as well as with an official trust officer or court-appointed guardian.

Should an owner inquire as to the use of a private party or appraiser for the negotiations who is not a broker, the negotiator should inform the owner that negotiations cannot be conducted directly with such unauthorized or unlicensed third persons unless the Landowner issues a written Power of Attorney and delegates the authority to act for them. In such cases, the negotiator will direct the discussions mainly to the owners.

This rule is not meant to compromise in any way those senior citizens or persons not fluent in English who may



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wish to have a friend or relative present to assist them. The rule has been established mainly to curtail any so-called "professional operators" from preying on unsuspecting landowners.

### I. BUREAU OF INDIAN AFFAIRS

#### **BUREAU OF INDIAN AFFAIRS**

Acquisition of land for right-of-way within the Wind River Indian Reservation requires technique and procedures which vary greatly from the negotiations process. Within the reservation there are three types of ownership, 1) Fee Land which is acquired under normal policies and procedures. 2) Allotment Lands which require all actions to be approved by the allottee or have the approval of the Superintendent of the Bureau of Indian Affairs, and 3) Tribal Land, which all actions must be approved by each tribe individually. The Northern Arapaho tribe and the Eastern Shoshone tribe should each sign off on any tribal land acquisition, and each should approve of the project prior to any landowner contacts. In the past, a Joint Business Council signed off for both tribes on Tribal Lands, but that has since been dissolved. If formed again, the Joint Business Council will be the point of contact for Tribal Land acquisitions.

No lands will be conveyed to the Department in fee. The right to use and occupy Allotment Lands can be conveyed only by "Consent of Owners to Grant of Right-of-Way" document. Tribal Land will be conveyed via a "Resolution To Grant Right-of-Way" document. Both these instruments convey no more than an easement. Prior to commencement of any negotiations, the Project Manager should be consulted on how to proceed and to whom one should contact within the Bureau of Indian Affairs to ascertain current policy and procedures mandated by the Bureau. The Federal Regulations for acquisition of rights of way over Indian Lands is outlined in 25 CFR, Part 169.

### N. FOLLOW-UP NEGOTIATIONS

#### **I. FOLLOW-UP CONFERENCES**

#### **FOLLOW-UP CONFERENCES**

Many negotiations which fail can be traced to the negotiator's failure to overcome the owner's initial objections to the offer. Quite often this is traceable to a weakness in explaining the basis for the State's valuation concepts. Follow-up negotiations are often desirable to make sure that the owner fully understands the reasons behind the State's offer.

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If, in the negotiation process, the landowner should present a counter offer, properly documented, with a truly comparable sale of property which has occurred subsequent to the Department's appraisal or had been missed during the appraiser's research, the negotiator shall bring it to the attention of the Review Appraiser and the Project Manager for consideration in effecting a settlement.

### 2. ARRANGING CONFERENCES

#### ARRANGING CONFERENCES

If an owner rejects the initial offer, the negotiator should request an opportunity for an appointment to further discuss the matter. Preferably such appointments should be requested during the current conference, thereby establishing a mutual understanding to the objective and purpose of the next conference. When a definite appointment cannot be made, the negotiator should request an opportunity to call and arrange an appointment. This procedure tends to show the owner that the negotiator has a continued, rather than a terminal, interest in the matter.

### 3. OVERCOMING OBJECTIONS

#### OVERCOMING OBJECTIONS

Owner objections should not necessarily be considered as impediments to an ultimate settlement. Rather, the negotiator should regard it more of a challenge to overcome these objections, and to successfully conclude the transaction.

In planning for a follow-up conference, the negotiator should review all possible reasons for the negotiations having failed. A point by point review might show where a misunderstanding could have occurred, or where some of the strong points of negotiations may have been overlooked in the initial contact. Reemphasis of such points might make the difference in obtaining an agreement. Good faith negotiations are required by law. See: W.S. 1-26-509(a) – (f) and 1-26-510. Careful documentation of negotiations and offers must be maintained.

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### 4. 15 DAY LETTER 15 DAY LETTER

W.S. 1-26-509 (e) requires that prior to initiating condemnation proceedings, the Department will send a letter by certified mail reiterating the Department's offer at least 15 days prior to a condemnation action. Once the 65 day time frame has concluded and negotiations have not reached an agreement, the Acquisition Agent should send the 15 day letter to the landowner by certified mail. The 15 Day Letter packet should include:

1. Memorandum of Agreement or Permit.
2. Conveyance Documents (If necessary).
3. Copy of the Engineering Plans.
4. Request for Taxpayer Identification Number (W-9 Form).
- 5 Voluntary Right-of-Possession Form.

This letter can be generated from the Right-of-Way document management system.

### 5. RESOLUTION FOR EXERCISE OF EMINENT DOMAIN

#### RESOLUTION FOR EXERCISE OF EMINENT DOMAIN

In order to be prepared for condemnation proceedings, if necessary, the Project Manager will send the Resolution for Exercise of Eminent Domain document to the Transportation Commission or local public agency for approval. The Resolution should be sent prior to the 15 Day Letter, to allow enough time for approval by the Commission or local public agency. This document will be generated by the Engineering Technician and checked by the Land Surveyor prior to transmittal. The Project Manager will send a Memorandum with project description, the Resolution for Exercise of Eminent Domain with legal description, and several copies of the colored Official Right-of-Way Plans shrunk down to 8½ x 11 letter size. The Project Manager should check with the Transportation Secretary or local public agency to determine the exact number of copies to transmit along with any other necessary information.

### 6. TERMINATIONG CONFERENCES

#### TERMINATING THE CONFERENCES

Once a total of 90 days has passed from the date the 65 Day Letter packet was sent by certified mail, and after diligent effort to negotiate, it should be mutually understood that condemnation will be instituted. The owner should understand that condemnation is to protect the owner's

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rights to receive just compensation as well as to protect the public interest.

When the negotiator has diligently and sincerely followed the defined requisites, it is no reflection on their ability if the owner still rejects the State's offer. It is understandable that there will be a minority of these conferences which cannot be amicably settled, no matter how effective the negotiator, or regardless of the number of contacts. Throughout the condemnation process, the negotiator should be open to continued contact with the landowner in the hopes of reaching an agreeable settlement.

### 7. POST-AGREEMENT FOLLOW-UP

#### **POST-AGREEMENT FOLLOW-UP**

The negotiator is quite often the owner's sole official contact with the State. It is, therefore, good public relations and a businesslike practice for the negotiator to assure the owner that signing of an agreement does not terminate his responsibility to the owner. Rather, the negotiator should assure the owner they will be available to assist at any time with the details of finally closing the subject transaction and to act as liaison with the landowners at necessary times subsequent to closing the transaction.

In the event of calls or correspondence from owners, the negotiator is responsible to ensure all are promptly and effectively answered within a reasonable time.

### 8. CONDEMNATION

#### **CONDEMNATION**

As previously explained in this Manual, the negotiator continues efforts to acquire the right-of-way as long as there is a possibility of settlement out of court. This goes through what might develop into the administrative settlement stage, it may continue past the point to show cause for right of entry hearing, and up to the time the Certificate of Award is filed by the court-appointed appraisers. A legal settlement is possible after the award is made and the negotiator is to cooperate with attorneys in order to effect a settlement. Prior to submitting the condemnation request, the acquisition agent ensures that all certified letters have been sent and the proper time has elapsed. The acquisition agent will then generate a "Condemnation Request" from the Right-of-Way document management system and fill in the appropriate information, and attach copies of all necessary documents.

Prior to presenting the Request for Condemnation to the Attorney General's office, the negotiator will deliver the

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completed packet to the Project Manager, who will deliver it to the Land Surveyor for checking. After approval by the Land Surveyor, a conference will be held which will include: the Land Surveyor, Engineering Technician, Appraiser, Review Appraiser, Negotiator, Project Manager, Attorney General representative, and appropriate Design personnel in order to avoid errors in the documents to be submitted to the Courts. After this has been accomplished, the Request for Condemnation will be handed to the appropriate attorney for further action. The negotiator shall also make sure that the *files for those parcels which ultimately go to condemnation are fully documented and complete*. The Request for Condemnation packet will include the following documents:

- a. Copy of Title Work;
- b. Copy of 2 year letter sent by certified mail;
- c. Copy of Waiver Valuation or Appraisal;
- d. Copy of Form 57 and Summary Statement of Fair Market Value;
- e. Copy of Legal descriptions and Exhibits;
- f. Copy of 65 day letter sent by certified mail and any subsequent offers;
- g. Copy of 15 day letter sent by certified mail;
- h. Copy of Record of Conversation;
- i. Copy of Voucher Request to be Deposited with Court to Accompany Request;
- j. Copy of the Voucher Request for Filing and Service Fees;
- k. Copy of the Resolution for Condemnation;
- l. Excerpt from Transportation Commission of Wyoming minutes, or Local Public Agency minutes authorizing condemnation.

## O. AGREEMENT FORMS

**A Memorandum of Agreement** is to be used for all ordinary partial right-of-way acquisitions and its supplement for whole takings except as noted below. These forms can also be used in conjunction with acquisition other than highway rights-of-way. Agreements prepared by the landowner's attorney or by some outside agency are also acceptable, providing they conform to Transportation Department regulations and do not conflict with standard design principles. Any outside agreements must be reviewed and approved by the Attorney General's Office. Special agreements may be required to cover individual interests in



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the surface estate if the circumstances of the interests are somewhat complex.

Special subordination agreements may be required to cover interests in the mineral estate. Such special agreements will be reviewed and approved by the Attorney General's Office. Assistance in drafting unusual agreements may be obtained from the Attorney General's Office.

Memorandums of Agreement are to be prepared by the negotiator for each private ownership. These will be prepared in the office after the review and authorization conference, and will be approved as to form and execution by the Project Manager. They will be prepared in triplicate and will include alternate agreements for alternate authorizations. One copy goes to the landowner and the other copy to the right-of-way parcel file. When the duplicate original is executed, it replaces the hold copy in the parcel file. In all cases, copies of all Memorandums of Agreement must be retained in the parcel file until such time as final signatures are secured for the parcel. Special agreements and agreements prepared by outside agencies will ordinarily be furnished in sufficient numbers that each party will have at least one copy of the executed agreement. An Attorney General's opinion should be secured when out-of-the-ordinary stipulations are incorporated within a Memorandum of Agreement.

### P. EXECUTION OF AGREEMENTS

The Memorandum of Agreement, in its printed form, contains several clauses which apply to most transactions and which should be amended or tailored to fit the conditions. Other conditions which were specified in the Review and Authorization for that particular property can be added. These include such items as: location of access points and structures, provisions for cattleguards, fencing and other than ordinary gates, old road obliteration, private utility replacements, reservation of improvements and retention by the State as part of the purchase price in certain instances.

Language used in the preparation and execution of the Standard Agreement will be shown under Memorandum of Agreement Standard Clauses shown in the Addendum.



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*Language in the special agreements and others prepared by an outside agency will be checked to clarify meaning.*

After Memorandums of Agreement have been prepared to include all the recognized items in the Review and Authorization, there still may be items which are not addressed within the Review and Authorization, such as: approach locations, licensing requirements for new private utility crossings, acceptance or decline of relocation assistance, and stipulations concerning acquisition of improvements. These can be agreed to and added to the Agreement by the negotiator.

Additions or alterations to the Memorandum of Agreement which may be brought up by the landowner, must be authorized administratively. Authority to make these changes can often be secured by telephone, except when there is a modification of design involved. If such a major change is authorized, the addition to the Agreement should be documented by appropriate papers, and initialed by the Project Manager as to form, before it is placed in the right-of-way file.

Special Agreements, or those prepared by an outside agency cannot be altered except by the agency which prepared them. Before any of the stipulations in them can be changed, changes must be approved by the Attorney General's office. As a practical matter, this usually means rewriting the major portion of such agreements.

*Signatures of all persons holding an interest in the surface estate shall appear on the Agreement.* Signatures of lien holders, mortgagors, and other such parties, are not required on the Memorandum Agreement. If signatures are required for working interests in minerals or such items, they will be by separate special agreement.

When fully executed by the landowner and the negotiator, the provisions of the Memorandum of Agreement are binding upon, and inure to the benefit of both parties and their successors and assigns, upon and after the date of the Agreement. The same is true of any Special Agreement, and those prepared by outside agencies, when they are fully executed.

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### Q, CONVEYANCE FORMS

The five primary conveyance documents used in the Right-of-Way Program are divided into categories as follows:

1. Warranty Deeds, used where title in fee simple can be obtained.
2. Quitclaim Deeds, are used where lessees interest is involved and/or where the grantor cannot convey by Warranty Deed.
3. Right-of-Way Easement, is used where a greater interest cannot be obtained or is desired, such as with public corporations, or to conform to the existing right-of-way interest
4. Deed of Access, is used for conveyance of access rights only, where no additional right of way is involved from that particular owner.
5. An Executor's of Administrator's Deed may be used by attorneys where probate of an estate is in progress. *The Department's legal counsel should approve these before acceptance or work in conjunction with the probate attorney.* Guardian's deed is also acceptable where applicable. Legal counsel approval is required.

The above mentioned are standard forms used for all ordinary right of way acquisitions, whether for whole takings or partial takings. These forms can also be used for property acquisitions other than highway rights of way. Special Warranty Deeds, Quitclaim Deeds, and Right of Way Easements, prepared by an attorney for an owner, partnership, company or corporation, or by some other outside agency, are *also acceptable, providing they do not conflict with Transportation Department policies or regulations.* They are sometimes used to protect prior rights of record. In all cases, they will have the legal descriptions checked, and the *documents approved for content and form through the Attorney General's office.*

Conveyance documents prepared by the Department will have the necessary legal descriptions prepared by the Engineering Technician of the Right of Way Program. These will be furnished in the appropriate conveyance form and will include the rights taken and reserved. Selection of correct type of conveyance, and decision on what rights are taken, will require consultations with the negotiator. Separate conveyances will also be prepared for excess property acquisition, if it is being taken in connection with

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the subject parcel. All conveyances are to be typed and proofed before delivery to the negotiator.

*The negotiators will check the accuracy of the description against the right-of-way map. The negotiator will then prepare the appropriate Memorandum of Agreement and/or will request preparation of special agreements, if they are required. They will also make certain that all slope easements, drainage and irrigation channel changes, and other permits for construction outside the right-of-way, which are shown on the plans and for which permission can be granted on agreement, are included thereon.*

### R. STANDARD PROPERTY RIGHTS TAKEN AND RESERVED 1. MINERAL RIGHTS RESERVED

#### **MINERAL RIGHTS RESERVED**

Mineral rights are generally reserved in all land transactions involving rights-of-way. An attempt is made to obtain a part of the mineral rights in excess purchases to influence the resale and disposal of excess lands. The following is the standard clause used in right-of-way deeds. *Variances are approved administratively.*

“Excepting and reserving from the above-described lands and unto the grantors herein all sand, gravel, oil, gas, minerals and mineral estate of every kind and nature that can be removed from the ground without jeopardy to the maintenance or safety of public use or travel upon the surface estate hereby granted and without using the surface of the lands hereby granted.”

If minerals or sand and gravel are to be acquired by the state the following wording is used in combination with the appropriate wording in the previous clause. “Other minerals and sand and gravel not herein excepted and reserved are hereby conveyed to the State (to the same extent as the surface estate.)”

### 2. INDIVIDUAL ACCESS RIGHTS TAKEN

#### **INDIVIDUAL ACCESS RIGHTS TAKEN**

Access rights are acquired by deed on access facility highways whether established as a partial control or full control access facility, where required. Full control of access is secured on all Interstate highways. The following is the standard clause used in right-of-way deeds. *Variances are approved administratively.*

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"As an essential part of this transaction, we, the undersigned, do for ourselves, our heirs, executors, successors and assigns, sell, transfer, convey, and relinquish to the said grantee, its successors, and assigns, all easement of access and all rights of ingress, egress and regress to, from and between the remaining portions of said grantors' lands and those portions hereby conveyed."

Where there are multiple parcels listed in the right-of-way deed it is necessary to modify the last ending sentence to read, "of Parcels 1, 2, 3, and 4 hereby conveyed."

### 3. CORPORATION

### ACCESS RIGHTS TAKEN

#### **CORPORATION ACCESS RIGHTS TAKEN**

The only difference between the standard clause used for an individual access right and a corporation access right is in language distinguishing between an individual and a corporation. The following is the standard clause used in right-of-way deeds. *Variances are approved administratively.*

"As an essential part of this transaction, the undersigned does for itself, its successors and assigns, sell, transfer, convey and relinquish to the said grantee, its successors and assigns, all easement of access and all right of ingress, egress and regress to, from and between the remaining portions of said grantors' lands and those portions hereby conveyed."

Where there are multiple parcels listed in the right-of-way deed, it is necessary to modify the last ending sentence to read, "of Parcels, 1, 2, 3, and 4 hereby conveyed."

### 5. EXECUTION OF CONVEYANCES

Generally speaking, a Warranty Deed is the preferable instrument of conveyance for highway rights-of-way and for other real properties acquired by the State, and should be used whenever the grantor is able to convey by that type of instrument. Some corporations, such as railroads, municipal utilities, counties, cities, etc., are not in a position to convey by Warranty Deed. This also applies to private individuals under certain circumstances. The negotiator should check to see if the correct type of conveyance has been used, before the agreement is prepared.

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The negotiator is responsible for the final preparation, check and completion of instruments of conveyance prepared by the Engineering Technician, as to correct record names of grantors, mortgages etc., based on the transmitted Engineering Plans, information transmitted by the title agent which includes the most recent title information revealed to the negotiator as indicated in the county courthouse records.

Signatures on the instrument of conveyance must be in agreement with the grantors, or other parties named in the caption or body of the instrument. All parties named as grantors, including the spouse of each, where applicable, must sign and be acknowledged by a notary public. A conveyance not acknowledged can not be recorded. Recording of conveyance must be done as soon as possible. The negotiator, being a notary public, can acknowledge the signatures if taken within the State of Wyoming, in so doing, they will show the county or counties in the acknowledgments are taken. When signatures are obtained outside Wyoming, arrangement will be made by the negotiator for acknowledgment by a local notary.

Deeds and easements shall ordinarily contain only the land description, access clause, mineral reservation and points of access, if applicable. It is Right-of-Way Program policy not to incorporate or make reference to agreements on the instruments of conveyance, except for certain limited cases or special conveyances which are subject to administrative and/or legal approval. Where agreements are referenced on deed, they must also be recorded.

Deeds and easements are to be recorded in the county where the acquisition is located. This is done after the warrants for payment have been mailed to the grantor. Arrangements for the recording of these, or other special types of conveyances, are the responsibility of the Negotiator. Recording the deed or easement shall precede recording of any mortgage release in all cases and payment must be made to the landowners prior to recording except the landowner may waive the right to be paid prior to such recording.

### T. CLOSING REQUIREMENTS

As a part of the closing requirements, the negotiator is responsible for seeing that the following functions have been accomplished, and are documented in the files.



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### 1. TAXES AND ASSESSMENTS

#### **TAXES AND ASSESSMENTS**

It is a standard provision of the Memorandum of Agreement that the landowner is to be responsible for payment of all property taxes and special assessments for the current year and all prior years, subject to the provision that the Department will pay its pro rata share of said taxes based on the current year's tax statement, if available. If not available, the Department's pro rata share of said taxes will be based on the preceding year's tax statement. Computation of taxes shall be made as of the date of the signing of said Memorandum of Agreement.

If the transaction encompasses a whole taking, the Department will withhold the landowner's pro rata share of the taxes and in turn will pay its share and that portion previously withheld to the county treasurer of the county where the subject land is situated.

### 2. IMPROVEMENTS

#### **IMPROVEMENTS**

As a part of the closing requirements, the negotiator will be responsible for determining whether the following conditions have been met as far as improvements are concerned.

If the improvements were to be retained by the landowner, it should be verified that they were removed within the specified time, or any extension of time that may have been granted. The file should be documented by a statement from the Resident Engineer.

Where the improvements were acquired as a part of the right-of-way acquisition, the negotiator will forward a memorandum to the Project Manager, giving the location and general description of the improvements and the date on which they must be removed. This date will ordinarily be governed by that which was specified in the original Memorandum of Agreement, or the anticipated date of the contract letting, whichever date is sooner.

If this acquisition includes an occupied dwelling, or other major improvement, the negotiator will make the following additions to the Memorandum of Agreement: (1) a general description of the structures being conveyed and a listing of the fixtures that are included, (2) a stipulation as to the date to which the premises may be occupied and what part of this time will be rent-free, (3) a stipulation that the landowner



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will be obligated for the following: (a) utility charges up to date of vacating, (b) interest on mortgages or indebtedness up to date the deed is delivered, settlement for all unpaid installments of special improvements or assessments and, (4) a stipulation that the landowner will carry fire and extended insurance coverage on the property up until the date stipulated for vacating the premises with a loss payable clause to the Department.

It is Transportation Department policy that minor improvements having no salvage value will be reserved unto the landowner. No other action is required for these items, except to specify the date they should be removed.

### 3. LEASES AND RENTAL AGREEMENTS

#### **LEASES AND RENTAL AGREEMENTS**

The lessor's interest in leases, rental agreements, and advertising sign leases, is handled by the standard provision contained in the Memorandum of Agreement. No further action is necessary during negotiations regarding the interests of the lessor.

These interests are set forth in the appraisals and handled separately in the Review and Authorization.

The lessee's interest, if valid and of value, is handled independently by separate appraisal authorization and by a separate special agreement made in the name of the lessee.

### 4. RELOCATION ASSISTANCE

#### **RELOCATION ASSISTANCE**

The responsibility of the negotiator ends with the confirmation of the request for relocation assistance by the completion of Item 4 of the Memorandum of Agreement.

This clause serves to dovetail the acquisition and relocation assistance programs together and acts as a check and balance measure. The Negotiator should notify and forward a copy of the Memorandum of Agreement to the Project Manager.

If a review authorization or administrative settlement essentially covers any benefits to which a displaced person is entitled to under relocation assistance, then Relocation would not be necessary.

### 5. MORTGAGE RELEASES

#### **MORTGAGE RELEASES**

One of the standard provisions contained in the Memorandum of Agreement obligates the landowner to

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secure a partial or full release of mortgage, depending upon the extent of the taking. On minor acquisitions Mortgage Releases will not be required.

The Department will pay reasonable mortgage release fees. Payment may be made to the landowner as an addition to the approved appraisal authorization, or if so directed by the landowner or mortgagee, such amount may be paid directly to the mortgagee.

*Mortgagees are named as co-payees; in the preparation of payment vouchers unless the mortgagee specifically directs that full payment be made directly to the mortgagor or vice versa.*

When the landowners are unfamiliar with the procedure for obtaining a release, the negotiator, if requested to do so by the owner, will prepare the necessary maps and release papers and deliver, or forward, same to the mortgagees. Standard Right-of-Way Program release forms may be used for this purpose. However, most mortgage companies or agencies have their own release forms. In such cases, the negotiator need only forward copies of the plans, deed and agreement to the mortgagee, and request a release on behalf of the landowner.

When a release cannot be secured without difficulty, or when a land payment is to be made in advance of a release, the negotiator will prepare the payment voucher to include the mortgagee as co-payee. When the mortgagee is thus included, it is not absolutely necessary that a release be secured and placed on record, because all interests are still fully protected. *It is, however, in the best interest of the public record that a release be secured*

### 6. QUIET TITLE ACTION

#### QUIET TITLE ACTION

Should preliminary title action be required by the landowner, it should be so stipulated within the Memorandum of Agreement. If time is a factor, other arrangements will have to be made. The Transportation Department may elect to bring a quiet title action on an entire project, rather than participate in individual actions. In this case, it will be initiated by the Attorney General's office, and usually after the acquisition.

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### 7. LEGAL FEES FOR COURT ORDERS

#### LEGAL FEES FOR COURT ORDERS

As a part of closing requirements in certain instances involving estates, and transactions involving minors and incompetents, it is necessary to procure court orders to transfer the real estate. In some instances, appointment of a Guardian may be required. In this case, court orders are required to confirm the sale to the Transportation Department.

The Transportation Department will pay all costs of securing these court orders subject to approval of the Attorney General's office.

Payments for the services involved will be made separately and can be made directly to the legal representatives. In the processing of cost summary accounting, such payments will be made a part of the costs to the particular parcel to which it is applicable.

### 8. RIGHT OF POSSESSION

#### RIGHT OF POSSESSION

It is a condition of the Memorandum of Agreement that immediate right of entry be granted as of the date of the Agreement for survey and preliminary plans preparations, prior to actual construction. The Department cannot take physical possession of the property until full payment has been made, unless specifically waived by the landowner. *(Memorandum of Agreement must include right to physical possession for construction - the date of transfer may be negotiable, but possession must be obtained!)*

The Right-of-Way Program may also *accept the right of possession of a property by fax, letter or telegram from a landowner*. This could be given prior to the actual receipt of the formal agreement. If so, partial payment is waived until the agreement is forwarded. In some instances, agreements allowing advance right of possession to the property are acceptable with a waiver of payment until final closing.

Right of entry procedures, under the condemnation process, are not applicable here, but are covered under Administrative Requirements and Procedures elsewhere in this manual.

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### 9. PAYMENT VOUCHERS

#### PAYMENT VOUCHERS

The following list of procedures is included as a guide in the preparation of payment vouchers and dispatch of the payments for land, damages, and improvements. This procedure also applies to payments made through the court in condemnation cases.

Each parcel file *shall contain* the following documents for purposes of securing payment for the parcel: 1) *Summary of Title Information*, for each parcel with title verified date in the Right-of-Way document management system; 2) *Plans marked "Exhibit A"*; 3) *Copy of Appraisal or Waiver*; 4) *Form 57*; 5) *Summary Statement of Fair Market Value*; 6) *Copy of 65 Day Letter*; 7) *Signed Official Receipt*; 8) *Signed Agreement*; 9) *Copy of Statement of Consideration*; 10) *Certification of Acquisition Agent*; 11) *Records of Conversation*; 12) *File and BEM Acquisition Check List*; 25) *Signed Conveyance*.

Voucher Authorization is prepared by the negotiator and *forwarded through the file management system to the Project Manager*. A complete Acquisition file will be transmitted to the Project Manager for approval, along with a completed "Acquisition Check List". Upon approval by the Project Manager, the secretary will prepare the Voucher Request, with one additional green copy and one white copy.

The secretary records the voucher as to date, amount, payee, project and account. The voucher and green copy are transmitted to Accounting.

After Accounting has prepared the warrant, it is returned to the secretary, who records the voucher and warrant numbers in the data base and prepares a standard letter of transmittal and mails the warrant via certified mail to the payee. A closing statement is included with this letter for the payee to sign and return to the Department, as well as a Landowner Survey.

Accounting notes the voucher and warrant numbers upon the green copy of the voucher and returns it to the Right-of-Way Program. This copy goes from the R/ W secretary to the negotiator. The negotiator places the green copy in the appropriate right-of-way parcel file. The return receipt for

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certified mail and one copy of the transmittal letter are also returned to the negotiator for appropriate filing.

Payment for recording fees, abstracting cost, mortgage releases, legal fees, etc., are handled in the same manner, except they are forwarded by regular mail. These require a letter of transmittal but no closing statement. The endorsed warrant serves the State as a receipt. Recording and filing of this type payment is handled the same as for land, damages and improvements. Recording fees may be added to the expense account of the person submitting the documents for recording.

### 10. ESCROW SERVICES

#### ESCROW SERVICES

Occasionally, Landowners may issue a Power of Attorney to an escrow agent to receive payment and to execute the conveyance. *A copy of the Power of Attorney should be placed in the file.* This is considered a normal procedure. The placing of the executed deed in the hands of an escrow agent and the fees are the responsibility of the landowner, with possible participation by the Department, dependent upon the circumstances.

### 11. RECORDING OF CONVEYANCES AND MORTGAGE RELEASES

#### RECORDING OF CONVEYANCES AND MORTGAGE RELEASES

After all closing requirements are cleared and final payments are mailed out to the landowners, the conveyances and releases are to be recorded in the office of the county clerk of the respective county.

The negotiator will fill out a state Revenue Department "STATEMENT OF CONSIDERATION" for each Quitclaim Deed, Warranty Deed or specialty deed to be recorded in the county records. Statement of Consideration will be attached to the conveyance instrument prior to sending document for recording.

All recording fees are the responsibility of the Right-of-Way Program. *Such fees can be handled by cash reimbursement or by personal expense affidavit.*

### 12. MAINTAINING PARCEL FILES

#### MAINTAINING PARCEL FILES

The negotiators will keep all correspondence and other information properly posted by reverse chronological dates. They are responsible for a neat and orderly project file.



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All documents including deeds, easements, mortgage releases, and orders of conveyance are *to be fastened in the respective folders*. The negotiator will dress the file down to eliminate duplications, surplus papers, etc. The Project Manager finalizes the project at some point in time after construction of the highway is completed. At that time these documents will be placed in a blue folder for filing in the Transportation Department's central filing system.

Originals of mortgage releases must be returned to the mortgagor and a copy should be placed in the appropriate parcel file.

### 13. NEGOTIATION WITH NONRESIDENT PROPERTY OWNERS

#### **NEGOTIATION WITH NONRESIDENT PROPERTY OWNERS**

The negotiator will direct a letter to the nonresident property owner, by certified mail, in which they will inform the landowner of the Department's intention to acquire lands and/or properties held under her/his/their ownership. The letter will indicate location of the land, project for which the right-of-way is intended, the fact that it has been appraised, the number of acres to be acquired and enumerating the enclosed which include; the conveyance being used to convey the land, a Summary Statement of Fair Market Value, a Memorandum of Agreement which recites all the conditions of the acquisition including the consideration to be paid, copy of the engineering plans by ownership, and a copy of the right-of-way brochure, "Highways and Your Land."

The letter will also state the negotiator's willingness to meet with the owner on the site at a convenient time or if appropriate will secure permission of his immediate supervisor and in turn, the written permission of the Lands Management Administrator for out-of-state travel to meet with the owner(s) and/ or their Attorneys or other official representative who would be empowered by the owners to make a decision as to the acceptability of the proposal submitted.

### 14. CERTIFICATION OF NEGOTIATOR

#### **CERTIFICATION OF NEGOTIATOR**

After a Memorandum of Agreement is executed by the landowner and negotiator, a Certification of the Acquisition Agent will be placed in each ownership file folder by the negotiator.



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### 15. TRANSMITTAL OF R/W DOCUMENTS TO OTHER PROGRAMS

#### **TRANSMITTAL OF R/W DOCUMENTS TO OTHER PROGRAMS**

Immediately after proper signatures have been secured upon the Memorandums of Agreement, or other Agreements, the negotiator will email copies of Agreements to the District Engineer, District Construction Engineer, Resident Engineer, and the Project Development Squad Leader. The Right-of-Way Administrator, Assistant Right-of-Way Administrator, and Project Manager will also be copied on the transmittal email. A record of this transmittal should be kept in the Right-of-Way document management system.

Within the memorandum of transmittal, any special attention items which were included in the Memorandum of Agreement are to be summarized so as to call attention to the special situations and/or change from the issued plans. *Special care should be given to ensure no information from the W-9 Form are transmitted along with the Agreements.*

### 16. CLOSING STATEMENT

#### **CLOSING STATEMENT**

Once the landowner has signed a copy of the Closing Statement document, a copy is given to the negotiator, who places it in the parcel file.

### 17. RECORDS OF CONVERSATION

#### **RECORDS OF CONVERSATION**

As a closing requirement, the negotiator will make sure that the signed Negotiator's Record of Conversation, for each negotiation contact, is contained in each parcel file. They will make sure that this record, in addition to the other stated requirements, includes information relevant to relocation assistance where it is applicable. See this form in Addendum.

### 18. OFFICIAL RECEIPT

#### **OFFICIAL RECEIPT**

Before closing, the negotiator will check each parcel file to see if it contains the original copy of the Official Receipt, and to see whether it was properly executed. If the signed and dated original has not been returned by the landowner, the negotiator will note this on the file copy, the date on which the conveyance, agreement, plans, etc. was delivered, and will include a notation that the landowner refused to sign the receipt. See the referred form in the Addendum.

### 19. CERTIFIED MAIL RECEIPT

#### **CERTIFIED MAIL RECEIPT**

All certified mail should have return receipts requested. It is the responsibility of the negotiator to see that this has been

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done and that return receipts have been attached to the correct correspondence in each ownership file.

Such correspondence will include: (1) offers to purchase, (2) offers of settlement, (3) relocation assistance letters, (4) transmittal letters for instruments to be recorded, (5) transmittal letters for voucher, closing statement, and state warrant for Land payments, (6) transmittal letters for return of abstracts, and (7) confirmation of offer letters.

### 20. DOCUMENTATION OF ADMINISTRATIVE SETTLEMENTS

#### **DOCUMENTATION OF ADMINISTRATIVE SETTLEMENTS**

Upon closing a parcel file where an administrative settlement has been involved, the negotiator will check the parcel file to see that there are properly signed documents to adequately cover the settlement. The Administrative Settlement must be in the file before payment is approved.

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### FORMS ADDENDUM

65 Day Letter  
Memorandum of Agreement  
Permit  
Certification of Acquisition Agent  
Official Receipt  
15 Day Letter  
Voluntary Right of Possession  
Snow Fence Letter  
Snow Fence Agreement  
Wetland Commitment Agreement  
Right-of-Way Donation Certificate – Appraisal Waived  
Right-of-Way Donation Certificate  
Condemnation Request  
Additional Clauses  
Bureau of Land Management Application Steps  
United State Forest Service Application Steps  
Wyoming State Lands Application Steps





Matthew H. Mead  
Governor

# WYOMING Department of Transportation

"Providing a safe, high quality, and efficient transportation system"

5300 Bishop Boulevard, Cheyenne, Wyoming 82009-3340



William T. Panos  
Director

September 28, 2018

Landowner  
Address  
City, State, Zip

Project: XXXX  
Road: XXXX  
Section: XXXX  
County: XXXX  
Parcel No.: X

Dear XXXX:

The Wyoming Department of Transportation (the Department) is planning a road construction project along XXXX. At this time the plan of work includes XXXX.

In order to construct this project, the Department is proposing to acquire a Wetland Agreement (5) Year Term, Construction Permit, Warranty Deed with Mineral Clause. The Department's Review Appraiser has concurred with the Appraiser's determination of the current "Fair Market Value" of your property.

The permit area(s) as shown on Exhibit "A", crosshatched in red, will be used as a temporary construction permit area and will be reclaimed to the extent that can be reasonably accomplished.

The Permanent Acquisition(s) as shown on Exhibit "A", in solid red, will be required for the construction of this project.

Based on the enclosed "Summary Statement of Fair Market Value", the Wyoming Department of Transportation is hereby authorized to offer you the sum of \$XXXX. This offer includes \$XXXX for land and \$XXXX for the temporary permit area(s), \$0.00 for improvements and \$0.00 for damages to the real estate as the result of XXXX.

Please find the following documents enclosed for your review:

1. Original and copy of the Memorandum of Agreement;
2. Original and copy of the Wetland Agreement (5) Year Term, Construction Permit, Warranty Deed with Mineral Clause;
3. Original and copy of the Official Receipt;





4. Copy of the Right of Way Engineering Plans marked "Exhibit A";
5. Copy of the Right of Way Brochure "Highways and your Land";
6. Copy of the Valuation Report;
7. Summary Statement of Fair Market Value;
8. WYDOT Vendor Form; and
9. Request for Taxpayer Identification Number (W-9 Form).

Please understand that you have 65 days from the date of this mailing to respond, in writing, to the Department's offer. The Department and the Landowner are obligated to negotiate in good faith. You are under no obligation to accept this written offer, but failure to respond will constitute a waiver under Wyoming Statute 1-26-510 of any claim that the Department has **not** negotiated in good faith. At any time during the negotiation process, and upon mutual agreement, either party may request dispute resolution, including mediation or arbitration or the informal procedures for resolving disputes through the Wyoming Agricultural and Natural Resource Mediation Board. Should negotiations fail, formal legal proceedings may be requested by the Department. You may at any time, seek advice from an attorney, real estate appraiser, or any other person of your choosing during this process.

If all is in order please sign and complete the originals of the Memorandum of Agreement, Wetland Agreement (5) Year Term, Construction Permit, Warranty Deed with Mineral Clause, Official Receipt, and the W-9 form. You may return these documents in the enclosed, postage pre-paid envelope. Please note that the Conveyance will need to be acknowledged by a Notary Public.

Should you have any questions or concerns regarding this project, or would like to accompany me, or a Department representative, on an inspection of the property being acquired, please contact XXXX toll-free at 1-888-570-9908, direct at (307) 777-XXXX, or by email at XXXX@wyo.gov.

Sincerely yours,  
XXXX  
Project Manager

By XXXX  
Acquisition Agent

SENT BY U.S. CERTIFIED MAIL



**WYOMING DEPARTMENT OF TRANSPORTATION  
MEMORANDUM OF AGREEMENT**

**Project: XXXX  
Road: XXXX  
Section: XXXX  
County: XXXX  
Parcel No.: 2**

THIS AGREEMENT IS ENTERED INTO between **XXXX**, herein referred to as the "Landowner" and the Wyoming Department of Transportation, herein referred to as the "Department."

**WITNESSETH:** that

**WHEREAS,** the Department wishes to secure for transportation purposes, the real property shown on the engineering plans marked Exhibit "A", herein referred to as the "property", a copy of which is attached to this agreement and has been submitted to and received by the Landowner; and

**WHEREAS,** the Landowner has agreed to convey the property to the Department, together with all improvements located thereon and appurtenances pertaining thereto, except as otherwise stated in this Agreement and in the associated conveyance(s), and the Landowner hereby agrees to execute said conveyance(s) and shall remit the signed and notarized conveyance(s) to the Department for recordation; and

**WHEREAS,** the Department will prepare a Warranty Deed with Mineral Clause with legal description(s) of the property outlined briefly as follows:

**Parcel 2G - SE¼SE¼ of Sec. 22, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo.**

**Parcel 2I - S½SE¼ of Sec. 22, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo.**

**Parcel 2U - SE¼NW¼ of Sec. 26, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo.**

**NOW THEREFORE,** in consideration of the promises, terms, conditions, and stipulations contained in this agreement, the parties agree to the following:

1. The Landowner will pay all real property taxes on the property for the current year, when due and payable, and for all prior years. The Department will reimburse the Landowner for their pro rata portion of the real property taxes for the remainder of the year computed from the date of this agreement. The pro rata portion of taxes shall be based upon the assessment of the property for the current year, if available. If the current year assessment is not available, the previous year's assessment shall be used to prorate the taxes. The Landowner shall be responsible for any and all real property taxes, liens and encumbrances prior to the date of this agreement and shall be responsible to provide clear title to the property being conveyed to the Department.
2. The consideration stated herein is full compensation for all of the Landowner's interest, including interests in state or federal land leases, and any and all other legal and equitable interests, which are or may be outstanding affecting any portion of the property being conveyed to the Department. The Landowner agrees to release these interests within thirty days from the date of this agreement.



3. The Landowner will terminate at their expense all existing leases or rental agreements, including advertising sign leases, affecting any portion of the property being conveyed, and will notify any lessees of such action within thirty days from the date of this agreement.
4. The Landowner has received a copy of the Departments Highways & Your Land brochure and any relocation benefits to which the Landowner may be entitled have been explained by the Department Representative. The Landowner requests relocation benefits for moving personal property, replacement housing, or business or farm displacement, to the extent of their eligibility under Wyoming Law.
5. The Department may fence the right-of-way boundary and/or property as directed by the Department's representative before any other construction work is started. Said fencing will be maintained by the Department.
6. There is excepted and reserved from the property all oil, gas, and other minerals that can be removed from the ground without jeopardy to the maintenance or safety of the public use or travel upon the surface estate and without using the surface of the property.

#### **CATTLE GUARD**

The Department shall construct and install a \_\_\_\_\_ foot cattle guard in back of and adjacent to the Department's right-of-way boundary. The Landowner(s) will be responsible for the maintenance of the cattle guard being set on the Landowner's property for the Landowner's exclusive use. The Landowner(s) hereby grants permission to the Department, its agents and contractors to enter upon the Landowner's property to install the cattle guard and to connect the right-of-way fence to the wings of the cattle guard. The Department shall construct a \_\_\_\_\_ foot drop wire gate to the ~~right~~/left of the cattle guard upon completion of the installation of said cattle guard.

#### **BORROW AREA(S)**

The Parcel(s) (insert Parcel #), referred to above are located outside of the existing right-of-way and is partially or wholly for the purpose of sloping and removing unclassified borrow material for the road project. The Landowner does hereby sell to said Department all of the sand, stone, gravel or soil which said Department may remove from said parcel of land for XXX year commencing upon the date of the awarding of the project by the Transportation Commission of Wyoming, at the price of XXXXXXXX per cubic yard, giving and granting the Department the right to enter upon said parcel of land for the removal of said materials and to erect or construct thereon such machinery and equipment as in the judgment of the Department is necessary and proper to extract and remove from the said land and/or process the material herein purchased, the number of cubic yards to be determined according to methods prescribed in the current edition of Specifications For Road and Bridge Construction adopted by the State Highway Commission and the further right to enter upon said parcel of land to remove any such equipment, machinery, or structures placed thereon by the Department. The material removed is for use on highway projects and maintenance only and removal by any other person(s) including the Department's contractor(s) for any purpose other than as herein provided, shall be under a separate agreement with the Landowner and only with prior written approval of the Department. It is further agreed by and between the parties hereto, that the Department and its agents or assigns shall have the right to haul material taken from said parcel of land, across any land owned by the Landowner, on routes mutually agreeable to the parties hereto. It is also agreed that the Landowner gives the Department the option to extend this Agreement for an additional year upon the same terms and conditions as herein set forth. The Department will exercise this option by notifying the Landowner in writing of its intention to do so prior to the termination of this Agreement. It is further agreed that any contractor operating under any agreement or contract with the Department that will extract and remove said material, is acting as the agent of the Department and is subject to all rights of and responsibilities of the Department under this agreement, and will be permitted to use said parcel of land to stockpile and/or properly process said material for highway purposes.

#### **Additional Conditions:**

- a. The premises will be left in a neat condition and the disturbed areas will be sloped, blended and re-seeded where feasible by the Department.





- b. Under the word "process" used herein above, it is contemplated that there may be cases wherein controlled emission of smoke, fumes, dust and odors will result. In such event, the Department, its assigns and contractors will control said emission and odors as required and in conformity with existing State and Federal anti-pollution laws.
- c. It is definitely understood and agreed by both parties hereto that the Department in no way guarantees or assures the Landowner that any material, whether desirable or not, will be removed in measurable quantities from said premises; that royalty payment to the Landowner will be made only if material is actually removed in measurable quantities. Payment to the Landowner will be made by the office of the Engineer in Charge of construction and will be based upon final cross sectioning of the material area, and said payment is a separate payment and is not part of the consideration stated herein below.

#### **APPROACH(ES)**

The Department will construct approach(es) to the highway at the following location(s):

- a. (list the size of approach, with culvert if plans show this, size of cattle guard as shown on the plans, side the gate will be constructed adjacent to the cattle guard and engr. sta. that approach will be located at.)

The Landowner hereby grants to the Department permission to enter upon the Landowner's adjacent land beyond the right of way line to construct, taper, blend the approaches, install gates and connect to existing trails, roads or lands as shown on the copy of the Engineering Plans marked *Exhibit "A"*.

#### **CONSTRUCTION PERMITS**

The Landowner hereby grants to the Department, its agents and contractor(s) permission to enter upon the following described areas for construction purposes as stated herein. Permits for said areas are located outside of and adjacent to the right-of-way line and will be of the following widths and lengths:

**Parcel 2** - A strip of land located in the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Sec. 26, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo., adjacent to the proposed northerly R/W line of Wyo. State Hwy. No. 193, also being the southerly boundary of said N $\frac{1}{2}$ NW $\frac{1}{4}$ , 30 feet wide on the right, beginning on the existing westerly R/W boundary of Wyo. State Hwy. No. 346 to opposite Engr. Sta. 205+44± tapering to 0 feet wide opposite Engr. Sta. 206+14.

**Parcel 2A** - A strip of land located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 26, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo., adjacent to the existing southwesterly R/W boundary of Wyo. State Hwy. No. 193, 10 feet wide on the left, beginning opposite Engr. Sta. 208+50 to & ending opposite Engr. Sta. 211+45.

**Parcel 2B** - A strip of land located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 26 & NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 27, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo., adjacent to the existing southwesterly R/W boundary of Wyo. State Hwy. No. 193, 425 feet wide on the left, beginning opposite Engr. Sta. 214+00 to & ending opposite Engr. Sta. 220+00. LESS & EXCEPTING Parcel 2C & a parcel of land adjacent to said existing southwesterly R/W boundary, 200 feet wide on the left, beginning opposite Engr. Sta. 214+00 tapering to & ending 0 feet wide opposite Engr. Sta. 217+75.

**Parcel 2D** - A strip of land located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 26, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo., adjacent to the existing northeasterly R/W boundary of Wyo. State Hwy. No. 193, 10 feet wide on the right, beginning opposite Engr. Sta. 218+00 to & ending opposite Engr. Sta. 219+00.

Said Permits include all rights of ingress and egress and the right to temporarily operate machinery upon the land. Prior to the completion of construction, disturbed areas will be blended and seeded or sodded where feasible. The use of the above described Permit area(s) will



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commence upon the date of the awarding of the project by the Transportation Commission of Wyoming, and will have a 2 year duration.

### **Wetland Mitigation Site**

Parcel 2, referred to above is located outside of the existing right-of-way and is wholly for the purpose of mitigating impacted wetlands to maintain the "no net loss" concept by substitution or replacement methods. The landowner owns certain lands which have the potential to be developed as a wetland replacement area. The Department wishes to secure certain real property for the construction and maintenance of a wetland mitigation site as shown on the plan sheets marked Exhibit "A". Landowner agrees to grant to the Department a Wetland Mitigation Easement on the property for a term of XX years, to commence upon the date of the awarding of the project by the Transportation Commission of Wyoming.

### **Additional Conditions:**

1. The Department will undertake to develop a wetland on the above described parcel and remain responsible for the wetland for the duration of the term herein defined.
2. Landowner will allow the Department, its agents and contractors ingress and egress to and from the wetland area for development and ongoing maintenance operations for the duration of term herein defined.
3. Landowner will allow the Department, its agents and contractors to temporarily operate machinery upon the wetland area for the construction and ongoing maintenance operations of said wetland area for the duration of the term herein defined.
4. The Landowner, for themselves, their successors and assigns do hereby agree to commit and dedicate the parcel of land described herein as a wetland and shall take no actions that would adversely impact or significantly degrade the wetland for the duration of the term herein defined.
5. The landowner agrees that in the event future circumstances deem it desirable or appropriate that this established wetland be reduced, degraded or destroyed due to landowner's actions or operations that landowner shall be responsible to mitigate such reduction, degradation or destruction using mitigation methods as prescribed by the Department of the Army, Corp of Engineers, the Environmental Protection Agency or any other appropriate Regulatory or Resource Agency. In so doing the Grantor assumes all responsibility for the success of the subsequent mitigation and the ultimate reestablishment of a viable wetland.

### **WATER RIGHTS**

The Department does not object to the Landowner transferring the water rights, if any, for irrigation and/or livestock purposes, from the land as described on said conveyance. Any and all costs or incidental expenses associated with the relocating of those described water rights herein, will be the complete and sole responsibility of the Landowner.

### **TEMPORARY FENCE**

Prior to the start of construction, permit areas may be temporarily fenced as deemed necessary by the Department. Should it be necessary to construct a temporary fence, said fence will consist of three strands of barbed wire placed on metal posts spaced according to Department temporary fence standards. The Landowner may remove and retain the temporary fencing after seeding has emerged or within three years after completion of the construction. Should the temporary fence not be removed by the Landowner within three years, the Landowner hereby grants permission to the Department, its agents and contractors the right of ingress and egress to the Landowner's property beyond the right-of-way line in order to remove said temporary fence. Said permission shall allow the Department to exercise this right at its discretion, but in no way obligates or requires the Department to enter upon the Landowner's property and remove said temporary fence. The Landowner, their heirs, assigns, successors or representatives, hereby agree not to withhold permission or inhibit the Department from exercising this right. It is hereby agreed that, should the Department remove the temporary fence, the materials removed shall become the property of the Department.





## STOCKPASS

The Department will construct a structure for livestock movement and drainage left of engineering station \_\_\_\_\_. Said structure will be a 10 foot diameter cmp and will have invert paving and will be winged fenced with a gate located across the north side of the pipe. The cleaning of said pipe will be the sole responsibility of the landowner.

## SALVAGE

Should the Landowner desire to salvage any of the items or portions of said items listed herein, the Landowner has 60 days from the date of this agreement to remove said items. After the 60 days if said items or any portion of said items are remaining, the Department will remove and dispose of as the Department deems necessary.

## PROTECTIVE CLAUSE

Any existing trees, plants, mailboxes, fencing, signs, structures, utilities, lawn, sprinkler system and/or drip system, ornamentation, or other personal items within the permit area(s) not specifically addressed in this agreement, but not limited to those items stipulated herein, will be worked around during construction. Should any such items be damaged during construction, and can be replaced by the Department, those items will be replaced. Those items that can not be replaced will be reviewed as a cost to cure payment in accordance to the Department's guidelines and said proposal of offer to cure any damage as a result of the above referenced project will be presented for acceptance to the Landowner by the Engineer-in-Charge of construction. Prior to the start of construction, the Engineer-in-Charge of Construction and/or the Department's contractor shall contact and inform the Landowner as to which additional items within the permit area(s) will be damaged or can be moved outside the permit area(s). The Department will relocate those items that can be moved safely and are functional, outside the permit area during construction and upon completed use of the permit area those items will be moved back within that permit area and will be functional.

## PERMANENT RIGHT-OF-WAY FENCE

The Department will construct new Type \_\_\_\_\_ right-of-way fence consisting of \_\_\_\_\_ strands of barbed wire placed on \_\_\_\_\_ posts spaced according to Department standards. Said fence is to be maintained by the Department:

- a. (list station locations of fence, either right or left of beginning station to ending station

The Landowner hereby grants to the Department permission to enter upon the Landowner's adjacent land beyond the right-of-way line to remove the existing right-of-way fence.

## COST TO CURE DAMAGES

As part of the consideration listed, the Department shall pay to the Landowner the amount of \$0.00, to replace the following items that will be removed as part of the construction phase of this project. The Landowner at their sole expense will be responsible to replace the items herein listed below.

## UNECONOMIC REMNANT(S)

**Option Number 1:** The Landowner hereby accepts the Consideration in the amount of and no/100 dollars (\$ \_\_\_\_\_) for the purchase of the additional right of way, use of the permit areas and the purchase of the uneconomic remnant.

**Option Number 2:** The Landowner hereby accepts the Consideration in the amount of and no/100 dollars (\$ \_\_\_\_\_) for the purchase of the additional right of way, use of the permit areas and the damages on the uneconomic remnant.

The Landowner hereby elects to choose Option Number \_\_\_\_\_ as complete and total payment for those items as addressed in said Option Number \_\_\_\_\_, listed hereinabove.





## **MORTGAGE**

If applicable, the Landowner will obtain a partial release of Mortgage covering the property and improvements being conveyed to the Department. The Landowner will provide the names of all Mortgage Holder(s) and their addresses that have a vested interest in the property being conveyed. The Department will be responsible for any and all reasonable mortgage release fees and any and all reasonable penalty costs for prepayment of any preexisting recorded mortgage against the property.

## **LIMITATION OF LIABILITY**

It is understood that the Temporary Construction Permit or Deeded area granted herein is for a public use road or highway exclusively constructed, maintained and operated by the Department/Commission. The Landowner has taken, and will take, no part in the construction, maintenance or operation of the highway. The Department/Commission accepts responsibility for any claims that may arise out of the Department's construction, engineering, operation and maintenance of the Property, as described in the Temporary Construction Permit or Deeded area granted including, but not limited to, those portions of Cheyenne Streets/Summit Dr and Ridge Rd.-College Dr, its setback or relief areas, and right-of-ways that cross Landowner's Property. Nothing in this paragraph shall be deemed to have waived the Department/Commission's defense of sovereign immunity. Any claim for damage to or destruction of the Property of the Landowner, including the loss of use thereof, that is deemed the responsibility of the Department/Commission shall not exceed the limits imposed by law pursuant to the Wyoming Governmental Claims Act, Wyo Stat. § 1-39-101, et seq., i.e., the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) per claimant and Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Any claim against the State shall be presented according to the procedure set forth in the statute.

## **NOT TO IMPEDE IRRIGATION INTERESTS**

The Landowners agree to grant the department and its agents the right to lay out and construct irrigation facilities, and agree not to construct, place or permit alteration to the constructed irrigation facilities and/or cause or inhibit the flow of waters through the irrigation facilities to be obstructed, altered, or impeded and by which cause would diminish the interests of the legally entitled water right holders, their heirs, assigns, representatives and/ or successors.

## **IRRIGATION ACRES TRANSFER**

It is understood by the Department that the Landowner must transfer the water rights from the Irrigated Acres that are being encompassed as a result of the above referenced project. The Landowner will be responsible for the filing of the necessary documents in which to transfer the water rights and the reasonable cost associated with the transfer of those water rights.

## **GATED PIPE PAYMENT**

The Existing irrigation ditch that is located in the additional right of way, will have to be removed, relocated and constructed by the Department as part of the above referenced project. In lieu of the Department having to construct a new irrigation ditch, the Landowner has agreed to accept the consideration in the amount of \_\_\_\_\_ and no/100 dollars for the purchasing of gated pipe. The Landowner will be solely responsible for the purchasing, installation and/or construction of the gated pipe and the hook up(s), the flow of irrigation water thru the gated pipe, and any all maintenance. Should the consideration listed herein above, not cover the complete cost of the irrigation pipe due to an increase, the Landowner shall submit to the Department for review an estimate of the additional expenditure. The estimate being submitted shall give the breakdown of the additional item(s) that are represent the additional cost. The Department reserves the right to deny any payment of additional costs based upon the estimate submitted for review.

## **EXISTING RIGHT-OF-WAY FENCE**

The Department shall remove those portions of the existing right of way fence that is located in the permit or acquisition areas. Said fence shall be stockpiled on the Landowners property



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outside of the right of way at a mutually agreed upon location. The Department does not guarantee the condition of the fencing material being removed; however the Department will make every effort to remove the fencing material in a useable manner.

#### **DIVISION OF TRUST PAYMENT**

A separate payment shall be made to each trust in accordance to their undivided percent of interest in the ownership of said parcel as described on the warranty deed.

#### **IRRIGATION**

The Department will not disrupt the Irrigation Flow during the time frame of **XXXXX to XXXXX**, should the Department need to disrupt the Irrigation Flow, the Engineer in Charge of Construction will contact the Landowner to provide an alternative means of the water delivery that is agreed to by both parties.

#### **CURB/GUTTER/SIDEWALK**

The Department shall construct curb, gutter and sidewalk as part of this project at no additional cost to the Landowner. To the extent required by local ordinance, the Landowner shall be solely responsible for the removal of any and all debris, including snow from the sidewalk adjacent to the Landowner's property.

#### **CONTINUAL ACCESS**

The Landowner will have safe access to their property at all times during construction on the above referenced project.

#### **FEDERAL TAX REPORTING**

Pursuant to the 1986 Tax Reform Act, the Department may be required to report all or a portion of the herein stated consideration to the Internal Revenue Service. The individual handling of the proceeds of this transaction are the responsibility of the Landowner. *In cooperation with IRS regulations, the Landowner agrees to complete the Department's W-9 form for the Department's use in reporting as required.* **Landowner acknowledges that payment will not be made without a properly completed W-9 form and that incomplete information may delay payment.**

#### **CONSIDERATION**

The Department agrees to pay to the Landowner the sum of **XXXX and 00/100 Dollars (\$XXXX)** within forty-five (45) working days of the date of the final signature on this Agreement and its possession of the completed W-9 form. Before final payment is made by the Department, the Department may make a title examination to determine if sufficient title to the property is vested in the Landowner. The Department will pay all costs of any necessary abstracting. The Landowner grants to the Department and its contractors the right of immediate entry on the property for survey and preliminary plan preparation. In the event of unacceptable title, the Landowner will cooperate with the Department to clear the title. The Department will pay all costs for quiet title actions, court orders, and any similar expenses incidental to conveying the property to the Department.

#### **SOVEREIGN IMMUNITY**

Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and the Wyoming Department of Transportation and the Transportation Commission of Wyoming expressly reserve sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.



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This Memorandum of Agreement is the entire Agreement and there are no additional promises, terms, conditions, stipulations or obligations between the parties. All parties having read the entire Agreement and having full knowledge of the Agreement, its intent, content, and of all clauses contained herein, place their signatures below, acknowledging and giving full and complete approval of this Agreement. By signing below, the Landowner represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. This Memorandum of Agreement shall be binding upon the Landowner, their representatives, heirs, successors or assigns.

**Wyoming Department of Transportation**

By: \_\_\_\_\_  
XXXX, Acquisition Agent

\_\_\_\_\_  
Date

**Landowner**

\_\_\_\_\_  
XXXXX

\_\_\_\_\_  
Date





**WYOMING DEPARTMENT OF TRANSPORTATION  
PERMIT**

**Project:** XXXX  
**Road:** XXXX  
**Section:** XXXX  
**County:** XXXX  
**Parcel No.:** 2

THIS AGREEMENT IS ENTERED INTO between XXXX, herein referred to as the "Landowner" and the Wyoming Department of Transportation, herein referred to as the "Department." The Department agrees to pay to the Landowner the sum of **XXXX and 00/100 Dollars (\$XXXX)** within forty-five (45) working days of the date of the final original signatures on this Agreement and the return of the completed W-9 form. The Landowner hereby grants to the Department, its agents, and contractors, permission to enter upon the following area(s) for construction purposes:

**Parcel 2** - A strip of land located in the N½NW¼ of Sec. 26, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo., adjacent to the proposed northerly R/W line of Wyo. State Hwy. No. 193, also being the southerly boundary of said N½NW¼, 30 feet wide on the right, beginning on the existing westerly R/W boundary of Wyo. State Hwy. No. 346 to opposite Engr. Sta. 205+44± tapering to 0 feet wide opposite Engr. Sta. 206+14.

**Parcel 2A** - A strip of land located in the NW¼NW¼ of Sec. 26, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo., adjacent to the existing southwesterly R/W boundary of Wyo. State Hwy. No. 193, 10 feet wide on the left, beginning opposite Engr. Sta. 208+50 to & ending opposite Engr. Sta. 211+45.

**Parcel 2B** - A strip of land located in the NW¼NW¼ of Sec. 26 & NE¼NE¼ of Sec. 27, T.53N., R.83W. of the 6th P.M., Johnson County, Wyo., adjacent to the existing southwesterly R/W boundary of Wyo. State Hwy. No. 193, 425 feet wide on the left, beginning opposite Engr. Sta. 214+00 to & ending opposite Engr. Sta. 220+00. LESS & EXCEPTING Parcel 2C & a parcel of land adjacent to said existing southwesterly R/W boundary, 200 feet wide on the left, beginning opposite Engr. Sta. 214+00 tapering to & ending 0 feet wide opposite Engr. Sta. 217+75.

Said Permit area(s) is/are shown on the official plans for the above-referenced highway project and said plans are hereby made a part hereof. The Permit includes the right of ingress and egress, and also the right to temporarily operate equipment upon the above described land. Upon completed use of the Permit area(s), the disturbed area(s) will be sloped, blended and seeded or sodded by the Department where feasible. The use of the Permit area(s) will commence upon the date of the awarding of the project by the Transportation Commission of Wyoming and will have a 2 year duration.

**CATTLE GUARD**

The Department shall construct and install a \_\_\_\_\_ foot cattle guard in back of and adjacent to the Department's right-of-way boundary. The Landowner(s) will be responsible for the maintenance of the cattle guard being set on the Landowner's property for the Landowner's exclusive use. The Landowner(s) hereby grants permission to the Department, its agents and contractors to enter upon the Landowner's property to install the cattle guard and to connect the right-of-way fence to the wings of the cattle guard. The Department shall construct a \_\_\_\_\_ foot drop wire gate to the right/left of the cattle guard upon completion of the installation of said cattle guard.



### **BORROW AREA(S)**

The Parcel(s) (insert Parcel #), referred to above are located outside of the existing right-of-way and is partially or wholly for the purpose of sloping and removing unclassified borrow material for the road project. The Landowner does hereby sell to said Department all of the sand, stone, gravel or soil which said Department may remove from said parcel of land for XXX year commencing upon the date of the awarding of the project by the Transportation Commission of Wyoming, at the price of XXXXXXXX per cubic yard, giving and granting the Department the right to enter upon said parcel of land for the removal of said materials and to erect or construct thereon such machinery and equipment as in the judgment of the Department is necessary and proper to extract and remove from the said land and/or process the material herein purchased, the number of cubic yards to be determined according to methods prescribed in the current edition of Specifications For Road and Bridge Construction adopted by the State Highway Commission and the further right to enter upon said parcel of land to remove any such equipment, machinery, or structures placed thereon by the Department. The material removed is for use on highway projects and maintenance only and removal by any other person(s) including the Department's contractor(s) for any purpose other than as herein provided, shall be under a separate agreement with the Landowner and only with prior written approval of the Department. It is further agreed by and between the parties hereto, that the Department and its agents or assigns shall have the right to haul material taken from said parcel of land, across any land owned by the Landowner, on routes mutually agreeable to the parties hereto. It is also agreed that the Landowner gives the Department the option to extend this Agreement for an additional year upon the same terms and conditions as herein set forth. The Department will exercise this option by notifying the Landowner in writing of its intention to do so prior to the termination of this Agreement. It is further agreed that any contractor operating under any agreement or contract with the Department that will extract and remove said material, is acting as the agent of the Department and is subject to all rights of and responsibilities of the Department under this agreement, and will be permitted to use said parcel of land to stockpile and/or properly process said material for highway purposes.

#### **Additional Conditions:**

- a. The premises will be left in a neat condition and the disturbed areas will be sloped, blended and re-seeded where feasible by the Department.
- b. Under the word "process" used herein above, it is contemplated that there may be cases wherein controlled emission of smoke, fumes, dust and odors will result. In such event, the Department, its assigns and contractors will control said emission and odors as required and in conformity with existing State and Federal anti-pollution laws.
- c. It is definitely understood and agreed by both parties hereto that the Department in no way guarantees or assures the Landowner that any material, whether desirable or not, will be removed in measurable quantities from said premises; that royalty payment to the Landowner will be made only if material is actually removed in measurable quantities. Payment to the Landowner will be made by the office of the Engineer in Charge of construction and will be based upon final cross sectioning of the material area, and said payment is a separate payment and is not part of the consideration stated herein below.

### **APPROACH(ES)**

The Department will construct approach(es) to the highway at the following location(s):

- a. (list the size of approach, with culvert if plans show this, size of cattle guard as shown on the plans, side the gate will be constructed adjacent to the cattle guard and engr. sta. that approach will be located at.)

The Landowner hereby grants to the Department permission to enter upon the Landowner's adjacent land beyond the right of way line to construct, taper, blend the approaches, install gates and connect to existing trails, roads or lands as shown on the copy of the Engineering Plans marked *Exhibit "A"*.



## **WATER RIGHTS**

The Department does not object to the Landowner transferring the water rights, if any, for irrigation and/or livestock purposes, from the land as described on said conveyance. Any and all costs or incidental expenses associated with the relocating of those described water rights herein, will be the complete and sole responsibility of the Landowner.

## **TEMPORARY FENCE**

Prior to the start of construction, permit areas may be temporarily fenced as deemed necessary by the Department. Should it be necessary to construct a temporary fence, said fence will consist of three strands of barbed wire placed on metal posts spaced according to Department temporary fence standards. The Landowner may remove and retain the temporary fencing after seeding has emerged or within three years after completion of the construction. Should the temporary fence not be removed by the Landowner within three years, the Landowner hereby grants permission to the Department, its agents and contractors the right of ingress and egress to the Landowner's property beyond the right-of-way line in order to remove said temporary fence. Said permission shall allow the Department to exercise this right at its discretion, but in no way obligates or requires the Department to enter upon the Landowner's property and remove said temporary fence. The Landowner, their heirs, assigns, successors or representatives, hereby agree not to withhold permission or inhibit the Department from exercising this right. It is hereby agreed that, should the Department remove the temporary fence, the materials removed shall become the property of the Department.

## **STOCKPASS**

The Department will construct a structure for livestock movement and drainage left of engineering station \_\_\_\_\_. Said structure will be a 10 foot diameter cmp and will have invert paving and will be winged fenced with a gate located across the north side of the pipe. The cleaning of said pipe will be the sole responsibility of the landowner.

## **SALVAGE**

Should the Landowner desire to salvage any of the items or portions of said items listed herein, the Landowner has 60 days from the date of this agreement to remove said items. After the 60 days if said items or any portion of said items are remaining, the Department will remove and dispose of as the Department deems necessary.

## **PROTECTIVE CLAUSE**

Any existing trees, plants, mailboxes, fencing, signs, structures, utilities, lawn, sprinkler system and/or drip system, ornamentation, or other personal items within the permit area(s) not specifically addressed in this agreement, but not limited to those items stipulated herein, will be worked around during construction. Should any such items be damaged during construction, and can be replaced by the Department, those items will be replaced. Those items that can not be replaced will be reviewed as a cost to cure payment in accordance to the Department's guidelines and said proposal of offer to cure any damage as a result of the above referenced project will be presented for acceptance to the Landowner by the Engineer-in-Charge of construction. Prior to the start of construction, the Engineer-in-Charge of Construction and/or the Department's contractor shall contact and inform the Landowner as to which additional items within the permit area(s) will be damaged or can be moved outside the permit area(s). The Department will relocate those items that can be moved safely and are functional, outside the permit area during construction and upon completed use of the permit area those items will be moved back within that permit area and will be functional.

## **PERMANENT RIGHT-OF-WAY FENCE**

The Department will construct new Type \_\_\_\_ right-of-way fence consisting of \_\_\_\_\_ strands of barbed wire placed on \_\_\_\_\_ posts spaced according to Department standards. Said fence is to be maintained by the Department:

- a. (list station locations of fence, either right or left of beginning station to ending station





The Landowner hereby grants to the Department permission to enter upon the Landowner's adjacent land beyond the right-of-way line to remove the existing right-of-way fence.

#### **COST TO CURE DAMAGES**

As part of the consideration listed, the Department shall pay to the Landowner the amount of \$0.00, to replace the following items that will be removed as part of the construction phase of this project. The Landowner at their sole expense will be responsible to replace the items herein listed below.

#### **UNECONOMIC REMNANT(S)**

**Option Number 1:** The Landowner hereby accepts the Consideration in the amount of and no/100 dollars (\$ \_\_\_\_\_) for the purchase of the additional right of way, use of the permit areas and the purchase of the uneconomic remnant.

**Option Number 2:** The Landowner hereby accepts the Consideration in the amount of and no/100 dollars (\$ \_\_\_\_\_) for the purchase of the additional right of way, use of the permit areas and the damages on the uneconomic remnant.

The Landowner hereby elects to choose Option Number \_\_\_\_ as complete and total payment for those items as addressed in said Option Number \_\_\_\_, listed hereinabove.

#### **MORTGAGE**

If applicable, the Landowner will obtain a partial release of Mortgage covering the property and improvements being conveyed to the Department. The Landowner will provide the names of all Mortgage Holder(s) and their addresses that have a vested interest in the property being conveyed. The Department will be responsible for any and all reasonable mortgage release fees and any and all reasonable penalty costs for prepayment of any preexisting recorded mortgage against the property.

#### **LIMITATION OF LIABILITY**

It is understood that the Temporary Construction Permit or Deeded area granted herein is for a public use road or highway exclusively constructed, maintained and operated by the Department/Commission. The Landowner has taken, and will take, no part in the construction, maintenance or operation of the highway. The Department/Commission accepts responsibility for any claims that may arise out of the Department's construction, engineering, operation and maintenance of the Property, as described in the Temporary Construction Permit or Deeded area granted including, but not limited to, those portions of Cheyenne Streets/Summit Dr and Ridge Rd.-College Dr, its setback or relief areas, and right-of-ways that cross Landowner's Property. Nothing in this paragraph shall be deemed to have waived the Department/Commission's defense of sovereign immunity. Any claim for damage to or destruction of the Property of the Landowner, including the loss of use thereof, that is deemed the responsibility of the Department/Commission shall not exceed the limits imposed by law pursuant to the Wyoming Governmental Claims Act, Wyo Stat. § 1-39-101, et seq., i.e., the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) per claimant and Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Any claim against the State shall be presented according to the procedure set forth in the statute.

#### **NOT TO IMPEDE IRRIGATION INTERESTS**

The Landowners agree to grant the department and its agents the right to lay out and construct irrigation facilities, and agree not to construct, place or permit alteration to the constructed irrigation facilities and/or cause or inhibit the flow of waters through the irrigation facilities to be obstructed, altered, or impeded and by which cause would diminish the interests of the legally entitled water right holders, their heirs, assigns, representatives and/ or successors.



## **IRRIGATION ACRES TRANSFER**

It is understood by the Department that the Landowner must transfer the water rights from the Irrigated Acres that are being encompassed as a result of the above referenced project. The Landowner will be responsible for the filing of the necessary documents in which to transfer the water rights and the reasonable cost associated with the transfer of those water rights.

## **GATED PIPE PAYMENT**

The Existing irrigation ditch that is located in the additional right of way, will have to be removed, relocated and constructed by the Department as part of the above referenced project. In lieu of the Department having to construct a new irrigation ditch, the Landowner has agreed to accept the consideration in the amount of \_\_\_\_\_ and no/100 dollars for the purchasing of gated pipe. The Landowner will be solely responsible for the purchasing, installation and/or construction of the gated pipe and the hook up(s), the flow of irrigation water thru the gated pipe, and any all maintenance. Should the consideration listed herein above, not cover the complete cost of the irrigation pipe due to an increase, the Landowner shall submit to the Department for review an estimate of the additional expenditure. The estimate being submitted shall give the breakdown of the additional item(s) that are represent the additional cost. The Department reserves the right to deny any payment of additional costs based upon the estimate submitted for review.

## **EXISTING RIGHT-OF-WAY FENCE**

The Department shall remove those portions of the existing right of way fence that is located in the permit or acquisition areas. Said fence shall be stockpiled on the Landowners property outside of the right of way at a mutually agreed upon location. The Department does not guarantee the condition of the fencing material being removed; however the Department will make every effort to remove the fencing material in a useable manner.

## **DIVISION OF TRUST PAYMENT**

A separate payment shall be made to each trust in accordance to their undivided percent of interest in the ownership of said parcel as described on the warranty deed.

## **IRRIGATION**

The Department will not disrupt the Irrigation Flow during the time frame of XXXX to XXXXX, should the Department need to disrupt the Irrigation Flow, the Engineer in Charge of Construction will contact the Landowner to provide an alternative means of the water delivery that is agreed to by both parties.

## **CURB/GUTTER/SIDEWALK**

The Department shall construct curb, gutter and sidewalk as part of this project at no additional cost to the Landowner. To the extent required by local ordinance, the Landowner shall be solely responsible for the removal of any and all debris, including snow from the sidewalk adjacent to the Landowner's property.

## **CONTINUAL ACCESS**

The Landowner will have safe access to their property at all times during construction on the above referenced project.

Said Permits include all rights of ingress and egress and the right to temporarily operate machinery upon the land. Prior to the completion of construction, disturbed areas will be blended and seeded or sodded where feasible. The use of the above described Permit area(s) will commence upon the date of the awarding of the project by the Transportation Commission of Wyoming, and will have a 2 year duration.



## FEDERAL TAX REPORTING

Pursuant to the 1986 Tax Reform Act, the Department may be required to report all or a portion of the herein stated consideration to the Internal Revenue Service. This reporting in no way creates a tax liability in itself as to the type of payment. The individual handling of the proceeds of this transaction are the responsibility of the Landowner. In cooperation with IRS regulations, the Landowner agrees to complete the Department's W-9 form for the Department's use in reporting as required. Landowner acknowledges that payment will not be made without a properly completed W-9 form and that incomplete information may delay payment.

## SOVEREIGN IMMUNITY

Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and the Wyoming Department of Transportation and the Transportation Commission of Wyoming expressly reserve sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

This Permit Agreement is the entire Agreement and there are no additional promises, terms, conditions, stipulations or obligations between the parties. Both parties having read the entire Agreement and having full knowledge of the Agreement, its intent, content, and of all clauses contained herein, attach the proper signatures below, acknowledging and giving full and complete approval of this Agreement. By signing below, the Landowner represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. This Agreement shall be binding upon the Landowner, their representatives, heirs, successors or assigns.

### Wyoming Department of Transportation:

By: \_\_\_\_\_  
XXXX, Acquisition Agent

\_\_\_\_\_  
Date

### Landowner:

\_\_\_\_\_  
XXXX

\_\_\_\_\_  
Date





**WYOMING DEPARTMENT OF TRANSPORTATION  
CERTIFICATION OF ACQUISITION AGENT**

**Project:**  
**Road:**  
**Section:**  
**County:**  
**Parcel No.:**

I, XXXX, Acquisition Agent, hereby certify to the following facts concerning the above referenced Project:

1. That the Permit/MOA embodies the whole agreement between the parties thereto, and there are no promises, terms or obligations referring to the subject matter hereof other than as contained therein.
2. That the Permit/MOA was consummated without coercion, promises other than those shown therein, or threats of any kind whatsoever by or to either party.
3. That I understand that the parcel is to be secured for use in connection with a Federal - Aid Highway project.
4. That I have no direct or indirect present or contemplated future personal interest in the parcel or in any benefit from the obtaining of the Permit/MOA on said parcel.

Dated this April 21, 2015

\_\_\_\_\_  
XXXX, Acquisition Agent



**WYOMING DEPARTMENT OF TRANSPORTATION  
OFFICIAL RECEIPT**

**Project:**  
**Road:**  
**Section:**  
**County:**  
**Parcel No.:**

The undersigned owner and/or claimant or the authorized representative hereby acknowledges receipt of the following right-of-way documents from the Wyoming Department of Transportation, as follows to-wit:

1. Copy of the "Summary Statement of Fair Market Value";
2. Copy of the "Permit" with the authorized offer in the amount of Two Hundred Fifty and 0/100 Dollars (\$250.00);
3. Copy of the Right-of-Way Engineering Plans by ownership, marked *Exhibit "A"*;
4. Copy of the Right-Of-Way Brochure, "*Highways and Your Land*";
5. Copy of the WOLFS-109 Tax Information Form;

It is expressly understood that the signing of this receipt does not in any way affect any rights of the undersigned relative to these matters, but is for the sole purpose of indicating receipt and explanation of the herein above listed documents.

Wyoming Department of Transportation

Owner - Claimant and/or Representative

By: \_\_\_\_\_  
XXXX, Acquisition Agent

\_\_\_\_\_XXXX

Date Mailed: \_\_\_\_\_

Date Received: \_\_\_\_\_

Please return the signed and dated original of this form to the Wyoming Department of Transportation, 5300 Bishop Blvd., Cheyenne, Wyoming, 82009-3340





Matthew H. Mead  
Governor

# WYOMING Department of Transportation

"Providing a safe, high quality, and efficient transportation system"

5300 Bishop Boulevard, Cheyenne, Wyoming 82009-3340



William T. Panos  
Director

September 28, 2018

Landowner  
Address  
City, State, Zip

Project: XXXX  
Road: XXXX  
Section: XXXX  
County: XXXX  
Parcel No.: X

Dear XXXX:

As required by Wyoming Statute 1-26-509(e) I am issuing this 15-day letter reiterating the Department's final offer in the amount of \$XXXX for the Conveyance, \$XXXX for the temporary construction permit along with \$XXXX for improvements and \$XXXX in damages for the loss of XXXX, for a total consideration of \$XXXX.

Enclosed for your consideration are the following documents:

1. Copy of the Memorandum of Agreement;
2. Copy of the Wetland Agreement (5) Year Term, Construction Permit, Warranty Deed with Mineral Clause;
3. Copy of the Engineering Plan Sheets marked Exhibit "A";
4. WYDOT Vendor Form;
5. Copy of the W-9 Tax Identification form as required by the IRS; and
6. Copy of the Voluntary Right of Possession Form.

There are three basic options at your disposal:

1. Accept the Department's proposal and the total consideration of \$XXXX. If this is the case, please sign and return the enclosed **Memorandum of Agreement** and notarized Wetland Agreement (5) Year Term, Construction Permit, Warranty Deed with Mineral Clause, as well as the completed **original W-9 form**. If you decide to accept the Department's offer, please return the signed documents within 15 days of your receipt of this letter.

2. If you decide that the Department's offer is not acceptable, but there are no issues with the construction of the above referenced project, please sign and return the **Voluntary Right of Possession Agreement**. This will allow the Department the use of the area(s) needed for the construction of the project as designed. (The Right of Possession Agreement is used when there is a disagreement with the appraised value(s) solely, not the design of the proposed project. The Voluntary Right of Possession Agreement allows the Department to proceed with the construction phase of the project while more information is gathered or presented by the Landowner as to why the values are not acceptable. This





Agreement also eliminates the first phase of any condemnation action and instructs the court that the issue unresolved is one of value solely.)

3. If you oppose the project as designed entirely, please inform me as soon as possible or do nothing. If neither the documents requested in option 1 above or the Voluntary Right of Possession Agreement are received by the Department within 15 days of your receipt of this letter, formal condemnation proceedings may be initiated through the Court of the th Judicial District of Wyoming. Please be advised that this action through the court will not preclude continued efforts at amiable resolution.

Should you have any other questions, you may phone XXXX, toll free at 1-888-570-9908 or directly at (307) 777-XXXX.

Sincerely yours,

XXXX  
Project Manager

By: XXXX  
Acquisition Agent

Enclosures

SENT BY U.S. CERTIFIED MAIL



WYOMING DEPARTMENT OF TRANSPORTATION  
VOLUNTARY RIGHT OF POSSESSION

Project: XXXX  
Road: XXXX  
Section: XXXX  
County: XXXX  
Parcel No.: X

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between THE TRANSPORTATION COMMISSION OF WYOMING, hereinafter referred to as the "Department", and XXXX hereinafter referred to as the "Landowner,"

WITNESSETH: THAT

WHEREAS, the Department has an immediate need for real property, for Transportation Purposes, in order to put Project XXXX under contract; and

NOW THEREFORE, in consideration of the amount specified and the mutual covenants stated herein and in the unsigned Memorandum of Agreement and instrument of conveyance attached hereto, and made a part of this Agreement the parties hereby agree as follows:

1. The Landowner hereby grants unto the Department, its agents and contractors, the right to enter upon the property and permit area(s) described in the attached Agreement and conveyance(s) for purposes of commencing highway construction.
2. The Department will pay the Landowner XXXX and 00/100 Dollars (\$XXXX), upon execution and return of this Agreement. The payment may apply towards the fulfillment of the obligation which the Department bears to pay just compensation for any lands taken from the Landowner and used by the Department for aforesaid transportation purposes.
3. In the event that final determination of just compensation, whether made by mutual agreement of the parties hereto or by formal eminent domain proceedings, for the lands taken and used for transportation purposes including improvements and fixtures being moved exceeds \$XXXX, the Department shall pay the difference to the Landowner. In the event such final determination, through the court, of just compensation is less than \$XXXX the Landowner shall refund the difference to the Department. In the event the parties agree on compensation in whole or in part other than money, then the Landowner shall refund to the Department the principal of said sum, in whole or in part, as the parties may agree.
4. It is understood and agreed that this instrument is solely for the purpose of allowing the Department, its agents and contractors, to enter upon said land and commence construction thereon. This Agreement is not intended to nor shall be construed to establish just compensation for the lands involved.
5. The parties agree that the date of this Agreement shall be the date of valuation for the property being acquired for transportation purposes.
6. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance. This Agreement shall be binding upon the Landowner, their representatives, heirs, successors and assigns.
7. Pursuant to the 1986 Tax Reform Act, the Department may be required to report all or a portion of the herein stated consideration to the Internal Revenue Service. The individual handling of the proceeds of this transaction are the responsibility of the Landowner. **The landowner agrees to complete the Department's W-9 form and return the signed original for the Department's use in reporting as required.**



**Landowner acknowledges that payment will not be made without a properly completed W-9 form and that incomplete information may delay payment.**

8. The State of Wyoming and the Wyoming Department of Transportation and the Transportation Commission of Wyoming do not waive sovereign immunity by entering into this contract, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. §1-39-104(a) and all other state law.

This Voluntary Right of Possession is the entire Agreement and there are no additional promises, terms, conditions, stipulations or obligations between the parties. All parties having read the entire Agreement and having full knowledge of the Agreement, its intent, content, and of all clauses contained herein, place their signatures below, acknowledging and giving full and complete approval of this Agreement. This Voluntary Right of Possession shall be binding upon the Landowner, their representatives, heirs, successors or assigns.

**Wyoming Department of Transportation**

By: \_\_\_\_\_  
XXXX, Acquisition Agent

\_\_\_\_\_  
Date

**Landowner(s)**

\_\_\_\_\_  
XXXX

\_\_\_\_\_  
Date







Matthew H. Mead  
Governor

# Wyoming Department of Transportation

*"Providing a safe, high quality, and efficient transportation system"*

5300 Bishop Boulevard  
Cheyenne, Wyoming 82009-3340

July 17, 2015



John F. Cox  
Director

Landowner  
Address  
City, State Zip

Project:  
Road:  
Section:  
County:  
Parcel #

Dear XXXX:

The Wyoming Department of Transportation would like to install XXX lineal feet of twelve foot high snow fence on your property located adjacent to Hay Creek Road in Crook County, Wyoming. The snow fence sites on your property are depicted in red on the enclosed engineering plan sheets, marked Exhibit "A." This snow fence will help reduce the snow drifting, road icing, removal and visibility problems prevalent on this portion of the highway, thereby making the highway much safer for winter-time travel.

The payment due you for placement of this snow fence on your land is \$XXX which is based on the Department's established rate of \$1.00 per lineal foot of snow fence. If this proposal is acceptable to you, please sign the enclosed Snow Fence Agreement and Easement along with the enclosed Taxpayer Identification Form and return them to the Department in the envelope provided.

Your cooperation would be greatly appreciated. Should you have any questions concerning this project, please contact XXXX toll-free at 1-888-570-9908, direct at (307) 777-XXXX, or by email at XXXX@wyo.gov.

Sincerely yours,  
XXXX  
Project Manager

By XXXX  
Acquisition Agent

Enclosures



WYOMING DEPARTMENT OF TRANSPORTATION

SNOW FENCE AGREEMENT

Project:  
Road:  
Section:  
County:  
Parcel:

THIS AGREEMENT ENTERED INTO ON THIS \_\_\_\_\_ day of \_\_\_\_\_, twenty fifteen, between XXXXX, herein referred to as the "Landowner" and the WYOMING DEPARTMENT OF TRANSPORTATION, herein referred to as "Department".

WITNESSETH: that

WHIFREAS, the Department wishes to secure certain real property for the construction and maintenance of a snow fence as shown on the plan sheets marked Exhibit "A", herein referred to as the "property", a copy which is attached to this agreement and has been submitted to and received by the Landowner; and

WHEREAS, the Landowner has agreed to grant to the Department a Snow Fence Easement on the property, the Landowner hereby agrees to execute said snow fence easement and shall remit the signed and notarized snow fence easement to the Department for recordation; and

WHEREAS, the Department will prepare a SNOW FENCE EASEMENT with legal descriptions of the property outlined briefly as follows:

The above described parcels total to approximately XXX acres with approximately XXX linear feet of snow fence easement.

NOW THEREFORE, in consideration of the promises, terms, conditions and stipulations contained in this agreement, the parties hereto agree to the following:

1. The Landowner grants to the Department, its agents and contractors, all rights of ingress and egress, to and from the property. Landowner further grants to the Department, its agents and contractors, the right to temporarily operate machinery upon the property for the construction and maintenance of said snow fence. Any disturbed areas, resulting from the construction or maintenance of said snow fence, shall be restore and rescinded by the Department.
2. The Snow Fence Easement shall be perpetual so long as said property is used for snow fence purposes. If said snow fence is no longer required or maintained to the Department standards, said Snow Fence Easement will become null and void. In this event, the Department will remove the fence from the property.
3. The Department is to maintain the snow fence and the area surrounding the snow fence in a reasonably neat and sightly condition.

**FEDERAL TAX REPORTING:**

4. Pursuant to the 1986 Tax Reform Act, the Department may be required to report all or a portion of the herein stated consideration to the Internal Revenue Service. This reporting in no way creates a tax liability in itself as the type of payment. The individual handling of the proceeds of this transaction are the responsibility of the Landowner. In cooperation with IRS regulations, the Landowner agrees to complete the Department's WOLFS-109 form for the Department's use in reporting as required. Landowner acknowledges that



payment will not be made without a properly completed WOLFS-109 form and that incomplete information may delay payment.

**CONSIDERATION:**

5. Payment for perpetuation of the Snow Fence Easement will be based on \$1.00 per linear foot of snow fence easement. Total payment is the sum of all parcels that have been round up to the nearest five dollars. The Department agrees to pay to the Landowner the sum of **Zero and 0/100 Dollars (\$0.00)** within forty-five (45) working days of the date of the final signature on this Agreement and its possession of the completed WOLF S-109 form.

**SOVEREIGN IMMUNITY:**

6. The State of Wyoming and the Wyoming Department of Transportation and the Transportation Commission of Wyoming do not waive sovereign immunity by entering into this contract, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. §1-39-104(a) and all other state law.
7. This Memorandum of Agreement is the entire Agreement and there are no additional promises, terms, conditions, stipulations or obligations between the parties. All parties having read the entire Agreement and having full knowledge of the Agreement, its intent, content, and of all clauses contained herein, place their signatures below, acknowledging and giving full and complete approval of this Agreement. This Agreement shall be binding upon the Landowner, their representatives, heirs, successors or assigns.

Wyoming Department of Transportation

By: \_\_\_\_\_  
XXXX, Property Management Agent

Landowner(s)

\_\_\_\_\_

\_\_\_\_\_ Date





## WETLAND COMMITMENT AGREEMENT

THIS AGREEMENT, entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, between XXXX hereinafter referred to as the Grantor, and the Wyoming Department of Transportation, hereinafter referred to as the Department.

WHEREAS, the Department is planning a project to reconstruct a portion of the XXXX in XXXX County to be designated as Project XXXX, XXXX, which project will impact certain areas designated as wetlands.

and;

WHEREAS, the Department is obligated to mitigate impacted wetlands to maintain the "no net loss" concept by substitution or replacement methods

and;

WHEREAS, Grantor owns certain lands in Johnson County, Wyoming which have the potential to be developed as a wetland replacement area. Said area is more particularly described as follows:

### **Parcel No. 2C**

All that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 26, T.53N., R.83W. of the 6th P.M., Johnson County, Wyoming, described by metes and bounds as follows:

Commencing at the northwest corner of said Section 26, said corner being monumented by a 1½ inch aluminum cap on a 5/8 inch rebar stamped Texaco LS 102-81 inside a 2½ inch iron pipe, as shown on Certificate of Survey prepared by Kerry C. Money, LS 5367, recorded on February 5, 2013 in Document No. 126801, Pages 371-393 from which the north quarter corner thereof bears N. 88°16'08.7" E. a distance of 2,639.72 feet, said corner being monumented by a 1½ inch aluminum cap on a 5/8 inch rebar stamped Texaco LS 102-81 inside a 2½ inch iron pipe in a mound of stone;

thence S.34°28'49.6" E. a distance of 1,174.52 feet to a point on the existing southwesterly right-of-way boundary of Wyoming State Highway No. 193, said point being monumented by a standard right-of-way marker, Station 5+00, Project No. 1003(2), P.O.T.;

thence along said right-of-way boundary N. 49°53'13.1" W. a distance of 491.73 feet to the **TRUE POINT OF BEGINNING**;

thence leaving said right-of-way boundary S. 40°06'47.0" W. a distance of 83.73 feet;

thence S. 20°49'49.3" E. a distance of 334.96 feet;

thence S. 68°01'09.6" W. a distance of 199.32 feet;

thence N. 39°46'50.2" W. a distance of 182.42 feet;

thence N. 02°03'39.4" W. a distance of 182.25 feet;

thence N. 64°07'57.4" E. a distance of 177.95 feet;

thence N. 40°06'47.1"E. a distance of 92.93 feet to a point on said southwesterly right-of-way boundary;

thence along said right-of-way boundary S. 49°53'13.1" E. a distance of 30.00 feet to the point of beginning.

The above described parcel of land contains 1.90 acres (82,785 sq. ft.), more or less.



NOW THEREFORE, in consideration of the promises contained herein, the parties agree to the following terms and conditions:

1. The Department will undertake to develop a wetland on the above described parcel and remain responsible for the wetland for a term of (XX) years from the date of execution of this instrument.
2. Grantor will allow the Department access to the wetland for development and ongoing maintenance operations for a term of (XX) years from the date of execution of this instrument.
3. The Grantor for and in consideration of Zero and 0/100 Dollars, in hand paid, agrees for herself, himself, themselves, her, his, their, heirs, successors and assigns to commit and dedicate the parcel of land described herein as a wetland and shall take no actions that would adversely impact or significantly degrade the wetland for a term of (XX) years from the date of execution of this instrument.
4. Grantor agrees that in the event future circumstances deem it desirable or appropriate that this established wetland be reduced, degraded or destroyed due to Grantor's actions or operations that Grantor shall be responsible to mitigate such reduction, degradation or destruction using mitigation methods as prescribed by the Department of the Army, Corp of Engineer, the Environmental Protection Agency or any other appropriate Regulatory or Resource Agency. In so doing the Grantor assumes all responsibility for the success of the subsequent mitigation and the ultimate reestablishment of a viable wetland.
5. In seeking to resolve any dispute relating to this Contract, the Department does not waive its sovereign immunity and specifically retains immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. §1-39-104(a) and all other state law.
6. This Agreement is the entire Agreement and there are no additional promises, terms, conditions, stipulations or obligations between the parties. All parties having read the entire Agreement and having full knowledge of the Agreement, its intent and of all clauses contained herein, place their signatures below in full knowledge and approval of this Agreement. This Agreement shall be binding upon the Landowner, their heirs, assigns, successors and representatives.

THE TRANSPORTATION COMMISSION OF WYOMING

Dated this, the \_\_\_\_\_ day of \_\_\_\_\_, 2018

ATTEST

THE TRANSPORTATION COMMISSION OF WYOMING

\_\_\_\_\_  
Sandra J. Scott, Secretary

\_\_\_\_\_  
for the Wyoming Department of Transportation

Dated this, the \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
XXXX (Grantor)



ACKNOWLEDGMENT

THE STATE OF \_\_\_\_\_ )  
 )§  
COUNTY OF Johnson \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018,  
by \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires

\_\_\_\_\_  
NOTARY PUBLIC





## RIGHT-OF-WAY DONATION CERTIFICATE

Project:  
Road:  
Section:  
County:  
Parcel No.:

I, XXXX am the owner of land situated in Crook County, Wyoming, more particularly described as:

Parcel 2

A strip of land located in the SE¼SW¼ of Sec. 20, T.54N., R.60W. of the 6th P.M., Crook County, Wyo., adjacent to the existing southwesterly R/W boundary of Hay Creek Road, 25 feet wide on the left, beginning opposite Engr. Sta. 20+50 to and ending on the northerly boundary of that certain tract of land described in Doc. No. 599446 of the Crook County Records.

### THIS IS TO CERTIFY THAT:

I have been informed by the representative of the Wyoming Department of Transportation for the need to secure right-of-way for highway and/or street purposes across the above described parcel;

I have discussed the proposed project with the representative of the Wyoming Department of Transportation and have been apprized to my satisfaction concerning the proposed construction details;

I have been informed by the representative of the Wyoming Department of Transportation of my legal right to just compensation in money for the above described parcel and of my right to just compensation for damages, if any, occurring as a result of said construction;

I release the Wyoming Department of Transportation from its obligation to have the property appraised pursuant to 49 CFR Part 24-102(2)(i);

I agree to sign and execute all necessary instruments conveying ownership of the above described parcel to the Transportation Commission of Wyoming;

Notwithstanding the above recited facts, I deem to donate free of cost the above described parcel to the Wyoming Department of Transportation and waive any damage claims relative to this action.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Grantor)

### ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNT OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



## RIGHT-OF-WAY DONATION CERTIFICATE

Project:  
Road:  
Section:  
County:  
Parcel No.:

I, XXXX am the owner of land situated in Crook County, Wyoming, more particularly described as:

**Parcel 2**

A strip of land located in the SE¼SW¼ of Sec. 20, T.54N., R.60W. of the 6th P.M., Crook County, Wyo., adjacent to the existing southwesterly R.W boundary of Hay Creek Road, 25 feet wide on the left, beginning opposite Engr. Sta. 20+50 to and ending on the northerly boundary of that certain tract of land described in Doc. No. 599446 of the Crook County Records.

**THIS IS TO CERTIFY THAT:**

I have been informed by the representative of the Wyoming Department of Transportation for the need to secure right-of-way for highway and/or street purposes across the above described parcel;

I have discussed the proposed project with the representative of the Wyoming Department of Transportation and have been apprized to my satisfaction concerning the proposed construction details;

I have been informed by the representative of the Wyoming Department of Transportation of my legal right to just compensation in money for the above described parcel and of my right to just compensation for damages, if any, occurring as a result of said construction;

I agree to sign and execute all necessary instruments conveying ownership and/or temporary use of the above described parcel to the Transportation Commission of Wyoming;

Notwithstanding the above recited facts, I deem to donate free of cost the above described parcel to the Wyoming Department of Transportation and waive any damage claims relative to this action.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Grantor)

## ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNT OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



WYOMING DEPARTMENT OF TRANSPORTATION  
CONDEMNATION REQUEST

Project: XXXX  
Road: XXXX  
Section: XXXX  
County: XXXX  
Parcel No.: X

1. **CONDEMNATION PROCEEDING REQUESTED FOR THE FOLLOWING OWNERSHIP:**

a. Name of Owners and Addresses:

Landowner  
Address, City, State, Zip

b. Name of Mortgagees and Addresses: (need letter sent for partial release if applicable)

c. Name of Lessees and Addresses:

2. **Taking:**

- a. Land Descriptions of Additional Right of Way and Amount of Area. Provide engineering tech with list of parcels in order to generate legals for condemnation in BEM;
- b. List the Improvements being Acquired are as follows: (List any improvements that are part of the acquisition)

3. **Appraisal:** - Name of Appraiser: XXXX

- a. Land Value: \$XXXX
- b. Permit Value: \$XXXX
- c. Damage Amount: \$XXXX
- d. Improvement Value: \$XXXX
- e. Total Consideration Offered: \$XXXX

4. **Authorized Offer:** - Name of Review Appraiser: XXXX

- a. Offer Authorized: \$XXXX
- b.

5. **Acquisition:** - Name of Acquiring Agent: XXXX

- a. Offer Made: XX/XX/XXXX
- b. Amount of Counter Offer Made: (If any)
- c. Dates of Contact:





6. **Date of Right of Possession Desired:** IMMEDIATELY
7. **Conditions of Condemnation:** Approach locations, fencing, etc as listed in MOA
8. **Voucher Requests:** (Contact the Clerks Office and Sheriffs Department as to the Fees and Tax No.
  - a. Process Voucher for Authorized Offer made out to Clerk of The District Court For Deposit;  
Date Requested \_\_\_\_\_
  - b. Process Voucher for Filing Fee made out to Clerk of The District Court;  
Date Requested \_\_\_\_\_
  - c. Process Voucher for Fee for Serving the Compliant made out to the Sheriff's Department;  
Date Requested \_\_\_\_\_
  - d. On the Requests **(DO NOT MAIL – RETURN TO R/W FOR FURTHER PROCESSING)**  
(Make sure a note to Nicki to Notify You and Project Manager when ready so someone can deliver to Attorney General Office)
9. **Documents That Need To Be In BEM Log** (This Allows AG'S Office Access To Documents)
  - a. 65 Day Letter sent to Landowner( Certified Copy);
  - b. Title Work;
  - c. Letter Requesting Partial Release – If Applicable;
  - d. Signed Completed Copy of Appraisal/Waiver;
  - e. Form 57;
  - f. Summary Statement of Fair Market Value;
  - g. Legal Descriptions and Most Current Exhibits;
  - h. Conveyance Document(s) Presented to Landowner;
  - i. Last Memorandum of Agreement with Last Offer Presented to Landowner;
  - j. 15 Day Letter sent to Landowner (Certified Copy);
  - k. Acquisition Agent Records of Conversation;
  - l. Voucher Request to be Deposited with Court;
  - m. Voucher Requests for Filing and Service Fees;



## **Additional Clauses**

### **Taxes - Partial Taking**

The Department shall pay its pro rata share of the taxes based upon the current year's assessment, if available. If not available, the pro rata, share shall be computed on the basis of the previous year's taxes. The Department's share shall be added to the purchase payment and is to be paid to the landowner as stated under Item 1 of the standard agreement. A tax computation sheet should be completed and placed in the parcel file.

### **Whole Taking, Taxes**

*Landowner's pro rata share of the current year's taxes will be withheld from the consideration as stated under Item 1 of the standard agreement. Taxes shall be computed upon the current year's mill levy and assessment, if available. If not available, they shall be computed upon the previous year's taxes.*

### **Taxes**

The Memorandum of Agreement, or its supplement prepared for WHOLE TAKINGS adequately cover the handling of taxes. No additional clause need be added. A standard letter for obtaining the amount of taxes from the county assessor with certification is shown in the Addendum to this manual.

### **Fencing of R/W boundary**

Where required, the following clause will be used to supplement the clause concerning fencing on the Memorandum of Agreement. "The Department will construct a right-of-way fence consisting of. *{insert a description of the type of fence material and post type being placed along with the WYDOT standard plans "type" designation.}* and spaced according to Department specifications. The Landowner(s) hereby grant permission to the Department, its agents and contractors to enter upon the Landowner(s) property outside the right-of-way line in order to remove the existing fence and construct the new right-of-way fence."

### **Access**

The following clause would be added to the Agreement where access is to be allowed to a service road. "The landowners reserve for themselves, their heirs, successors and assigns, a right of access to a (graveled) (paved) service road to be constructed within the (north?) 175 feet of the right-of-way as described in the referenced (specify type conveyance). Such access to be limited to approaches to be constructed by the Department at the following locations: (1) right of Station                      etc."





## **Approaches**

The following clause will apply on access controlled or non-access controlled primary or secondary highways where access to the highway is being replaced or new accesses allowed.

**Single Approach** - "The Department will construct an approach right of Engineering Station 80±90±. Said approach to be 16 feet wide, paved through the radius, with pipe culvert and have a drop wire gate installed. The Landowner hereby grants permission to the Department, its agents and contractors, to enter upon Landowner(s) property beyond the right-of-way line in order to construct said approach."

**Multiple Approach** - The Department will construct approaches at the following locations:

Left and right of Engineering Station 1575+20±. Approaches to be 16 feet wide, paved through the radii (with 10 foot pad) have a drop wire gate installed.

Right of Engineering Station 1453+00± Approach to be 16 feet wide, paved through the radius (with 10 foot pad) have a drop wire gate installed.

Right of Engineering Station 1472+00±. Approach to be 24 feet wide, paved to the right-of-way boundary and have 24 foot wide cattleguard and adjacent drop wire gate and adjacent to the cattleguard in the line fence.

The Landowner hereby grants permission to the Department, its agents and contractors, to enter upon Landowner(s) property beyond the right-of-way line in order to construct said approaches.

In the case of paved approaches, it should clearly state the limits of paving: (1) paving will be completed through the radius of the approach curves; (2) paving will be completed to the right of way line.

## **Improvements**

The following clause will be added to the agreement where the landowner has agreed to retain the improvements. Improvements having no salvage value will be automatically reserved without the required performance bond.

"The landowners reserve unto themselves, their heirs and assigns all shrubs, trees, sheds, barns, residence and all other improvements, including personal property, located in the described right-of-way, with the right and subject to the duty to remove all of said improvements and personal property located upon the described right-of-way prior to the \_\_\_\_day of \_\_, 20\_\_\_\_. Any and all such improvements and personal property remaining upon the described right-of-way on (the \_\_\_\_day of \_\_, 20\_\_\_\_) shall on that date become the property of the Department to dispose of as may be necessary. The Department will withhold a sum equal to the estimated cost of removal of said improvements from the consideration stated on the agreement, as a performance bond, which amount will be paid to landowners upon completion and acceptance of removal of said





improvements. Before final payment is made, approval of the Lands Management Administrator must be given in writing. Failure to remove the said improvements and personal property will result in the forfeiture of that portion of the money withheld as performance bond required to remove said and personal property. Balance of the money withheld will be paid to the landowners after removal by Department or its contractors.”

Or Should the Landowners desire to retain and remove said improvements, the Department hereby agrees to sell to the Landowners the salvage rights to the above described improvements in total for the sum of \$850.00. Said \$850.00 which will be deducted from the compensation stated herein below.

Landowners must remove said improvements no later than (Date).

In the event improvements are not removed by (Date), the improvements will become the property of the Department and will be disposed of as deemed necessary by the Department. Should Department have to exercise this option, no refund of the Landowners’s payment for salvage rights shall be made by the Department. Landowners payment for salvage rights shall be considered as a performance bond for the removal of stated improvements in the event the Department has to remove said improvements.

If a residence, business establishment or other major improvements with salvage are being acquired by the Transportation Department as part of the right-of-way acquisition, the negotiator will make the following additions to the Agreement at the time Agreement is reached.

(1) A general description of the structure being conveyed, (2) a description of the fixtures and personal property to be included in the sale, (3) a stipulation that the landowner will be obligated to pay all utility charges up to and including the date set for vacation, (4) a stipulation that the landowner has the right to occupy the premises up to the date specified by the Lands Management Administrator, (5) a stipulation that the landowner will pay all interest on mortgages or on contract indebtedness that may be due and owing at the time of delivery of the deed, (6) a stipulation that the landowner will be responsible to clear all unpaid installments of special improvements and assessment levied and assessed against the premises, and (7) a stipulation that the landowner will carry fire and extended insurance coverage on the property until the date fixed for vacation or sale, with a loss payable clause to the Department.

### **Stockpass**

The following clause will apply on all highways where the Department intends to construct a separate stockpass structure for landowner’s personal use.



"The Department will construct a x \_\_\_\_ (R.C.) (S.P.P. arch pipe) Box stockpass at the following location: (1) Station \_\_\_\_ . The structure will be wing fenced to allow free movement of livestock."

### **Machinery Pass**

The following clause will apply generally to interstate highway projects only, where the Department intends to construct a separate machinery pass structure for a landowner's personal use. Machinery pass structures are ordinarily built for necessity of year around use and such structures are winter maintained, but secondary to the main facilities.

"The Department will construct a machinery pass type structure of 14'-6" maximum clearance at the following location: (1) Station \_\_\_\_ . Winter maintenance will be provided when requested after main facilities have been cleared by the Department"

### **Dual-Use Structure**

The following clause is used where a separate stockpass; cannot be justified and it is combined with an enlarged drainage structure to accommodate a dual use. This is applicable on all highway projects.

"The Department will construct a - S.P.P. for drainage at approximate Station - and the invert will be paved for dual use as drainage and stockpass. Winter maintenance of the structure will be provided when requested, subject to established maintenance priorities."

### **Cattleguards**

The following clause may be used where replacements of existing cattleguards or new cattleguards are a part of the design plans, or where the landowner is willing to pay for the same through a reduction of the total purchase price, by the estimated cost, where one does not exist.

"The Department will provide and install a cattleguard in the approach Rt. of Station \_\_\_\_ with a dropwire gate adjacent."

### **Other Than Ordinary Gates**

The following clause may be used where replacement of existing swinging gates or new steel gates are a part of the design plans, or where the landowner is willing to pay for same through a reduction of the total purchase price, by the estimated cost, where one does not exist.

"The Department will provide and install a [state size of gate] steel gate in the approach Rt. of Station \_\_\_\_ ."





### **Old Road Obliteration**

The following clause may be used where the Department intends to obliterate the old road affecting an ownership as a part of the construction contract. Unless specific provisions are made for salvage of existing fence for the landowner, the removal is as per standard specification in the contract. "The Department will obliterate the existing road on the left or southerly side between Station and . Contractor will salvage in a reasonable workmanlike manner and store fence materials for landowner's use at a mutually agreed upon location."

### **Irrigation Ditch**

The following clause may be used where the landowners accept damages for their own restoration of irrigation facilities outside the right-of-way in lieu of the Department restoring the irrigation system in accordance with Item 6 of the Memorandum of Agreement. "As an amendment to Item contained herein, the Department will construct an irrigation siphon at Station, at determined elevations, for delivery of water to the limits of the right-of-way and the landowner accepts in lieu of payment (damages), which are included herein, and agrees to reconstruct all other irrigation facilities which are affected outside the limits of the right-of-way at no additional cost to the Department."

### **Private Utility Crossing**

The following clause may be used where the landowner requests a new private utility crossing of the right-of-way, which is subject to Transportation Department licensing requirements.

"Parties hereto agree that the landowner will be given the opportunity to install a pipeline to be encased in a sleeve for the width of the described right-of-way crossing at Station , said sleeve will extend from right-of-way line to right-of-way line. All costs of the installation are to be borne by the landowner. The installation is to be completed within 20 days of the date on which the Transportation Department Engineer in charge of construction gives notice to the landowner to proceed with the said installation to the line and grades established by said engineer. As a condition of this agreement, the landowner will be subject to making application through the Transportation Department District Office for the necessary license." Where applicable, this clause may be altered to commit the Department to install the sleeve.

### **Construction Permits**

The following clause is to be used and modified to fit the condition for various types of construction permits outside the right-of-way necessary for channel change, detours, slopes, drains, approaches, trail roads, etc., required as a part of the design plans.





**“The Landowner hereby grants permission to the Department, its agents, and contractors to enter upon the following described areas for construction purposes as stated. Permits for said areas are to be located outside of and adjacent to the right-of-way line.**

**A parcel of land 50 feet wide lying on the right or southerly side adjacent to the proposed right-of-way line from the west boundary of Lot 20 of Sec. 24, Dependent Resurvey T. 21 N., R. 88 W. to Engineering Station 4734+50. The purpose of permit is to do drainage work. Said permit contains 250 square feet, more or less.**

**A parcel of land 150 feet wide lying on the right or southerly side adjacent to the proposed right-of-way line from Engineering Station 4737+00 to the east boundary of Lot 20, of Sec. 24, Dependent Resurvey T. 21 N., R. 88 W., located in said Lot 20. The purpose of permit is to construct, blend and slope approach. Said permit contains 0.2 acres, more or less.**

**Prior to the start of construction, permit area(s) will be temporarily fenced as deemed necessary by the Department. All disturbed area(s) will be sloped, blended and reseeded where feasible prior to completion of the above referenced project. The Landowner may remove and retain the temporary fencing after seeding has emerged or within three years after completion of construction, whichever is most favorable to Landowner. Should the temporary fence not be removed by Landowner within three years, Landowner hereby grants permission to the Department, its agents and contractors the right of ingress, egress, and regress to the Landowner's property beyond the right-of-way boundary in order to remove said temporary fence. Said permission shall allow the Department to exercise this right at its discretion, but in no way obligates or requires the Department to enter upon the Landowner's property and remove said temporary fence. Landowner and his assigns hereby agree not to withhold permission or inhibit the Department from exercising this right should the Department opt to remove the fence at a future time. It is hereby agreed that, should the Department remove the temporary fence, the materials removed shall be the property of the Department to be disposed of at its discretion.”**

#### **Quiet Title Actions**

**The following clause is to be used where the landowners are required to perfect their title to the property and the Department participates in this cost.**

**“Parties hereto agree that, should title examination disclose a title defect, the landowner will join with the Department to institute a quiet title action to clear same, and that the Transportation Department will pay all reasonable cost of said quiet title action.”**





### **Severance of Irrigation**

The following clause would apply where the Department determines it would be more economical to sever a ditch rather than to provide the crossing in lieu of the Transportation Department restoring the irrigation crossing, in accordance with Item \_\_\_\_ of the Memorandum of Agreement.

“Parties hereto agree that as an amendment to Item \_\_\_\_ herein, the consideration for this acquisition includes damages in full for the severance of the irrigation ditch crossing at Engineering Station \_\_\_\_, as shown on Exhibit “A” plans. No culvert will be provided.” *It should be made clear that compensation includes landowner compliance with all applicable state engineer laws.*

### **Separation and Interchange Structures**

The Right-of-Way Program does not determine the public necessity for or justify separations or traffic interchanges shown as a part of the design plans. There are no rights superior or equal to the public rights in the use of such facilities, even though they might be located on private property. *They, therefore, should not be mentioned in Memorandums of Agreement since such facilities are not a condition of the settlement.* If a landowner requires assurance that such a facility will be constructed, notation may be placed upon the agreement at their insistence.

### **Bridges**

The following clause will apply where the Transportation Department proposes to provide passage for stock or machinery, for private use, in the design of a bridge structure.

“The Department will construct an access road berm for machinery and stock use on the north side of the stream under the proposed Bear River bridge, to be constructed at Engineering Station \_\_\_\_.”

### **New Irrigation Crossings**

The following clause will apply where the landowner requests a new irrigation crossing of the right-of-way which is subject to Department licensing requirements.

“The landowner will be given the opportunity to install an irrigation culvert crossing at Engineering Station \_\_\_\_\_. All costs of the installation are to be borne by the landowner. The installation is to be completed within 20 days of the date on which the Transportation Department Engineer in charge of construction gives notice to the landowner to proceed with said installation. As a condition of this agreement, the landowner will be subject to making application through the Transportation Department District Office for the necessary license and will be subject to the provisions of said license. Negotiator will assist in submitting application, if requested.”



### **Ranch Roads**

The following clause would apply where the landowner accepts damages for his own restoration of a ranch road outside the right-of-way, in lieu of the Transportation Department constructing the road as part of the construction contract, under a construction permit. "The landowners hereby accept damages included herein for their replacement and construction of ranch roads Lt. of Station - to Station and Rt. of Station - to Station Acceptance of damages by landowners absolves the Department from further responsibility for construction of the road."





## **BLM Land Acquisition Transfer Steps – Highway Easement Deed (HED)**

1. Receive the Acquisition file from the Engineering Tech. This file should include Landowner Exhibit, Topo Map of scale 1" = 2000', filing map signed by State Land Surveyor, and a parcel summary showing acreage of the taking.
2. Identify how the existing r/w is held. If by Letter of Decision or Letter of Consent and copy is not in the file, obtain a copy. How we hold the existing r/w will determine what type of application you make. It could be a new application; an amendment to an existing Serial No. (WYW/WYE-\_\_); or you could ask to supersede the existing Serial No.
3. Compute acreage of the acquisitions or construction permits using the Parcel Summary.
4. Draft application letter along with exhibits. Give a copy of the entire packet to the engineering tech to check the sizes and legal description in your letter to make sure there are no mistakes.
5. Send the application letter in WORD format to FHWA contact. FHWA contact will place a signature acknowledging receipt and beginning the 4 month acquisition timeframe outlined in the most current BLM/FHWA/WYDOT Memorandum of Understand (MOU).
6. Send application packet to BLM field office by certified mail, and place scanned copy in the ROW Document Management System. The application should include two copies of the environmental document (CE, FEIS, etc.) Follow up in about a week to make sure it was received and complete.
7. Agent should monitor the time frame for the application, and be responsive to issues or questions. Based on our MOU, the BLM has 4 months to approve the application or it can be taken by FHWA.
8. Upon receipt of the Letter of Consent (LOC), check the legals against the legals on your application letter to make sure everything is correct. Send copies of the LOC along with Stipulations, if any, to the Resident Engineer and Project Development Squad Leader for review. If PD and the RE are not agreeable to the Stipulations, the Agent will need to file an appeal with the BLM. Environmental Services can help with this, but it is the Agent's responsibility to file the appeal.
9. Update the Highway Easement Deed prepared by the Engineering Tech and attach the filing map stamped and signed by the State Land Surveyor. If only a few Stipulations, add to the Deed and delete the part in red of Item (5). If there are a number of Stipulations, attach as appropriate Exhibit "?" and leave the part in red but change to black. If the project includes construction permits as well, a Temporary Construction Easement Deed will be necessary as well.
10. Send a cover letter with the HED, filing maps, and a copy of the LOC to FHWA Division Administrator requesting signature.



11. Once HED is returned signed by FHWA, send executed HED to WYDOT AG for his review and signature. Once signed by the AG, send to the WYDOT Assistant Chief Engineer along with approved Memo requesting signature. The Assistant Chief Engineer's signature will need to be notarized.
12. Once fully executed, send Highway Easement Deed to county courthouse for recordation.
13. Send copies of the recorded deed to the BLM Field Office. Send cover letter and copy of deed to FHWA, and copy to the District Maintenance Engineer for the appropriate District.



## **BLM Land Acquisition Transfer Steps – Temporary Construction Easement Deed (TCED)**

1. Receive the Acquisition file from the Engineering Tech. This file should include Landowner Exhibit, Topo Map of scale 1" = 2000', and a parcel summary showing acreage of the permit.
2. Identify how the existing r/w is held. If by Letter of Decision or Letter of Consent and copy is not in the file, obtain a copy. How we hold the existing r/w will determine what type of application you make. It could be a new application; an amendment to an existing Serial No. (WYW/WYE-\_\_\_); or you could ask to supersede the existing Serial No.
3. Compute acreage of the construction permits using the Parcel Summary
4. Draft application letter along with exhibits. Give a copy of the entire packet to the engineering tech to check the sizes and legal description in your letter to make sure there are no mistakes. Send the application letter in WORD format to FHWA contact. FHWA contact will place a signature acknowledging receipt and beginning the 4 month acquisition timeframe outlined in the most current BLM/FHWA/WYDOT Memorandum of Understanding (MOU).
5. Send application packet to BLM field office by certified mail, and place a scanned copy into the ROW Document Management System. The application should include two copies of the environmental document (CE, FEIS, etc.) Follow up in about a week to make sure it was received and complete.
6. Agent should monitor the time frame for the application, and be responsive to issues or questions. Based on our MOU, the BLM has 4 months to approve the application or it can be taken by FHWA.
7. Upon receipt of the Letter of Consent (LOC), check the legals against the legals on your application letter to make sure everything is correct. Send copies of the LOC along with Stipulations, if any, to the Resident Engineer and Project Development Squad Leader for review. If PD and the RE are not agreeable to the Stipulations, the Agent will need to file an appeal with the BLM. Environmental Services can help with this, but it is the Agent's responsibility to file the appeal.
8. Update the Temporary Construction Easement Deed prepared by the Engineering Tech and attach the colored plan sheets showing the permit areas. If only a few Stipulations, add to the Deed and delete the part in red of Item (5). If there are a number of Stipulations, attach as appropriate Exhibit "?" and leave the part in red but change to black.
9. Send a cover letter with the TCED, Exhibit, and a copy of the LOC to FHWA Division Administrator requesting signature.
10. Once TCED is returned signed by FHWA, send executed TCED to WYDOT AG for his review and signature. Once signed by the AG, send to the WYDOT Assistant Chief





Engineer along with approved Memo requesting signature. The Assistant Chief Engineer's signature will need to be notarized.

11. Keep executed copy of TCED in file. Periodically contact the R.E. to see if construction and reclamation is complete. When complete, the Termination and Release of Temporary Construction Easement must be executed by WYDOT and the FHWA. Draft a Memo to the Assistant Chief Engineer requesting his signature on the termination.
12. When WYDOT executed TCED is returned, prepare a cover letter to the FHWA for their execution of the Termination.
13. Upon receipt of the executed TCED, mail copies to the BLM Field Office, WYDOT Maintenance Engineer, and a copy of the transmittal letter to BLM and Deed to FHWA.



## **USFS Land Transfer Steps – Easements**

1. Receive the Acquisition file from the Engineering Tech. This file should include Landowner Exhibit, Topo Map of scale 1" = 2000', filing map signed by State Land Surveyor, and a parcel summary showing acreage of the taking.
2. Identify how the existing r/w is held. If by Letter of Decision or Letter of Consent and copy is not in the file, obtain a copy. How we hold the existing r/w will determine what type of application you make. It could be a new application; an amendment to an existing; or you could ask to supersede the existing authorization. Also check to see if the permanent right of way is held under a Highway Easement Deed or a Special Use Permit. If by Special Use Permit, we may need to begin the process of converting to a Highway Easement Deed.
3. Compute acreage of the acquisitions or construction permits using the Parcel Summary.
4. Draft application letter along with exhibits. Give a copy of the entire packet to the engineering tech to check the sizes and legal description in your letter to make sure there are no mistakes.
5. Send application letter along with exhibits and environmental document to FHWA with cover letter requesting the application be forwarded on to the appropriate USFS office. FHWA will send a cover letter copy back to show the application was sent to the USFS. Follow up by calling the USFS office to confirm their receipt of the application.
6. Agent should monitor the time frame for the application, and be responsive to issues or questions. Based on MOU 15-MU-11020000-029, the USFS has 4 months to approve the application or it can be taken by FHWA.
7. Upon receipt of the Letter of Consent (LOC), check the legals against the legals on your application letter to make sure everything is correct. Send copies of the LOC along with Stipulations, if any, to the Resident Engineer and Project Development Squad Leader for review. If PD and the RE are not agreeable to the Stipulations, the Agent will need to file an appeal with the USFS. Environmental Services can help with this, but it is the Agent's responsibility to file the appeal. If there is a Special Use Permit issued along with the LOC, Tammy Hooper with Risk Management will need to review the document to make sure the appropriate insurance is acquired. Only Special Use Permits require this step.
8. Sometimes we have to clear timber for the project and if so, the USFS will send a contract and you will have to make a timber payment.
9. The Agent will need to contact the R.E. periodically to find out when construction is completed. When complete, prepare a Highway Easement Deed and attach the filing map. If only a few stipulations, add to the Deed and delete the part in red of Item (5).



If there are a number of stipulations, attach an appropriate Exhibit “?” and leave the part in red but change to black.

10. Send a draft of Easement with filing maps to the appropriate USFS office for their review. If they want changes, make them if acceptable.
11. When you receive final approval from the USFS, send letter with Deed, filing map, and a copy of the USFS approval letter to FHWA requesting their execution of the Deed, mail by inter-office mail.
12. First send FHWA executed Deed to our AG for review and signature, then approved Memo with Deed to Assistant Chief Engineer requesting execution. Assistant Chief Engineer’s signature will need to be notarized.
13. Upon receipt of fully executed Deed, send for recordation.
14. Upon return of recorded Deed, mail copy of the recorded Deed to the appropriate USFS office and a copy of the transmittal letter and Deed to FHWA.





## **USFS Land Transfer Steps – Special Use Permits**

The Forest Service only uses Special Use Permits and not Temporary Construction Easement Deeds, therefore, applications for SUPs are not under Title 23, do not have to go through FHWA and do not have a requirement to reply within four months.

1. Receive file from Engineering Technician.
2. Identify how existing right of way is held. If by Letter of Decision or Letter of Consent and a copy is not in the file, obtain a copy.
3. Compute the acreage of the permit area using the Parcel Summary.
4. Draft Application letter and give entire packet to Engineering Technician to check computations.
5. Send the application letter directly to the appropriate USFS field office by certified mail. The application must include exhibits showing the requested permit area(s), a topographic map exhibit, and the environmental clearance document (Cat Ex, FONSI, EA, etc.).
6. Sometimes you will receive a letter back from the Forest Service requesting payment for processing the application. Send a letter explaining that WYDOT is a governmental agency, and we don't charge them so they shouldn't charge us (Cost Recovery Waiver Letter).
7. Upon receipt of the SUP, proof and if corrections are needed return to the Forest Service field office as they will make the corrections and send a new one. Always read the SUP and if anything is out of the ordinary run it by the Resident Engineer to see if acceptable. Pay attention to any Stipulations.
8. If no corrections are needed, send to State of Wyoming Risk Management for review and to get the appropriate insurance.
9. Once Risk Management has reviewed and is finished, send to the Attorney General's office for review and signature.
10. Once AG's office has completed review, sign SUP and return to the Forest Service Field Office for signature.
11. Upon receipt of fully executed SUP, email copies to Project Development and Resident Engineer.
12. Sometimes we have to clear timber for the project, and if so, USFS will send a contract and we will need to make timber payment.
13. Sometimes the SUP is only for a short term, some Forest Service District will not renew a SUP and if it expires before the project is completed, you will need to re-apply.
14. The SUP does not go into the Blue Folder since it expires and is not recorded.



## **State Lands Transfer Steps – Permanent Easements**

1. Receive Acquisition File from Engineering Technician.
2. Identify how the existing right of way is held. If by State Lands Grant of Easement and a copy is not in the file, obtain a copy.
3. Check “Surface Lessee” information on the State Lands Website to obtain the address, phone number, and lease number for each Surface Lessee affected. State Lands can be contacted directly for this information if necessary.
4. Compute acreages from the Parcel Summary and payment for each Lessee.
5. Print off colored exhibits for each Surface Lessee affected.
6. Draft Letter and Surface Lessee Notification and Comment Form and send by Certified Mail with stamped self-addressed return envelopes for each Surface Lessee. If applying for easement only, no surface damage payment is necessary. If acquiring Temporary Use Permits (Construction Permits) along with Easement the TUP areas will need a damage payment.
7. If returned Surface Lessee Notification and Comment Form has negative comments, these must be addressed before application can be sent to State Lands.
8. Upon receipt of Lessee’s form or 10 days after date lessee receives letter, whichever comes first, compute numbers for State Lands application.
9. Draft application letter and exhibits and give to Engineering Technician for checking. Include returned Lessee Notification and Comment Forms or proof sent by certified mail. Process Payment to State Lands and filing fee (currently \$50.00 per application) and send along with application letter. State Lands will not process application without payment up front. Send to State Lands by inter-office mail.
10. Upon receipt of preliminary approval from State Lands, update information in BEM. Parcel is “Clear,” and awaiting Final Approval. Transmit Preliminary Approval documents to PD, RE, DE, and ROW Staff.
11. Upon receipt of Final Approval from State Lands, update information in BEM and transmit approval to the field.
12. Once construction is complete, check to make sure project was constructed as originally applied for, and Filing Map is correct. If so, send the “Easement Post Construction Report” along with Mylar Filing Maps and legal description of the Easement to State Lands by Interoffice mail.
13. Check with State Lands to make sure the Easement is being processed. Once you receive the “Grant of Easement” document back from State Lands, check the document for errors. If errors, work with State Lands to correct. If no errors, send the document to the County for recording.
14. Once recorded, place recorded document and other pertinent information into Falcon and Blue Folder.



## **State Lands Transfer Steps – Temporary Use Permits (TUP)**

1. Receive Acquisition File from Engineering Technician.
2. Identify how the existing right of way is held. If by State Lands Grant of Easement and a copy is not in the file, obtain a copy.
3. Check “Surface Lessee” information on the State Lands Website to obtain the address, phone number, and lease number for each Surface Lessee affected. State Lands can be contacted directly for this information if necessary.
4. Compute acreages from the Parcel Summary and payment for each Lessee.
5. Print off colored exhibits for each Surface Lessee affected.
6. Draft Letter and Surface Lessee Notification and Comment Form and send by Certified Mail with stamped self-addressed return envelopes for each Surface Lessee.
7. If returned Surface Lessee Notification and Comment Form has negative comments, these must be addressed before application can be sent to State Lands.
8. Upon receipt of Lessee’s form or 10 days after date lessee receives letter, whichever comes first, compute numbers for State Lands application. Each Surface Lessee will need to be paid damages. Payments for damages to Lessees is \$10.00 per acre or \$100.00, whichever is greater. State Lands does not accept rounding, everything must be calculated to the cent.
9. Draft application letter and exhibits and give to Engineering Technician for checking. Include returned Lessee Notification and Comment Forms or proof sent by certified mail and proof of payment to Lessees’. Process Landowner Payment and State Lands filing fee (currently \$50.00 per application) and send along with application letter. State Lands will not process application without payment up front. Send to State Lands by inter-office mail.
10. Upon receipt of preliminary approval from State Lands, update information in BEM. Parcel is “Clear,” and awaiting Final Approval. Transmit Preliminary Approval documents to PD, RE, DE, and ROW Staff.
11. Upon receipt of Final Approval from State Lands, update information in BEM and transmit approval to the field.
12. When the term of the TUP is almost up, State Lands will send you a letter asking if you want to renew. Check with the R.E., and if he/she needs a renewal, then process. Same letter content, same form content, same payment steps, same process except for the Lessee steps. You do not have to work with the Lessee again, they are only a one time negotiation payment. If you do not need to renew, just send a non-renewal letter and then when the term is up, close the file.





# Part VII

## Relocation Assistance

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# Part VII:

## Relocation Assistance

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### A. PURPOSE

This manual identifies the responsibilities and outlines the procedures for implementing the Wyoming Relocation Assistance Act of 1973 and 1989 amendments thereto. The act implements Relocation Assistance for persons, businesses, farms and nonprofit organizations displaced as a result of Federal-aid and state transportation programs within the State of Wyoming.

### B. AUTHORITY

The Wyoming Relocation Assistance Act of 1973 and 1989 amendments thereto conform with the Federal Uniform Relocation Assistance Real Property Acquisition Policies Act of 1970 and 1987 amendments thereto, including the Department of Transportation (DOT) Final Rule 49 CFR, Part 24, which became effective on March 2, 1989 and March 15, 1999 and February 3, 2005, respectively.

### C. ADMINISTRATION

The Right-of-Way Administrator is responsible for implementation of the relocation assistance program. The Project Managers are responsible for carrying out the provisions of this manual within the Right of Way Program. One or more of the R/W Agents will be Responsible for relocation assistance duties. A project relocation office will be established when necessary. The Right of Way Administrator will approve the determination. The project office will be established at a location and time convenient to the project residents, including evenings if necessary. It is anticipated that such offices will be established only on larger urban projects with numerous displacees. It is not anticipated that relocation services will be provided on a contract basis with any individual, firm, corporation or government agency. However, if it becomes necessary to employ one of these entities to perform relocation services on federally and/or state funded projects, the Right-of-Way Administrator must approve the contract for such services. If land has been purchased and cleared by a public agency prior to the location of a right-of-way line, relocation assistance may be handled by the public agency in accordance with local procedures. If land has been purchased and acquired by a public agency after notification from the Wyoming Department of Transportation of the location of a proposed highway, relocation may be handled by the Wyoming Department of Transportation. If the public agencies have limited or no



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capability to administer assistance, it will be provided by the Wyoming Department of Transportation's Right-of-Way Program.

For the purpose of this directive the following terms are defined:

### D. DEFINITIONS

#### **Appraisal**

A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of adequately described property as of a specific date supported by the presentation and analysis of relevant market information. The appraisal itself is to be done before the negotiations for purchase of the real property to be acquired are initiated and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. An appraisal is not required if the owner is donating the property and releases the Department from this obligation or the Department determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$10,000 or less, based on a review of available data.

#### **Person**

An individual, family, partnership, company, corporation, or association.

#### **Family**

Two or more individuals related by blood or legal ties who live together as a family unit in a single household plus all other individuals regardless of blood or legal ties who live with them and are considered part of the family unit or two or more individuals not related by legal or blood ties who live together by mutual consent.

#### **Displaced Person**

Any person who moves from real property or moves his/her personal property from real property, a dwelling or a seasonal residence as a result of the acquisition of the realty, in whole or in part, for a Federal or State Project; or as a result of the initiation of negotiations which includes the announcement of relocations due to hazardous materials; or as a result of rehabilitation or demolition for a project; in the case of a partial acquisition, the Department will determine whether the person is displaced as a direct result of the partial acquisition; or as a result of a written order from the Department to vacate such real property for the project; or as a result of the Department's acquisition of rehabilitation or demolition of, or written order to vacate other real property for a project on which the person conducts a

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business, farm operation or is a nonprofit organization. In this last instance, eligibility as a displaced person applies only for purposes of obtaining relocation advisory services and moving expenses. Also, a person may qualify as a displaced person if the property must be acquired for a Federal or federally assisted program or project regardless of

- whether Federal funds contribute directly to the payment for the property; or
- whether the property is acquired by a Federal or State agency; or the method of acquisition; or
- the name or status of the person who acquires or holds title to the property.

Any person who does not meet the occupancy criteria as described above is not a displaced person for the purposes of relocation assistance.

As applied to the Department's relocation assistance program there are non-exclusive provisions concerning persons not displaced. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

- a) A person who moves before the initiation of negotiations, unless the Department determines that the person was displaced as a direct result of the program or project; or
- b) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or
- c) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act; or
- d) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Department in accordance with any guidelines established by the Federal agency funding the project; or
- e) An owner-occupant who moves as a result of an acquisition as described, or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.); or
- f) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or
- g) A person who, after receiving a notice of relocation eligibility, is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not



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moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

- h) An owner-occupant who voluntarily conveys his or her property, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or
- i) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or
- j) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303, except that such owner remains a displaced person for purposes of subpart D of this part; or
- k) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, under applicable law;
- l) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with CFR, Subpart C, Sec. 24.208; or
- m) Any person, other than a person who was an occupant of the property at the time it was acquired, who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

### **Initiation of Negotiations For The Parcel**

The date that the first personal contact is made with the owner of real property or his designated representative to make a written offer for the property to be acquired. This date is also inclusive of the following:

- means formal announcement of permanent relocations necessary for the protection of the public health and welfare or federally coordinated health advisory where the Federal Government decides to conduct a permanent relocation;

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- is the date the person moves after being notified by the Department in one way or another of the Department's intent to acquire real property, if he moves prior to receipt of the initial written offer;
- means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property whenever such displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property and there is no related acquisition by a federal agency or a state agency.

### **Displacee**

The term "displacee" means any person who meets the definition of a displaced person.

### **Dwelling**

The place of "customary and usual abode" - it includes any single family house, a single family unit in a multi-family building, a unit of a condominium or cooperative housing project, a mobile home, or another residential unit.

### **Comparable replacement Dwelling** - one which is:

- Decent, safe and sanitary.
- Functionally equivalent to the displacement dwelling with respect to number of rooms and area of living space i.e. means that comparable replacement property performs the same function, provides the same utility, and is capable of contributing to a comparable style of living as for the displacement property.
- Fair Housing - open to all persons regardless of race, color, religion, sex, or national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968.
- In areas not generally less desirable than the dwelling to be acquired in regard to Public utilities, Public and commercial facilities or in areas subject to adverse environmental conditions.
- Reasonably accessible to the displacee's place of employment.
- In an equal or better neighborhood, not subject to unreasonably adverse environmental factors; or to the extent feasible, be selected from the neighborhood where displacement dwelling is located.
- Adequate to accommodate the displacee and currently available on the market to the displaced person.
- On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, and greenhouses.
- Within the financial means of the displaced person by which displacee is made whole and explained as follows:

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- A replacement dwelling purchased by a homeowner in occupancy for at least 90 days prior to initiation of negotiations is considered to be within the homeowner's financial means if the homeowner is paid the full purchase differential, all increased mortgage interest cost, and all incidental expenses, plus any additional amount required to be paid under Last Resort Housing.
- A replacement dwelling rented by a displaced person is considered to be within his or her financial means if the monthly rent at the replacement dwelling does not exceed the base monthly rent at the displacement dwelling as described under the Rental Assistance Payment Section of this manual. For a person who paid little or no rent before displacement, the market rent of the displacement dwelling shall be used when computing costs.

### **Contributes Materially**

The term "contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs, or during such other period as we determine to be more equitable, a business or farm operation:

- Had average annual gross receipts of at least \$5,000; or
- Had average annual net earnings of at least \$1,000; or
- Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.
- If the above criteria creates an inequity or hardship in any given case, the Department may approve the use of other criteria as determined appropriate.

### **Business**

A lawful activity, except a farm operation, conducted:

- Primarily for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
- For the sale of services to the public;
- By a nonprofit organization; or
- For assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted.

### **Nonprofit Organization**

A corporation, partnership, individual or other public or private entity, engaged in a business, professional or instructional activity on a nonprofit basis, which requires fixtures, equipment, stock in trade or other tangible property for the carrying on of the business, profession, or institutional activity on the premise.

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### **Farm Operation**

Any activity conducted solely or primarily for the production of one or more agricultural products or commodities (including timber) for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operators support.

### **Federal Financial Assistance**

A grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

### **Mortgage**

Such classes of liens and credit instruments commonly given to secure advances on, or secure the unpaid purchase price of real property under the laws of the State of Wyoming together with the credit instruments, in any, secured thereby.

### **Owner**

A person who:

- Owns, legally or equitably, the fee simple estate, a life estate, a 99 year lease or lease with at least 50 years to run from date of acquisition of the property, or other proprietary interest in the property; or
- Is the contract purchaser of any of the foregoing estates or interests; or
- Has succeeded to any of the foregoing interests by device, bequest, inheritance or operation of law. When his interest is obtained in this manner the tenure or ownership, to occupancy of the succeeding owner, shall include the tenure of the preceding owner of the purposes of relocation assistance administration; or
- Has any other interest, including a partial interest, which in the judgment of the Department warrants consideration as ownership.

### **Existing Patronage**

The net annual average dollar value of business transacted during the two taxable years immediately preceding the taxable year in which business is displaced.

### **90-Day Owner**

A person who has owned and occupied the dwelling from which he is being displaced for at least 90 consecutive days immediately prior to the initiation of negotiations.



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### **Tenant**

Tenant means a person who has temporary use and occupancy of real property owned by another.

### **Last Resort Housing**

Authorization for the construction, purchase and/or rehabilitation of dwellings as replacement housing units for highway displacees. When such displacees, including displacees of less than 90 days at time of initiation of negotiations, cannot afford comparable replacement housing (buy or rent as the case may be) using their own funds as determined by the Department, they are eligible to receive Last Resort Housing (LRH) on a reasonable cost basis. LRH allows the Department to take whatever action is necessary or appropriate to provide needed housing for eligible displacees, which is particularly useful when no comparable replacement dwellings are available to the displacees.

### **The Department**

The Wyoming Department of Transportation

### **The Commission**

The Transportation Commission of Wyoming

### **Relocation Agent**

An employee of the Wyoming Department of Transportation, assigned to the relocation assistance section as an agent of the Department.

### **FHWA**

Unless otherwise indicated, the Division Office of the Federal Highway Administration, Cheyenne, Wyoming.

### **Federally Funded Projects**

All projects on which any phase of the project receives federal funds and includes interstate highway construction and federal aid projects. In jointly-funded projects involving two or more Federal agencies that perform the same function where acquisition of real property or displacement results, the agencies may agree to appoint a cognizant Federal agency to administer the funds to the acquiring or displacing agency in accordance with federal regulations concerning relocation. The cognizant Federal agency will ensure that the displacing agency complies with Uniform Act and resultant regulations.

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### **Vacation Date**

Date Occupancy is Terminated.

Any person deemed eligible for relocation assistance at date of the initiation of negotiations will remain so even if evicted for cause on or after the date of the initiation of negotiations unless the Department determines that:

- 1) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
- 2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
- 3) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in these regulations.

### **Federal Waiver of Regulations**

Any part of Federal regulations concerning relocation not required by law, can be waived on a case by case basis by the Federal agency funding the project, if the agency determines that such a waiver does not reduce any assistance or protection available to an owner or displaced person.

**“Program or Project”** in this context means any activity or series of activities undertaken by the Department with Federal Financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal agency guidelines.

**“Salvage Value”** means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer’s expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

**“Small Business”** means a business having at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project.

**“Uneconomic Remnant”** means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the Department has determined has little or no value or utility to the owner.

**“Unlawful Occupancy”** a person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is



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determined by the Department to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. The Department may, at its discretion, consider such a squatter to be in lawful occupancy.

**“Utility Costs”** means expenses for heat, lights, water and sewer.

**“Utility Facility”** means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

**“Utility Relocation”** means the adjustment of a utility facility required by the program or project undertaken by the Department. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

### **Voluntary Sales**

Voluntary Sales are transactions that meet all of the following conditions:

- No specific site or property needs to be acquired, although the Department may limit its search for alternative sites to a general geographic area. Where a Department wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.
- The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- The Department will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- The Department will inform the owner of what it believes to be the fair market value of the property.

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### E. STANDARDS FOR DECENT, SAFE, AND SANITARY (DSS)

#### I. MINIMUM REQUIREMENTS

##### **MINIMUM REQUIREMENTS**

A decent, safe, and sanitary dwelling is one which conforms to state and local housing codes and ordinances, or if located where codes, ordinances or regulations are not applicable or are less restrictive, the following standards shall apply:

##### **Water**

Has a continuing and adequate supply of potable safe water.

##### **Kitchen Requirements**

Has a kitchen or an area set aside for kitchen which contains a sink in good working condition connected to hot and cold water, and an adequate sewage system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not required by local codes, or ordinances or custom, utility service connections and adequate space for the installation of such facilities shall be provided.

##### **Heating System**

Has an adequate heating system in good working order which will maintain a healthful temperature of approximately 70 in the living area under local outdoor design temperature conditions. Bedrooms are not included in the “living area” as referred to in this paragraph.

##### **Bathroom Facilities**

Has a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and flush toilet, all in good working order and properly connected to sewage disposal system.

##### **Electric System**

Has an adequate and safe wiring system for lighting and other electrical services. When the utility is not reasonably accessible and is not required by local codes, ordinances, or customs, an exception may be approved on a project basis.

##### **Structurally Sound**

Is structurally sound, weather tight, is good repair and adequately maintained.

##### **Egress**

Each building used for dwelling purposes shall have a safe, unobstructed means of egress leading to safe open space at ground

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level. In multilevel buildings of two stories or more access directly from or through a common corridor, the common corridor on each story must have two means of egress.

### **Habitable Floor Space**

Has adequate size with respect to the number of rooms and area of living space required to accommodate the displaced person(s) or family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes and excludes such enclosed places as closets, pantry, bath or toilet rooms, service rooms, connecting corridors, laundries and unfurnished attics, foyers, storage spaces, cellars, utility rooms, and similar spaces.

### **Rental Sleeping Rooms**

Have a dwelling be free of any barriers which would preclude reasonable ingress and egress for a handicapped displacee, or which would prevent use of the dwelling by a handicapped displacee.

The standards for decent, safe and sanitary housing as applied to rental sleeping rooms, shall be adhered to and will include:

### **Bathroom Facilities**

Lavatory, bath and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

### **Approval of Local Code**

In those instances where a local housing code does not meet all the standards listed in this paragraph but is reasonably comparable, exceptions may be requested on an individual parcel basis. On Federal-aid Projects, request for exceptions may be submitted to division office of FHWA. On State projects, the Right-of-Way Administrator will rule on the request for an exception.

### **Exceptions**

Exceptions may be granted to decent, safe and sanitary standards but requests should be limited to items and circumstances that are beyond the reasonable control of the displacees to adhere to. Approved exceptions shall not affect the computation of the replacement housing payment. In cases of extreme hardship or other similar extenuating circumstances, an exception to the decent, safe and sanitary characteristics of replacement housing may be permitted on a project or individual parcel basis. On

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federally funded projects, requests for exceptions will be submitted to the Division Office of the FHWA. On state financed projects, the Right-of-Way Administrator will make the decision.

### F. ASSURANCES OF ADEQUATE RELOCATION ASSISTANCE PROGRAM

Authorization will not be granted by the FHWA to proceed with any phase of any project or to proceed with construction on any federally funded project that will displace any person until certain assurances have been submitted. These assurances are normally submitted by the Department to the FHWA on a one time basis for state wide application and are as follows:

- Relocation payments and services were or will be provided as set forth in this directive and DOT Final Rule 49 CFR, Part 24.
- The public was or will be adequately informed of the relocation payments and services which will be provided as outlined in this manual.
- To the greatest extent practicable no person lawfully occupying real property shall be required to move from his dwelling, or to move his business or farm operation, without at least 90 days written notice.
- The Department will comply with the Uniform Act and program regulations, and will take whatever corrective action as is necessary in order to do so. The FHWA will monitor such compliance and may also apply sanctions in accordance with applicable program regulations.
- The Department will conduct its relocation program in a manner that minimizes fraud, waste, and mismanagement, and is in accordance with State Law.

### G. CONCEPTUAL STAGE AND FINAL ALIGNMENT SELECTION

The relocation assistance section, when requested by the Right-of-Way Administrator, will estimate the number of individuals, families, businesses, farm, and non-profit organizations to be displaced and the probable availability of decent, safe and sanitary housing for displacees located on the proposed right-of-way lines. The field work will be performed by a relocation agent. The work would involve a visual inspection of the alternate lines and an estimate of the approximate number of displacees for each

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alternate line. Personal contacts will not be made with any of the displacees during this inspection. The relocation agent will contact such local public and private agencies as necessary to make a reasonable determination as to the probable availability of decent, safe and sanitary replacement housing within the financial means of the potential displacees. Upon completion of the survey, the relocation agent will submit a written report of his findings to the Project Manager.

### 1. REPORT ON FINDINGS

#### REPORT ON FINDINGS

The Project Manager will review the relocation agent's report for accuracy and will submit the report to the Right-of-Way Administrator if deemed appropriate or necessary by the latter. The report will include:

- Estimate of households to be displaced, including the family characteristics (e.g., minorities, income levels, tenure, the elderly, large families).
- Divisive or disruptive effect on the community, such as separation of residences from community facilities or separation of neighborhoods.
- An estimate of the businesses to be displaced and the general effect of business dislocations on the economy of the community.
- A description of replacement housing in the area, and the ability to provide replacement housing for the types of families to be displaced.
- A description of special relocation advisory services that will be necessary for identified unusual conditions.
- A description of the actions proposed to remedy insufficient relocation housing, including, if necessary, housing of the last resort.
- Results of consultation with local officials, social agencies, and community groups regarding the impacts on the community affected.

### 2. THE CORRIDOR AND HIGHWAY DESIGN PUBLIC HEARINGS

#### THE CORRIDOR AND THE HIGHWAY DESIGN PUBLIC HEARINGS

The Right-of-Way Administrator or his designated representative will be present at these hearings and to discuss the following.

- Availability of relocation assistance, services, eligibility requirements and payment procedures.
- Estimated number of individuals, families, businesses, farm and nonprofit organizations that are to be relocated on each of the



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alternate lines, including on the final right-of-way alignment selected.

- The studies that have been or will be made and the methods that will be followed in order to assure that the various needs of the displacees are met. The current "Relocation" (your rights and benefits as a displaced person under the Federal Relocation Assistance Program), will be distributed without cost to all interested individuals and organizations at all public hearings.
- That no eligible displacees will be displaced from their residences unless comparable replacement dwellings have been made available to them.

### H. RIGHT-OF-WAY PHASE

After the road alignment has been selected and the project enters into the right-of-way phase, preliminary work can begin on the relocation plan and appraisals.

### I. THE RELOCATION INITIAL INTERVIEW AND PLAN

#### **THE RELOCATION INITIAL INTERVIEW AND PLAN**

Although the FHWA has eliminated the requirement of a written Relocation Plan to their office for applicable projects, the Department will still formulate a relocation plan for each project requiring relocation so as to differentiate between the real property to be acquired and the personal property to be moved. This plan will necessitate that either the Project Manager or Relocation Agent, attend the first meeting the appraiser(s) has with the owner, including any tenants in order to determine which is real property to be acquired and personal property to be moved for any type of relocation. The relocation agent will conduct a careful investigation of the owner's and tenant's property in order to make this determination and inform the appraiser accordingly. This interview and investigation can be done solely by the appraiser, if the Department determines that a Relocation Agent's expertise is not required. For individual or family relocations, the initial interview will document the determination of what is real property or personal property on a Record of Conversation. However, for a business, farm or non-profit organization, a preliminary inventory list will be made to discern between the realty and personalty along with a Record of Conversation. In this manner, problems concerning what is real or personal property and to whom it belongs, including owner's versus tenant's improvements or personal property, can be avoided when negotiations to acquire the owner's property are commenced.



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### 2. RELOCATION INTERVIEW AT INITIATION OF NEGOTIATIONS

#### RELOCATION INTERVIEW AT INITIATION OF NEGOTIATIONS

During this interview, the relocation agent will determine the qualifications and needs of the displacees, will offer relocation assistance and advisory services, and will discuss with the displacees the applicable payments and procedures. The relocation agent will complete a Record of Conversation on each contact with the displacee.

As a part of this interview, the relocation agent will make an inspection of the subject dwelling noting all major characteristics such as number of rooms, adequacy of living space, size of family, plumbing, heating, electric system, exterior attributes, water supply, kitchen arrangement, bathroom, basement, closets, utility room, attics, ventilation of rooms, means of egress and similar items. He will note the type of neighborhood and the relative accessibility to public services and places of employment.

### 3. THE RELOCATION SURVEY

#### THE RELOCATION SURVEY

The relocation agent will contact local agencies rendering services useful to the displacee. Such agencies will include social welfare, urban renewal, redevelopment authorities, public housing authorities, Federal Housing Administration, Veterans Administration and Small Business Administration. He will make contact with private real estate agencies, property managers, owners, and contractors, for property listings and such other sources of information as may be necessary. From these sources he will compile available regulations, booklets, pamphlets, literature, transportation schedules, and an inventory of available and comparable housing in the general neighborhood, and will make this information available to the displacee. He will personally inspect available housing in this inventory and will note the qualifications of each as to decent, safe and sanitary minimum requirements. He will analyze current and future federal, State and community programs operating in the project areas that might have an effect on the supply of available housing.

To the greatest extent possible, no person lawfully occupying real property shall be required to move from his dwelling, or to move his business, farm operation or non-profit organization, without at least 90 days written notice of the date such move is required.

The following information will be provided for each project, if deemed necessary by the Project Manager.

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- Current and continuing lists of replacement dwellings available to persons without regard to race, color, religion, or national origin drawn from various sources.
- Current and continuing lists of comparable commercial properties and locations for displaced businesses.
- Current data for such costs as security deposits, closing costs, typical down payments, interest rates and terms.
- Maps showing the location of schools, parks, playground, shopping and public transportation routes in the area where applicable.
- Schedules and costs of public transportation where applicable.
- Copies of the Department's brochure explaining its relocation program, local ordinances pertaining to housing, building codes, open housing, consumer education literature on housing, shelter costs and family budgeting.
- Subscriptions for apartment directory services, neighborhood and metropolitan newspaper, etc. In addition, multiple listing services shall be maintained where available.

### 4. RELOCATION ASSISTANCE AND ADVISORY SERVICES

#### RELOCATION ASSISTANCE AND ADVISORY SERVICES General

The services required herein are intended, as a minimum, to assist persons in relocating to decent, safe and sanitary housing that meet their needs. The services shall be provided by personal contact, except, if such personal contact cannot be made, the file shall be documented to show that reasonable efforts were made to achieve the personal contact.

### 5. TO WHOM PROVIDED

#### TO WHOM PROVIDED

Relocation assistance and advisory services shall be offered to:

- Any displaced person.
- Any person occupying property immediately adjacent to the real property acquired when such person or persons are caused substantial economic injury because of the acquisition, and
- Any person who, because of the acquisition of real property used for his business or farm operation, moves from other real property used for a dwelling, or moves his personal property from such other real property.

### 6. MINIMUM ADVISORY SERVICES REQUIREMENTS

#### MINIMUM ADVISORY SERVICE REQUIREMENTS

The relocation agent assigned to the project shall:

- Discuss and explain the services available, relocation payments and the eligibility requirements, and assist in completing any applications or other required forms.

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- Provide current information on a continuous basis regarding the availability, prices and rentals of comparable decent, safe, and sanitary housing, and of comparable commercial properties and locations for displaced businesses.
- Assist a person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location.
- Supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons.
- Advise displaced persons that no payments received under the Uniform Act shall be considered as income for the purposes of the Internal Revenue Code of 1954 or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.
- Provide other advisory services to displaced persons to minimize hardships to such persons in adjusting to a new location.
- Explain that advisory services shall be administered on a reasonable basis commensurate with the displacees' needs.
- Inform each displaced person in writing of the specific comparable replacement dwelling that has been made available to him or her and the amount of the replacement housing payment to which he or she may be entitled.
- Inform displacees that replacement housing is to be inspected prior to being made available to assure that it meets applicable standards. If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.
- Whenever possible, give minority persons reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration and that are within their financial means. However, the Department does not have to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.
- Inform all displaced persons, especially the elderly and the handicapped that transportation will be provided to inspect housing to which they are referred.

## 7. CIVIL RIGHTS

### CIVIL RIGHTS

Replacement housing will be open and extended to all races and sexes without discrimination. Fair housing discrimination complaints will be processed and displacees will be kept fully informed of the results early in the process of providing them with relocation services. Displacees will be informed of their fair housing rights and options in selecting replacement housing in areas of their choice in order to assure them that their fair housing

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rights are being protected in accordance with Title VI of the Civil Rights Act of 1968 and the HUD Amendment Act of 1974. Displacees will be assisted in such a manner so as to ensure against discriminatory practices on the basis of race, color, religion, sex or national origin.

### 8. WRITTEN NOTICES TO DISPLACEES

#### WRITTEN NOTICES TO DISPLACEES

Much of the work of determining assistance and services to eligible displacees should be accomplished during this period. Among other things, the following written notices must be furnished.

##### 1. General Information Notice And Notice Of Displacement

The Department has combined the General Information Notice with the Notice of Displacement or relocation eligibility for ease of administration. Such informational notices will be personally given or sent by registered mail to persons scheduled to be displaced on a project at the initiation of negotiations or as soon thereafter as reasonably possible for the parcels of land to be acquired as follows:

##### 2. 90-day Owners

At or soon after the initiation of negotiations, owner-occupants of not less than 90 days shall be furnished by letter that is either delivered personally or sent by registered mail:

- An explanation of the eligibility requirements to receive payments for replacement housing, increased interest costs, incidental expenses, and of their option to rent replacement housing unless such explanations are adequately covered in the brochure.
- An explanation of relocation services available and where they may be obtained.
- The Department's Brochure entitled "Relocation".

##### 3. Tenants

At or soon after initiation of negotiations for the dwelling unit occupied, the tenants shall be contacted either personally or by registered mail and furnished in writing:

- The date of initiation of negotiations for the parcel.
- An explanation of the eligibility requirements to receive a rental replacement housing payment, and of the option to receive a down-payment for the purchase of replacement housing, including incidental expenses and matching requirements, unless such explanations are adequately covered in the brochure.



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- An explanation of services available and where they may be obtained. Emphasize the fact that eligibility for relocation benefits begins with the initiation of negotiations. Any person (i.e. owner-occupants and tenants both) who moves prior to the initiation of negotiations is not eligible to receive relocation benefits.
- The Brochure.

#### **4. Notice of Replacement Housing or Rent Supplement Amounts**

The displacee shall be furnished information on the amount of replacement housing payment to which he/she is entitled. The amount shall be computed in accordance with provisions of this manual and in a timely manner. The displacee shall be relocated in a dwelling comparable to original ownership or tenancy status or such optional ownership status as may be provided. If optional status is available, the replacement housing payment will be based on the specified option. The maximum amount will be limited to the amount based on a comparable replacement dwelling. The amount of replacement housing payment shall be determined near the time that the displacee will be actively looking for replacement housing. The amount shall be given within a reasonable time of the displacees request and at least 90 days, if possible, prior to the time he is required to vacate.

#### **5. 90 day Notice to Vacate**

To the greatest extent possible a displacee will not be required to move from dwelling, or move his business or farm without at least 90 days written notice sent by registered mail or delivered personally. The 90 day notice will be given on or after the initiation of negotiations for the parcel and will include a statement that the displacee will not be required to move from a dwelling or move his/her farm or business before 90 days from the date of notice. Also, the 90 day period does not begin unless a written offer to purchase the subject property has been received; and also suitable replacement property identified and notice of replacement housing payment amount has been received.

The notice will also state that he/she will be given a 30 day notice specifying the date by which he/she must move from the property. The 30 day notice will not be given until legal possession of property is obtained and will also be sent by registered mail or delivered personally. If a displacee moves prior to the issuance of the notice, such notice is not required.

#### **6. Right of Appeal**

The brochure entitled "Relocation" which is transmitted along with the General Information Notice Letter as described above, contains an adequate explanation of the appeal rights to which a displacee is entitled. Also, appeal rights are discussed in personal

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contacts with displacees and documented accordingly on the records of conversation.

### 7. Public Announcements

Public announcements describing relocation services, payments and other pertinent information will be provided immediately before, at or as soon as reasonably possible after initiation of negotiations on both federally and state projects funded if deemed necessary by the Right-of-Way Administrator. The Relocation Agent will provide public notice in newspapers, handbills, radio, television or by other means. The extent of the public notices to be provided will depend upon the complexity of the project. The brochure will be distributed, upon request, to all interested persons.

## I. ELIGIBILITY CRITERIA

### 1. RELOCATION ASSISTANCE PAYMENTS

#### FOR RELOCATION ASSISTANCE PAYMENTS

- Any displaced person meeting the eligibility criteria as set forth in this manual.
- A displaced person must be displaced by a project and relocated in accordance with federal and state laws.
- A displaced person's occupation of the acquired property must be lawful and costs of relocation must be lawfully incurred.
- Displacees occupying property not within the right-of-way may be eligible for payments if they must relocate because of the project.
- Any displaced person deemed eligible for relocation assistance at date of initiation of negotiations will remain so even if evicted for cause on or after the date of the initiation of negotiations.

### 2. FOR RELOCATION ADVISORY ASSISTANCE

#### FOR RELOCATION ADVISORY ASSISTANCE

- All persons occupying property adjacent to property being acquired when determination is made that these persons might suffer substantial economic injury because of the acquisition.
- All persons who, because of the acquisition of real property used for a business for farm operation, move from other real property used as a dwelling or move personal property from such other property.

### 3. MISCELLANEOUS ELIGIBILITY REQUIREMENTS

#### MISCELLANEOUS ELIGIBILITY REQUIREMENTS

- The type of interest acquired by the Department does not affect eligibility to receive relocation payments as long as the acquisition of the interest acquired causes a displacement.
- If a person is dislocated by acquisition of right-of-way, he/she may be eligible for relocation payments even though the land is not used for right-of-way purposes.
- If a person receives notice from the Department to vacate the property and moves, he/she may be eligible to receive relocation



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payments even though the property is not acquired by the Department.

- A displaced person can refuse relocation services and be eligible for payments if he makes the claim within the time limits prescribed and meets the other requirements as herein described.
- A displaced person is not entitled to receive a relocation payment if he receives a payment under Federal, State, or local law that has the same general purpose and effect as such payment under these procedures.
- The type of interest does not affect eligibility to receive reimbursement for relocation costs providing the interest acquired is sufficient to cause displacement.
- Losses suffered by the displaced person caused by his negligence or that of his agent or employee are not reimbursable.

### J. RELOCATION PROGRAM AT CONSTRUCTION STAGE

#### **AUTHORIZATION FOR CONSTRUCTION OF FEDERALLY AND STATE FUNDED PROJECTS**

The Right-of-Way Administrator shall verify the fact that comparable replacement housing has been made available to the displacee prior to clearing the right-of-way for a bid letting.

#### **COMPARABLE REPLACEMENT HOUSING “MADE AVAILABLE”**

“Made available” means that the displacee has either by himself/herself or through the Department obtained and has the right of possession of comparable replacement housing which is decent, safe and sanitary and which is available for immediate occupancy. The Department will be in compliance with the “has been offered” requirement when it can be shown that it has:

- Determined that comparable, decent, safe and sanitary housing, located in an area not less desirable in regard to public utilities, and commercial facilities, in the same general area or same neighborhood, if possible, from which he/ she is being displaced and reasonably accessible to his/her place of employment and adequate to accommodate him/her, is available to him/her, and he/ she has been informed of its availability and location.
- Informed the displacee of the amount, if any, of supplemental payments available to him/her. In hardship cases, assured the displacee that an advance of funds will be made should it become necessary.

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- Provided the displacee sufficient time to negotiate for and obtain possession of the housing.
- Determined that the available and comparable housing is within the financial means of the displacee.
- Determined that the comparable replacement housing offer is fair housing - open to all persons regardless of race, color, religion, sex or national origin.

### K. CLAIMS FOR RELOCATION PAYMENTS – GENERAL REQUIREMENTS

#### **Documentation**

Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as, bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

#### **Expeditious Payments**

The Department shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

#### **Advance Payments**

If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Department shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

#### **Time for Filing**

All claims for a relocation payment shall be filed with the Department within 18 months after, for tenants, the date of displacement, and for owners, the date of displacement or the date of final payment for the displacement dwelling, whichever is later. This time period shall be waived by the Department for good cause.

#### **Multiple Occupants of Same Dwelling**

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Department, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling.

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However, if the Department determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlement to relocation payments.

### **Deductions from Relocation Payments**

The Department may deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, when acquiring real property a Federal Agency shall, and the Department may, deduct from relocation payments any rent that the displaced person owes to such acquiring agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining comparable replacement housing. The Department shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

### **Notice of Denial of Claim**

If the Department disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

## L. MOVING AND RELATED EXPENSES – GENERAL PROVISIONS

- A displaced person is eligible to receive payment for the reasonable expense of moving his/her personal property from the right-of-way acquired for a highway project.
- If the acquisition of real property used for a business or farm operation causes a person to vacate a dwelling from other real property not acquired, the additional expenses of moving such personal property are eligible for the appropriate moving cost payments.
- Relocation costs will be paid on only one move, except in cases where additional moves are deemed necessary by the Department.

### **Distance of move**

Moving expenses will be paid on moves not to exceed 50 miles either interstate or intrastate unless the Department determines that relocation beyond 50 miles is justified.

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### **Where moved to**

Payment may be made to relocate personal property of a displacee onto remaining or other lands owned by the displacee or his landlord.

### **Advertising for Bids**

Expenses may be paid for advertising for packing, crating and transportation when determination is made that such advertising is necessary. Such advertising should be limited to complicated or unusual moves where advertising is the only method of securing bids.

### **Cost of Moving Bids**

Costs of securing bids or estimates or moving expenses are not to exceed two bids, unless they prove to be incompatible, then a third can be obtained.

### **Direct Payment to Mover**

By written agreement between Department, the displacee and the mover, the displacee may present an unpaid moving bill for direct payment.

### **Contract With Movers**

The Department may enter into a contract with independent movers on a schedule basis and will furnish the displacee with a list of movers he may choose from to move his property. In such instances the Department would pay the mover. Should it become necessary, a schedule will be prepared on a project basis.

### **Hardship Cases**

Those cases concerning elderly, ill, indigent or other persons or businesses, farms, and nonprofit organizations where moving costs would create an economic strain and payment in advance of the actual move would alleviate the condition. Each case must be judged on its own merits and, where justified, moving costs may be paid in advance of the move.

### **Storage**

When an actual expense basis is used and a determination is made that it is necessary for a displaced person to store his personal property for a reasonable time, not to exceed 12 months unless the Department determines that a longer period is necessary, the cost of such storage may be paid. Cost of storage of personal property on the property owned or leased by the displacee or on the acquired property, will not be paid.

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### **Insurance on Actual Moves**

The cost of insurance premium covering loss and damage of personal property while in storage or transit is reimbursable. Such insurance coverage shall not exceed the reasonable replacement value of the personal property. If the displacee elects to move on a schedule basis, insurance premiums are not reimbursable.

### **Losses Moving**

Where insurance coverage is not available, the reasonable replacement value of property lost, stolen, or damaged in the process of moving is reimbursable providing the IOSB is not caused by fault or negligence of the displaced person, his agent or employee.

### **Removal and Reinstallation Expenses**

In reference to residential moves and in addition to and/or part of the reimbursement for moving expenses discussed above, any qualified displaced person, either owner-occupant or tenant, can receive reimbursement for the following expenses if deemed reasonable and necessary by the Department:

- Packing, crating, unpacking and uncrating of the personal property.
- Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property.
- Other moving related expenses that are not ineligible as listed later on in this manual and that the Department determines to be reasonable and necessary.

In reference to nonresidential moves, any business or farm operation that qualifies as a displaced person can receive reimbursement based on all of the same criteria as discussed above, except in place of household appliances, machinery and equipment are relocated in the same manner. The following expenses are also reimbursable in conjunction with a nonresidential move if the Department determines them to be reasonable and necessary:

- Connection to utilities available nearby, such as a telephone connect.
- Modifications to the personal property necessary to adapt it to the replacement structure the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property, excluding expenses for providing utilities from the right-of-way to the building or improvement.
- Any license, permit, or certification required of the displacee at the replacement location, but based on the remaining useful life of the existing license, permit or certification.



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- Professional services necessary for planning the move of personal property, moving the personal property and installing the relocated personal property at the replacement location.
- Re-lettering signs and replacing stationery on hand at the time of displacement that is made obsolete as a result of the move,(reimbursement for what is in current inventory)
- Other expenses for which a displaced person in this category may be entitled to receive reimbursement are discussed later in this manual.

### **Owner retention**

If the Department permits the displaced owner to retain his/her dwelling and move it to a site he/she already owns (i.e. on owner's remaining land) or purchases, the Department will determine the actual cost of the replacement as the sum of:

- The retention cost of the dwelling (the amount the displaced owner paid the Department).
- The cost to move the dwelling to its new site.
- Any costs necessary to restore the dwelling to its condition prior to the move.
- Any costs necessary to correct decent, safe and sanitary deficiencies.
- The cost of the replacement site is not to exceed the cost of a comparable replacement site as derived from use of the three comparable methods described later on in this manual. The applicable land cost portion of the replacement site is its current market value for residential use unless the displacee rented the displacement site and he/she has a reasonable opportunity to rent a suitable replacement site. For inherited property, the value of the estate land would be used as the land cost figure or the land would need to be appraised as of the date of inheritance.
- Any costs as described above all must be actual and reasonable costs. Such costs must not include items that are extra or beyond what the original dwelling enjoyed, such as a finished basement when one did not exist in the before situation.

Instead of permitting owner retention, the Department may permit the owner to buy the acquired dwelling back at the dwelling's salvage value.

### **Exclusions on Moving Expenses and Losses**

The following expenses are ineligible for reimbursement as actual moving expenses:

- Additional expenses incurred because of living or operating in a new location, except as provided in 49 CFR-Sec. 24.304(a)(6).



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- Cost of moving structures, improvements or other real property in which the displaced person reserved ownership.
- Improvements to the replacement site.
- Interest on loans to cover moving expenses.
- Loss of good will.
- Loss of business and/or profits.
- Loss of trained employees.
- Personal injury.
- Cost of preparing the application for moving and related expenses.
- Modification of personal property to adapt it to replacement site.
- Payment for searching expenses.

### M. MOVING EXPENSE PAYMENTS TO INDIVIDUALS AND FAMILIES

#### **General**

An eligible displaced person is entitled to receive a payment for moving his personal property, himself and his family. He has the option of payment on the basis of actual reasonable moving expenses or a moving expense schedule, (see current published schedule)

#### **Actual Reasonable Moving Expenses - Commercial Moves**

A relocated individual or family will be paid for the actual, reasonable cost of a move accomplished by a commercial mover. Such expense will be supported by receipted bills. Contracts with independent movers may be executed on a schedule basis and the displacees will be furnished with a list of approved movers that they may choose from to move their property.

#### **Cost of Transportation**

The cost of transportation of individuals and families to the new location is also eligible. The cost will be on a mileage basis at whatever the current rate per mile is. Reasonable actual fees may be paid if commercial transport is used and may include special services such as the cost of ambulances to transport invalid or handicapped displacees. The actual reasonable costs of meals and lodging may also be reimbursable when determination is made that such costs are justifiable. Such meals and lodging are to be considered a temporary measure and not to be used to expedite a project.

#### **Fixed Moving Expense Schedule** (as published by FHWA)

A relocated individual or family is eligible to receive a moving expense allowance, which includes a dislocation allowance based on the number of rooms with furniture in the dwelling. The moving expense payment will be computed on the number of

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furnished rooms in the dwelling units plus basements, attics, garages and outbuildings if such rooms and buildings contain personal property of sufficient value and quantity to be counted as a room.

### **Owner-occupant of a Multi-Dwelling**

- In addition to the payments for the moving of personal property, himself and his family from his dwelling, the owner-occupant of a multi-family dwelling may also be eligible to receive moving payments under the Moving Payments to Businesses Section of this directive.
- The relocation agent will process actual and scheduled moving cost claims. The relocation agent will explain the move options to the displacee and record which option the displacee selects for the move. The relocation agent must verify that the move has actually been made. On commercial moves, the displacee may select a mover from a list of qualified movers and payment for the move may be made direct to the mover. The agent must determine that moving cost claims are reasonable. The agent will obtain bills and receipts on actual/reasonable moves and keep them on file.

### **MOVING EXPENSE PAYMENTS TO BUSINESSES**

The eligible owner of a displaced business is entitled to receive the payment for actual reasonable moving and related expenses which include:

- Packing
- Disassembling
- Loading
- Moving (up to 50 miles)
- Unpacking
- Reassembling
- Reconnection
- Necessary Storage
- Replacement Insurance
- Licenses, permits, Fees for Certifications, Professional services for planning, moving and installing personal property
- Re-lettering signs, replacement stationery
- Connecting to available nearby utilities
- Professional services to determine site suitability
- Impact Fees
- Actual direct losses of tangible personal property in moving or discontinuing his business.
- Actual reasonable expenses in searching for a replacement, (\$2,500.00 Limit)

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- Other moving expenses not listed as ineligible and determined to be actual, reasonable and necessary by the Agency.

All bids and estimates are to be signed, dated and copies kept on file. The owner of a displaced business shall furnish a certified inventory of the items to be moved. If, at the time of the move, the inventory varies appreciably from the original inventory the moving payment will be adjusted accordingly. Under the law, all expenses are to be actual and reasonable. The relocation agent shall take steps to assure himself that expenses are actual and reasonable by monitoring the various phases of the move. Instead of the payment for actual moving expenses and losses, a displaced business may be eligible for a fixed payment as further explained later on in this manual.

### **Actual Reasonable Expense in Searching for a Replacement Business**

The owner of a displaced business may be reimbursed for the actual reasonable expenses in searching for a replacement business, not to exceed \$2,500.00. Such expenses may include transportation expenses, meals, lodging away from home, the reasonable value of time actually spent in the search, including fees of real estate agents or real estate brokers, time spent in obtaining permits, working on zoning or attending hearings, time spent negotiating the purchase/lease for a replacement site.

The displacee must furnish:

- All expenses claimed except a value of time actually spent in search must be supported by receipted bills.
- Payment for time actually spent in search must be based on hourly wage of the person(s) making the search. A certified statement of the time spent in search and hourly wage rates shall accompany the claim.

### **Actual Reasonable Moving Expenses**

#### **Commercial moves**

The owner of a displaced business may be paid the actual reasonable cost of a move accomplished by a qualified commercial mover. Such expense will be supported by receipted bills. A commercial mover may be defined as one who is licensed and otherwise authorized and equipped to move household goods and other personal property.

When two acceptable bids can be obtained from qualified moving companies, based in moving the items on the inventory, the owner may be paid an amount equal to the low estimate or bid without negotiation. When circumstances warrant, the relocation agent may negotiate with the displacee for payment of moving costs in

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an amount not to exceed the lower of two acceptable estimates. The business may still claim removal and reinstallation expenses if not included as part of the estimate.

If acceptable estimates cannot be obtained, or if circumstances (such as large fluctuations in inventory) prevent reasonable bidding, the displaced owner may be paid his actual reasonable moving costs supported by receipted bills or other evidence of expenses incurred. Allowable expenses of a self move may include:

- Amounts paid for truck and/or equipment hired.
- If the business uses its own equipment in the move, a reasonable amount to cover gas and oil, cost of insurance and depreciation directly allocable to the actual time the equipment is used for the move.
- Wages for the labor of those actually performing the move. Labor costs are to be computed on the basis of actual hours worked at the hourly rate paid but the hourly rate may not exceed that paid by commercial movers or contractors in the locality for each profession or craft involved.
- The wages of the foreman or group leaders regularly employed by the business to provide supervisory services in connection with the move. Only the wages covering actual time spent in supervising the particular move may be paid.

In the case of a low-cost uncomplicated self-move, the relocation agent may make a moving expense finding, based upon charges that would be used by a professional moving firm. The amount of such moving expense finding may be paid the owner of a business upon completion of a move without supporting evidence of actual expense incurred.

Prior to any type business move, the relocation agent will do a final inventory of the personal property to be moved (or certified copy of owner's inventory can be used instead). The agent will also monitor the move (which includes an inventory at the replacement business upon completion of the move) to ensure that all of the previously inventoried personal property has been moved.

If the items listed on the owner's certified inventory deviate to any significant extent from those actually relocated, the inventory will be revised accordingly.

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### **Loss of Tangible Personal Property**

In certain situations, moving equipment, supplies and other items is not desirable from the displaced business's point of view. Machinery may be obsolete with little remaining economic value. Other items may be of little or no value to the business at its relocation site. In these circumstances the agency may compute the payment for a move, or a portion of the move, using an alternative method known as "Loss of Tangible Personal Property". This method is used when the equipment or personal property is not to be replaced at the replacement site.

The payment shall consist of the lesser of: the fair market value in place of the item, as is, for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the property, unless the Department determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of goods to the business, not the potential selling price.); or the estimated cost of moving the item as is, but with no allowance for storage or reconnecting if the equipment is in storage or not being used. (If the business is disconnected, the estimated cost shall be based on a moving distance of 50 miles.)

The reasonable cost incurred in attempting to sell an item that is not to be relocated is reimbursable as an actual cost expense.

Note: Special attention should be given at the time of the real estate appraisal inspection as to whether certain items are actually trade fixtures and as such should be included in the real estate appraisal and acquisition process.)

### **Substitute Personal Property**

If an owner wishes not to move a piece of personal property used as part of the business, but rather, wishes to promptly replace it with substitute personal property that performs a comparable function at the replacement site, he may do so. Under this method the owner is paid the lesser of the cost of the replacement item LESS the proceeds of the sale of the old item, or the cost to move and re-install (including the cost to bring the item up to code) the old item with no allowance for storage.

While the business is required to make a good faith effort to sell the personal property, the Department may determine IN ADVANCE that there is no market for the property and waive the requirement.

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1. Reasons for using this method: personal property is outdated and can be traded in for updated personal property.
2. Information needed to calculate payment:
  - a. Move estimate including the cost of re-installation and code requirements.
  - b. Cost of substitute item (include delivery, set-up and installation).
  - c. Amount of trade-in or proceeds of sale for old item.

NOTE: that personal property under this payment does not include inventory.

### **Low Value/High Bulk**

The use of this payment is triggered only by the agency when in the agency's judgment the cost to move the personal property is disproportionate to the value of the property. Payment shall not exceed the lesser of: the amount received if the property were sold at the site; or replacement cost of comparable quantity delivered to the new site. Examples of use of this payment method for; sand, gravel, minerals, concrete blocks, etc.

### **Abandoned Personal Property**

Technically, since we received estimates on the entire inventory, all the property should be moved. However, consider the following:

If certain items, most commonly hazardous material or large bulk items, would necessitate additional expenses to the agency to move if abandoned; agency must insist the items be moved or the agency will not pay.

If there is no additional cost to the agency to move the property, i.e. demolishing the building will cost no more to remove the property as rubble, then consider, allowing the abandonment of some personal property especially if a non-documented self-move. It is a sign of good faith effort to help a business while not costing the agency additional monies.

### **Alternate payments**

Where personal property which is used in connection with the business to be moved is of low value and high bulk and the cost of moving would be disproportionate in relocation to the value, the relocation agent may negotiate with the owner for an amount not to exceed the difference between the cost of replacement of comparable items on the market and the amount which would probably have been received for the items on liquidation.



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### **Fixed Payment - Business Move (In-Lieu)**

Instead of receiving reimbursement for actual moving expenses, a qualified owner of a discontinued or relocated business is eligible to receive a fixed payment equal to the average annual net earnings of the business except that such payment shall not be less than \$1,000.00 nor more than \$40,000.00 and providing that the following requirements are met:

- The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement site.
- The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Department determines that it will not suffer a substantial loss of its existing patronage; and
- The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Department and which are under the same ownership and engaged in the same or similar business activities.
- The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.
- The business is not operated at the displacement site solely for the purpose of renting the site to others.
- The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see definition of contributes materially).
- A part time individual or family occupation in the home which does not contribute materially to the income of the displaced owner as earlier defined is not eligible for this payment.

The term "average annual net earnings" means one half of any net earnings of the business, before federal, state and local income taxes, during the two taxable years immediately preceding the taxable year in which the business is relocated, or if not representative, upon a different period of time when the Department determines it to be more equitable. It may include any compensation paid by the business to the owner, his spouse, or his dependents during the two-year period. In the case of a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner of the majority interest in the corporation for the purpose of determining majority stock ownership. Stock held by a husband and wife and their dependent children shall be treated as one unit.

If the business affected can show that it was in business 12 consecutive months during the two taxable years prior to the taxable year in which it was required to relocate, had income

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during such period and is otherwise eligible, the owner of the business is eligible to receive the in lieu of payment. Where the business was in operation for 12 consecutive months or more but was not in operation during the entire two preceding taxable years, payment shall be computed by dividing the net earnings by the number of months the business was operated and multiplying by 12. A taxable year is defined as any 12 month period used by the business in filing income tax returns.

The business owner must provide information to support his/her net earnings. Tax returns, certified financial statements, or an affidavit from the owner stating his/her net earnings are acceptable evidence of net earnings, providing the owner grants the Department the right to review the records and accounts of the business.

When comparable multi-family structures are not available, the owner of such may be entitled to a fixed payment for the business in accordance with the above explained criteria.

After all factors have been carefully analyzed, the relocation agent will determine whether or not the owner of any type of business qualifies for the fixed payment. Copies of all data supporting eligibility and computation of payment will be filed in the proper relocation file.

### **Determining the Number of Businesses**

In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, the Department will consider all pertinent factors, including the extent to which:

- The same premises and equipment are shared.
- Do employees work for one or all the businesses?
- Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.
- The entities are held out to the public, and to those customarily dealing with them, as one business.
- The same person or closely related persons own, control, or manage the affairs of the entities.

The eligible owner of a displaced farm operation is entitled to receive payments for actual reasonable moving expenses or self-moving expenses, actual direct losses of tangible personal property and actual reasonable expenses in searching for a replacement farm as previously explained under moving expense

D. MOVING  
EXPENSE  
PAYMENTS TO  
FARM  
OPERATORS

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payments to businesses. The relocation agent will use Form R/W 68ra to process the claim for payments.

### **Fixed Payment - Farm Move**

Instead of receiving reimbursement for actual moving expenses, any owner of a displaced farm operation is eligible to receive a payment equal to the average annual net earnings of the farm operation except that such payments shall not be less than \$1,000.00 and no more than \$40,000.00.

For the owner of a displaced farm operation to be eligible to this payment, the following must apply:

- The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- The partial acquisition caused a substantial change in the nature of the farm operation.

### **P. MOVING EXPENSE PAYMENTS TO NON-PROFIT ORGANIZATION**

A displaced non-profit organization is eligible to receive payments for actual reasonable moving expenses or self-moving expenses, actual direct losses of tangible personal property and actual reasonable expenses in searching for a replacement site as previously discussed.

### **Q. FIXED PAYMENT - NON- PROFIT ORGANIZATION**

A displaced non-profit organization may be paid not less than \$1,000.00 nor more than \$40,000.00 as a fixed payment, if it cannot be relocated without a substantial loss of its existing patronage which is assumed to exist unless proved otherwise by the Department. The term, existing patronage as applied to non-profit organization includes the persons, community or clientele serviced or affected by the nonprofit organization.

### **Eligibility Requirements For Non-Profit Organizations**

The organization must have an "exempt status" with the State or Federal Income Tax Office and must provide the Agency with proof of its non-profit status. It can obtain an exemption certificate or other documentation from the State Tax Board or the Internal Revenue Service.

A claim of non-profit status is not sufficient. A legitimate non-profit organization is chartered by the state or local municipality and it will have some type of legal documents that define its nature, character and mission. Most importantly, it must have a Federal Tax Identification Number.

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### RE-ESTABLISHMENT EXPENSES – NONRESIDENTIAL MOVES

In addition to payment for actual reasonable moving and related expenses, a small business, farm or nonprofit organization may be eligible to receive payments for expenses actually incurred in relocating and re-establishing such small business, farm or nonprofit organization at a replacement site.

The cost of a new “shell” structure is a Capital Expenditure and **not eligible** as a re-establishment expense, such as basic walls, additions to existing “shell” structure, site preparation, etc. required to complete the new “shell” structure. However, improvements and/or modifications to the “New Construction of Existing” replacement building may include the addition of necessary facilities such as bathrooms, room partitions, etc., if either required by Federal or local law, code ordinance or considered **reasonable and necessary** for the operation of the business.

In addition to moving payments, a business, farm or non-profit organization may be eligible to receive a payment for expenses actually incurred in relocation and re-establishing such business, farm, or non-profit organization at a replacement site; (MAP-21 changed the CFR limits of re-establishment payments from \$10,000.00 to \$25,000.00), However, Wyoming Statue 16-7-103 allows reasonable and necessary re-establishment expenses to exceed the CFR and these expenses may be federally reimbursable. Eligible, reasonable and necessary re-establishment expenses are determined by WYDOT.

Due to the change in Wyoming’s State Statute in 2007, which allows reasonable and necessary re-establishment expenses to exceed the CFR, WYDOT has determined it will be necessary for the displaced business, farm operations or non-profit organizations to reinvest an amount equal to the Fair Market Value paid for land and improvements pertaining to the displaced business operation.

Landlord businesses are not eligible for the fixed payment “in-lieu-of” actual moving expenses.

Business re-establishment benefits cannot be applied toward modifying the same building or structure where the Department paid cost to cure or acquired structures retained for future use.

Re-establishment expenses are not intended to provide betterments. Consideration should be given to how they were



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doing business prior to displacement, the type of building they were occupying, size, code requirements, and condition of the replacement site to re-establish the business. This does not mean the replacement building is required to be exactly like the displacement building.

Landlord business operations that consist solely of leasing real estate to others at the displacement site may be eligible for certain re-establishment benefits. If property is unoccupied at the time of the offer, the landlord must prove the property has been leased within the last 12 months and is currently pursuing another tenant. If the displacement site is currently occupied, request proof the landlord is receiving rent.

If a landlord business is trying to replace the residence that was acquired by the Department, the landlord shall reinvest the Fair Market Value into another decent, safe and sanitary residence in a good state of repair with the same square foot living space, number of bedrooms and number of bathrooms etc.

The Relocation Agent shall inspect the replacement residence and identify modifications that may be eligible for reimbursement such as replacing soiled or worn carpet or painting the inside to make it rentable. This does not mean they can change the carpet or paint just for aesthetic reasons. If the replacement is larger than the displacement property, reimbursement costs may be limited to the same square footage documented at the displacement site unless supporting documentation is provided to show this was the only property suitable and available for replacing the business operation.

### **Relocation Agent**

1. Inspects the replacement property prior to the displacee making financial commitments and modifications to the replacement property. Assists the business to identify code requirements and modifications in order for the business to be re-established. Determine how modifications can be documented as eligible, reasonable and necessary.
2. Prepares memo requesting pre-approval to Right-of-Way Administrator. Attach specific photographs relative to the pre-approval request to support re-establishment eligibility. Eligible re-establishment expenses must be reasonable and necessary as determined by the Right-of-Way Administrator. Any unique or unusual requests for approval will be submitted to the Right-of-Way Administrator for pre-approval.
3. Receives approval from the Right-of-Way Administrator. Informs displacee to proceed and that they will need to retain

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documentation for all expenses. If the displace is performing work themselves they will be required to obtain pre-approval for labor rates from the Right-of-Way Administrator and they will need to keep a log of days and hours spent working on the project with a description of the work being done.

4. Verify all re-establishment is completed. Obtain documentation of expenses and claim signed by displacee and forwards to Project Manager.

### **Eligible Expenses**

Re-establishment expenses must be actual, reasonable and necessary, as determined by the Department. They may include the following:

1. Repairs or improvements to the replacement real property as required by Federal, state or local law, code or ordinance.
2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
3. Construction and installation costs, for exterior signing to advertise the business. This should not be confused with paying the cost of moving a sign from the old location, which is eligible as an actual move expense.
4. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting. Document how these expenses are actual, reasonable and necessary and are not for aesthetic purposes.
5. Licenses, fees, and permits when not paid as part of moving expenses.
6. Feasibility surveys, soil testing and marketing studies.
7. Advertisement of replacement location, will be limited to \$2,500.00 for any and all forms of media advertising including but not limited to the following:
  - a. Banner at the old site
  - b. Newspaper ads
  - c. Radio ads
  - d. Television ads

These costs should not be confused with paying the cost of moving, installing a sign from the old location, which is eligible as a actual move expense.

8. Professional services in connection with the purchase or lease of a replacement site.
9. Estimated increased costs of operation during the first 2 years at the replacement site, for such items as:
  - a. Lease or rental charges,
  - b. Personal or real property taxes,
  - c. Insurance premiums, and
  - d. Utility charges, excluding impact fees.



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NOTE: income tax records should be adequate to provide a record of the above costs prior to displacement. The costs of the new location can be estimated using various sources.

10. Other items that the Agency considers essential to the re-establishment of the business.

### Ineligible expenses

The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

1. Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.
2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
3. Interest on money borrowed to make the move or purchase the replacement property.
4. Payment to a part-time business in the home which does not contribute materially to the household income.

## S. ADVERTISING SIGNS

The owner of a displaced advertising sign which is personal property is eligible to receive a payment for actual reasonable or acceptable self moving and related expenses, including searching expenses not to exceed \$2,500.00, as applicable to a business move, excepting the eligibility to receive a fixed payment. A sign that is otherwise eligible for moving payments will not be eligible when it is moved to a site in violation of State, Federal or local regulations. The sign owner may be reimbursed for actual direct losses when he or she is entitled to relocate the sign, but does not do so. The amount of such loss will be the lesser of the depreciated reproduction cost of the sign as determined by the Department, less the proceeds from its sale; or the estimated cost of moving the sign, but with no allowance for storage.

## T. REPLACEMENT HOUSING PAYMENTS – GENERAL PROVISIONS

In addition to other payments authorized by this manual, qualified individuals and families displaced from a dwelling are eligible for replacement housing payments in accordance with this manual.

The displaced individual or family is not required to relocate to the same occupancy (owner or tenant) but has other options according to his ownership status and tenure of occupancy as

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described in succeeding paragraphs. Only one replacement housing payment is authorized for each dwelling unit except in the case of a multi-family dwelling as previously explained. The relocation agent will make the determination of eligibility for replacement housing payments and will process the claims in accordance with this and succeeding paragraphs.

### **Requirements to Receive Payments**

In addition to the tenure of occupancy provisions, the displaced person is otherwise eligible for the appropriate payments when he relocates and occupies a decent, safe and sanitary dwelling within one year period, beginning on the later of the following dates:

- The date on which the owner received final payment for all costs of the acquired dwelling negotiated settlements. In condemnation cases, the date on which the required amount was deposited in court for the benefit of the owner; or
- The date on which he moves, from the displacement dwelling.

The displaced person who has entered into a contract for the construction or rehabilitation of a replacement dwelling and, for reasons beyond his/her reasonable control, cannot occupy the replacement housing within the time period shown above shall be considered to have purchased and occupied the dwelling as of the date of such contract. The replacement housing payments under these conditions would be deferred until actual occupancy was accomplished. A displaced tenant or owner "occupies" a replacement dwelling within the meaning of this section only if the dwelling is his permanent place of residence and he satisfies the eligibility requirements.

### **Inspection for Decent, Safe and Sanitary Standards**

Before making payment to the displacee, the replacement dwelling will be inspected to determine that it meets the standards of decent, safe and sanitary housing. The relocation agent will inspect the dwelling and will record the DSS information. The services of any public agency ordinarily engaged in housing inspection may be utilized to make the inspection. The determination that a dwelling meets the standards for decent, safe and sanitary housing is made solely to determine the eligibility of displacees for payments under this manual and is not a representation for any other purpose.

If it is not possible to make the necessary inspection or secure it through a third party, the displacee may certify that he has occupied DSS housing and this certification will be sufficient to establish his/her eligibility for payment.

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### **Correcting Minor DSS Deficiencies**

Properties with minor DSS deficiencies may be considered as comparable replacement properties if there is a limited availability of comparables in the area where relocations are necessary. The nominal costs to correct such minor DSS deficiencies (i.e. broken windows, missing window screens, broken light fixtures and the like) should be included in the replacement housing payment computation for both purchased and rented replacement housing. This procedure will be used in order to prevent excessive expenditures and/or situations where last resort housing would result only because DSS comparable replacement housing was not available. This procedure will not be used to meet the requirement of “comparable replacement dwelling has been made available in the case of forced displacement until the deficiencies have actually been corrected.

### **Statement of Eligibility to a Lending Agency**

A statement may be made to any interested party, financial institution or lending agency that a qualified displacee will be eligible for payment of a specific sum provided he purchases and occupies an approved dwelling within the specified time limits.

### **Claims for Replacement Housing Payments**

The replacement housing payment may be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to a lessor for rent or to a seller for use towards the purchase of a decent, safe and sanitary dwelling. If specifically requested by the displacee in the claim, the payments may be made into escrow prior to the displacee moving.

Displacees' claims for relocation payments shall be filed with the Department within 18 months after, for tenants, the date of displacement, and for owners, the date of the final payment for the acquisition of the real property, whichever is later.

### **Advance Replacement Housing Payments in Condemnation Cases**

An advance replacement housing payment can be computed and paid to a property owner if the determination of the acquisition price will be delayed pending the outcome of condemnation proceedings. Since the replacement housing payment cannot be determined due to the pending condemnation proceedings, a provisional replacement housing payment may be calculated by using the maximum offer for the property as the acquisition price. Payment of such amount may be made upon the owner-occupant's agreement that:

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- Upon final determination of the condemnation proceeding the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the actual price or the amount determined by the State as necessary to acquire a comparable, decent, safe and sanitary dwelling.
- If the amount awarded in the condemnation proceeding as the fair market value of the property acquired plus the amount of the provisional replacement housing payment exceeds the price paid for, or the determined cost of a comparable dwelling, the displacee will refund to the Department, from his/her judgment, an amount equal to the amount of the excess. In no event, shall he be required to refund more than the amount of the replacement housing payment advanced.
- If the property owner does not agree to such adjustment, the replacement housing payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

### **Ownership of Replacement Dwelling Prior to Displacement**

Any person who has obtained legal ownership of a replacement dwelling or land upon which it rests either before or after displacement and occupies the dwelling after being displaced but within the specified allotted time period, is eligible for a replacement housing payment provided the dwelling meets DSS requirements. Cost of land and buildings will be their market value in this determination of the replacement housing payment.

### **Partial Acquisition**

If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Department may offer to purchase the entire property. If the owner refuses to sell the remainder to the Department the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

### **Joint Residential and Business Use**

Occupants of living quarters located on the premises of a farm, business or nonprofit organization are to be considered separately for the purpose of relocation assistance and payments. The following procedure will be used to determine replacement housing payments to owners of multi-family dwellings who occupy one unit.

- If a dwelling comparable to the property to be acquired is not available, structures of the next lowest density must be used. If comparable multiunit dwellings are not available, compare the



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owners living unit to a single family residence, a higher density structure should never be used as a comparable.

- Only the value of the owners living unit, not the entire subject property, is to be used as a basis for payment determination. Only the difference between the value of the owners living unit and the living unit in the most comparable property will be used as payment determination. Whether the comparable property is a duplex or triplex or more units, only one of the units will be considered. The value of the remaining units cannot be used because they are income providing and are not part of the owners personal living area.

### **Determining Cost of Comparable Replacement Dwelling**

The probable selling price of a comparable replacement dwelling will be determined by analyzing at least three, if three are available, dwellings comparable to the dwelling unit to be acquired. They must be available on the private market and meet the minimum requirements for decent, safe and sanitary dwellings. Less than three comparables may be used for this determination when additional comparable dwellings are not available and the parcel file is documented to this effect. Selection of comparables and computation of the payment on the best comparable must be by a relocation agent, not the appraiser or review appraiser on the parcel involved. The selected comparables must be the most nearly comparable and equal to or better than the subject property. A dwelling inspection report will be completed by the Relocation Agent on the selected comparable most similar to the subject and on which the computed replacement housing payment amount is based.

An adjustment will be made to the asking price of selected comparables, if such an adjustment is considered justified by the Department. If a dwelling is obviously over priced in comparison to other comparables, it may not be used in the replacement housing computation.

If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost

of the displacement dwelling for purposes of computing the payment. If a buildable residential lot or an uneconomic remnant remains after a partial acquisition and the owner of the remaining property refuses to sell the remainder to the Department, the fair market value of the remainder may be added to the acquisition

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cost of the displacement dwelling for purposes of computing the payment.

To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

### **Payment After Death**

A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

- The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
- The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy the replacement dwelling selected in accordance with these regulations.
- Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

### U. REPLACEMENT HOUSING PAYMENTS FOR OWNER-OCCUPANT FOR 90 DAYS OR MORE WHO PURCHASES

A displaced owner-occupant of a dwelling may receive additional payments, the combined total of which may not exceed \$31,000.00 and which are required in order:

- To purchase replacement housing or retain displacement dwelling in accordance with applicable procedures already stated.
- To compensate him/her for the loss of favorable financing on his existing mortgage in the financing of replacement housing.
- To reimburse him/her for authorized incidental expenses incident to the purchase of replacement housing.

### **The Owner-Occupant is Eligible for such Payments when:**

- he/she has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and
- he/she has purchased and occupied a DSS dwelling within one year after the later of the following dates (except that the Department may extend such one year period for good cause):



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- (1) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or
- (2) The date the Department has made a comparable replacement dwelling available.

If otherwise eligible, the owner-occupant may receive these payments if the Department issues an order to vacate even though the property is not acquired.

A displaced person in this category is deemed to have “purchased” a dwelling when he/she:

- Acquires an existing dwelling.
- Purchases a life estate in a retirement home. The actual cost may include the entrance fee and other monetary commitments to the home except periodic service charges. The replacement housing payment is limited to the reasonable cost of purchasing a replacement dwelling, comparable to the one to be acquired, less the price paid for the acquired dwelling.
- Relocates and/or rehabilitates a dwelling he owns or acquires. When the dwelling has DSS deficiencies, the cost to correct them is eligible for reimbursement to the extent that the purchase price or cost of the replacement dwelling and the cost of correcting the deficiencies do not exceed the maximum replacement housing payment based on comparable properties; or
- Constructs a DSS dwelling on a site which he owns. Reimbursable costs are limited to only those necessary to construct a dwelling comparable to the one acquired. Costs of adding new features simply to bring the cost up to the maximum replacement housing payment is not eligible for reimbursement.

### V. REPLACEMENT HOUSING PAYMENT – DETERMINING PRICE DIFFERENTIAL GENERAL

That portion of the replacement housing payment allocated for the price differential is the amount, that, when added to the price paid for the displacee’s displacement dwelling, equals the amount that the displacee is required to pay for a decent, safe and sanitary dwelling or the amount determined as necessary to purchase a comparable dwelling, whichever is less.

If the displacee desires to be relocated to the status of his/her original ownership, comparable replacement housing will be made available.

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If he/she desires to receive a rental assistance payment in lieu of the above, then DSS rental replacement housing will be made available.

### **Revisions to Replacement Housing Amount**

A displacee will be offered comparable housing that is available at the offered amount. When this housing becomes unavailable, a new replacement housing payment will be established that will enable him to purchase comparable housing that is available. In no event will the revised payment be less than the original amount.

### **Increased Interest Payments**

Payment may be provided to compensate a displacee for the increased interest costs he/she may be required to pay for financing a replacement dwelling. The payment will be allowed only when: the acquired dwelling was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 90 days. All bona fide mortgages on the acquired dwelling will be used in computing the payment.

### **The Amount of the Increased Interest Payment**

The amount of the increased interest payment will be determined as follows:

- The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination the payment will be prorated and reduced accordingly. In the case of a home equity loan the unpaid balance shall be that balance which existed 90 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
- The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
- The interest rate on the new mortgage used in determining amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
- Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

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1. They are not paid as incidental expenses;
  2. They do not exceed rates normal to similar real estate transactions in the area;
  3. The Department determines them to be necessary; and
  4. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.
- The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

### **To Whom Payment Made**

The increased interest payment may be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to the mortgagee of the replacement dwelling. In cases where a claimant otherwise qualifies for an interest payment, and upon his/her specific request, payment into escrow may be made prior to the move.

### **Partial Acquisition**

Where the dwelling is located on a tract normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the acquisition price bears to the before value; except, the reduction shall not apply when the mortgage requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

Where a dwelling is located on a tract larger than normal for residential use in the area, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

### **Multi-Use Properties**

The interest payment on multi-purpose property shall be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

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### **Other Highest and Best Use**

If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as provided in the appropriate paragraphs above. If the mortgage is based on the higher use, however, the interest payment shall be reduced to percentage ratio that the estimated residential value of the parcel has to the before value.

### **Incidental Expenses**

The incidental expenses payment is the amount necessary to reimburse the home owner for the actual costs incurred by him incident to the purchase of the replacement dwelling, but not for prepaid expenses. Such costs may include the following items if normally paid by the buyer:

- Legal, closing and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats and charges paid incident to recordation.
- Lenders, FHA, or VA appraisal and application fees.
- Loan origination fees (points) which are not prepaid interest and not paid as part of MIDP, (Mortgage Interest Differential Payment).
- Certification of structural soundness when required by lender, FHA or VA.
- Credit report.
- Owner's title policy or abstract of title, not to exceed the cost for a comparable replacement dwelling.
- Escrow Agent's fee.
- Sales or Transfer Taxes or State Revenue Stamps (not to exceed the costs for a comparable replacement dwelling).
- No fee, cost, charge or expense if reimbursable as incidental expenses which is determined to be a part of the debt service, or finance charge under 15 U.S.C. 1631-1641, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System.
- Such other costs as the Department determine to be incidental to the purchase.

### **Non-Reimbursable Expenses**

1. Mortgage Interest
2. Hazard Insurance Premiums
3. Prepaid Real Estate Taxes Insurance or Condominium Fees
4. Motor vehicle registration fees on mobile homes
5. Additional costs in securing large mortgage on replacement dwelling
6. Points paid as part of the MIDP

### **Combined Payments not to Exceed \$31,000.00**

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If an owner-occupant is otherwise qualified for a Replacement Housing payment but has previously received a rental assistance payment, the amount of such prior payment shall be deducted from the amount to which he/she is entitled under replacement housing. The combined payments are not to exceed \$31,000.00.

NOTE: Should a residential relocate elect to build a new house, any interim rental expense is considered as a cost, and should be subtracted from the RHP, not added.

### **Insurance Proceeds**

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss (e.g. fire, flood, etc.,) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

### W. REPLACEMENT HOUSING PAYMENT FOR 90 DAY OCCUPANT

A tenant or owner occupant displaced from a dwelling is entitled to a payment not to exceed \$7,200.00 for rental assistance, or down payment assistance, if such displaced person:

- (1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and
- (2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Department extends this period for good cause) after:
  - a. For a tenant, the date he or she moves from the displacement dwelling, or
  - b. For an owner-occupant, the later of:
    - (i) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or
    - (ii) The date he or she moves from the displacement dwelling.

### **Down payment assistance**

An eligible displaced person, who purchases a replacement dwelling, is entitled to a down payment assistance payment in the amount the person would have received as rental assistance if the person had rented a comparable replacement dwelling. At the Agency's discretion, a down payment assistance payment that is less than \$7,200.00 may be increased to any amount not to



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exceed \$7,200. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under the replacement housing payment calculation, if he or she met the 90 day occupancy requirement. If the Agency elects to provide the maximum payment of \$7,200.00 as a down-payment, the Agency shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 90-day owner-occupant is not eligible for this payment.

Application of payment. The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

### X. RENTAL ASSISTANCE PAYMENT

#### **Rental Assistance Payment**

The Amount of payment an eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$7,200.00 for rental assistance. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
2. The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

#### **Base Monthly Rental for Displacement Dwelling**

The base monthly rental for the displacement dwelling is the lesser of:

- (1) The average monthly cost for rent and utilities at the displacement dwelling for the last three (3) months or other reasonable period deemed appropriate by the Department prior to displacement. (For an owner-occupant, the fair market rent will be used for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, the fair market rent will be used, unless its use would result in a hardship because of the person's income or other circumstances); or
- (2) Thirty (30) percent of the person's average gross household income if the amount is classified as "Low Income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental shall be established solely on the criteria in paragraph (1) above for persons with income exceeding the survey's "Low Income" limits, for persons refusing to provide



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appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or

- (3) The total amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

### **Utility Adjustment**

If utilities are included in the monthly rent of the displacement dwelling, the monthly rent of the replacement dwelling should include utilities; but if it does not, an appropriate amount shall be added. If utilities are not included in the monthly rent of the displacement dwelling, but are included in the monthly rent of the comparable replacement dwelling, an appropriate amount shall be added to the monthly rent of the displacement dwelling in making the calculations.

If the utilities are not included in the monthly rent of the displacement dwelling or the monthly rent of the replacement dwelling, then the relocation agent will compute a rental assistance payment without including utilities.

### **Payment Disbursement**

The payment under this section shall be disbursed in a lump sum amount, unless the Department determines on a case-by-case basis, for good cause, that the payment should be made in installments. The file will be documented as to the reasons for the decision.

### **Change of Occupancy**

If an owner-occupant or tenant, after moving to a comparable DSS dwelling, relocates within the one (1) year period to a higher cost unit, he/she may present another claim for the excess over the original claim, but not to exceed the total rent supplement computed. The final computed rental assistance payment is to be within the financial means of the displacee.

Y. MOBILE  
HOMES -  
GENERAL

The Department will determine whether or not the mobile home qualifies as real property or personal property in accordance with applicable state law. Federal funds may be used in the acquisition when the mobile home is classed as real property.

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When the mobile home which must be moved from the site is personal property and cannot be acquired under State law, the displaced owner-occupant is entitled to a replacement housing payment if:

- The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable costs. The payment determined by the Department will utilize "salvage value" instead of "acquisition cost" to determine the maximum replacement housing payment, or
- The mobile home is not decent, safe and sanitary. The payment determination by the Department will utilize "trade-in value" instead of "acquisition cost" to determine the replacement housing payment.

When a sufficient portion of a mobile home park is taken to justify the operator of such park to move his business or go out of business, the owners-occupants or tenants of the mobile home dwellings, not within the actual taking, who are forced to move would be eligible to receive relocation payments as though their dwellings were within the actual taking.

A mobile home may be considered a comparable replacement dwelling provided it substantially meets applicable requirements for decent, safe and sanitary dwellings, except that one means of egress is acceptable. When a comparable mobile home dwelling is not available, it will be necessary to calculate the replacement housing payment on the basis of the next highest type of dwelling that is reasonably available and meets the applicable requirements and standards, i.e., a higher type mobile home or a conventional dwelling.

If a mobile home requires repairs or modifications to permit its relocation to another site and the Department determines that it would be practical to move the mobile home and make the repairs or modifications, the cost of a comparable dwelling is the value of the occupants' mobile home plus the cost to make the repairs or modifications. If a mobile home is not actually acquired, but the occupant is considered displaced under these regulations, the initiation of negotiations shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he or she is a displaced person for the purposes of these regulations.

The general provisions for moving expenses and replacement housing payments as previously described in this manual are also applicable to owners and tenants of mobile homes. If a mobile home needs repairs or modifications in order to move it to the

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replacement site, and the costs are reasonable as determined by the Department, such costs may be added to the moving costs. In addition, the Department will reimburse the mobile home owner-occupant or tenant for the reasonable cost of disassembling, moving and reassembling any attached appurtenances, such as awnings, decks, porches and skirting, which were not acquired, anchoring of the mobile home, and utility hook-up charges. The same forms will be used to process mobile home moving and replacement housing claims as for a conventional dwelling. If the displacee is required to pay a mobile home park entrance fee, such fee can be included in the actual moving expenses if the fee is not returnable to the tenant like a security deposit would be, unless the Department determines that comparable mobile home parks are available which do not require entrance fees.

### **General Rules for Replacement Housing Payment Computations**

The ownership or tenancy of the mobile home (not the land on which it is located) determines the occupants status as an owner or tenant. The length of ownership and occupancy of the mobile home on the mobile home site will determine the occupants residency status as a 90 day owner-occupant or tenant.

The mobile home must be occupied on the same site (or in the same mobile home park) for the requisite 90 days for the occupant to be eligible for the \$7,200.00 to \$31,000.00 payment limitations. The replacement housing or rental assistance payment for the mobile home owner-occupant or tenant will be computed using the same procedures as for any other comparable dwelling unit. Either payment for the mobile home will be computed using the same comparability standards, however, the payment is limited to the maximum according to his/her length of ownership or tenancy. The displaced person in this category may also utilize the same procedures to change his ownership or tenancy status.

A displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section previously described. However, the total replacement housing payment to a person shall not exceed the maximum payment (either \$31,000.00 or \$7,200.00).

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When computing the amount of a replacement housing payment for a person displaced from a mobile home, the cost of a comparable replacement dwelling is the reasonable cost of a comparable replacement mobile home, including the site. This applies whether the displaced person's actual replacement dwelling is another mobile home or a conventional home. If the owner is reimbursed for the cost of moving the mobile home under these regulations, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

### 2. REPLACEMENT HOUSING PAYMENTS FOR 90 DAY OWNER

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment not to exceed \$31,000.00 if the person both owned the displacement mobile home and occupied it on the displacement site for at least 90 days immediately prior to the initiation of negotiations; the person meets the other basic eligibility requirements described herein; and the Department acquires the mobile home as real property, or the mobile home is not acquired by the Department, but the owner is displaced because the Department determines that the mobile home:

- Is not decent, safe, and sanitary; or
- Cannot be moved without substantial damage or unreasonable cost; or
- Cannot be moved because it does not meet mobile home park entrance requirements.

When the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount shall include the salvage value or trade-in value of the mobile home, whichever is higher.

If the mobile home is not acquired, but the owner obtains a replacement housing payment under one of the circumstances just described above, the owner is not eligible for payment of moving expenses.

### AA. REPLACEMENT HOUSING FOR 90 DAY TENANT

The same criteria as applied to a 90 day mobile home owner-occupant applies to this section except that the qualified person here is one who has actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations and is only entitled to a replacement housing payment or a rental assistance payment not to exceed \$7,200.00.

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### BB. LAST RESORT HOUSING PROGRAM

#### Purpose

The Last Resort Housing Program allows utilization of project funds to construct or otherwise provide housing on a reasonable cost basis. No eligible person will be required to move from the right-of-way acquired until comparable decent, safe and sanitary housing is available for immediate occupancy. These procedures will be implemented when normal Relocation Assistance Payment limits are inadequate to effect a solution to the housing needs of eligible displacees. The many varied housing situations that may be encountered dictates a need for program flexibility. Innovative approaches to realistic solutions for implementing Last Resort Housing will be utilized as necessary.

#### General

The provisions of this section are not intended to deprive any displaced person of his right to receive relocation assistance payments for which he may be eligible nor of his freedom of choice in the selection of replacement housing. The Department may not require a displaced person, without his written consent, to accept a dwelling provided by the Department under these provisions in lieu of his acquisition payment, if any, or the real property from which he is displaced or the replacement housing payments for which he may otherwise be eligible. However, the Department's obligation of providing comparable replacement housing is discharged when such housing is made available to the displaced person in compliance with the Uniform Relocation Act. If the displacee does not accept the comparable replacement housing provided by the Department, but obtains and occupies other decent, safe and sanitary housing, the replacement housing payment shall be the amount necessary to provide comparable replacement housing or the amount actually incurred by the displacee for decent, safe and sanitary housing, whichever is the lesser. Any person displaced because of the acquisition of real property for a last resort housing project under the Department's power of eminent domain (including amicable agreements under the threat of such power) is entitled to all benefits for which he is eligible under the relocation assistance provisions, except in the case of an owner-occupant who voluntarily acts to sell his property to the Department for last resort housing, and when the Department determines that the person does not meet other qualifying criteria as a permanently displaced person.

The Department will endeavor to provide a replacement dwelling which places the displacee in the same ownership or tenancy status as he had prior to displacement. At the request of the



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displacee, the Department may provide a dwelling which changes the ownership or tenancy status of the displacee if such a dwelling is available and can be provided more economically.

However, if the computed replacement housing payment for owner-occupant is less than \$7,200.00, a rental assistance payment not to exceed \$7,200.00 may be paid.

### **Implementation**

The Department will implement last resort housing on a reasonable cost basis when: comparable replacement housing is not available for the displaced person; or when comparable replacement housing is available for the displaced person within his financial means but the computed replacement housing payment exceeds the \$31,000.00 limitation or the computed rent supplement exceeds the \$31,000.00 limitation.

The 90 day owner is eligible for increased interest costs, closing costs and a replacement housing payment. When the sum of these items is estimated to exceed the \$31,000.00 maximum, last resort housing will be implemented.

A 90 day owner or tenant, is eligible for a rental assistance payment. When this payment is expected to exceed the \$7,200.00 maximum, last resort housing will be implemented.

If suitable dwellings are available for purchase, the tenant may be paid the lesser of the amount that would be required as a down payment for financing a conventional loan on a comparable dwelling or the amount that would be required for a down payment for financing a conventional loan on the replacement dwelling actually purchased; provided this payment does not exceed the amount that would be required to place the tenant in comparable rental housing. No portion of the down payment received under this provision need be matched by the displacee. If the amount of the computed down payment exceeds the rent supplement payable, our obligation will be limited to providing a comparable rental unit with the appropriate rent supplement to the displacee.

The Department will also implement last resort housing for displacees who have less than 90 days occupancy at the acquired dwelling in those cases where such displacees cannot afford comparable replacement housing using their own funds as determined by the Department.

Payments under this section may be paid directly to the displacee, except in those instances where the Department considers a direct payment to be inappropriate.



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Whenever a direct payment is deemed inappropriate, the file will be documented with the reason why.

When comparable replacement housing is not available and cannot otherwise be made available, the Department may provide such housing by methods which include but are not limited to the following:

- The purchase of land and/or dwellings. Title 3 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 1987 amendments thereto will apply when such acquisitions are made under the Department's power of eminent domain or the threat of eminent domain.
- Rehabilitation of existing dwellings to meet decent, safe and sanitary requirements.
- The relocation and, if necessary, the refurbishing or rehabilitation of dwellings purchased by the Department for right-of-way purposes.
- The construction of new dwellings; or
- The removal of barriers to the handicapped.

### Utilization

Whenever this section must be utilized to provide housing or payments in excess of the maximum limits, a Preliminary Housing Study and a Last Resort Housing Plan must be completed by the Relocation staff and approved by the Lands Management Administrator

When simple displacements are involved, the study and plan may be combined and will be simple in content and nature. The report will advise the Lands Management Administrator of the necessity for such action and furnish a proposal for providing replacement housing. If it appears that there will be a lack of available replacement housing, two separate reports may need to be submitted. Content of the study and plan will contain much more detail to support the unavailability of housing and the plan to provide housing.

## CC. RELOCATION PROGRAM ON PROJECTS AFFECTED BY A MAJOR DISASTER

### General

The policies and procedures contained in this manual as modified by this paragraph, are applicable to relocation programs on projects in areas designated by the President as major disaster areas and to those designated by the Governor of Wyoming as disaster areas.

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### **Tenure of Occupancy**

Individuals and families whose homes have been damaged or destroyed by a major disaster and who have not been able to reoccupy their homes by the start of negotiations for the parcel may be considered to be in constructive occupancy. Federal funds may participate in relocation payments to such individuals and families providing that location approval for the project has been given by the FHWA prior to the disaster.

### **Computation of Replacement Housing Payment for Owner-Occupant of 90 Days or More Who Purchases**

The fair market value of damaged or destroyed residences will be as of the usual date of valuation for a highway project. The replacement housing payment will be the amount which, when added to the amount paid for the damaged or destroyed dwelling, equals the lesser of the actual cost the owner is required to pay for a decent, safe and sanitary dwelling, or the amount determined as necessary to purchase a comparable dwelling.

As referred to earlier, any proceeds received by the displacee for payment of damages to his residence as a result of the major disaster, from any source, such as flood insurance or cancellation of a portion of a Small Business Administration (SBA) loan, is to be deducted from the replacement housing payment for which he is eligible.

## DD. APPEALS

A displacee may appeal the decisions of the Wyoming Department of Transportation regarding relocation assistance and payments in the following sequence:

- The complainant will write a letter to the Right-of-Way Administrator, Wyoming Department of Transportation, citing the complaint and all facts concerned. (The Department will accept an appeal from the complainant regardless of the form). It will be addressed to: Wyoming Department of Transportation, Right-of-Way Administrator, Right of Way Program, 5300 Bishop Blvd, Cheyenne, Wyoming 82009.
- Additionally, he may make a personal appointment with the State Right-of-Way Engineer to present his complaint.
- The Right-of-Way Administrator will review the case and render a decision. If favorable to the complainant, the necessary claim forms will be completed and the amount agreed upon will be paid. If the complaint concerns matters other than monetary, and is

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adjudged as valid, necessary corrective action will be taken by the Right-of-Way Administrator.

- If the decision by the Right-of-Way Administrator is unsatisfactory to the complainant, he may appeal to the Transportation Commission of Wyoming. He will be furnished a copy of "Rules and Regulations Wyoming Department of Transportation relating to rules of practice governing appeals and hearings before the Transportation Commission of Wyoming in accordance with Chapter 108, Session Laws of Wyoming, 1965~. Appeal procedures will be in accordance with these regulations. Copies of appeals procedures before the Commission are available from the Right-of-Way Administrator. The Department will also advise the complainant of his/her right to seek judicial review, if the full relief requested is not granted.
- Should the complainant decline to accept the ruling of the Commission he may elect to carry his complaint to the courts. It is advisable at this time for him to secure an attorney if he has not previously done so. The complainant has legal counsel or other representative during appeal process, but only at his/her own expense; reference Wyoming Administrative Procedure Act, w.s.16-3-101 and 16-3-115.
- The time limit for filing an appeal is not to be less than 60 days after the displacee receives the Department's written determination on the displacee's claim.
- The Department, will permit the complainant to inspect and copy all materials pertinent to his/her appeal, provided that such material is not considered confidential by the Department.

## EE. FUNCTIONAL REPLACEMENT

Federal regulations allow for functional replacement under 23 CFR Part 710.509. Functional replacement means providing a property or facility which will provide equivalent utility to the property which is to be acquired. The Wyoming Department of Transportation through the discretion of the Right-of-Way Administrator will allow this type of compensation for acquisitions under special circumstances when all of the conditions listed below are met.

1. This type of compensation is determined to be in the best interest of the public, WYDOT and the effected property owner.
2. The property being acquired is publically owned.
3. The property being acquired is under public use.
4. The replacement property will be in public ownership.
5. The replacement property will continue the use and function of the acquired property.

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6. The owner of the property has been given the option of accepting market value or functional replacement and has chosen functional replacement.
7. In the case of projects involving Federal Funding, concurrence from FHWA on the decision to provide functional replacement is given.
8. The real property is not owned by a utility or railroad.

### **Procedures**

The use of functional replacement shall be at the discretion of WYDOT through the Right-of-Way Administrator. The form of compensation is not required. It is allowed in certain special instances. The Project Manager and staff will be responsible for the oversight of the functional replacement process. The following is an outline of the procedures to be followed when functional replacement is used.

1. If during the planning, design or appraisal phases it is determined that functional replacement is an alternative for a parcel to be acquired for a transportation project, a memorandum will be prepared by the Project Manager outlining the issues involved and requesting approval from the Lands Management Administrator to begin the functional replacement process.
2. The property owner will be contacted and the options of receiving compensation based on a market value estimate or functional replacement will be discussed. A document outlining this option and the landowners request will be prepared and signed by the landowner.
3. A Memorandum of Agreement shall be prepared by the Project Manager's staff outlining the terms of the Functional Replacement Agreement. This document shall include wording indicating that functional replacement costs will include costs which are actually incurred in replacement of the acquired land/or facility and do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal regulatory, or similar requirement or to meet reasonable prevailing standards; and cost for land to provide a site for the replacement facility. Estimates on these costs will be outlined in the agreement along with specific terms of how payments will be requested, made and reviewed for accuracy. Any payments requests above original estimates will be explained and will require approval by the Project Manager. This agreement will also cover other detail related to the functional replacement and will be signed by the Relocation Agent and the Landowner.
4. The appraiser shall provide guidance to the Project Manager on costs associated with the functional replacement. Specifically the Review Appraiser must approve all cost estimates provided in the



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MOA. Written estimates from contractors, information on sales, and other supporting documentation may be requested by WYDOT staff before payment is made.

5. Payments will be made to the landowner at the request of the Right-of-Way Agent associated with the parcel. These payments must be approved by the Project Manager as well as the Review Appraiser.
6. Upon completion of this action the Right-of-Way Agent will clean the file and place it with the other files associated with the project.

### FF. RECORD KEEPING AND FORMS

Instructions for use of forms (copies of which are attached hereto)

**Form R/W 7A** - Relocation Assistance Check List. This form will be noted for each parcel file on all relocation projects so as to determine progress being made. An Outdoor Advertising Check List is also used, if necessary.

**Form R/W 8A** - Relocation Record of Conversation. This form will be utilized by the relocation agent for all conversations (personally or over the telephone) he has with displacees, including with other people necessary to document relocation files.

**Notice of Displacement Letter** - A sample form letter for a 90 day owner and a 90 day tenant is shown. Actual letter to displacee may be altered to reflect displacee's individual relocation circumstance (i.e., letter to a less than 90 day owner or tenant).

**Form R/W 39ra** - 1-Notice to Vacate Property - 90 Day. This notice will be sent to each eligible displacee on all projects where one or all of persons, improvements and personal property will be displaced from the right-of-way. The notice will be sent out no earlier than the date of initiation of negotiations for the parcel. Actual content of notice letter may vary according to relocation activities being conducted on individual displacee concerned.

**Form R/W 39ra** - 2-Notice to Vacate Property - 30 Day. Notice will not be sent before the Memorandum of Agreement is signed by both parties or, in condemnation cases, before the date deposit is made into court or right of entry is secured. Actual content of notice letter may vary according to relocation activities being conducted on individual displacee concerned.

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**Form R/W 52ra-2** - Replacement Housing Comparable; Analysis Worksheet. Form is used to compare replacement housing comparables to the Subject House.

**Form R/W 53ra** - 1-Dwelling Inspection Report. Form will be completed on comparable properties used as a basis for replacement housing payments and on subject or acquired properties.

**Form R/W 53ra** - 2-Dwelling Inspection Report. This form furnishes description of property and will be completed on all comparables used as a basis for replacement housing computations and subject properties. Includes worksheet to be used in making determination.

**Form R/W 67ra** - Claim for Reestablishment Expenses. This form will be used for business, farm and non-profit organization reestablishment expenses .

**Form R/W 68ra** - Claim for Actual Moving Expenses. Form will be completed on all actual moving expense claims.

**Form R/W 69ra** - Fixed Payment for Moving Expenses - Residential Moves. Form will be used for all schedule moving expense claims.

**Form R/W 70ra** - When businesses, farms and non-profit organizations qualify for the fixed payment, this form will be completed and will be filed along with other documentation.

**Form R/W 71ra** - Claim for Replacement Housing Payment. This form will be completed on all claims for replacement housing payments, increased interest payments and incidental expenses for owner occupants of more than 90 days prior to initiation of negotiations who purchase replacement housing

**Form R/W 72ra** - Claim for Replacement Housing Down payment. This form will be used by owner and tenant occupants of more than 90 days for replacement housing down payment for purchase of replacement housing.

**Form R/W 73ra** - Claim for Rental Assistance Payment. Tenant occupants and land owner occupants of more than 90 days may claim Rental Assistance payment by making application on this form. Work sheets will be attached as necessary for documentation if computed monthly rent payment is not within financial means and if utility adjustments are required. (Note:



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utility adjustments are made by adding anticipated costs to rental amounts which do not include a specific utility. Included utility costs are never subtracted).

**Form R/W 74ra** - Request for Relocation Assistance. The Relocation Agent will complete this form on all displaced individuals, families, businesses, farms and nonprofit organizations. It will provide needed information and certifications for determining eligibility, and payments and assistance required.

**Form R/W 79ra** - Statement of Relocation Agent - Replacement Housing Payment. This form is a means of giving the displacee written notice of the amount of replacement housing payment to which the displacee is entitled.

In condemnation cases where replacement housing payments are involved this form is used to stipulate the amount of payment and an agreement as to how it can be paid.

**Form R/W 80ra** - Estimated Increased Interest Payment. Informs displacee of approximate increased interest payment to which displacee is entitled.

**Form R/W 82ra** - Incidental Expenses - Replacement Housing. Form serves as a work sheet to note incidental expenses connected with replacement housing.

## GG. RENTAL OF VACANT RENTAL PROPERTIES PRIOR TO ACQUISITION

The purpose for renting vacant rental properties after the initiation of negotiations, but prior to acquisition would be to prevent the additional cost involved with the relocation of less than 90 day occupants or occupants who begin renting after date of initiation of negotiations but prior to acquisition, project delays, and the provision of last resort housing. The procedures for such rentals are to be implemented as follows:

- Tenant is to vacate after initiation of negotiations and negotiation with owner of rental property is to be resolved or voluntary right of entry or right of entry through the court is to be obtained from owner, within 90 days of first contact.

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- Period of time for which the owner is compensated for keeping rental units vacant is to be restricted to no longer than 90 days from first rental date.
- Amount of rent payment to owner is to be same as or below the rent paid by previous tenant upon documented proof of previous rent. The Department will negotiate with owner for higher rent upon documented proof of current market rent and specific approval of the Right-of-Way Administrator.
- Timing of rent offer to owner is to be as soon as vacancy is discovered and owner notifies the Department of his intent to re-rent.
- Timing of rent payments to owner is to be as customary in area or as can be negotiated between the owner and the Department. Rent is to be pro-rated until date of actual acquisition or right of entry.

The above procedures along with any others deemed necessary will be incorporated into the lease between the Department and the owner as prepared by the Department. The Right-of-Way Agent, as part of his property management duties, will handle the executed lease and be responsible for processing the monthly rent so it will be available on the rent due date. He will also be responsible for utility payments, if necessary, and for periodic inspections of the property.

The Right-of-Way Administrator will be informed if it is expected that the Department will exceed the 90 day rental limitation. Upon this occurrence, a new determination may have to be made concerning the continued rental of the property.

### III. DISCRETIONARY UTILITY RELOCATION PAYMENTS

Whenever a program or project undertaken by the Department causes the relocation of a utility facility as earlier defined herein and the relocation of the facility creates extraordinary expenses for its owner, the Department may, at its option make a relocation payment to the owner for all or part of such expense under criteria established by the Department in keeping with Federal guidelines.

# Part VIII

## Property Management

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### A. PURPOSE

This section prescribes the policies and procedures to be followed by each Right of Way crew for property management in order to ensure control of lands and improvements acquired by the Transportation Commission of Wyoming. All transactions involving such lands are processed through the Right-of-Way Program and certain records as indicated in this handbook are maintained by each crew for future reference.

### B. OBJECTIVE

The principal objectives of Property Management are:

- To insure that all information is forwarded to appropriate programs regarding inventory and insurance.
- To maintain records of all improvements acquired with the purchase of right-of-way until they are disposed of.
- To assume management and records of lands acquired for right-of-way until disposed of or until the project is completed.
- To lease land and/or improvements prior to disposal or construction of the project.
- To maintain Driver Services and Highway Patrol leases.
- To dispose of surplus land and improvements in accordance with policies and procedures.
- To clear the right-of-way of improvements and obstructions as required.
- To maintain an accounting system for leases and sales.
- To initiate a rodent control program for each project as required.

### C. ADMINISTRATION

#### ADMINISTRATION

The Lands Management Administrator is responsible for the administration of all lands and real property to which the Transportation Commission has taken title by either purchase, gift, or condemnation.

The Project Managers are charged with the responsibility of carrying out the objectives of the manual. These persons coordinate the work activities of their unit, attend work production meetings, meet report deadlines and coordinate the work with all other units of the Right-of-Way Program.

The Project Managers and Right of Way Agents are responsible for carrying out the objectives of property management. It is their responsibility to see that the following files are properly maintained:



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### 1. EXCESS LAND

#### **EXCESS LAND**

Excess Lands (real property) are not needed currently or in the foreseeable future for transportation purposes or other uses eligible under Title 23. When land is identified as surplus/excess, the Project Manager will notify the Lands Management Administrator concerning the status of the excess land, (i.e., possibilities of land trade-offs, whether or not the land was purchased with federal funds, etc.) The Lands Management Administrator will assign the excess land to a Project Manager who will create a digital excess land parcel in the PaeceTrak database with the locations, funding source, purchase date and other pertinent information. Simultaneously, a physical “excess land” parcel file is set up to contain all of this information, including related correspondence, and is maintained by the crew responsible for the disposal until the disposal is closed.

### 2. LEASES TO OTHERS (DEPARTMENT AS LESSOR)

#### **LEASES TO OTHERS (DEPARTMENT AS LESSOR)**

Real property owned by the Wyoming Department of Transportation may be leased to other parties whenever time and other considerations permit. CFR 710.405 would apply whenever the real property was acquired with Title 23 funds and states, “A ROW use agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with CFR 710.403 and CFR 710.405. Any non-highway alternative use of real property interests requires approval by FHWA, including determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in CFR 710.403(b).” The PaeceTrak Lease module will contain exhibits, dates, terms, and other information. These lease contracts and associated information will be filed in green folders by county in the Right of Way Program office.

It is important that newly leased properties be initially inspected by both the Lessor and Lessee so that they can agree and affix their signatures as to the existing condition and any repairs, etc., that may be needed. The “Lease Inspection Form” (A or B) is to be completed for this purpose and should be used and signed again by both parties as part of a final inspection when the lease is terminated. New lease tracking and numbering system in PaeceTrak is numeric: first two numbers are last two digits of year created--third digit is District—last two digits are order in which created that year. (Example: 15-5-01)



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### 3. LEASES OF PRIVATELY OWNED LAND BY THE DEPARTMENT (AS LESSEE)

#### LEASES OF PRIVATELY OWNED LAND BY THE DEPARTMENT (AS LESSEE)

Material sites, storage areas, shop sites, communications sites and other real property required for proper operation of the Department may be leased from private interests. The PaeceTrak Lease module will contain parcel descriptions; information on purposes of leases, payment amounts, correspondence, and a tickler file may be set-up to alert the Lease Manager as to when lease payments are due. These lease contracts and associated information are filed in yellow folders by county in the Right of Way Program office. New lease tracking and numbering system in PaeceTrac is numeric: first two numbers are last two digits of year created--third digit is District--last two digits are order in which created that year. (Example: 15-5-01)

### 4. DRIVER CONTROL AND HIGHWAY PATROL

#### DRIVER CONTROL AND HIGHWAY PATROL

The Lease Manager is specifically responsible for various Drivers' License and Highway Patrol offices throughout the state are necessary to lease from private sources or other public agencies. Where possible, Driver Control and Highway Patrol Offices are included within the Department's District Complex facilities. The Lease Manager will ensure that leases are renewed and paid in a timely fashion, and will work with the appropriate program managers to develop and adapt new leases as needed.

### 5. DEPARTMENT REAL PROPERTY AND IMPROVEMENTS

#### DEPARTMENTAL REAL PROPERTY AND IMPROVEMENTS

The Right Way Program's Property Management function for long-term departmental properties is to keep records of transfers and to dispose of the sites if use is abandoned. Records are sent to Financial Services Inventory Specialist and copied to the Asset Management Tech in the Maintenance Office when improvements are purchased. WYDOT is self insured, but needs to make sure that any new properties are forwarded to records so they can notify Risk Management.

The inventory of improvements can be found on the WYDOT intranet under Maintenance Staff, Buildings, and contains information by county on such things as consideration paid for the site, who the previous owner was, and under which blue folder number the site is listed. The actual management of these sites is under the District Engineer's supervision. Site renewal leases including some, but not all communication/tower sites, as well as easements, are also obtained by a Right of Way Agent with details in both hard files and the PaeceTrak database. In addition, a binder for Shop Site, Rest Area, and certain other properties in each District is maintained in the Right-of-Way library

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Files are also maintained by the State Land Surveyor on all lands being used as right-of-way. They are computer indexed according to section, township, range, and by project number under which acquired. PaeceTrak and Falcon files are also designed to reference the Wyoming Department of Transportation's central files or "blue folder" numbers which contain deeds and other important documents.

### D. PROCEDURES

This section outlines procedures to be followed by Property Management Agents in the management, housekeeping, leasing and disposing of Department owned property.

#### MANAGEMENT AND HOUSEKEEPING

When a parcel is received into the excess land inventory or is purchased in advance of actual need, Property Management Agent may hire a consultant to:

- Inspect the property to determine the condition of the improvements and fixtures, including whether or not hazardous materials are present, or if rodent control is necessary.
- Determine which fixtures and appurtenances will remain on the property.
- Determine the plans of the occupants to vacate the property, arrange for a final inspection, and secure physical possession of the property.
- Estimate rents to be charged for use of property until time of disposition.
- Estimate sale value of the improvements for removal and salvage.
- Provide protection against vandalism and fire for vacated parcels by ensuring that all utilities are disconnected; clean out potential fire hazards; post notice of State ownership; alert local protective agencies; and prevent or correct illegal dumping or disposal of refuse on the property.

#### LEASING EXCESS LAND AND IMPROVEMENTS

A parcel of excess land may be leased to qualified tenants if it is to be retained for a relatively long period of time prior to use as right-of-way or sale. If it is deemed practical by the Lands Management Administrator, leasing and property management may be hired out to a local realty company.

The Property Management Agent will determine from the Lands Management Administrator if owners and/or tenants may be permitted to occupy and rent the acquired premises until the right-of-way has been cleared for project construction or disposal. If such permission is granted, then a fair rental for the property is

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determined based upon prevailing rents in the locality with consideration given for short-term rentals which give a basis of comparison, rentals received, and other information.

Next, the Property Management Agent will advertise and solicit for tenants by any means necessary, such as the use of newspapers, handbills or personal contact. Copies of advertisements will be retained for files.

Third, the Property Management Agent will supervise the property and collect rents through the term of the lease, making sure all conditions of the lease are met and that all parcels are vacated in sufficient time to be cleared for right-of-way usage or vacated for sale or demolition.

Procedures to be followed by the Property Management Agent in renting, billing, collecting and accounting for rental properties are as follows:

- Lessor and Lessee complete and sign "Short Term Lease Agreement," Form R/W 105PM
- Advance rental payment is collected and a receipt is furnished to the Lessee.
- When payment is received, Form R/W 103 PM will accompany the payment to Financial Services for deposit and one copy will be placed in the file

### 3. EASEMENT

#### **EASEMENT**

Requests for easements within an existing highway right-of-way need to go through the District Engineer for approval. Normally no easements are granted, but if permission is granted it would be in the form of a license or permit. Consideration should also be made as to how the existing right-of-way is owned: fee or easement.

### 4. ABANDONMENTS AND RELINQUISHMENTS

#### **ABANDONMENTS AND RELINQUISHMENTS**

**General Abandonment:** Section 3028 of Wyoming Compiled Statutes 1920, Section 52-104 of Wyoming Revised Statutes 1931, and Section 48-105 of Wyoming Compiled Statutes 1945 provide the State Highway Commission and its successors the authority to designate by resolution public highways as state highways and therefore by resolution the State Highway Commission and its successors abandoned previously designated state highways. This form of abandonment has commonly been termed "General Abandonment". The Wyoming Highway Commission last utilized the "General Abandonment" of highways in 1957. Wyoming Statute Section 24-3-126 is the defining authority under which the Wyoming Transportation Commission abandons and/or relinquishes existing state highways. Said statute states in part "The state highway commission may abandon or relinquish any portion of state

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highways upon the reconstruction or relocation of any portion of an existing state highway.” It also states “Prior to abandonment of any portion of a state highway, the state highway commission shall offer the highway to the governing body of any county or city in which the highway is located.”

**Abandonment/Relinquishment Process:** The processes of abandonments and relinquishments are performed by a Right of Way Agent and overseen by a Project Manager. These processes are done in accordance with WYDOT Operating Policy 19-5, March 31, 2000. The abandonment and relinquishment processes are basically the same action of disposing of excess right-of-way. Abandonments dispose of excess right-of-way by recording the excerpt (Resolution for Abandonment) from the Transportation Commission Minutes in the appropriate county. Relinquishments dispose of excess right-of-way to government entities (i.e., federal agencies, cities, towns, and/or counties). In most cases a relinquishment requires the disposed land to remain in public use.

Potential abandonment/relinquishment parcels are identified and in some cases described during the project right-of-way engineering phase. In other cases, potential abandonment / relinquishment parcels are identified during project closure or during events involved with highway right-of-way research.

A R/W Form 100PM entitled “Disposal of Surplus Land Property” accompanied by a colored exhibit delineating the proposed abandonment/relinquishment parcel(s) is provided by the District Engineer to initiate the process. After signature and adding any comments deemed necessary, the form will be returned to the Right-of-Way Program for processing. Or, an email in response to a specific inquiry by the Right of Way Program will suffice. The District will also need to approve the legal description.

Wyoming State Statute 24-3-126 (b) requires the Department to first offer right-of-way to the governing body of any county or city in which the right-of-way is located. This will be the responsibility of the Right of Way Agent. Concurrent to this process, a file is created in the Excess Land module of the PaeceTrak system. The Excess Land number is generated based on the year and the order the parcel is created in the system.

A land description with acreage is generated for incorporation into resolutions and/or conveyance instruments. For an abandonment, the property description is incorporated into a Resolution of Abandonment. For a relinquishment, the property description is

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incorporated into a Resolution of Relinquishment and a Resolution of Acceptance requiring execution by the effected government agency.

A Categorical Exclusion (CE) or Environmental Impact Statement (EIS) will be obtained from Environmental Services for all disposals requiring Federal Highway Administration concurrence.

According to the Stewardship and Oversight Agreement between WYDOT and the Federal Highway Administration (April 2015), FHWA must approve all disposals at fair market value for all Interstate Highways. WYDOT can approve all non-interstate highway disposals. FHWA must also approve all disposals at below fair market value. Colored exhibits delineating the proposed abandonment/ relinquishment parcel(s) are provided to the Federal Highway Administration.

Once the above requirements have been met, a request for abandonment & relinquishment is submitted for approval to the Wyoming Transportation Commission. This submission is done through memorandum to the Wyoming Department of Transportation, the Assistant Chief Engineer and the Right of Way Program Administrator. The memo should include statements regarding the reasons for the subject abandonment and/or relinquishment and a general location description identifying the proposed action relative to known and prominent land marks (i.e. miles from the nearest city or town). The proposal to the Commission should include attachments as follows:

1. Colored exhibits delineating the proposed abandonment/relinquishment parcel(s).
2. Email or form with District Engineer's recommendations and signature.
3. A copy of the Federal Highway Administration concurrence, if applicable.
4. Resolution of Abandonment/Relinquishment with land description and acreage.
5. Executed Resolution of Acceptance (in cases of relinquishment to a governmental entity.)

An electronic copy of the Resolution for Abandonment / Relinquishment is emailed to the Transportation Commission Secretary and to WYDOT Management Services. After the minutes of the meeting have been formally typed, a certified (stamped) original of the excerpt is sent to the Right-of-Way Program. The Right-of-Way Program then sends said excerpt to the appropriate county clerk for recording. The recorded excerpt is returned to the Right-of-Way Program and then the file is closed and the originals



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are archived in the initial Blue Folder and copies are placed in secondary Blue Folders. If a Quitclaim Deed is initiated, a “Statement of Consideration” must be completed and attached to the Deed when sent to the County for recording.

After the recorded documents are returned to the Right-of-Way Program and the file is ready to be closed, copies of the recorded excerpt with cover letter are sent to the respective District Engineer and to WYDOT Planning Section to notify them of the abandonment/relinquishment. If a bridge is involved, WYDOT Bridge Department is also notified. The PeaceTrak and Falcon databases are to be updated with copies of all pertinent documents and key dates.

### 5. DISPOSAL OF SURPLUS LAND

#### **DISPOSAL OF SURPLUS LAND**

Disposal of surplus land is governed by Wyoming Statutes, Wyoming State Rules and Regulations and Wyoming Department of Transportation Operating Policy (and by Federal Highway Administration directives on federally funded projects.) The Right of Way Program will periodically review records for surplus parcels that may be disposed of.

When the determination is made to dispose of surplus parcels, a Right of Way Agent will:

- Conduct a title verification.
- Initiate request through “Disposal of Surplus Land Property” Form R/W 100PM, and circulate to applicable officials for their approval (including legal description), or, request authorization from applicable officials via email.
- When approval is received, dispose of (i.e. sell, trade, abandon or relinquish) surplus land in accordance with Wyoming Department of Transportation’s Operating Policy No. 19-2, Disposal of Surplus Lands. The surplus land classifications as described in Chapter XXV of the Rules of the Transportation Commission of Wyoming are as follows:
  1. Old Highway Rights-of-Way.
  2. Lands Acquired as Severed Parcels.
  3. Lands Acquired for Highway Purposes but Unused.
  4. Other Department Lands (i.e. building sites, stockpile areas, gravel pits, etc.).
- Ensure that parcels purchased with federal participation in the costs are sold or traded with the concurrence of proper federal officials and documented to that effect.
- Ensure that any necessary appraisals are prepared to ascertain fair market value on surplus land parcels as stated above. Appraisals should then be reviewed for accuracy by the staff Review Appraiser or other qualified staff.



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- Have the descriptions written and Quitclaim Deed(s) prepared.
- Advertise (i.e. provide adequate and legally required public notice for not less than 3 weeks, containing the location of the property, the time and place of the sale, and contact information for persons authorized to provide an inspection of the property) and sell pertinent surplus land parcels at public auction, or by sealed bid, for not less than 75% of current fair market value as required by Wyoming Department of Transportation Rules and Regulations, General Section, Chapter 25.
- Require that sales will be for cash, or other certified funds, if under \$5,000 and at least a 10% earnest money deposit for sales of more than \$5,000 or as determined by the Right of Way Administrator. The balance must be paid within 45 days or the earnest money deposit will be forfeited.
- Provide a receipt for all cash sales and use Form R/W 106PM, "Agreement--Land Sale" for sales over \$5,000 in which a 10% down payment is made and the balance is to be paid within 45 days of the sale date. The purchaser's name will be entered on the Quitclaim Deed to be delivered to the purchaser upon completion of the payment. The Deed is first recorded with the original going to the purchaser and a copy with the recording information thereon going to the Right of Way Agent for filing.
- Scan the Deed into the PaecerTrak and Falcon databases and place a hard copy in the applicable blue file folder.
- Submit money receipts to the Project Manager for proper accounting prior to depositing with cashier with the Form R/W 103PM.
- Credit of Federal funds as called out in 49CFR-18.31(c) and 23CFR-713.307, is no longer required for real property disposals sold on or after June 9, 1998. The Federal share of net income from the sale or lease of excess real property shall be used by the Wyoming Department of Transportation for activities eligible for funding under title 23 of the United States Code.

Personal property may be sold separate from land or improvements.

### 6. SELLING IMPROVEMENTS

#### SELLING IMPROVEMENTS

Surplus improvements may be sold by public auction or bids, separately or with the land. Information on performance bonds, deposits, terms of sale and other requirements will be noted in the advertisements and explained at the time of sale.

The process is as follows: the sale is advertised in local newspapers for not less than three weeks to assure adequate public notice; the sale is also publicized during regular auctions if a local auction service is used (sale by auction is preferable, but sealed bids may be solicited if an auction is not practical); all sales will be for cash. "Agreement-Improvement Sale and Removal," Form R/W 107PM, will be used as a receipt and buyer's agreement to clear the property.

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In the event personal property is sold, the buyer will be given a receipt. The receipts will be submitted to the Project Manager in the Right-of-Way Program for proper accounting and distribution of funds prior to deposit with the cashier accompanied by Form R/W 103PM.

### 7. DEMOLITION OF IMPROVEMENTS

#### **DEMOLITION OF IMPROVEMENTS**

If improvements cannot be sold and it is necessary to remove them from the right-of-way, they must be demolished and removed. For large demolition projects, the Wyoming Transportation Department's Purchasing and Contracting Officer will be requested to advertise and award a contract in accordance with the Department's Purchasing and Contracting procedures. (Procedures include compliance with federal wage and hour standards, and with requirements regarding the Minority Business Enterprise program on federal-aid projects.) For small jobs costing \$50,000 or less, such as demolition of small houses, garages, or sheds, informal bids may be secured from individuals or contractors qualified to do the job and an award made to the lowest qualified bidder; or an advertisement running once a week for two consecutive weeks can be made in the legal section of a newspaper (where the demolition is to take place) in order to solicit qualified bidders.

Right of Way Agents will perform intermediate and final inspections to assure compliance with the contract provisions and clearance of the right-of-way after the award of the contract.

Right of Way Agents will file all correspondence concerning the demolition and note the disposition of the improvements for each impacted parcel in the appropriate database.

If no other means of disposal is available or time is critical, the Right of Way Program will provide a description of the improvements to be demolished, their location, and an estimate of the salvage value to the Contracts and Estimates Engineer and the Project Development Engineer for inclusion in the bid specifications of the project.

When demolition has been completed or a contract awarded, a Right of Way Administrator will notify the Contracts and Estimates Program of the Department of Transportation by preconstruction letter that the right-of-way is clear. Property records are then completed and properly filed.

### 8. HAZARDOUS MATERIALS

#### **HAZARDOUS MATERIALS**

Before proceeding with demolition of improvements, an EPA and/or DEQ certified asbestos abatement person hired by the Department will check the improvements for asbestos. In the event that asbestos does have to be removed from certain improvements located on any given project site prior to their demolition, such removal and disposal thereof will be done in accordance with USEPA National

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Emission Standards for Hazardous Air Pollutants, (NESHAPS) Asbestos Regulations (40 CFR 61, Sub-part M, effective November 20, 1990), and corresponding state Environmental Quality Regulations, including any more current amendments thereto.

Any removal and disposal of underground storage tanks will be done by demolition contractors certified by the DEQ to perform such work. Clean-up of sludge and residue, and removal of contaminated soil will be performed by contractors to the satisfaction of WYDOT, DEQ & EPA.

The determination of whether or not a particular material on a project is hazardous, especially in reference to possible corrosive, ignitable, reactive and toxic waste material, will be made by the appropriate Federal and/or State agencies, such as EPA and/or DEQ. Any required removal, transport and disposal of identified hazardous waste from any given project site, will be done in accordance with Federal and State laws and regulations.

### 9. RODENT CONTROL

#### **RODENT CONTROL**

A Right of Way Agent will determine whether rodent or pest extermination is needed on improved properties, and report by memo to the unit supervisor who will file the memo in the appropriate property management file for the project concerned. If rodents or other pests are present, and extermination is required, the City or County Health Department will be requested to effect the extermination with help from commercial exterminators if necessary. Commercial exterminators may be used as required. A Right of Way Agent will re-inspect the affected properties regularly and report by memos as to status changes.

# FORMS ADDENDUM

Department Lease Inspection Consent Form

Lease Agreement – State as Lessee

Lease Agreement – State as Lessor

Right-of-Way Form 103PM

Right-of-Way Form 100PM Disposal of Surplus Land Property

Land Sale Agreement

Agreement for Improvement Sale and Removal

Abandonment Checklist

Relinquishment Checklist

Land Sale Checklist

# WYOMING DEPARTMENT OF TRANSPORTATION

## DEPARTMENT LEASE INSPECTION CONSENT FORM

### Current Inspection:

Noted herein are the observed conditions of \_\_\_\_\_, \_\_\_\_\_ located at XXX ADDRESS, prior to occupancy.

- |          |            |
|----------|------------|
| 1. _____ | 2. _____   |
| 3. _____ | 4. _____   |
| 5. _____ | 6. _____   |
| 7. _____ | 8. _____   |
| 9. _____ | 10.. _____ |

\_\_\_\_\_  
Date

\_\_\_\_\_  
Occupant

\_\_\_\_\_  
Manager/Supervisor

### Departure Inspection:

Noted herein are the observed conditions of \_\_\_\_\_, \_\_\_\_\_ upon vacation by the undersigned occupant relative to the Pre-occupancy Inspection above. Please note the apparent damage or deterioration beyond normal wear due to occupancy.

- |          |            |
|----------|------------|
| 1. _____ | 2. _____   |
| 3. _____ | 4. _____   |
| 5. _____ | 6. _____   |
| 7. _____ | 8. _____   |
| 9. _____ | 10.. _____ |

\_\_\_\_\_  
Date

\_\_\_\_\_  
Occupant

\_\_\_\_\_  
Manager/Supervisor





**LEASE BETWEEN  
XXXX  
AND  
THE WYOMING DEPARTMENT OF TRANSPORTATION**

1. **Parties.** This Lease is made between XXXX, a corporation [or LLC, Partnership, or Individual] [organized under the laws of the State of \_\_\_\_\_], whose address is XXXX, XXXX, City of XXXX, State of XXXX, and The Wyoming Department of Transportation, a governmental body of the State of Wyoming, hereinafter referred to as Lessee. In consideration of the mutual covenants contained herein, the parties agree as follows:

- a. Lessor's business address for the purpose of notification under the terms of this Lease is:  
Address  
City, State, Zip
- b. Lessee's business address for the purpose of notification under the terms of this Lease is:  
  
Wyoming Department of Transportation  
Right of Way Program  
5300 Bishop Blvd.  
Cheyenne, WY 82009-3340
- c. In the event that the addresses listed above change, the party whose address has changed will immediately notify the other party to the Lease in writing.

2. **Purpose of Lease.**

- a. Lessor is the sole owner of the premises described below, and desires to lease the premises to a suitable lessee for business purposes.
- b. Lessee desires to lease the premises for the purpose of conducting government business described as XXXX.
- c. The parties desire to enter a Lease defining their rights, duties, and liabilities relating to the premises.
- d. For consideration, Lessor leases to Lessee the building and land located in the County of XXXX, State of Wyoming, and more particularly described as follows:  
LEGAL DESCRIPTION

The address of the premises is:  
ADDRESS

3. **Term of Lease.** Lessor leases the above premises for a term of ##LS\_lease\_length## (##LS\_lease\_length\_num##) ##LS\_time\_unit## commencing ##LS\_LSStartDate##, and terminating on ##LS\_LSEndDate##, at twelve o'clock a.m. or sooner as provided herein. This Lease is not valid and shall not become effective until it is signed by an authorized representative of the Lessor and an authorized representative of the Lessee, and has been approved as to form by the Office of the Wyoming Attorney General. The effective date of the Lease shall be the last date specified in the Term of Lease provision.

##Option1## ##Option2##



4. **Rent Payment.** The rent to be paid by Lessee to Lessor shall be ##LS\_paymt\_freq\_amt## (##LS\_paymt\_freq\_amt\_num##) per ##LS\_payment\_frequency\_Lbl##. Rent shall be paid in advance, on or before the first day of each ##LS\_payment\_frequency\_Lbl##, for that period's rental, during the term of this Lease. All rental payments shall be made to Lessor at the address specified above. The total amount of rent paid under this Lease shall not exceed ##LS\_TotalLeasePayment## (##LS\_TotalLeasePayment\_num##). No payment shall be made under this Lease for any tenancy occurring before the date upon which the last required signature is affixed to this Lease.
5. **Responsibilities of Lessor.**
- a. **Parking.** Lessor will provide Lessee with ##ParkingDetails1## ##ParkingDetails2## parking spaces, located at ##LS\_parking\_location## at no additional cost for as long as this Lease is in effect.
- b. **Quiet Enjoyment.** Lessor warrants that Lessee shall be granted peaceable and quiet enjoyment of the premises free from any eviction or interference by Lessor if Lessee pays the rent, and otherwise fully and punctually performs the terms and conditions imposed on Lessee.
- c. **Taxes.** Lessor shall pay all taxes, assessments, or other governmental charges that shall or may during the lease term be imposed on, or arise in connection with the premises.
6. **Responsibilities of Lessee.**
- a. **Access to Premises; Signs Posted by Lessor.** Lessee shall permit Lessor or its agents to enter the premises at all reasonable hours to inspect the premises or make repairs; to show the premises to prospective buyers; and/or at any time within ##LS\_premise\_access## (##LS\_premise\_access\_Num##) days before expiration of the term, to show the premises to others wishing to rent the premises, all provided that Lessee's use of the premises shall not be unreasonably impaired. Lessee shall, within ##LS\_optto\_post\_notice## (##LS\_optto\_post\_notice\_Num##) days before expiration of the term, permit the usual notices of "For Rent" to be placed on the premises and to remain thereon without hindrance and molestation.
- b. **Assignment, Mortgage, or Sublease.** Neither Lessee nor its successors or assigns shall, without Lessor's consent, assign, mortgage, pledge, or encumber this Lease or sublet the premises in whole or in part, or permit the premises to be used or occupied by others. The consent by Lessor to an assignment, mortgage, pledge, or transfer shall relieve Lessee from obtaining the express written consent of Lessor to any future transfer of interest.
- c. **Surrender of Possession.** Lessee shall, on the last day of the term, or on earlier termination and forfeiture of the Lease, peaceably and quietly surrender and deliver the premises, including all buildings, additions, and improvements constructed or placed thereon by Lessee, except moveable trade fixtures, all in good condition and repair, to Lessor free of subtenancies.
- d. **Utilities.** In the event that no other tenants or users are located on or using the premises, all applications and connections for necessary utility services on the premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, telephone, snow removal, garbage and janitorial service. Lessee shall be liable for all connections and charges for its own telephone system.



7. **Special Provisions.**

a. **Alterations, Additions, and Improvements.**

- i. Lessee may, at its own expense, at any time during the lease term, make alterations, additions, or improvements in and to the premises. No structural or substantial portion of the premises shall be demolished or removed by Lessee without the prior written consent of Lessor. Alterations shall be performed in a workmanlike manner and shall not weaken or impair the structural strength, or lessen the value, of the premises.
- ii. All alterations, additions, and improvements on or in the premises at the commencement of the term, and that may be erected or installed during the term, shall become part of the premises and the sole property of Lessor, except that all moveable trade fixtures installed by Lessee shall be and remain the property of Lessee.

b. **Condition of Premises; Summary of Damage & Repair.**

- i. Lessee. Lessee has examined and knows the condition of the premises to be leased. On or before commencement of the Lease, Lessee and Lessor shall prepare and sign a written itemization of the items which are damaged or in need of repair, known as "Summary of Damage & Repair." The Summary shall contain the following:

- (1) Damaged items that will not be repaired:

##LS\_damages\_nottobe\_repaired##

- (2) Items to be repaired by Lessor before occupation by Lessee.

##LS\_repairs\_prior\_lo##

- (3) Items to be repaired by Lessor during occupation by Lessee. No later than Repaired By ##LS\_LSDamageRepairDeadline##, Lessor promises to have completed the following repairs:

##LS\_repairs\_during\_lo##

Please see attached Summary. Based on the afore-mentioned "None", no Summary is required.

The Summary shall be reviewed by both parties. The original Summary shall be attached to and be incorporated into the original Lease. Lessor will be furnished a copy of the executed Summary. Lessee shall retain a copy of the Summary throughout the term of the Lease for the purpose of establishing that such damage was not caused by Lessee.

- ii. Lessor. Lessor agrees to provide the leased premises in good order and repair. In accordance with the above described Summary, Lessor further agrees that the itemized damage exists and that the repairs as indicated will be made. Lessor shall disclose all known contamination or hazardous conditions and defects to Lessee. In the event Lessor fails to make the required repairs or fails to disclose contamination or hazardous conditions to Lessee, Lessee may terminate the Lease.





c. **Destruction of Premises.**

i. Substantial destruction. If the premises shall be damaged by fire or other casualty which shall, in the opinion of the Lessee, make the premises substantially unusable, the obligation to pay rent shall cease until the premises are substantially usable by Lessee.

(1) Repair. Lessor shall have ##LS\_usable\_rtf## days within which to repair the premises so that the premises are substantially usable by Lessee. Thereafter, Lessor shall have ##LS\_full\_rtf## days to repair the premises so that the premises are fully repaired. During such repair, Lessee shall pay a proportional part of the rent, as described in subparagraph (c)(ii), partial destruction, below.

(2) Failure to repair. If Lessor shall not commence repair of the premises within the time specified above, or informs Lessee that it does not intend to repair the premises, the Lease may be terminated by Lessee.

ii. Partial destruction. In the event of partial destruction of the premises, Lessee shall be entitled to a proportionate reduction of rent while repairs are being made. The amount of the proportionate reduction shall be based on the extent, in the opinion of the Lessee, to which the destruction and repairs interfere with the business carried on by Lessee.

Repair. Lessor shall have ##LS\_partial\_destruction\_rtf## days within which to repair the premises so that the premises are fully usable by Lessee.

Failure to repair. If Lessor shall not commence repair of the premises within the time specified, or informs Lessee that it does not intend to repair the premises, the Lease may be terminated by Lessee.

a. **Easements, Contracts, or Encumbrances.** The parties shall be bound by all existing easements, contracts, and encumbrances of record relating to the premises.

b. **Insurance.** During the term of the Lease and for any further time that the Lessee shall hold the premises, the Lessor shall provide coverage through its commercial insurance program for personal property kept at the premises. The Lessee shall be insured for liability through the State Self Insurance Program (SSIP), to the extent allowable under the Governmental Claims Act.

c. **Repairs.**

i. Lessor shall keep in good repair all structural portions, the exterior and interior walls, floors and ceilings of the leased space.

ii. Lessee at its own expense shall repair any damage or injuries caused by Lessee, its customers, members, invitees, agents or employees.

iii. Lessee shall keep the non-structural portions of the premises, including any improvements made by Lessee, in good repair at its own expense.

iv. On termination of this Lease, Lessee shall ensure that the premises are in the same condition and repair as when received by it except for normal wear and tear and loss by fire or other unavoidable casualty and damage by the elements.



- d. **Security Deposit.** No Security Deposit Required.
- e. **Successors and Assigns.** This Lease and the terms and conditions hereof apply to and are binding on the purchasers, heirs, legal representatives, successors, assignees, agents and employees of both parties.
- f. **Time is of the Essence.** Time is of the essence in all provisions of this Lease.
- g. **Unlawful or Dangerous Activity.** Neither Lessor nor Lessee shall use or occupy the premises or any part thereof for any unlawful, disreputable, or ultra-hazardous business purpose nor operate or conduct business in a manner constituting a nuisance of any kind. Lessee shall immediately, on discovery of any unlawful, disreputable, or ultra-hazardous use, or nuisance, report such activity to Lessor, who shall take immediate action to halt such activity. In the event that such activity continues, Lessee may terminate the Lease.

8. **General Provisions.**

**Americans With Disabilities Act and Nondiscrimination.** The Lessor shall comply with the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.* The Lessor shall assure that no person is discriminated against based on the grounds of age, sex, color, race, religion, national origin or disability in connection with this Lease.

**Applicable Law/Venue.** The construction, interpretation and enforcement of this Lease shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Lease and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

**Entirety of Lease.** This Lease, consisting of [REDACTED] pages plus the Summary Report, contains the entire contract between the parties and supersedes all prior negotiations, representations or contracts, either written or oral. This Lease cannot be changed except by a written instrument subsequently executed by the parties.

**Funding.** This Lease is subject to the available funding of the Lessee. Should the governmental source of funds fail to appropriate monies or the responsible department or agency fail to provide the necessary funding, then the Lessee may terminate the Lease.

**Indemnity.** The Lessor shall release, indemnify, and hold harmless the State, the Lessee, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of pre-existing conditions, Lessor's non-disclosure of known contamination, or Lessor's performance or failure to perform under this Lease.

**Notice.** All notices to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, or in person, to the party to be notified at the address set forth above.

Every notice shall, if mailed, be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice.

**Sovereign Immunity.** The State of Wyoming and the Lessee do not waive sovereign immunity by entering into this Lease and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and



all other state law. Designations of venue, choice of law, enforcement actions or similar provisions should not be construed as a waiver of sovereign immunity.

**Termination.** This Lease may be terminated immediately for cause if the Lessor fails to perform in accordance with the terms of this Lease.

In addition to any other event provided for herein whereby this Lease may be terminated, either party may terminate this agreement upon ##LS\_early\_term\_notice## (##LS\_early\_term\_notice\_num##) days written notice of termination. In the event that either party should exercise its right to terminate this lease by provision of written notice as above provided, all prepaid rents shall be returned to Lessee. Occupation of the leased premises by Lessee for any part of a calendar month shall be deemed occupation for the entire month for the purpose of computing the refund.

**Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Lease shall not be construed so as to create such status. The rights, duties and obligations contained in this Lease shall operate only between the parties to this Lease, and shall inure solely to the benefit of the parties to this Lease. The provisions of this Lease are intended only to assist the parties in determining and performing their obligations under this Lease. The parties to this Lease intend and expressly agree that only parties signatory to this Lease shall have any legal or equitable right to seek to enforce this Lease, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Lease, or to bring an action for the breach of this Lease.

**Waivers.** The failure of Lessor to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that Lessor may have regarding that specific term or condition.

**Remainder of Page Intentionally Left Blank**





**Signatures.** IN WITNESS WHEREOF, the parties to this Lease through their duly authorized representative have executed this Lease on the dates set out below, and certify that they have read, understand, and agree to the terms and conditions of this Lease.

The effective date of this Lease is the date of the signature last affixed to this page.

**LESSOR: XXXX**

\_\_\_\_\_  
XXXX (owner)

\_\_\_\_\_  
Date

**LESSEE: WYOMING DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
XXXX,  
TITLE

\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

\_\_\_\_\_  
##LSR\_AssistantAttorneyGeneral##  
##LSR\_AsstAttorneyGeneral Title##  
*Representing the Wyoming Department of Transportation*

\_\_\_\_\_  
Date



**LEASE BETWEEN  
THE WYOMING DEPARTMENT OF TRANSPORTATION  
AND  
XXXX**

1. **Parties.** This Lease is made between THE WYOMING DEPARTMENT OF TRANSPORTATION [Agency], whose address is 5300 Bishop Boulevard, Cheyenne, Wyoming 82009-3340 and XXXX, a corporation [or LLC, Partnership, or Individual] [organized under the laws of the State of \_\_\_\_\_], whose address is XXXX, XXXX, City of XXXX, State of XXXX. In consideration of the mutual covenants contained herein, the parties agree as follows:

- a. Lessor's business address for the purpose of notification under the terms of this Lease is:

Wyoming Department of Transportation  
Right of Way Program  
5300 Bishop Blvd.  
Cheyenne, WY 82009-3340

- b. Lessee's business address for the purpose of notification under the terms of this Lease is:

Name  
Address  
City, State, Zip

- c. In the event that the addresses listed above change, the party whose address has changed shall immediately notify the other party to the Lease in writing.

2. **Purpose of Lease.**

- a. Lessor is the sole owner of the premises described below, and desires to lease the premises to a suitable lessee for business purposes.
- b. Lessee desires to lease the premises for the purpose of conducting business described as XXXX.
- c. The parties desire to enter a Lease defining their rights, duties, and liabilities relating to the premises.
- d. For consideration, Lessor leases to Lessee the building and land [premises] located in the County of XXXX, State of Wyoming, and more particularly described as follows:

##LS\_legal\_description##

The address of the premises is: ##LS\_property\_address1##  
##LS\_property\_address2##,  
##LS\_property\_city##,  
##LS\_property\_state\_Lbl##,  
##LS\_property\_zip##

3. **Term of Lease.** Lessee leases the above premises for a term of Term ##LS\_lease\_length## (##LS\_lease\_length\_num##) months commencing ##LS\_LSStartDate##, and terminating on ##LS\_LSEndDate##, at \_\_\_\_\_ o'clock \_\_.m. or sooner as provided herein. This



Lease is not valid and shall not become effective until it is signed by an authorized representative of the Lessee and an authorized representative of the Lessor, and has been approved as to form by the Office of the Wyoming Attorney General. The effective date of the Lease shall be the date specified in the Term of Lease.

##Option1##

##Option2##

4. **Rent Payment.** The monthly rent to be paid by Lessee to Lessor shall be ##LS\_LSMonthlyLeasePayment## (##LS\_LSMonthlyLeasePayment\_num##) per ##LS\_payment\_frequency\_Lbl##. Rent shall be paid in advance, on or before the first day of each ##LS\_payment\_frequency\_Lbl##, for that period's rental, during the term of this Lease. All rental payments shall be made to Lessor at the address specified above.

5. **Responsibilities of Agency.**

- a. **Parking.** Lessor will provide Lessee with ##LS\_parking\_details## (##LS\_parking\_details\_num##) parking spaces, located at ##LS\_parking\_location## at no additional cost for as long as this Lease is in effect.
- a. **Quiet Enjoyment.** Lessor warrants that Lessee shall be granted peaceable and quiet enjoyment of the premises free from any eviction or interference by Lessor if Lessee pays the rent and otherwise fully and punctually performs the terms and conditions imposed on Lessee.
- b. **Taxes.** Lessor [Agency] shall pay all taxes, assessments, or other governmental charges that shall or may during the Lease term be imposed on, or arise in connection with the premises.

6. **Responsibilities of Lessee.**

- a. **Access to Premises; Signs Posted by Lessor.** Lessee shall permit Lessor or its agents to enter the premises at all reasonable hours to inspect the premises or make repairs; to show the premises to prospective buyers; and/or at any time within ##LS\_premise\_access## (##LS\_premise\_access\_Num##) days before expiration of the term, to show the premises to others wishing to rent the premises, all provided that Lessee's use of the premises shall not be unreasonably impaired. Lessee shall, within ##LS\_optto\_post\_notice## (##LS\_optto\_post\_notice\_Num##) days before expiration of the term, permit the usual notices of "For Rent" to be placed on the premises and to remain thereon without hindrance and molestation.
- b. **Assignment, Mortgage, or Sublease.** Neither Lessee nor its successors or assigns shall, without Lessor's prior written consent, assign, mortgage, pledge, or encumber this Lease or sublet the premises in whole or in part, or permit the premises to be used or occupied by others, nor shall this Lease be assigned or transferred. If all or any part of the premises is sublet or occupied by anyone other than Lessee, Lessor may collect rent from the assignee, transferee, subtenant, or occupant, and apply the net amount collected to the rent reserved herein, but no such assignment, subletting, occupancy, or collection shall be deemed a waiver of this Lease or condition hereof, or the acceptance of the assignee, transferee, subtenant, or occupant as Lessee. The consent by Lessor to an assignment, mortgage, pledge, or transfer shall not be construed to relieve Lessee from obtaining the express written consent of Lessor to any future transfer of interest.
- c. **Surrender of Possession.** Lessee shall, on the last day of the term, or on earlier termination and forfeiture of the Lease, peaceably and quietly surrender and deliver the premises to Lessor free, including all buildings, additions, and improvements





constructed or placed of subtenancies thereon by Lessee, except moveable trade fixtures, all in good condition and repair.

- d. **Utilities.** In the event that no other tenants or users are located on or using the premises, all applications and connections for necessary utility services on the premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, telephone, snow removal, garbage and janitorial service.

In the event that other tenants or users are located on or using the premises, ##LS\_dot\_sharing\_liability##.

7. **Special Provisions.**

a. **Alterations, Additions, and Improvements.**

- i. Lessee shall not at any time during the Lease term, make alterations, additions, or improvements in and to the premises, except with prior written consent of the Lessor. No structural or substantial portion of the premises shall be demolished or removed by Lessee without the prior written consent of Lessor. Alterations shall be performed in a workmanlike manner and shall not weaken or impair the structural strength, or lessen the value, of the premises.
- ii. All alterations, additions, and improvements on or in the premises at the commencement of the term, and that may be erected or installed during the term, shall become part of the premises and the sole property of Lessor, except that all moveable trade fixtures installed by Lessee shall be and remain the property of Lessee.

b. **Condition of Premises; Summary of Damage & Repair.**

- i. Lessee. Lessee has examined and knows the condition of the premises to be leased. On or before commencement of the Lease, Lessee and Lessor shall prepare and sign a written itemization of the items which are damaged or in need of repair, known as "Summary of Damage & Repair." The Summary shall contain the following:

- (1) Damaged items that will not be repaired:

##LS\_damages\_nottobe\_repaired##

- (2) Items to be repaired by Lessor before occupation by Lessee.

##LS\_repairs\_prior\_lo##

- (3) Items to be repaired by Lessor during occupation by Lessee. No later than ##LS\_LSDamageRepairDeadline##, Lessor promises to have completed the following repairs:

##LS\_repairs\_during\_lo##

The Summary shall be reviewed by both parties. The original Summary shall be attached to and be incorporated into the original Lease. Lessor will be furnished a copy of the executed Summary. Lessee shall retain a copy of the Summary throughout the term of the Lease for the purpose of establishing that such damage was not caused by Lessee.



- ii. Lessor. Lessor agrees to provide the leased premises in good order and repair. In accordance with the above described Summary, Lessor further agrees that the itemized damage exists and that the repairs as indicated will be made. Lessor shall disclose all known contamination or hazardous conditions and defects to Lessee.
- c. **Destruction of Premises.**
  - i. Substantial destruction. If the premises shall be damaged by fire or other casualty which shall, in the opinion of the Lessor, make the premises substantially unusable, the obligation to pay rent shall cease until the premises are, in the opinion of Lessor, substantially usable by Lessee.
  - ii. Partial destruction. In the event of partial destruction of the premises, Lessee shall be entitled to a proportionate reduction of rent while repairs are being made. Proportionate reduction shall be based on the extent to which, in the opinion of Lessor, the destruction and repairs interfere with the business carried on by Lessee. Such a proportionate reduction in rent shall become effective only after Lessor provides written notice of such to Lessee, and shall remain in effect only for so long as agreed to, in writing, by Lessor.
- d. **Easements, Contracts, or Encumbrances.** The parties shall be bound by all existing easements, contracts, and encumbrances of record relating to the premises.
- e. **Insurance.**
  - i. Lessor. During the term of the Lease and for any further time that the Lessee shall hold the premises, the Lessor shall obtain and maintain at its expense insurance on the buildings and fixtures on the premises, with all standard extended coverage that may be required by any first mortgagee, including insurance against loss or damage by fire.
  - ii. Lessee. During the term of the Lease and for any further time that Lessee shall hold the premises, Lessee shall obtain and maintain at its own expense insurance on its personal property and all standard extended coverage that may be required by any first mortgagee. Additionally, the Lessee shall provide proof of the following insurance coverages:

**Commercial General Liability Insurance.** The Lessee shall provide coverage against claims arising out of bodily injury and death, and from damage to or destruction of property of others, including loss of use thereof, and including products and completed operations, with minimum limits of Two Hundred Fifty Thousand Dollars (\$250,000.00) per claimant and Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

The State of Wyoming shall be named as an additional insured by an endorsement on the Lessee's general liability policy for the term of this agreement.

It is understood and agreed that the Lessee's policies are primary and not contributory. All insurance certificates shall be submitted to the Lessor for review and approval before the effective date of this Lease. All insurance certificates provided by the Lessee must include a clause stating that the insurance may not be canceled,





amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to the Lessor.

The Lessee will report any damage to the property to the Lessor administering this Lease. The Lessee will also advise the Lessor of any potential or pending liability claim filed against it arising from the use of the premises.

a. **Repairs.**

- i. Lessor shall keep in good repair all structural portions, the exterior and interior walls, floors and ceilings of the leased space.
- ii. Lessee at its own expense shall repair any damage or injuries caused by Lessee, its customers, members, invitees, agents or employees.
- iii. Lessee shall keep the non-structural portions of the premises, including any improvements made by Lessee, in good repair at its own expense.
- iv. On termination of this Lease, Lessee shall ensure that the premises are in the same condition and repair as when received by it except for normal wear and tear.

- b. **Security Deposit.** Lessee shall not deposit any money with Lessor, as security or performance deposit for the full term of this lease or any extension thereof.

OR

Lessee shall deposit ##LS\_LSSecurityDeposit## (##LS\_LSSecurityDeposit\_Num##) with Lessor, which amount shall be held by Lessor as security for the full and timely performance by Lessee of the terms and conditions herein.

No interest shall be paid on the deposit.

The deposit shall be returned to Lessee at the expiration of this Lease provided that all the terms and conditions herein contained have been fully performed by Lessee.

Should the premises be sold, Lessor may transfer or deliver this security deposit to the purchaser with provision that the deposit shall be returned to Lessee upon lease expiration, and Lessor shall then be discharged from any further liability with respect to the security deposit.

- a. **Successors and Assigns.** This Lease and the terms and conditions hereof apply to and are binding on the purchasers, heirs, legal representatives, successors, assignees, agents and employees of both parties.
- b. **Time is of the Essence.** Time is of the essence in all provisions of this Lease.
- c. **Unlawful or Dangerous Activity.** Lessee shall neither use nor occupy the premises or any part thereof for any unlawful, disreputable, or ultra-hazardous business purpose nor operate or conduct business in a manner constituting a nuisance of any kind. Lessee shall immediately, upon notification of any unlawful, disreputable, or ultra-hazardous use, or nuisance, take action to halt such activity.

8. **General Provisions.**





**Americans With Disabilities Act and Nondiscrimination.** The Lessee shall comply with the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.* The Lessee shall assure that no person is discriminated against based on the grounds of age, sex, color, race, religion, national origin or disability in connection with this Lease.

**Applicable Law/Venue.** The construction, interpretation and enforcement of this Lease shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Lease and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

**Entirety of Lease.** This Lease, consisting of \_\_\_\_\_ ( ) pages, contains the entire contract between the parties and supersedes all prior negotiations, representations, leases, or other contracts, either written or oral. This Lease cannot be changed except by a written instrument subsequently executed by the parties.

**Indemnity.** The Lessee shall release, indemnify, and hold harmless the State of Wyoming, the Agency, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of Lessee's performance under this Lease.

**Notice.** All notices to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, or in person, to the party to be notified, at the address set forth above.

Every notice, if mailed, shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice.

**Sovereign Immunity.** The State of Wyoming and the Agency do not waive sovereign immunity by entering into this Lease and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law. Designations of venue, choice of law, enforcement actions or similar provisions should not be construed as a waiver of sovereign immunity.

**Termination.** This Lease may be terminated immediately for cause if the Lessee fails to perform in accordance with the terms of this Lease.

**Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Lease shall not be construed so as to create such status. The rights, duties and obligations contained in this Lease shall operate only between the parties to this Lease, and shall inure solely to the benefit of the parties to this Lease. The provisions of this Lease are intended only to assist the parties in determining and performing their obligations under this Lease. The parties to this Lease intend and expressly agree that only parties signatory to this Lease shall have any legal or equitable right to seek to enforce this Lease, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Lease, or to bring an action for the breach of this Lease.

**Waivers.** The failure of Lessor to insist on a strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that Lessor may have regarding that specific term or condition.

**THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**



**Signatures.** IN WITNESS WHEREOF, the parties to this Lease through their duly authorized representative have executed this Lease on the dates set out below, and certify that they have read, understand, and agree to the terms and conditions of this Lease.

The effective date of this Lease is the date of the signature last affixed to this page.

**LESSOR: WYOMING DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
XXXX, Title

\_\_\_\_\_  
Date

**LESSEE**

\_\_\_\_\_  
XXXX

\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

\_\_\_\_\_  
##LSR\_AssistantAttorneyGeneral##

\_\_\_\_\_  
Date

##LSR\_AsstAttorneyGeneral Title##

*Representing the Wyoming Department of Transportation*



WYOMING DEPARTMENT OF TRANSPORTATION  
Right-of-Way Program  
Property Management Section

NAME Laramie County Fire District 10

ARS ROWAYOHPA

ADDRESS P.O. Box 73

PROJECT Lease of Excess Lands

CITY & STATE Granite Canyon, Wyoming

PARCEL

TERMS \$200.00 per year

LOCATION

AMOUNT DUE \$100.00

AMOUNT PAID \$100.00

TO BE PAID BEFORE 01/01/07

PAYMENT REFERENCE Personal Check #3281

RENTAL PERIOD 01/01/06 to 12/31/06 & 01/01/07 to 12/31/07

WYDOT RECEIPT NO.

DATE February 8, 2007

SIGNATURE





**WYOMING DEPARTMENT OF TRANSPORTATION**  
**Disposal of Surplus Land Property**

District No. \_\_\_\_\_ Project \_\_\_\_\_ Road \_\_\_\_\_  
County \_\_\_\_\_ WYDOT File No.(BF) \_\_\_\_\_ Acres \_\_\_\_\_  
Location \_\_\_\_\_ Reason for Disposal \_\_\_\_\_  
Type of Land \_\_\_\_\_ How Used \_\_\_\_\_  
Acquired From \_\_\_\_\_ Date \_\_\_\_\_ Ownership \_\_\_\_\_

Do you recommend disposal of this property? ( Y / N )

	Date	Initials
( ) Abandonment	_____	_____
( ) Relinquishment	_____	_____
( ) Sale	_____	_____
( ) Other _____	_____	_____

Remarks: \_\_\_\_\_

I, \_\_\_\_\_, District Engineer, certify that in accordance with Federal-Aid Highway Program Manual, Volume 6, Chapter 1, Section 1, Subsection 8:

1. The subject land will not be needed for Federal-Aid Highway purposes in the foreseeable future.
2. That the right-of-way being retained is adequate under present day standards for the facility involved.
3. That the release will not adversely affect the Federal-Aid Highway facility or the traffic thereon.
4. That the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of 23 U.S.C. 319 and PL 89-285, Title III, Sections 302-305 (Highway Beautification Act of 1965).

Date: \_\_\_\_\_

**DISTRICT ENGINEER**

**VALUATION**

Appraisal Value \_\_\_\_\_ Appraiser \_\_\_\_\_ Reviewer \_\_\_\_\_  
Date of Value \_\_\_\_\_ Remarks: \_\_\_\_\_

Established Minimum Value \_\_\_\_\_ Date \_\_\_\_\_

( ) Abandonment ( ) Relinquishment ( ) Sale ( ) Other \_\_\_\_\_

Remarks \_\_\_\_\_

Authority to proceed with Disposal \_\_\_\_\_ Date: \_\_\_\_\_

**LANDS MANAGEMENT ADMINISTRATOR**

FHWA Approval Date if Acquired with Federal Monies \_\_\_\_\_

Transportation Commission Approval Date if valued over \$20,000.00 \_\_\_\_\_

**DISPOSITION**

Obtained By \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

Amount \_\_\_\_\_ Terms \_\_\_\_\_

Remarks \_\_\_\_\_

Deed Info: Date \_\_\_\_\_ Recording No. \_\_\_\_\_ Book \_\_\_\_\_ Page \_\_\_\_\_

**COMPLETION APPROVAL**

Date \_\_\_\_\_

**PROPERTY MANAGEMENT UNIT SUPERVISOR**

Blue Folder Number \_\_\_\_\_ Database Entry \_\_\_\_\_ File Closed \_\_\_\_\_

**PLEASE RETAIN THIS INFORMATION SHEET IN ALL FILES**



WYOMING DEPARTMENT OF TRANSPORTATION

AGREEMENT--LAND SALE

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of XXXX, 2018, by and between the WYOMING DEPARTMENT OF TRANSPORTATION hereinafter referred to as the "Department" and XXXX, hereinafter referred to as the "Purchaser",

WITNESSETH:

**WHEREAS**, the Department is the owner of a parcel of land XXXXX

**WHEREAS**, the Department is willing to sell and the Purchaser is willing to buy the above-described land subject to the abandonment of a parcel of land

**NOW THEREFORE**, in consideration of \$XXXXX (XXX Dollars and 00/100) in certified funds the receipt of which is hereby acknowledged, as payment in full for said land, the Department agrees to sell said land to the Purchaser. The parties hereto further agree as follows:

1. The Department agrees to deliver to the Purchaser a Quitclaim Deed conveying the Department's interest in the herein described property to the Purchaser, after full payment has been received, (*full payment meaning when funds are deposited in the Department's Account*).
2. The Department will send the original quitclaim deed to the Sheridan County Court House to be recorded. The Department will forward the recorded deed to the Purchaser within 10 working days after the Department has received the deed back from Sheridan County.
3. The Purchaser agrees to release, indemnify, and hold harmless the State of Wyoming and the Department, their officers, agents, employees, successors and assigns from any cause of action, or claims or demands arising out of pre-existing conditions from the sale of the previously mentioned property, including but not limited to any soil contamination above or below ground levels. This property is sold in "as is/where is" condition, with no warranty implied or expressed.
4. Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and the Wyoming Department of Transportation and the Transportation Commission of Wyoming expressly reserve sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
5. Transfer of title will be by Quitclaim Deed in accordance with Wyoming Law. Subject, however, to all easements, rights of way, restrictions, zoning and building ordinances, questions of survey, covenants, conditions, lien of taxes, mineral reservations of record, previously conveyed parcels of land, and notices of Contracts of Sale, shown of record in the office of the County Clerk of XXXX County, Wyoming.

**WHEREFORE**, the parties hereto have affixed their names and seals as of the date first above written.

Wyoming Department of Transportation

Purchaser

By: \_\_\_\_\_

\_\_\_\_\_  
Purchaser

Attest By:



**WYOMING DEPARTMENT OF TRANSPORTATION  
AGREEMENT  
IMPROVEMENT SALE AND REMOVAL**

THIS AGREEMENT, entered into on the 28<sup>th</sup> day of February, 2018, by and between the **WYOMING DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "Department" and **XXXX** hereinafter referred to as the "Purchaser".

WITNESSETH:

WHEREAS, the Department is the owner of the following described pole barn located on the property at 746 Hat Six Road, further described as, all of Block 5, "Brooks-Hat Six Industrial Park", located in the SW¼NW¼ of Section 9, T. 33 N., R. 78 W. of the 6<sup>th</sup> P.M., XXXX County, Wyoming.

WHEREAS, the Department is willing to sell and the Purchaser is willing to buy above-described building and;

NOW THEREFORE, in consideration of payment that consists of a salvage price of **\$XXXX** and state sales tax of XXXX% **XXXX** for a total of **XXXX**, receipt of said amount is hereby acknowledged.

IT IS AGREED and understood that the Purchaser will provide the Department a performance deposit of **One Thousand and 00/100 Dollars (\$1,000.00)**, Certified Funds in the form of a Cashiers Check. These funds are to be deposited with the Property Management Supervisor in Cheyenne before removal of the building is started.

The parties hereto further agree as follows:

1. Purchaser agrees to have the pole barn removed and the debris cleaned-up by **May 01, 2018**. All residual materials must be removed from the site.
2. Purchaser shall release, indemnify and hold harmless the Department and its agents from any cause of action, claims or demands arising out of the sale and removal of this building.
3. Purchaser agrees to secure all required permits, including insurance, and to comply with applicable laws and ordinances before and during removal of the building.
4. Purchaser agrees to perform the removal of the building in such a manner as to protect the public from personal injury and property damage.
5. The Department may inspect the site during the removal period in order to assure that proper safety procedures are being implemented.
6. Purchaser may not enter the building or take possession of the building until full payment for the building has been received by the Department.
7. All work must be done in accordance with U.S. Environmental Protection Agency (USEPA), National Emission Standards for Hazardous Air Pollutants (NESHAPS), Asbestos Regulations (40 CFR 61), Subpart M, and corresponding Wyoming Department of Environmental Quality Regulations.





8. Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and the Wyoming Department of Transportation and the Transportation Commission of Wyoming expressly reserve sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
9. The Department will return the cash performance deposit after inspection of the site if the removal and clean-up has been accomplished within the authorized period of time and to the satisfaction of the Department.
10. Should the Purchaser fail to satisfactorily remove said improvements and clean up the site by the date set forth in Paragraph 1 above, to the Department's satisfaction, the Department shall retain the bid price, state sales tax and the performance deposit as liquidated damages.
11. This Agreement also acts as a Bill of Sale for the purchase of the building.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed under their respective names and through their duly authorized officer on this 28th day of February, 2018.

Purchaser **XXXX**

**WYOMING DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
##EXCESSLANDPURCHASER\_CAPS#  
#

By: \_\_\_\_\_  
XXXX  
Property Management Agent

Address: ADDRESS  
CITY, STATE, ZIP

Telephone No. XXXX

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**



## Abandonment Checklist

### Authorized:

- Letter from the District Engineer agreeing with disposal of Excess Land (need it writing)
- Have deed to show how we own the parcel and how the original owner we bought it from held the parcel.
- How was project funded?

### Acceptance:

- Offered it to County or City (need it writing whether the County/City want it or they reject it). **Also, be mindful that some City Counsels only meet once a quarter. This may effect when the packet goes to the Commission.**

### Environmental Clearance:

- ROW File Number (i.e. 16-000259)
- If known, WYDOT project number property was acquired under.
- County of project location
- Road and cross streets if applicable
- Section, Township, Range
- Approximate acres or size
- If known, Describe who you are relinquishing the property to.
- If known, Why the property was acquired - i.e. acquired for the construction of US 89, The parcel of land was purchased by WYDOT from Rick Cecil on January 27, 2004 during project number 1600(5). WYDOT needed to buy the property due to flooding from the construction of State Highway 310.
- An exhibit that has the entire parcel that is being disposed of.

### Description:

- Final description completed.



## **Abandonment Checklist (Cont)**

### **FHWA:**

- Cover letter (explain the history of the parcel being disposed of)
- Environmental Clearance
- Letter or email from District Engineer
- Exhibits
- Original Deeds

### **Commission:**

- Resolution of Abandonment
- Exhibit
- Memo from County/City
- FHWA Approval memo
- After packet is approved to go to Commission. Make sure you email word document to Sandra Scott a week before Commission meeting takes place.
- Make 12 copies of packets

### **Record:**

- Record Commission Minutes (can get it on the following months Commission Meeting)

- **Operating Policy 19-2 and Chapter 25 from “Procedures for Disposal of Surplus Lands Held in the Name of the Transportation Commission of Transportation” can be used to reference more info.**





## **Relinquishment Checklist**

### **Authorized:**

- Letter from the District Engineer agreeing with disposal of Excess Land (need it writing)
- Have deed to show how we own the parcel and how the original owner we bought it from held the parcel.
- How Project was funded?

### **Acceptance:**

- Acceptance of Resolution from County/City/Landowner.
- Why do they want the property?

### **Environmental Clearance:**

- ROW File Number (i.e. 16-000259)
- If known, WYDOT project number property was acquired under.
- County of project location
- Road and cross streets if applicable
- Section, Township, Range
- Approximate acres or size
- If known, Describe who you are relinquishing the property to.
- If known, Why the property was acquired - i.e. acquired for the construction of US 89, The parcel of land was purchased by WYDOT from Rick Cecil on January 27, 2004 during project number 1600(5). WYDOT needed to buy the property due to flooding from the construction of State Highway 310.
- An exhibit that has the entire parcel that is being disposed of.

### **Description:**

- Quitclaim Deed with Reverter Clause.



## **Relinquishment Checklist (Cont)**

### **FHWA:**

- Cover letter (explain the history of the parcel being disposed of)
- Environmental Clearance
- Letter or email from District Engineer
- Exhibits
- Original Deeds

### **Commission:**

- Quit Claim Deed w/ Reverter Clause.
- Acceptance of Resolution
- Exhibit
- Memo from County/City
- FHWA Approval memo
- After packet is approved to go to Commission. Make sure you email word document to Sandra Scott a week before Commission meeting takes place.
- Make 12 copies of packets

### **Record:**

- Record Quitclaim Deed(s)

- **Operating Policy 19-2 and Chapter 25 from “Procedures for Disposal of Surplus Lands Held in the Name of the Transportation Commission of Transportation” can be used to reference more info.**



## Land Sale Checklist

### Authorized:

- Letter from the District Engineer agreeing with disposal of Excess Land (need it writing)
- Have deed to show how we own the parcel and how the original owner we bought it from held the parcel.
- How Project was funded?

### Engineering:

- Quitclaim Deed w/ Mineral Clause is created and Mark Corbridge has checked it.
- Total Square footage is established

### Appraisal:

- Appraisal has been completed in a 12 month period
- Based off of Fair Market Value of the parcel will be the Approval Authority.

### Approving Authority:

- Check with Land Management Administrator (Kevin Labeda) to see if it even has to go to Commission.
- Land Management Approval is less than \$200,000
- Directors Approval \$200,000-\$500,000
- Commission Approval over \$500,000

### Environmental Clearance:

- ROW File Number (i.e. 16-000259)
- If known, WYDOT project number property was acquired under.
- County of project location
- Road and cross streets if applicable
- Section, Township, Range
- Approximate acres or size
- If known, Describe who you are relinquishing the property to.
- If known, Why the property was acquired - i.e. acquired for the construction of US 89, The parcel of land was purchased by WYDOT from Rick Cecil on January 27,





2004 during project number 1600(5). WYDOT needed to buy the property due to flooding from the construction of State Highway 310.

- An exhibit that has the entire parcel that is being disposed of.

Description:

- Quitclaim Deed with Mineral Clause.

### **Land Sale Checklist (Cont)**

FHWA:

- Cover letter (explain the history of the parcel being disposed of)
- Environmental Clearance
- Letter or email from District Engineer
- Exhibits
- Original Deeds

Commission (If Applicable):

- Quit Claim Deed w/ Mineral Clause.
- Exhibit
- Memo from County/City
- FHWA Approval memo
- After packet is approved to go to Commission. Make sure you email word document to Sandra Scott a week before Commission meeting takes place.
- Make 12 copies of packets

Advertising:

- Make sales packet(s) and give them to Dana to post on website
- Must advertise in local paper for a minimum of 3 weeks.

Bidding is done:

- Write letters to the winning bidder with an attached "Sales Agreement"
- Write letters to low bidders with their cashier's check.

Record:



➤ Record Quitclaim Deed(s)

- **Operating Policy 19-2 and Chapter 25 from “Procedures for Disposal of Surplus Lands Held in the Name of the Transportation Commission of Transportation” can be used to reference more info.**



# Part IX

## Outdoor Advertising

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# Part IX:

## Outdoor Advertising

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# Part IX:

## Outdoor Advertising

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### A. PURPOSE

These guidelines prescribe the policies and procedures to be followed in:

- a. The issuance of permits to erect and maintain outdoor advertising structures.
- b. Relocation and removal of conforming and nonconforming sign structures.
- c. Maintaining a system of control to assure compliance with the State and Federal Agreement for the Control of Outdoor Advertising.

Exception: any signs that must be removed and/or relocated as a result of highway construction, whether regulated under this program or otherwise, will be handled as Cost-To-Cure Damage items during the Acquisition phase of negotiations.

### B. AUTHORITY

The foundation of the current Outdoor Advertising Control Program comes from the Highway Beautification Act (HBA) of 1965, as amended, (PL 89-285), Title 23 U.S.C. 131, which states the basic program objectives as follows:

*"The erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the Interstate System and the Primary System should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."*

In accordance with Title 23 U.S.C. 131, 23 CFR part 750, and the State and Federal Agreement for the Control of Outdoor Advertising that was entered into between WYDOT and FHWA on June 8, 1971, Wyoming has developed laws, regulations and procedures to regulate outdoor advertising as follows:

- a. Wyoming State Statute Title 24, Chapter 10 "Outdoor Advertising Act" contains W.S. 24-10-105 authorizing the Highway Commission "to make and promulgate regulations to control the erection and maintenance of outdoor advertising signs, displays and devices along the interstate and primary highway systems in conformance with the terms of this act and in conformity with section 131 of Title 23, United states Code as amended."
- b. WYDOT's Administrative Rules, Chapter 16 "Outdoor Advertising" authorizes the agency to "promulgate rules governing outdoor advertising along interstate, national, and former [sic?] primary highway systems" pursuant to W.S. 24-10-105.
- c. The Federal-Aid Primary system as it existed on June 1, 1991, and the National Highway System (NHS), as updated by MAP-21 on

# Part IX:

## Outdoor Advertising

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October 1st 2012 constitute routes covered under these regulations. The failure by a state to conduct effective control can potentially cost the state 10% of its annual apportionment.

### C. ADMINISTRATION

The Right of Way Administrator is responsible for the implementation of the Outdoor Advertising Control Program.

An assigned Project Manager is responsible for carrying out the provisions of this manual within the Right-of-Way Program through the efforts of a specialized Right of Way Agent.

### D. EFFECTIVE CONTROL PROCEDURE

23 CFR 750.705 outlines requirements for effective control of outdoor advertising, summarized as follows:

- a. Prohibit the erection of new signs that do not meet requirements;
- b. Assure signs comply with size, lighting and spacing criteria;
- c. Assure signs comply with national standards;
- d. Remove illegal signs expeditiously;
- e. Remove nonconforming signs, subject to 23 CFR 750.707 and 23 U.S.C. 131(n);
- f. Assure that Landmark Signs comply with regulations (none exist in Wyoming);
- g. Establish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of the highway;
- h. Develop laws, regulations and procedures to regulate outdoor advertising;
- i. Establish enforcement procedures to discover illegally erected or maintained signs and cause their prompt removal;
- j. Submit regulations and enforcement procedures to FHWA for approval.

Implementation of the regulations requires timely oversight with adequate resources to conduct inventory, surveillance, log information, document actions, monitor permitting, collect fees and discover illegally erected or maintained signs.

By conducting a statewide field inventory at least every two years in addition to yearly correspondence with prospective and existing permit holders, the Right of Way Program will establish, renew, terminate and take enforcement actions as needed to demonstrate effective control of the Outdoor Advertising Control program.

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### R. FILES AND ELECTRONIC DATABASE

The Right of Way Agent in charge of the Outdoor Advertising Program is to maintain and keep current an index of numbered hard files on each permitted sign and update the Department's online Outdoor Advertising Database accordingly. This database is to be kept accessible to the public on the Department's website.

### F. SIGN PERMITTING PROCEDURE

A permit must be obtained from WYDOT before construction of any sign. The application includes a fee, written consent of the property owner, statement from the appropriate zoning authority verifying the zoning classification, and a zoning map or a diagram of the sign location showing the highway, physical features, distance to the nearest milepost marker and spacing to any existing signs or commercial or industrial activity used to define the area. Each permit is assigned an identification number and tag that is affixed to the sign by the permit holder. The permit is valid for 3 years and then renewed annually by paying a yearly fee of \$15.00.

#### **Permit Applications:**

If an Outdoor Advertising application meets the standards outlined above, a permit may be issued and continued provided the applicant:

- a. Completes and signs the outdoor advertising permit application Form TD-15.
- b. Pays a fee of \$100.00 to be submitted with the application.
- c. Pays an annual renewal fee of \$15.00 after the first 3 years.

Using the "O.A. Application Checklist," the Right-of-Way agent assigned as the outdoor advertising control agent will process and review the permit application for completeness, payment of the application fee and will determine if the outdoor advertising permit application meets the requirements as stated above. When signs have been approved, a metal Permit tag will be mailed to the sign owner with the explanatory WYDOT "Outdoor Advertising Permit" approval notice. Pictures of the completed sign structure with the permit tag affixed will be kept in both the hard copy file and the Outdoor Advertising database.

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## Outdoor Advertising

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### G. MAINTENANCE, REMOVAL AND RELOCATION

#### I. CONFORMING SIGNS

##### CONFORMING SIGNS:

The owner of a conforming sign may ask to relocate and do so with the permission of the Department as long as the new location meets all the requirements set forth in the Federal/State Agreement.

##### 2. NONCONFORMING SIGNS:

#### NONCONFORMING SIGNS

23 CFR 750.707(c) allows a sign legally placed before new regulations rendering it nonconforming to remain "at its particular location for the duration of its normal life subject to customary maintenance." The intent of the HBA is to permit a nonconforming sign to continue in place until it is destroyed, abandoned or discontinued or is removed by the State. 23 CFR 750.707(d)(5) states that a nonconforming sign must "remain substantially the same as it was on the effective date of the State Law or regulations." If a nonconforming sign is removed for any reason than criminal or tortuous acts, the permit will be revoked and the structure will not be allowed to be rebuilt.

The classification of signs on the road segments added to the NHS as a result of the revisions to 23 U.S.C. 103 by MAP-21 Section 1104(a) must conform to State requirements. Signs can be classified as legal nonconforming on these new NHS routes if they were in existence as of October 1, 2012. If a sign is classified as legal nonconforming due to location, spacing, height or lighting, it is subject to the limitation of customary maintenance noted above.

WYDOT Outdoor Advertising Regulations Chapter 16, Section 12 provides standards for repair, maintenance and relocation of signs. Subsection (b) allows nonconforming signs to be changed and structures repaired, but they shall not be improved in a manner that increases a structure's value.

Section 13 specifies types of unlawful signs. When a nonconforming sign is blank, a certified letter is sent to the sign owner indicating that if the sign does not have a message for more than 9 continuous months, it is considered abandoned and must be removed by the sign owner.

If an owner for an abandoned sign cannot be located, the Department will send a certified letter to the last known address of the permit holder requesting the removal of the sign. If contact cannot be made,

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## Outdoor Advertising

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a certified letter will be sent to the land owner for written permission for the Department to enter the property to remove the structure.

### APPENDIX

#### Definitions:

- a. "**Abandoned sign**" means a signs that is obliterated, displays an obsolete advertising message or is in need of repair for nine continuous months.
- b. "**Blank sign**" means a signs structure having no panel or face, or whose panel or face is not covered at least 50 percent in an area by an advertising message for 9 continuous months. If the sign structure has multiple display surfaces, a blank sign means a sign with either surface having an advertising message covering less than 50 percent of its area.
- c. "**Commercial or Industrial zone**" means those areas reserved for business, commerce or trade pursuant to comprehensive local zoning ordinances or regulations, or enabling state legislation, including highway service areas in which the primary use of the land is reserved for commercial and roadside services other than outdoor advertising. To be accepted, any commercial or industrial zone shall be adopted in accordance with the planning and zoning provisions of W.S. 18-5-201 through W.S. 18-5-208.
- d. "**Conforming sign**" means a sign that is lawfully in place and complies with size, lighting or spacing requirements and all other pertinent lawful regulations.
- e. "**Department**" means the Wyoming Department of Transportation.
- f. "**Interstate System**" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may be so designed by the Department and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways."
- g. "**Maintain**" means allowed to exist.
- h. "**Main-traveled way**" means the traveled way of a state highway in which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite



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## Outdoor Advertising

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directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways or parking areas.

- i. "**National highway system**" means that portion of connected main highways, including interstate and defense highways, as officially designated by the Department and approved by the secretary of transportation pursuant to the provisions of the Title 23 United States Code. "Highways."
- j. "**Nonconforming Sign**" means a sign that was lawfully erected but does not comply with the provisions of the state law or regulations passed later or that later fails to comply with state law or regulations because of changed conditions.
- k. "**Outdoor advertising**" means any permanent or portable outdoor sign, display, light, device, figure, painting, drawing, plaque, poster, billboard or other object designed, intended or used to advertise or inform, and is visible from any place on the main-traveled way of the interstate or national highway system.
- l. "**Primary system**" means the federal-aid primary system in existence June 1, 1991, and any highway not on this system but included on the National Highway System.



WYOMING DEPARTMENT OF TRANSPORTATION  
OUTDOOR ADVERTISING PERMIT APPLICATION

See Reverse Side for Directions - Please Print

Owner of Sign \_\_\_\_\_ Phone (    ) \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

This application is for a: ☐ New Advertising Sign ☐ Directional Sign, Type I ☐ Directional Sign, Type II

Approximate date of erection \_\_\_\_\_

## Location of sign:

Highway number \_\_\_\_\_ Milepost number (Nearest 1/10 Mile) \_\_\_\_\_

Side of road: ☐ North ☐ South ☐ East ☐ West

County \_\_\_\_\_ Nearest Town \_\_\_\_\_

Distance from nearest OFF-PREMISE advertising sign \_\_\_\_\_ Permit No. \_\_\_\_\_

Other identifying features \_\_\_\_\_

The location of the sign is: ☐ Zoned commercial or industrial ☐ Unzoned commercial or industrial  
(See directions on back for required attachments)Size: Width \_\_\_\_\_ Height \_\_\_\_\_ Lighted ☐ Yes ☐ NoSign Style: ☐ Single Face ☐ Back to Back ☐ Double Face One Way ☐ V TypeType of Construction: ☐ Wood ☐ Metal ☐ CombinationThis sign is located on: ☐ Private land ☐ Government landThis sign is maintained under: ☐ A written lease (attach copy) ☐ Written permission (attach copy)

Owner of Land \_\_\_\_\_ Phone (    ) \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

I certify, under penalty of perjury, the foregoing statements are true and accurate to the best of my information and knowledge.

\_\_\_\_\_  
(Signature of Sign Owner or Agent)

## FOR WYOMING DEPARTMENT OF TRANSPORTATION USE

Permit Number \_\_\_\_\_ Cty \_\_\_\_\_ Rt \_\_\_\_\_ Sfx \_\_\_\_\_ Side: ☐ Left ☐ Right

Approved \_\_\_\_\_ Date \_\_\_\_\_

State Traffic Engineer



# Part X

## Junkyard Control

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# Part X:

## Junkyard Control

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# Part X:

## Junkyard Control

---

### A. PURPOSE

This Manual prescribes the policies and procedures to be followed in: (1) the issuance of permits for establishment and operation of junkyards, (2) screening, relocation, removal or disposal of nonconforming junkyards and (3) maintaining a system of control to assure compliance with the Junkyard Control Act.

### B. AUTHORITY

Procedures outlined herein are in conformance with the Junkyard Control Act (Wyoming Highway Laws-Sec. 33-19-101 to 33-19-110) of the State of Wyoming.

### C. ADMINISTRATION

The Right of Way Administrator is responsible for the implementation of the Junkyard Control Program.

An assigned Project Manager is responsible for carrying out the provisions of this manual within the Right-of-Way Program through the efforts of a specialized Right of Way Agent.

The Transportation Commission of Wyoming will administer any funds obligated by the Federal Highway Administration for junkyard abatement. The Commission cannot use general highway funds to match Federal Highway Beautification funds for this purpose.

***The Wyoming State Legislature may provide special highway fund appropriations for junkyard abatement with which to match any Federal-Aid funds. As of the date of this manual, this has never occurred at the state or federal level and the Junkyard Control Act remains an "unfunded mandate" in Wyoming.***

That portion of highway project funds allocated for right-of-way acquisition may be used for junkyard abatement, if a junkyard is to be acquired (in whole or in part) in conjunction with a highway project. (Ref. Memorandum from WYDOT Senior Assistant Attorney General, dated March. 27, 1986, concerning use of highway funds for junkyard control).

### D. DEFINITIONS

**Junk:** Old or scrap copper, brass, rope, rags, bottles, batteries, debris, paper, trash, rubber debris, waste, junked, dismantled or wrecked automobiles, machinery or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

# Part X:

## Junkyard Control

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**Automobile graveyard:** Any establishment or place of business which is used, maintained or operated for storage, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

**FHWA:** Federal Highway Administration.

**Junkyard:** Any establishment or place of business maintained, operated, or used for storing, keeping, buying or selling junk, or for maintenance or operation of an automobile graveyard. This definition includes garbage dumps or sanitary landfills but not litter, trash or debris scattered along the highway, or temporary operations and outdoor storage of limited duration.

**Illegal Junkyard:** One established and/or maintained in violation of the Wyoming Junkyard Control Act. In keeping with Federal law, ten or more wrecked, scrapped, ruined, or dismantled motor vehicles constitute an illegal junkyard without a valid permit for such and/or a designation as a nonconforming junkyard.

**Nonconforming Junkyard:** One which was lawfully established but does not comply with the provisions of the Junkyard Control Act, or regulations passed at a later date, or which fails to comply with the act or regulations due to changed conditions.

**Unzoned Industrial Area:** Those areas not zoned by state or local law, regulation, or ordinance which are occupied by one or more industrial activities, on lands along the highway for a distance of 600 feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions; provided those lands on the opposite side of the highway are not deemed scenic or as having aesthetic value.

**Industrial Zone:** Those areas which are reserved for industry pursuant to comprehensive local zoning ordinances or regulation, or enabling state legislation.

**Commission:** The Transportation Commission of Wyoming

**Act:** Junkyard Control Act (Wyoming Highway Laws-Sec. 33-19-101 to 33-19-110).

**Administrator:** Lands Management Administrator or his duly authorized representative.

**Person:** Any individual, firm agency, company, association partnership, business, trust, joint stock company, or corporation who operates or allows a junkyard to be placed or to remain on premises controlled by the person.

## E. CONTROL PROCEDURES

### I. PERMITS

#### PERMITS:

No person shall establish, operate, or maintain a junkyard, any portion of which is within one thousand (1000) feet of the nearest edge of the right-of-way of the interstate or primary highway system

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## Junkyard Control

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in Wyoming without obtaining a junkyard permit. Before a permit can be issued the junkyard must be: (1) screened by natural objects, plantings or appropriate means so as to not be visible from the main traveled way; or (2) located within an area zoned for industrial use under authority of law; (3) located within an unzoned industrial area as determined from actual land uses; (4) not visible from the main traveled way of the highway system. A sample of this permit (Form R/W 29JY - Junkyard Business Permit) is included in the Appendix hereof

Cost to screen or relocate or remove a junkyard established subsequent to March 3, 1967 shall be borne by the junkyard owner. He shall also keep the screen in a good state of repair, including painting, if composition is such that periodic painting is required. The screen must meet the specifications outlined under "screening" for nonconforming junkyards as stated later on in this manual.

### 2. PERMIT APPLICATIONS

#### **PERMIT APPLICATIONS:**

If a junkyard meets the standards outlined above, a permit may be issued provided the applicant: (1) completes and signs application Form R/W 27JY Junkyard Permit Application and (2) pays a permit fee of \$50 to be submitted with the application.

The Right-of-Way Agent assigned as junkyard control agent will process the Junkyard Permit Application for completeness, payment of the application fee and will determine if the junkyard meets the requirements as stated above.

### 3. INSPECTIONS

#### **INSPECTIONS:**

The Right of Way Agent responsible for the Outdoor Advertising Program (see Part IX ) will conduct regular inspections of all junkyards every two years in conjunction with field inventory of all signs to assure compliance with the Junkyard Control Act. Complaints or violations will be referred to the Office of the Attorney General. Results of the inspections will be properly documented and placed on file. Form R/W 26JY- Inspection Report- will be used when making inspections. This report will then be entered into the access database for Junkyard Control. Also, Form R/W 8A Record of Conversation- will be used to document conversations with junkyard owners and other parties, such as county agencies, about junkyard control matters.

# Part X:

## Junkyard Control

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### F. MAINTENANCE AND CONTINUANCE, SCREENING, RELOCATION, REMOVAL OR DISPOSAL OF NONCONFORMING JUNKYARDS

A junkyard may continue in operation as long as it is not extended, enlarged, or changed in use or its functions changed. A change in any of the above ways will nullify its nonconforming status and it will be treated as a new junkyard at a new location. Any junkyard whose use is discontinued, destroyed or abandoned for a period of 120 days or more, shall be declared to be an illegal junkyard and must be removed by the owner of the land. Once a junkyard is made conforming, any junk placed so that it may be seen from the main traveled way shall change its status to that of a new junkyard and a new permit must be applied for.

### G. SCREENING

#### SCREENING:

If considered feasible, a nonconforming junkyard located within one thousand (1000) feet of the nearest edge of the right-of-way of the interstate or primary systems, i.e. principal arterials, shall be screened by the Commission when funding is made available. The screening shall be at locations on the right-of-way or in areas outside the right-of-way acquired for the purpose, so that the junk inside the junkyard is not visible from the main traveled way of the interstate or primary system, i.e. principal arterials. The agreement will be set forth on Form 28JY, Highway Beautification Agreement.

Detailed specifications shall be drawn-up and approved by the Administrator on a project basis. The screen must meet the following general specifications: it may be living or fabricated, at least six feet in height and must be constructed and/or maintained so as to immediately obscure from the view of the traveling public, junk contained within the enclosed junkyard area. Fabricated fences or screens shall be of uniform composition, i.e., all wood, all metal or of such material approved for use by the engineer. Screens shall be kept at all times in good state of repair or condition and properly painted where composition is such that painting is required. Gates shall be a minimum of six (6) feet in height and shall be kept closed except to permit traffic in and out of the enclosure. Junk shall be stacked so as not to be visible from the main traveled way with the screen in place. If the screen is paid for by the Commission, it will remain the property of the Commission; however, the junkyard owner shall bear the cost of maintaining the screen in good state of repair, including painting.

# Part X:

## Junkyard Control

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### 2. RELOCATION, REMOVAL, OR DISPOSAL

#### **RELOCATION, REMOVAL, OR DISPOSAL:**

When it is determined that the topography of the land adjoining the Interstate or Primary systems, i.e. principal arterials, will not permit adequate screening of such junkyards, or that the screening would not be economically feasible, the Commission may require the relocation, removal or disposal of the junk and junkyard by negotiation or condemnation. A study shall be made to find the most practical approach to the problem. The Junkyard Agent may negotiate with the owner on one or more of the alternatives and should encourage recycling, if possible. The agreement will be set forth on Form R/W 28JY, Highway Beautification Agreement. Payments for work accomplished shall be based upon the lower of bids submitted, or, if bids cannot be obtained, upon a negotiated settlement.

### 3. CONDEMNATION

#### **CONDEMNATION:**

If condemnation is necessary, the Commission shall institute condemnation proceedings in the name of the Commission as provided by Rule 71.1, Wyoming Rules of Civil Procedure. When the Commission determines that it is in the best interests of the state, it may acquire such land or interest in land as necessary to provide adequate screening of such junkyards. If screening is not economically feasible, the Commission may require the relocation, removal, or disposal of the junk and/or junkyard by condemnation. Damages resulting from any taking of property by condemnation shall include, but not be limited to, acquisition costs, leasehold value and moving costs.

# FORMS ADDENDUM

Inspection Report  
Junkyard Permit Application  
Junkyard Business Permit  
Highway Beautification Agreement



# Wyoming Department of Transportation INSPECTION REPORT

[illegible]



WYOMING DEPARTMENT OF TRANSPORTATION

**JUNKYARD PERMIT APPLICATION**  
(Nontransferable)

Name of Junkyard: \_\_\_\_\_ Location: \_\_\_\_\_ Milepost: \_\_\_\_\_

Owner of Junkyard: \_\_\_\_\_

Address: \_\_\_\_\_

Property Owner: \_\_\_\_\_

Address: \_\_\_\_\_

(attach copy of written lease, or written permission from property owner)

Date Junkyard was established: (Month /Year) \_\_\_\_\_ / \_\_\_\_\_

Applicant is applying for permit under one of the following exceptions as provided for in the State Junkyard Control Act. Please check one.

1. Screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveledway of the interstate or primary system, or otherwise removed from sight; if the junkyard was established subsequent to March 3, 1967 the screen will be provided by the applicant and approved by the State Highway Commission.

2. Located within areas zoned for industrial use under authority of law. Attach documentation from appropriate zoning authority.

3. Located within unzoned industrial areas as determined from actual land uses and defined by regulations promulgated by the Commission.

4. Located within one thousand (1,000) feet to the nearest edge of the right of way of the interstate or primary systems but not visible from the main traveled way of said road system.

I certify, under penalty of perjury, the foregoing statements are true and accurate to the best of my information and knowledge.

\_\_\_\_\_  
(Signature of Owner or Agent)

FOR WYOMING DEPARTMENT OF TRANSPORTATION USE:

Permit No. \_\_\_\_\_

Approved: \_\_\_\_\_ Title: \_\_\_\_\_

Date Approved: \_\_\_\_\_





Applicant is applying for permit under one of the following exceptions as provided for in the State Junkyard Control act.

Please check one

(i) screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main-traveled way of the interstate primary systems, or otherwise removed from sight; the screen will be provided by the applicant and approved by the Transportation Commission of Wyoming or its authorized personnel prior to the stockpiling.

\*(ii) located within areas zoned for industrial use under authority of law.

\*(iii) located within unzoned industrial areas as determined from actual land uses and defined by regulations promulgated by the commission.

(iv) those which are not visible from the main-traveled way of the highway system.

\* Documentation must accompany from authorized zoning commission within area.

Form R/W 29JY

STATE OF WYOMING  
**JUNKYARD BUSINESS PERMIT**

NAME \_\_\_\_\_ DATE OF ISSUE \_\_\_\_\_

PERMIT NO. \_\_\_\_\_ EXPIRATION DATE: (Non-Expiring) \_\_\_\_\_

**This is to certify that the person and establishment noted herein  
is permitted to engage in the business of a  
Junkyard in the State of Wyoming.**

Wyoming Department of Transportation  
5300 Bishop Boulevard  
Cheyenne, WY 82009-3340

Approved by: \_\_\_\_\_  
Junkyard Control Agent





WYOMING DEPARTMENT OF TRANSPORTATION

HIGHWAY BEAUTIFICATION AGREEMENT

Project No:  
Road:  
County:  
Parcel No:

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_ by and between THE WYOMING DEPARTMENT OF TRANSPORTATION, hereinafter  
referred to as the "Grantee", and \_\_\_\_\_ hereinafter referred  
to as "Grantor" or hereinafter referred to as "Grantor"..

WITNESSETH

WHEREAS, the Grantee desires to remove from view of the traveling public, located on Highway  
\_\_\_\_\_

WHEREAS, under The State of Wyoming Junkyard Control Act, the Grantee desires to protect the  
view adjacent to any primary or interstate highway from stockpiling of old or scrap copper, brass, rope,  
rags, batteries, paper, trash, debris, rubber debris, waste, junked, dismantled or wrecked automobiles and  
machinery or parts thereof, iron, steel, old or scrap ferrous or nonferrous material herein called junk, and:

WHEREAS, the Grantee is willing to reimburse, where applicable for expenses incurred in relocating,  
removing, screening, disposal, or any combination of these acts as hereinafter defined as required to protect  
the view of the traveling public, and:

NOW THEREFORE, in consideration of (\$) \_\_\_\_\_ it is hereby agreed by and between the parties  
hereto as follows:

The Grantee shall have the right to enter upon the property to survey, plan, construct, or do what is neces-  
sary to screen, relocate, remove or dispose of the junk so that said junk is not visible from the main traveled  
way of said highway.

The Grantor promises and agrees to maintain his property in strict accordance with the provisions of the  
Wyoming Junkyard Control Act.

This Agreement shall be binding upon both parties.

IN WITNESS WHEREOF, the parties have hereunto set hand- this \_\_\_\_\_ day of \_\_\_\_\_,  
A.D., 20\_\_\_\_\_.

Grantee: WYOMING DEPARTMENT OF TRANSPORTATION Grantor:

By: \_\_\_\_\_  
(Junkyard Control Agent)



# Part XI

## Railroads

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# Part XI:

## Railroads

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# Part XI:

## Railroads

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### A. PURPOSE

The Railroad Procedural Manual supplements the Wyoming Department of Transportation's (WYDOT) Railroad Regulations Manual of 1999 (three Chapters with 2002 revisions made thereto) and WYDOT's Railroad Policy Manual of 1999 (Part One). This railroad manual further implements WYDOT Operating Policy 19-7 concerning railroads. The intent of this railroad manual is to explain the Right-of-Way procedures and railroad agreement procurement methods.

### B. REGULATORY AUTHORITY

#### REGULATORY AUTHORITY

Appendix G of the above-referenced Railroad Policy Manual delineates the federal and state laws that authorize the Transportation Commission of Wyoming to acquire the necessary rights-of-way by purchase or condemnation from railroad companies. The Burlington Northern-Santa Fe Railway Company (BNSF) and the Union Pacific Railroad Company (UPRR) are the two primary companies from which the commission will secure right-of-way on railroad involved projects.

### C. RAILROAD PROCEDURES

#### RAILROAD PROCEDURES

#### 1. ADVANCE PREPARATION

##### Advance Preparation

The Railroad Agent works directly with the Project Control Scheduling (PCS) Program in order to keep abreast of upcoming railroad projects in each of the five WYDOT Districts. The Railroad Agent can review current status information on the PCS Program for all railroad projects, so that the Railroad Agent can have advance notice of any upcoming Railroad Projects. The Railroad Agent also reviews Project Development Engineering and Right of Way Inspection Reports and grading plans or preliminary engineering plans for similar type information.



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### 2. ADVANCE NOTIFICATION

#### **Advance Notification**

Due to their bureaucratic set-ups, railroad companies take considerably longer to respond to right-of-way requests. Most contacted landowners have a turn round response time of 65 days or less in which time the transactions are completed. Whereas, it can take a minimum of 90 to 120 days to complete a transaction with either of the referenced primary railroad companies. With this being the case, it is imperative that finalized appraisals, agreements and plans be sent to the railroad companies at least 90 days in advance of the project advertisement date.

### 3. RAILROAD RESEARCH

#### **Railroad Research**

If a project involves widening an at-grade or an above grade (overpass or viaduct) railroad crossing for additional traffic lanes, then research is required in order to determine the exact location of the crossing and the type of railroad agreement under which it is held. All railway/highway crossings are marked by an assigned Department of Transportation (DOT) number (#), such as DOT # 806-503A, along with the railroad milepost for the DOT # indicated. There are railroad mapping books for each county and railroad company along with railroad computer databases which show the DOT # location and the railroad mileposts throughout Wyoming as well as existing railroad agreements. These railroad maps are then correlated with state highway system maps and Wyoming's Reference Marker System in order to determine the railroad's at grade, over or under pass crossing's highway mile post or reference marker location as it crosses the highway.

If the highway mile post is known for a railroad crossing, but the DOT # is not, the DOT # can be found on the WYDOT Agile Assets Computer Database or on the GX 32 Railroad Crossing Database. These databases will provide a list of railroad crossings with their assigned DOT #'s and railroad mileposts (RRMP).



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## Railroads

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Both BNSF and UPRR have internet sites which can be accessed to provide information on real estate acquisition specifications. Such sites also provide information on which railroad manager or department to contact for the type of acquisition requested and for a particular region of the state.

### 4. SPECIAL PROVISION

#### **Special Provision**

If any planned project work is within BNSF's or UPRR's operating right-of-way, then a "Special Provision for Work on Railroad Property, Insurance and Railroad Right-of-Entry Agreement with Railroad Flagging," (Form SP100) is required. The actual form is saved in the G: drive and is updated for each separate crossing. The responsible Railroad Agent sends the Special Provision to the Project Development Squad Leader, who fills out the areas in blue and returns to the Railroad Agent. This particular information is obtained from the railroad computer database which is not necessarily always up to date. For BNSF, such information is the number of tracks and trains per day affected in proposed project area. For UPRR, the same information is provided along with the speed of train. The Railroad Agent then updates the areas in red, by contacting the Resident Engineer for an estimated number of days necessary to have a flagger present on the project. Once this information is updated, the Railroad Agent forwards the final version to all concerned parties in WYDOT and FHWA. The procedure for processing a Special Provision is located in the Appendix and in the G: Drive.

Whenever revisions to the Special Provision are necessary, like when insurance rates need to be adjusted based on the market, the Railroad Agent, the Construction Staff Engineer, WYDOT Legal Staff and the concerned railroad companies coordinate their efforts to make the revisions. Part II of section 14 of the referenced Policy Manual further explains the standards for the Special Provision.

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### 5. PROJECT INSPECTION

#### **Project Inspection**

On-site inspections of projects involving railroads are inspected as soon as possible after issuance of preliminary engineering plans. Such inspections further identify how the railroad will be impacted and what mitigation measures will be necessary in order to minimize the impact. How drainage is to be handled in, around and under the railroad tracks is always of major importance to railroad companies. Great care has to be taken when installing drainage in such areas. Poorly constructed drainage could cause the ground underneath the railroad tracks to subside, thereby leading to train derailments that could result in injury or death.

### D. ADDITIONAL PROCURAL 1. SAFETY MEASURES

#### **Safety Measures**

Safety is not only paramount in improvements and installations around railroads, but also in how things are done. As part of the project inspections follow-up, District office and Right-of-Way office reviews are often held with some or all of the parties involved, i.e., Right-of-Way and Railroad Agents, Right-of-Way Administrative Personnel, District Engineers and/or District Construction Engineer, Railroad's Manager of Public Projects, Resident and Project Engineers, City and/or County Personnel, Federal Highway Administration Right-of-Way Representative and whatever other public agencies are involved, in order to determine the best and safest courses of action for the railroad projects at hand. With the help of these sources, the Railroad Agent can determine how many flagging days will be required at the various railroad project locations in order to keep them safe during construction. At the same time, the Railroad Agent takes the necessary personal safety precautions in order to be safe around railroads. Such as wearing safety gear, i.e., hard hat or helmet and orange reflective vest

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along with safety boots or shoes and glasses, while within the operating railroad right of way. In addition, all contractors and related personnel working on railroad projects are required to have taken Contractor Safety Orientation Training.

**Railroad safety laws and standards, including applicable Code of Federal Regulations (CFR), are further explained under Appendix G of the above-referenced Railroad Policy Manual. Also, each major railroad company has its own emergency response procedures included in this appendix.**

### 2. RAILROAD PROJECT MONITORING

#### **Railroad Project Monitoring**

From project start to finish, the Railroad Agent monitors the railroad company's work progress to ensure that it is in keeping with agreement terms, including any payments to be made to the railroad, like flagging payments and safety arrangements. Besides making periodic on-site inspections during the course of the project, the Railroad Agent also works closely with the Resident or Project Engineer in charge of construction to ensure a safe and timely completion of the project.

### 3. RAILROAD PROJECT INVENTORY & REPORT

#### **Railroad Project Inventory & Report**

In addition to normal filing procedures, i.e., placing pertinent documents in numerically assigned Blue Folders in WYDOT's Main File Room, as well as in Right of Way's computer filing system, a computer inventory entry is made for each new railroad agreement onto WYDOT's Agile Assets Database. With this inventoried information, the Railroad Agent can obtain Railroad Reports on railroad agreements and their locations in the state.

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### 4. RAILROAD AGENT RESPONSIBILITIES

#### **Railroad Agent Responsibilities**

The Railroad Agent is responsible for preparing and securing all agreements, easements, lease renewals or conversions to easements or quitclaim deeds and posting them on PAECETrak (BEM); obtaining information for Special Provisions, researching railroad computer records, railroad flagging and signalization payments, including verification with WYDOT Resident Engineers as to the railroads' billing accuracy concerning inspection services.

### 5. TYPES OF AGREEMENTS

#### **Types of Agreements**

##### **a. Overpass Agreements**

Overpasses are also referred to as grade separation crossings and viaducts. An overpass is warranted at an at-grade crossing when traffic becomes so heavy that it is no longer safe to permit the public to travel across the railroad tracks in an at-grade or level manner.

Existing viaducts that have become dilapidated, besides being no longer able to handle the current volume of traffic, have to be replaced with larger, multi-lane structures which are better able to accommodate the increased flow of traffic. Sometimes an existing grade separation can be rehabilitated, i.e., maintained, without being reconstructed or replaced in its entirety in which case only a new Special Provision is required, but not a Supplemental Agreement to the original Overpass Construction and Maintenance (C & M) Agreement. Also refer to section 4 of the 1999 Railroad Policy Manual for more information on grade separation structures.

Any time an overpass has to be reconstructed or replaced and/or the grant of right modified to include additional easement area for the viaduct, a C & M or a Supplemental Agreement for the construction of a new viaduct is required. The format for such an agreement is found under the first part of section 14 of the above referenced Railroad Policy Manual. Modification or replacement of an existing viaduct or construction of a separation at an at-grade crossing, sometimes requires that an additional or new easement all together be obtained from the railroad, because the new overpass is

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placed on a new alignment.

The viaduct agreement will describe the easement to be acquired along with any construction permits that may be required. The same acquisition procedures as explained elsewhere in the Right-of-Way Manual are used here in acquiring the easement and permit areas.

Once a viaduct agreement for a railroad project is prepared, two duplicate originals of it are signed by an authorized representative of the Transportation Commission of Wyoming which is usually the Director or Chief Engineer or Engineering and Planning Engineer for WYDOT. These two agreements are then sent to the railroad company with two sets of the following exhibit attachments:

1. Exhibit "A"- final Right-of-Way Engineering/Purchase Plans showing the work area, including the new permanent easement or grant-of-right and temporary easement areas, when relevant, for that portion of work to be done in the operating right-of-way of the railroad company;
2. Exhibit "B"- WYDOT preliminary/final bridge plans for the viaduct over the railroad company;
3. Exhibit "C"- a reference copy of WYDOT's Special Provision. As stated earlier, actual original thereof will be prepared and issued by WYDOT's Construction Program;
4. Exhibit "D"- Railroad cost estimates for railroad work to be done;
5. Exhibit "E"- legal description for new easement, when relevant; and
6. Additional exhibits, such as providing a copy of the original Overpass Construction and Maintenance Agreement to the railroad company may be necessary, depending upon the project.

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### **b. Underpass, Drainage, and Special Agreements**

The same reasoning applies to underpass agreements as was applied to overpass agreements, i.e., they are secured whenever necessary due to increased traffic and safety reasons. Also, there are times when large drainage structures as well as smaller ones have to be installed under the railroad tracks. Each major railroad has its own special types of agreements for installation of such structures. These agreements, along with various other agreements can be found on the internet website for each of the major railroads (UPRR and BNSF). BNSF uses a property management company called Jones Lang LaSalle Services Americas, Inc. to handle its permanent and temporary property acquisition matters, including the use of Temporary Occupancy Permits for construction permit areas and License Agreements for drainage related matters.

Conveyance of non-operating railroad right of way land to WYDOT also requires use of each railroad's own special agreement in order to do so. UPRR has a Letter Agreement to correspond with a Quitclaim Deed when conveying such land to WYDOT. BNSF also has a Letter Agreement to correspond with an Easement when conveying such land to WYDOT.

WYDOT will endeavor to convert all leases with UPRR into perpetual right of way easements as the leases come-up for renewal. UPRR's lease renewal rates have become cost prohibitive, leaving this conversion method as WYDOT's best option to retain necessary highway rights of way.

### **c. At-Grade Crossing Agreements**

Anytime modification of an existing at-grade crossing necessitates that a new or additional right-of-way be acquired, the Railroad Agent must enter into an agreement covering the at-grade crossing being improved with the affected railroad company. The format for such an agreement is found under the first part of section 14 of the above-referenced Railroad Policy Manual. Besides easing the flow of traffic, highway rail crossing safety is again the primary concern when modifying at-grade crossings.



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### APPENDIX

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### PROCEDURE FOR SPECIAL PROVISION FOR FLAGGING AND INSURANCE

#### Project Development:

1. Contacts ROW for the Master Railroad Special.
2. Request the special provision number from the Plan Checker.
3. Completes portions in blue text.
4. Emails the special to the ROW contact on that project.

#### ROW:

1. Completes portions in Red text. Currently estimating \$1400 per day for flagging.
2. Contacts Resident Engineer to find out estimated number of days needed for flagging. Forwards this information to Project Development contact.
3. Changes all text to black.
4. Emails the special to:
  - Project Development Contact
  - Contracts and Estimates Contact
  - Resident Engineer
  - District Construction Engineer
  - FHWA if it is a federally participating project:

Send it to the appropriate FHWA representative, based on which District your project is located.

5. Notify Railroad contact that Special Provision is in place, along with estimated number days flagging, letting date for project, and name and contact information for Resident Engineer.
6. Convert WORD file to a searchable PDF, and place PDF file in Falcon – in the Project, under folder \_PSE\_PDF\_SET. Email a copy to Jeff Sherman.