

FS Agreement No. 21-MU-11020000-008

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
STATE OF WYOMING
OFFICE OF THE GOVERNOR
And The
USDA, FOREST SERVICE
ROCKY MOUNTAIN AND INTERMOUNTAIN REGIONS

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the State of Wyoming, by and through the Office of the Governor, hereinafter referred to as "Cooperator" and the United States Department of Agriculture (USDA) Forest Service, Rocky Mountain and Intermountain Regions, hereinafter referred to as the "U.S. Forest Service".

Background: The Council on Environmental Quality regulations addressing cooperating agency status (40 C.F.R. §§ 1501.6 & 1508.5) for implementing the National Environmental Policy Act (NEPA) mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise. (42 U.S.C. §§ 4331(a), 4332(2) and Memorandum: Cooperating Agencies, James C. Connaughton, Chair, Council on Environmental Quality, January 30, 2002). Cooperating agency status is a major component of agency stakeholder involvement that neither enlarges nor diminishes the decision-making authority of any agency involved in the NEPA process. This MOU does not expand requirements or responsibilities beyond those found in current laws and regulations, nor does it require an agency to provide financial assistance to a cooperating agency.

Title: Memorandum of Understanding documenting a Cooperating Agency Agreement Between the U.S. Forest Service and the State of Wyoming for Working Together on National Environmental Policy Act Analyses for National Forest System (NFS) lands in Wyoming.

I. PURPOSE:

The purpose of this MOU is to document the cooperation between the parties to prepare environmental documents under NEPA for which the U.S. Forest Service is the lead agency on NFS lands in the State of Wyoming in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS:

The creation of this MOU promotes efficiency, cooperation, and disclosure of relevant information during the environmental analysis processes and helps to



ensure successful completion of analyses in a timely, efficient, and thorough manner.

The authority of the U.S. Forest Service to enter into and engage in the activities described within this MOU includes, but is not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and its implementing regulations published by the Council on Environmental Quality (40 CFR parts 1500).

The authority of the State of Wyoming to enter into this MOU includes, but is not limited to, Wyoming Statute 9-1-207 State Planning Coordinator and Wyoming Statute 9-1-209 Coordinator of state-federal relations.

In consideration of the above premises, the parties agree as follows:

III. STATE OF WYOMING SHALL:

- A. Perform the duties of a Cooperating Agency as defined in 40 CFR 1501.6 for environmental analyses conducted in Wyoming for which the U.S. Forest Service is the lead federal agency and the State of Wyoming has special expertise or jurisdiction.
- B. As mutually agreed, provide information, comments, and technical expertise to U.S. Forest Service regarding those elements of the environmental analyses for which it has jurisdiction or special expertise. This may be done as a participant on U.S. Forest Service interdisciplinary teams as requested by the U.S. Forest Service and agreed to by the Cooperator, and by providing review and written comments on draft environmental analyses prior to public distribution to ensure technical accuracy of disclosures regarding state laws, regulations, plans, programs and policies, and recommendations for improvement of materials that are found to be incomplete or inaccurate.
- C. Share with the U.S. Forest Service data and other information within its special expertise and jurisdiction that are or may be relevant to the project.
- D. Upon request, provide copies of and explain the relationship of existing and proposed laws, regulations, plans, programs, and policies within its special expertise and jurisdiction that are or may be relevant to the project.
- E. Upon request, participate in government-to-government coordination meetings and field reviews with the U.S. Forest Service, if feasible.
- F. Participate when appropriate in the scoping process, including advice on public involvement strategies, addressing environmental issues as identified in the NEPA process, identifying potential effects of alternatives, suggesting mitigation for



environmental effects, and providing comments on drafts of the NEPA documents.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Retain final responsibility for the content of all environmental analysis documents. The U.S. Forest Service shall be responsible for determining the purpose and need for the project, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the U.S. Forest Service will follow all applicable statutory and regulatory requirements.
- B. Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.
- C. As requested, provide the State of Wyoming with copies of documents relevant to the State's responsibilities, including technical reports, data, analyses, comments, working drafts and final environmental analysis documents. The U.S. Forest Service will exercise reasoned use of agency discretion to determine when to provide such documents.
- D. Provide notice of availability of electronic copies to the requesting state agencies of all draft and final project EIS's and potentially controversial EA's, unique proposals, or other actions specifically requested by state agencies.
- E. Meet with the State of Wyoming at the state's request.

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

- A. The parties agree to participate in all NEPA processes in good faith and make all reasonable efforts to resolve disagreements. Where disagreements may impede effective and timely completion of a NEPA analysis, the parties agree that the U.S. Forest Service retains final responsibility for the NEPA analysis and subsequent decisions. If the parties agree, they shall retain an in-house or independent facilitator to foster clear and efficient communication. The facilitator's responsibilities, selection, direction, and compensation will be identified for the specific NEPA process undertaken.
- B. The parties agree to comply with the schedule developed for each individual NEPA analysis.
- C. Each party will fund its own expenses unless an alternative arrangement is identified for a specific NEPA analysis.



- D. Any additional provision regarding the responsibilities of either party will be identified in modification to this MOU through a written agreement of all signatories.
- E. As needed, when a NEPA analysis is initiated, each party will designate a representative(s) to ensure coordination between the State and the U.S. Forest Service during the process. Either party may change its representative as needed.
- F. This MOU applies to all NEPA analyses that both parties agree are appropriate for the cooperating agency process. Either party may opt out of the cooperating agency process at their discretion.
- G. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Joe Budd 200 W. 24th St. Cheyenne, Wyoming 82002 Telephone: 307-777-7942 FAX: 307-632-3909 Email: joe.budd@wyo.gov	Randall Luthi 200 W. 24th St. Cheyenne, Wyoming 82002 Telephone: 307-777-7520 FAX: 307-632-3909 Email: randall.luthi@wyo.gov

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contacts	U.S. Forest Service Administrative Contact
Jenna Sloan 1617 Cole Blvd, Building 17 Lakewood, CO 80401 Telephone: 303-656-0402 Email: jenna.sloan@usda.gov	Rick Maestas 2840 Kachina Drive Pueblo, CO 81008 Telephone: 719-553-1443 Email: richard.maestas@usda.gov
Chris Moyer 324 25 th Street Ogden, UT 84401 Telephone: 202-604-0534 Email: christopher.moyer@usda.gov	
Sandra Underhill 5500 Bishop Blvd Cheyenne, WY 82002 Telephone: 307-460-0251 Email: sandra.underhill@usda.gov	



H. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or Cooperator is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

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

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

- I. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or Cooperator from participating in similar activities with other public or private agencies, organizations, and individuals.
- J. ENDORSEMENT. Any of Cooperator's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of the State of Wyoming's products or activities.
- K. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

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



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

- L. USE OF U.S. FOREST SERVICE INSIGNIA. In order for Cooperator to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- M. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- N. FREEDOM OF INFORMATION ACT (FOIA). For the USDA, public access to this MOU or to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552). For the State, public access to this MOU or to any documents created by or shared with the State pursuant to its role as Cooperator under this MOU shall be determined by applicable law, including the Wyoming Public Records Act (W.S. 16-4-201 *et seq.*).
- O. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- P. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. Cooperator is/are encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments.

The Cooperator may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. The Cooperator is requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to The U.S. Forest Service's Office of Communications as far in advance of release as possible.



- Q. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. Cooperator shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- R. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. Cooperator shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

- S. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- T. DEBARMENT AND SUSPENSION. Cooperator shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should Cooperator or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- U. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.



V. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through January 31, 2026 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

W. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU.

In witness whereof, the parties hereto have executed this MOU as of the last date written below.

BUCK MCVEIGH, Chief of Staff
State of Wyoming, Governor's Office

2/25/2021
Date

TAMARA ANGEL, Acting Regional Forester
U.S. Forest Service, Rocky Mountain Region

Date

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

Date



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

RICHARD MAESTAS

Digitally signed by RICHARD MAESTAS
Date: 2021.02.25 13:17:07 -07'00'

2/25/2021

RICK MAESTAS

Date

U.S. Forest Service, Grants Management Specialist

 # 209549

02-23-2021

TYLER RENNER, Assistant Attorney General
State of Wyoming, Attorney General's Office
Approval as to Form

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

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