



FS Agreement No. 23-MU-11020000-007

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
STATE OF SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
AND THE
FEDERAL HIGHWAY ADMINISTRATION
And The
USDA, FOREST SERVICE
ROCKY MOUNTAIN AND NORTHERN REGIONS

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the State of South Dakota Department of Transportation, hereinafter referred to as "SDDOT" and the Federal Highway Administration, hereinafter referred to as "FHWA,," and the United States Department of Agriculture (USDA), Forest Service, Rocky Mountain Region and Northern Region, hereinafter referred to as the "U.S. Forest Service."

Background: This MOU supersedes and replaces the MOU of 2017, U.S. Forest Service Number 17-MU-11020000-072, between SDDOT, FHWA and the U.S. Forest Service. This MOU does not supersede or replace the requirements of any national agreements, easements, or permits between the affected parties. This MOU does not alter or supersede the authorities and responsibilities of any of the Agencies on any matter under their respective jurisdictions.

Title: Coordination of State Transportation System and National Forest System Lands in the State of South Dakota

I. PURPOSE: The purpose of this MOU is to document the cooperation between the parties to coordinate activities affecting the state transportation system and lands administered by the U.S. Forest Service within the State of South Dakota in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

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

For the U.S. Forest Service, effectiveness is measured by transportation projects that are planned, designed, constructed, and maintained with appropriate consideration of



U.S. Forest Service management objectives and with emphasis on conservation and enhancement of forest/grasslands lands and resources.

This MOU seeks to enhance interagency coordination, cooperation, and the mutual understanding of transportation projects on U.S. Forest Service National Forest System (NFS) lands and resources. This MOU documents the mutual agreement regarding the specific “Implementing Procedures” to be followed as a means to achieve these purposes described in Attachment A.

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

III. FHWA SHALL:

- A. Administer Federal highway funding and is the lead agency for implementing the National Environmental Policy Act of 1969 (NEPA) as it relates to Federal –aid highway projects (Chapter One, Title 23 U.S.C) including the Interstate System, the National Highway System, and selected state, city and county routes.
- B. Facilitate the acquisition (through the Federal Land Appropriation process) of highway easement deeds for the use of NFS land.

IV. SDDOT SHALL:

- A. Be responsible for the planning, location, design, construction, operation and maintenance and perpetuation of a safe and efficient transportation system needed for the benefit of the public in accordance with Title 23, U.S.C. SDDOT is also responsible for ensuring that the social, economic, and environmental effects are considered in the planning, development, and maintenance of state transportation projects and that the projects are in the best overall interest of the public. SDDOT is the primary agency responsible for implementation and administration of this MOU.

V. THE U.S. FOREST SERVICE SHALL:

- A. Function as a cooperating agency for Federal-aid highway projects. It is responsible for the protection and multiple use management of the NFS lands and resources for the benefit of the people of the United States. This responsibility extends to the development of a public lands transportation system both within and providing direct access to NFS lands.

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

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



Principal Cooperator Contacts:

<p align="center">South Dakota Department of Transportation Cooperator Program Contact</p>	<p align="center">South Dakota Department of Transportation Administrative Contact</p>
<p>Mark Leiferman Project Development Program Manager 700 East Broadway Ave Pierre, SD 57501 Telephone: 605-773-3281 Email: mark.leiferman@state.sd.us</p>	<p>Steve Gramm Transportation Planning Supervisor 700 East Broadway Ave. Pierre, SD 57501 Telephone: 605-773-3281 Email: steve.gramm@state.sd.us</p>

<p align="center">Federal Highway Administration Cooperator Program Contact</p>	<p align="center">Federal Highway Administration Administrative Contact</p>
<p>Mark Hoines Engineering & Operations Supervisor 116 East Dakota Avenue, Ste A Pierre, SD 57501 Telephone: 605-776-1010 Email: Mark.Hoines@dot.gov</p>	<p>R. Kirk Fredrichs Division Administrator 116 East Dakota Avenue, Ste A Pierre, SD 57501 Telephone: 605-776-1001 Email: Kirk.Fredrichs@dot.gov</p>

Principal U.S. Forest Service Contacts:

<p align="center">U.S. Forest Service Rocky Mountain Region Program Manager Contact</p>	<p align="center">U.S. Forest Service Rocky Mountain Region Administrative Contact</p>
<p>Miles Barkhurst, PE Transportation Group Leader 1617 Cole Blvd Lakewood, CO 80401 Telephone: 303-275-5181 Email: miles.barkhurst@usda.gov</p>	<p>Karla Swenson Lead Grants Management Specialist 203A Yellowstone Ave Cody, WY 82414 Telephone: 307-219-8233 Email: karla.m.swenson@usda.gov</p>
<p align="center">U.S. Forest Service Northern Region Program Manager Contact</p>	<p align="center">U.S. Forest Service Northern Region Administrative Contact</p>
<p>Name: Daniel Hager Director of Engineering, Fleet and Geospatial Services 26 Fort Missoula Rd Missoula, MT 59808 Telephone: 406-329-3173 Email: daniel.hager@usda.gov</p>	<p>Matt Gordon Grants Management Specialist 26 Fort Missoula Rd Missoula, MT 59808 Telephone: 406-329-1008 Email: matthew.gordon@usda.gov</p>

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



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

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

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

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

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

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

- F. USE OF U.S. FOREST SERVICE INSIGNIA. In order for SDDOT or FHWA 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.
- G. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- H. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- I. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- J. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. SDDOT or FHWA shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- K. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. SDDOT or FHWA 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."

- L. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- M. DEBARMENT AND SUSPENSION. SDDOT or FHWA 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 SDDOT or FHWA or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- N. 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.
- O. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through April 1, 2033 at which time it will expire.
- P. 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.

Joel.Jundt

Digitally signed by Joel.Jundt
Date: 2023.05.05 14:43:07 -05'00'

JOEL JUNDT, Department Secretary
South Dakota Department of Transportation

Date

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

Karla.Engle

Digitally signed by Karla.Engle
Date: 2023.04.28 08:54:13 -05'00'

KARLA ENGEL, State of South Dakota
(attorney's office)

Date



ROBERT KIRK FREDRICHS Digitally signed by ROBERT KIRK FREDRICHS
Date: 2023.05.15 09:52:28 -05'00'

R. KIRK FREDRICHS, South Dakota Division Administrator Date
Federal Highway Administration

FRANK BEUM Digitally signed by FRANK BEUM
Date: 2023.06.02 16:11:51 -06'00'

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

MELANY GLOSSA Digitally signed by MELANY GLOSSA
Date: 2023.05.17 14:38:21 -06'00'

LEANNE MARTEN, Regional Forester Date
U.S. Forest Service, Northern Region

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

KARLA SWENSON Digitally signed by KARLA SWENSON
Date: 2023.04.19 16:06:06 -06'00'

KARLA SWENSON Date
U.S. Forest Service Grants Management Specialist

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.

Attachment A

IMPLEMENTING PROCEDURES FOR SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
ROADWAY PROJECTS INVOLVING NATIONAL FOREST SYSTEMLANDS

Table of Contents

ACRONYMS AND DEFINITIONS USED IN THIS DOCUMENT i

I. PLANNING 1

 A. Purpose..... 1

 B. Shared Agency Information..... 1

 1. SDDOT Project Development Office and Regions 1

 2. USFS Forest or Grasslands Supervisors 1

 3. GIS data 1

II. EARLY PROJECT DEVELOPMENT 2

 A. Purpose..... 2

 B. Procedural Steps..... 2

 1. Scoping Phase 2

 2. SDDOT Field Survey Phase 2

 3. Early Public Involvement 3

III. ENVIRONMENTAL REVIEW PROCESS..... 4

 A. Purpose..... 4

 B. Roles and Responsibilities 4

 1. FHWA:..... 4

 2. SDDOT: 4

 3. USFS:..... 4

 4. FHWA, SDDOT, and USFS 5

 5. Interdisciplinary Team (IDT) 5

 C. Agency Decisions..... 5

 1. FHWA and SDDOT 5

 2. FHWA..... 5

 3. USFS..... 5

 4. FHWA..... 5

 D. NEPA Laws, Regulations and Guidance 5

 E. NEPA Process 6

 1. Initial Environmental Coordination (CEs, EAs, and EISs)..... 6

Attachment A

2. Environmental Information Gathering.....6

3. Public and Agency Involvement.....7

4. Environmental Analysis7

5. NEPA Document Review7

F. PROJECT IMPLEMENTATION AND MONITORING:.....8

IV. PROJECT DESIGN.....8

 A. Purpose.....8

V. USE AND DISPOSITION OF NATIONAL FOREST SYSTEM RESOURCES9

 A. Special Uses.....9

 B. Timber9

 A. Borrow Pits, Waste and Mineral Material Sites.....10

VI. APPROPRIATION OF FEDERAL LANDS12

 A. Introduction12

 B. Appropriations Process.....12

VII. CONSTRUCTION/RECONSTRUCTION13

VIII. OPERATION AND MAINTENANCE14

IX. SIGNING16

X. THIRD PARTY OCCUPANCY18

 A. General Provisions.....18

 B. Utility Permits.....18

XI. ACCESS CONTROL.....19

APPENDICES

APPENDIX A-1 - Potential Issues and Concerns Identified by the USFS.....1

APPENDIX A-2: Coordination Schedule1

Attachment A

ACRONYMS AND DEFINITIONS USED IN THIS DOCUMENT

CEQ - Council on Environmental Quality

CE - Categorical Exclusion

CFR - Code of Federal Regulations

CLEARING – The removal of vegetative material from the road right-of-way.

CLEAR ZONE – A lateral distance (as measured from the edge of the driving lane) that provides for an area that is obstacle free from roadside hazards. The required distance for a particular roadway section will be as defined in the pertinent SDDOT document for that section.

DEIS - Draft Environmental Impact Statement

EA - Environmental Assessment

ESA – Endangered Species Act

EIS - Environmental Impact Statement

FEIS - Final Environmental Impact Statement

FHWA - Federal Highway Administration

FLRMP – Forest Land & Resource Management

Plan FONSI - Finding of No Significant Impact

FOREST BOUNDARIES: Includes National Grasslands.

Section 4(f) - Section 4(f) of the 1966 Department of Transportation Act and codified in 23 CFR 774 applies to publicly owned parks, recreation areas, wildlife refuges, and historic sites (regardless of ownership). properties GIS - Geographic Information System

IDT – Interdisciplinary Team

LOC - Letter of Consent. The USFS writes and executes LOCs, which include a right of entry allowing SDDOT to put a construction project out for bid. LOCs are typically a Lands staff function and how the USFS formally documents the concurrence a DOT easement grant by the FHWA across NFS lands. (FSM 2731)

LOGO - Referring to signs with company logos/emblems on them

MERCHANTABLE TIMBER – Defined as any species of tree with a diameter at breast height (dbh) of 9” or above, an inside bark diameter of 6 inches or greater and length greater than 8 feet. The Forest Service retains ownership of timber within an easement granted across NFS lands.

MINERAL MATERIALS – Mineral materials. A collective term used throughout this subpart to describe petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Common varieties do not include deposits of those materials which are valuable because of some property giving them distinct and special value, nor do they include “so called ‘block pumice’ ” which occurs in nature in pieces having one dimension of two inches or more and which is valuable and used for some application that requires such dimensions. (36 CFR 228.43 Ch. II)

MINERAL MATERIAL SITE - A mineral material “site” would simply be defined as a location from which mineral materials are obtained. This could be a quarry, excavation, or other location. MINOR CLEARING – An activity whereby a majority of the material being removed is not considered merchantable timber.

MOU - Memorandum of Understanding

MUTCD - Manual on Uniform Traffic Control Devices

NAGPRA – Native American Graves

Protection and Repatriation Act

NCHRP – National Cooperative Highway Research

Program NEPA - National Environmental Policy Act

NFS - National Forest System (lands administered by the Forest Service)

Attachment A

NHPA - National Historic Preservation Act
NOI - Notice of Intent
PCE – Programmatic Categorical Exclusion
PLH - Public Lands Highway
ROD - Record of Decision
SDDOT - South Dakota Department of Transportation
SHPO - State Historic Preservation Office
STIP - State Transportation Improvement Program
THPO - Tribal Historic Preservation Office
TODS - Tourist Oriented Directional Signs
U.S.C. - United States Code
USFS - United States Forest Service

Attachment A

IMPLEMENTING PROCEDURES

I. PLANNING**A. Purpose**

This section provides the opportunity for early, planning level coordination among agencies to ensure each agency's interests are addressed, share information, and coordinate projects, plans and objectives.

B. Shared Agency Information

1. SDDOT Project Development Office and Regions
 - a. Provide the Regional Foresters with a functional classification map showing the State Highway System in South Dakota.
 - b. Respond to USFS requests for comments on the Forest Land & Resource Management Plans (FLRMP), as the forest plans are revised. (Articulate to USFS the highway needs during revision of a FLRMP).
 - c. Annually provide the Regional Foresters, Forest or Grasslands Supervisors, and District Rangers with copies of the current State Transportation Improvement Program (STIP) and request identification of any issues within the Forests concerning highways.
 - d. Solicit USFS input in SDDOT STIP development process.
 - e. Provide USFS with a schedule of Long-range Plan activities that require USFS coordination.
2. USFS Forest or Grasslands Supervisors
 - a. Provide SDDOT Project Development Office, Rapid City Region Office and Pierre Region Office with the FLRMP, the Travel Management Plan and long-range road plans that indicate existing and planned land uses and the relationship between these uses and related travel.
 - b. Provide timely information to SDDOT Project Development Office on any changes that may affect SDDOT transportation system. Solicit SDDOT input to FLRMP revisions.
 - c. Include SDDOT Region Offices and Environmental Office on their mailing list for notification of possible actions regarding NEPA documents, forest plan revisions and plan amendments, and transportation plan related documents.
 - d. Build SDDOT highway project development and coordination needs into annual Program of Work.
 - e. Notify SDDOT Right-of-Way Office and appropriate Region Office of any proposed land ownership adjustment or land exchanges affecting SDDOT facilities or right-of-way. Upon such notification, the SDDOT Region Office will determine the necessity of applying for an easement deed to protect its interest prior to the completion of the land exchange.
 - f. Review SDDOT STIP to notify SDDOT Regions of any concerns or issues.
3. GIS data
 - a. GIS data maintained by the appropriate agency will be shared between

Attachment A

signatories of the MOU at no cost when such data is available.

II. EARLY PROJECT DEVELOPMENT

A. Purpose

This section outlines a process to build agency support for the project. This is accomplished by identification of known information, issues and concerns, participation in early field reviews, resolution of issues and preparation for public involvement. In addition, these steps provide input into the development of the project Purpose and Need statement and determining the type of environmental class of action.

The following steps apply on highway construction projects that are not routine activities such as structure replacements (bridge or reinforced concrete box culvert), shoulder widening projects, or reconstruction projects. Routine activities on highway projects, such as resurfacing, restriping, minor intersection modifications and pipe culvert maintenance/repair will not require formal coordination, due to limited disturbance beyond the roadway surface.

B. Procedural Steps

1. Scoping Phase

- a. SDDOT Project Development Office will:
 - i. Notify the USFS of the proposed project description and location.
 - ii. Schedule a scoping (reconnaissance) field inspection to review the proposed project and identify resources, interests, and concerns that are important to the agencies.
 - iii. Invite the USFS, FHWA, and SDDOT Environmental Office project coordinators to attend the scoping inspection. Each agency coordinator will invite other agency personnel as appropriate.
 - iv. Prepare and provide a draft and final inspection report to the USFS and FHWA project coordinators. This report will summarize project issues identified during scoping.
 - v. Prepare and provide a draft and final scoping report to the USFS and FHWA project coordinators. This report will include a preliminary listing of major project objectives, design criteria, a brief project schedule, and other information.
 - vi. Invite USFS to attend upcoming project reviews.
- b. USFS Project Coordinator and other appropriate USFS personnel will:
 - i. Participate in the scoping (reconnaissance) field inspection.
 - ii. Identify the FLRMP direction that would need to be incorporated into SDDOT highway development project's design criteria.
 - iii. Identify areas intentionally managed for recreation activities including those without physical recreation features.
 - iv. Identify public lands survey monuments, locations, monument protection requirements.
 - v. Provide comments, or completion of Appendix A-1 on the draft inspection and scoping report to SDDOT Project Development Office.

2. SDDOT Field Survey Phase

- a. Project Development, Area Offices and SDDOT Environmental Office, will:
 - i. Research public/county records for land survey information on corner locations, property line boundaries, maps, and access routes necessary to conduct environmental evaluations and request additional information from the USFS as needed.

Attachment A

- ii. Will jointly collaborate to secure necessary authorizations or permits required prior to starting any field survey or site investigations. A typical list of permits/authorizations required include: land surveying, land ties, topographic mapping (to be completed prior to preliminary plans), material investigation and boring (includes any subsurface investigation on NFS lands, i.e., landslides, foundations, borrow, aggregate, etc.), and environmental surveys.
- b. USFS District Ranger will:
 - i. Issue permits (or arrive at a determination of no permit needed pursuant to 36 CFR 251.50(e) (1-2)).
 - ii. Furnish available survey and access information, including land corner locations, maps and access routes necessary to conduct environmental surveys when that information is not available in the county/public records.
 - iii. Establish requirements and limitations related to clearing practices for survey lines, material source investigations, and borings.
 - iv. Review and discuss with SDDOT issues identified during scoping of the project.
- 3. Early Public Involvement
 - a. The Project Development Office will coordinate with the FHWA and USFS to determine whether a public information meeting is required based on scope of work. Both FHWA and the USFS will concur when public meeting is not required.
 - b. When a public information meeting is required, Project Development Office will:
 - i. Provide the opportunity for the USFS to develop a project specific list of interested parties to be merged and included with SDDOT mailing lists for all public correspondence related to project.
 - ii. Provide the public an opportunity to participate in a public information meeting to provide comments on the project.
 - iii. Prepare a summary of information provided during the public meeting (if held) and all major issues developed and how these issues were resolved.
 - c. USFS Project Coordinator may:
 - i. Coordinate with SDDOT regarding the kind(s) and amounts of public involvement necessary for the project.
 - ii. Prepare a project specific list of interested parties to be furnished to SDDOT.
 - iii. Participate in public scoping meeting and coordination efforts to provide information to the public regarding USFS concerns and management of the affected lands.
 - d. SDDOT and FHWA will identify future public involvement decisions that are required by their agency for the project to move forward, and whether additional analysis is necessary for these decisions. This may include the additional public involvement decisions related to Section 4(f) of the DOT Act, Visual Impact Assessment Guidelines, Section 106 of the National Historic Preservation Act, or Tribal Consultation.

Attachment A

III. ENVIRONMENTAL REVIEW PROCESS

The Environmental Review phase may begin or run concurrently with Phase II.B shown above. References to the SDDOT throughout this section refers to the SDDOT Environmental Office.

A. Purpose

The purpose of this section is to:

1. Outline the coordinated process to use one shared analysis for developing environmental documents that will be used by the SDDOT, FHWA, and the USFS for meeting the requirements of NEPA, ESA, NHPA, NAGPRA, and other applicable environmental protection laws.
2. Prepare a single set of environmental documents to fulfill FHWA and USFS NEPA requirements on Federal-aid Highway Projects located within or on USFS lands.

B. Roles and Responsibilities

1. FHWA:
 - a. Is designated as the lead federal agency (40 CFR 1501.7) with NEPA decision authority for projects funded under the Federal-Aid Highway program. FHWA is responsible for NEPA compliance and providing guidance and direction to SDDOT in the preparation of NEPA documents.
 - b. Is designated as the lead Federal agency for purposes of fulfilling the Section 106 requirements under the National Historic Preservation Act.
 - c. Is responsible for ensuring approvals, clearances, and permits fulfill the regulatory requirements of other agencies that are not a part of this MOU. Examples include the ESA Section 7 Consultation with the US Fish and Wildlife Service; Section 404 of the Clean Water Act with the US Army Corp of Engineers; and Section 106 of the NHPA, in consultation with the State Historic Preservation Officer (SHPO) and the Tribal Historic Preservation Officer (THPO).
 - d. Is responsible for providing formal tribal consultation requested by any federally recognized tribe.
 - e. On an EA or an EIS, is responsible for formally requesting the participation of USFS and other Federal agencies as Cooperating or Participating Agencies.
2. SDDOT:
 - a. Is designated as joint lead agency (40 CFR 1501.7) for projects funded under the Federal-Aid Highway program.
 - b. Is responsible for coordinating and conducting all phases of the NEPA process under the guidance of FHWA. This includes: agency, tribal, and public meetings; environmental surveys and reviews, preparation of NEPA documents; and requesting any specific assistance or necessary expertise.
 - c. Is responsible for inviting the USFS and FHWA to all agency and public meetings.
 - d. Is responsible for maintaining the formal record file for environmental documentation.
3. USFS:
 - a. Is designated as a cooperating agency (40 CFR 1508.5) or in limited situations as a joint lead agency (40 CFR 1501.7) for projects funded under the Federal-Aid

Attachment A

Highway program that are located on or within NFS lands.

- b. Is responsible for providing FHWA and SDDOT
 - i. List of Regional Forester's Sensitive Species or Species of Conservation Concern, or both as appropriate.
 - ii. Design criteria or alternatives to eliminate and mitigate adverse project effects to NFS lands and resources.
 - iii. Any multiple-use public land holdings with adjacency to the project that are designated by statute or identified in an USFS official management plan as being primarily for public park, recreation, wildlife and waterfowl refuge, or historic purposes, and are determined to be significant for such purposes.
- c. Is responsible for representing USFS interests at public meetings.
4. FHWA, SDDOT, and USFS
 - a. Are responsible for providing comments on documents circulated for review within 30-days of the document being circulation unless parties mutually agree to a longer review time.
5. Interdisciplinary Team (IDT)
 - a. For EISs, the FHWA and SDDOT will invite cooperating and participating agencies to be representatives on a project IDT. The IDT will coordinate on project objectives, purpose and need, environmental analysis, key issues to be carried forward, and alternatives to be evaluated.

C. Agency Decisions

1. FHWA and SDDOT
 - a. Are responsible for determining purpose and need and for selecting the preferred alternative which may include the "No Build Alternative".
2. FHWA
 - a. Is responsible for the NEPA decision on Title 23 projects using federal aid.
3. USFS
 - a. Is responsible for NEPA decision for state funded projects, which do not include the FHWA. Cost recovery to cover the Forest Service costs related to processing and monitoring of the application may be assessed pursuant to 36 CFR 251.58.
4. FHWA
 - a. Is responsible for the determining the class of action.

D. NEPA Laws, Regulations and Guidance

FHWA Technical Advisory T6640.8A provides FHWA's guidance for preparing and environmental and Section 4(f) documents. FHWA NEPA documents will be developed in accordance with this Technical Advisory, in combination with the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR 1500-1508), FHWA's Environmental Impact and Related Procedures (23 CFR 771) and other environmental statutes and orders listed in the Technical Advisory.

The "*Programmatic Agreement Between the FHWA, SD Division and the SDDOT Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-aid Highway Projects*" will be used to identify projects that may be classified as CEs and to establish the review, coordination, and documentation process. This agreement, referred to as the 'PCE Agreement', is available on the weblink:

https://dot.sd.gov/media/documents/PAgreement_CategoricalExclusions.pdf

Attachment A

E. NEPA Process

The following identifies specific coordination to take place during the NEPA process

1. Initial Environmental Coordination (CEs, EAs, and EISs)
 - a. SDDOT will provide the Forest or Grassland Supervisor and FHWA with:
 - i. A draft project purpose and need statement for review at a level of detail commensurate with the likelihood of significant impacts and scale and scope of project.
 - ii. A summary of needs, concerns, interests identified during the early project development phase if not provided previously.
 - iii. SDDOT Environmental Project Coordinator's name and contact information.
 - b. Within 30 days of receiving initial environmental coordination from the SDDOT, the USFS Forest or Grasslands Supervisor will provide the SDDOT and FHWA:
 - i. The USFS Project Coordinator's name and contact information.
 - ii. Comments on the draft purpose and need statement.
 - iii. Additional (if any) USFS project needs, concerns, and interests. An example checklist is attached for reference in Appendix A-1.
 - c. SDDOT will coordinate with federal, state, and local resource agencies and interested tribes to:
 - i. Provide project information including scope of work and project location.
 - ii. Request input regarding potential interests, issues, and concerns.
2. Environmental Information Gathering
 - a. The SDDOT will coordinate with the USFS and FHWA, taking into consideration the likelihood of significant impacts and scale and scope of project, to refine the Purpose and Need statement such that, it is responsive to project issues, concerns and objectives, including: (1) the location of any proposed action; (2) the length of any proposed action; (3) the termini of any proposed action; (4) any proposed improvements; (5) the transportation and other needs which a proposed action is intended to satisfy; and (6) have independent utility or independent significance.
 - b. The SDDOT will coordinate with USFS and FHWA to refine a list of environmental factors where either the significance of impacts is unknown or there will likely be significant impacts based on issues and concerns identified from:
 - i. Factors identified during the early project development phase by the USFS national forest/grasslands
 - ii. Factors discussed in T6640.8A to be included in the environmental review.
 - c. Class of Action determination

The FHWA may revise the class of action, taking into consideration comments provided by federal, state, and local agencies, Tribes and the public at any time during the NEPA review.

 - i. CE:
 - The project qualifies as a CE under the PCE Agreement;
 - No factors were identified that will likely involve significant impacts;
 - There are no issues or concerns that cannot be resolved through appropriate mitigation, based on experience with similar projects.
 - ii. EA:
 - Factors were identified that may likely involve significant impacts; or
 - It is unknown whether resolution of issues or concerns will be resolved

Attachment A

through appropriate mitigation.

- iii. EIS:
 - Factors were identified that involve significant impacts.
 - d. Prior to proceeding with the NEPA review, the USFS shall advise the SDDOT of their preliminary determination as to whether the project is consistent with the Forest Land & Resource Management Plan (FLRMP).
3. Public and Agency Involvement
- a. SDDOT will coordinate with the FHWA and USFS regarding the number and timing of public meetings to be conducted, taking into consideration the environmental factors identified and the likelihood significant impacts, whether there may be Section 4(f) impacts, and number of documents that will be released for public review and comment (refer to 40 CFR 1500-1508, 23 CFR 771, and 23 CFR 774).

CE documents generally will not require a public meeting however projects with Section 4(f) impacts, regardless of class of action will require at a minimum the opportunity for public review and comment period.

FHWA will make the final determination as to whether a public meeting is required. All public meetings will be conducted in accordance with the 40 CFR guidelines, and public/agency comments will be received by the SDDOT Environmental Office.

- b. For EAs and EISs, the SDDOT will draft letters for FHWA to formally request the participation of USFS and other Federal agencies as Cooperating or Participating Agencies. This request will include copies of any project reports available and a copy of the NOI to prepare an EIS. The SDDOT will coordinate and prepare a schedule and coordination plan for cooperating and participating agency meetings.
 - c. The SDDOT will make approved EAs, DEISs, and FEISs available to the public, USFS, and USFS mailing list.
 - d. SDDOT Environmental Office will evaluate all public comments with assistance of FHWA.
4. Environmental Analysis
- a. SDDOT will utilize available resource databases and baseline information. In their absence, SDDOT will cooperate and coordinate with USFS to collect the required data or perform appropriate studies. If mutually agreeable and beneficial, SDDOT and USFS may enter a collection agreement to collect the required information. Should USFS lack the staff and/or time to accomplish the work, SDDOT Environmental Office, in consultation with USFS, may perform the work or contract for the work to be performed by other sources.
 - b. The SDDOT will perform the appropriate level of surveys, investigations, and analysis for each of the NEPA factors identified.
 - c. The SDDOT will coordinate with the USFS Project Coordinator in the development of special technical reports, mitigation measures, and environmental commitments.
5. NEPA Document Review
- a. SDDOT will coordinate with the USFS to incorporate information within the NEPA document that is required for USFS decisions related to the project.
 - b. SDDOT will provide a draft of EAs, EISs and supporting documents developed

Attachment A

during the review process such as wetland delineation reports, cultural resource reports, biological assessment(s) and additional environmental field survey reports, to the USFS and FHWA for review and comment.

- c. SDDOT will provide a draft of CE Checklists, Environmental Commitments Checklists, and supporting documents to the USFS and, FHWA if requested, for review and comment.
- d. SDDOT and FHWA will coordinate with USFS to resolve comments.
- e. SDDOT will prepare and provide FHWA with a review copy of each NOI, FONSI and ROD.
- f. FHWA will publish completed NOI and FEIS in the Federal Register.
- g. When necessary, the USFS may prepare a ROD for actions not covered by the FHWA ROD, for example, FLRMP amendment.
- h. SDDOT will provide a complete copy of all final environmental documents to the USFS Project Coordinator and all cooperating and participating agencies upon request.
- i. SDDOT Environmental Office will make available on their website copies of all EAs, DEISs, FEISs, FONSI, and RODs until the project is complete.

F. Project Implementation and Monitoring:

Commitments for avoidance, minimization, restoration, mitigation and monitoring included in CEs, FONSI and RODs must be adhered to unless the associated impact is reduced, eliminated or increased during final design. In those cases, the mitigation commitments will be adjusted accordingly.

IV. PROJECT DESIGN

Preliminary Plans, Grading Plans, Right-of-Way and Engineering Inspection Plans, Right-of-Way and Utility Plans and Final Plans

A. Purpose

1. The purpose of this section is to outline the coordinated process used by SDDOT as they progress from preliminary design to final design.

For information purposes, it is estimated that:

- a. Preliminary Plans represent approximately 20% design,
- b. Plans for Landowner Meeting represent 40% design,
- c. Final Inspection Plans represent 75% design,
- d. Right-of-Way and Utility Plans represent 90% design, and
- e. Completed Final Plans represent 100% design completion.

B. Procedural Steps

1. Features of construction/reconstruction projects, such as design criteria derived from NEPA to mitigate any effect on the protection and utilization of the land traversed by the right-of-way and adjoining land under the administration of USFS will be mutually agreed upon by USFS, FHWA and SDDOT by conference or other communication during the preparation of the plans and specifications for each project.

Attachment A

2. During each of the five project development plan phases, SDDOT Road Design Office will provide the USFS District Ranger with one set of plans and the USFS Project Coordinator with one set of plans. SDDOT will invite USFS to attend each of the scheduled SDDOT plan reviews/field inspections. At that time, USFS may submit project specific comments and recommendations to SDDOT Road Design.
3. Recommendations received from USFS will be included in subsequent plans when feasible and incorporated into the design plans as much as possible to keep Letter of Consent stipulations to a minimum.
4. SDDOT Right-of-Way, Road Design, the Region and Area Engineers and FHWA will review comments and recommendations and return them to the USFS Project Coordinator if revisions are needed. USFS comments and recommendations need to be agreed upon and finalized prior to final design.
5. Prior to final design, SDDOT will define work limits and notify USFS of proposed clearing limits and timber and mineral materials to be removed. USFS will determine appropriate method of disposing of merchantable timber and mineral materials and will coordinate with SDDOT Road Design for inclusion in final plans.
6. Prior to construction of a project or an individual segment within a "corridor" project, SDDOT Road Design will prepare a set of Final Plans. The USFS Project Coordinator will be notified of the scheduled SDDOT Final Plan review. The Final Plans provided to USFS will include the proposed general contract provisions covering work on NFS lands. The general contract provisions will include any appropriate USFS fire plan, clearing plan, and erosion control plan.
7. USFS will be invited to participate in the Final Plan review. A set of project or segment specific recommendations will be developed and submitted to SDDOT Road Design by USFS as appropriate.
8. SDDOT Road Design will incorporate mutually agreeable recommendations from the field inspection review and final office review in plans and specifications. Differences will be referred to the next appropriate level of each agency, with final authority resting with the signatories of this MOU.
9. Contract design and specifications resulting from this process cannot be modified without USFS agreement from the Forest Supervisor's Office.

V. USE AND DISPOSITION OF NATIONAL FOREST SYSTEM RESOURCES

A. Special Uses

USFS is responsible for determining if special use authorizations are needed for use and occupancy outside of the highway easement deed. This may require additional NEPA.

B. Timber

1. USFS will retain the right to any merchantable timber not specifically appropriated. SDDOT Road Design will notify the USFS District Ranger and Project Coordinator of timber within the clearing limits scheduled for removal. USFS District Ranger will determine whether a timber sale to an independent contractor or another authorization for removal is appropriate.
2. USFS and SDDOT will develop a joint project implementation schedule that will include timetables related to merchantable timber and mineral materials removal.

Attachment A

3. Timetables will include dates for completion of items such as clearing limit designation, timber marking and cruising, appraisal, and contract preparation.
4. As directed by the District Ranger, any merchantable timber will be: (1) stockpiled in an area designated by USFS for disposal by other means, or (2) acquired by SDDOT or SDDOT contractor at fair market value as determined by appraisal.
5. When USFS will retain the ownership of the timber cut within the clearing limits, the USFS District Ranger will provide direction that must be followed for the marking, bucking, and decking (cutting and stacking) of the timber.
6. The USFS District Ranger or their designated representative will provide a written appraisal and contract (if required) in accordance with the joint project schedule. It is understood that the objective is for the appraisal to be completed at least 30 days prior to the bid opening. A timber contract (if required) should be completed no later than 30 days after SDDOT awards the construction contract.
7. If merchantable timber is being acquired by SDDOT or SDDOT contractor, at a fair market value as determined by USFS, the holder of the contract will provide direct payment to USFS for the value of the timber as determined by USFS prior to cutting, in accordance with the terms of the contract. The negotiated schedule should reflect the applicable dates for flagging of the cutting limit boundaries, the completion of volume estimates and corresponding appraisal, and the issuance of the contract.
8. If the timber is stockpiled on National Forest System (NFS) land, the site must be identified by the USFS Project Coordinator and agreed to by the SDDOT Area Engineer, and any necessary environmental clearances obtained.
9. If allowed by USFS the timber can be given to the public, at no cost, for use as firewood. If this is to occur, the wood must be cut to lengths specifically for use as firewood prior to removal from the designated NFS land according to USFS requirements.

C. Borrow Pits, Waste and Mineral Material Sites

1. By Forest Service policy, Highway Easement Deeds cannot include borrow pits or mineral material sites. Mineral material sites and borrow pits are authorized under separate authorities outlined here.
2. The USFS authorized official may assess a fee to cover costs of issuing and administering a mineral contract or permit (36 CFR 228.43b) within the USFS.
3. USFS Authority for disposal of mineral materials is provided by the Materials Act of July 31, 1947 (30 U.S.C. 601 et seq.), as amended by the Acts of August 31, 1950 (30 U.S.C. 603-604), July 23, 1955 (30 U.S.C. 601, 603) and September 25, 1952 (30 U.S.C. 602), and the following: the Act of June 4, 1897 (16 U.S.C. 602), the Act of March 4, 1917 (16 U.S.C. 520); the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); the Act of September 1, 1949 (section 3) (30 U.S.C. 192c); the Act of June 28, 1952 (section 3) (66 Stat. 285); the Act of September 2, 1958 (16 U.S.C. 521a); the Act of June 11, 1960 (74 Stat. 205); and the Federal Highway Act of 1958 (23 U.S.C. 101 et seq.).
 - a. USFS retains the Federal management responsibilities for all mineral materials located on NFS lands, including those located within rights-of-ways or easements across NFS lands.
 - b. USFS concurs that Free Use – Mineral material generated on NFS lands and used in a public purpose project, such as any public transportation construction project (whether on or off Federal lands), is free of charge to FHWA or SDDOT (36 CFR

Attachment A

228.62(d)(1)). Coordination between the USFS District Ranger and SDDOT will be required. A "Free-Use" contract/permit may be required. If required, the "Free-Use" permit may be issued to a designated agent (contractor) of FHWA or SDDOT at the discretion of the authorized USFS officer (36 CFR 228.62(c)).

4. If the USFS establishes that any excess excavated mineral material, such as landscape rock, topsoil, gravel, fill, or waste material has marketable value, then the excess material, when generated during highway construction activities, will be stockpiled in an area mutually agreed upon by USFS, FHWA, and SDDOT. The site where the material will be stored will be designated in the project plans. Such mineral materials are the property of the United States [36 CFR 228.43(d)] and the sale or disposal of this material will follow the procedures outlined below. USFS retains the Federal management responsibilities for all excess excavated mineral materials located within rights-of-ways or easements across NFS lands. The negotiated project schedule, specified in Section V. A. 2. should reflect all issues and decisions regarding the disposal or use of excess excavated mineral resources.
5. USFS, SDDOT and FHWA will cooperate, during development of the project environmental document to identify disposal sites and resolve other issues associate with the storage of excess excavated mineral materials, identify any mitigation necessary to use the sites, and complete the needed clearances for use of that site during project construction.
6. SDDOT, during all stages of project plan development, will assure that the USFS Project Coordinator is notified of all plan inspections, identify the quantity of excess excavated materials, identify designated or available disposal sites, and request USFS authorization, as needed.
7. At the Final Design review, a Special Provision should be developed, for inclusion in construction contracts as needed, to advise the contractor and SDDOT when a Mineral Material sale contract with associated fees will be required by the USFS District Ranger for any excess excavation material removed from NFS lands and disposed to any private individual or group (non-public agency) or for any private use (non-public use). USFS will be invited to work with SDDOT in the development of appropriate specification language for their contracts.
8. Sale of Mineral Material – A USFS mineral material contract is required whenever mineral material is removed from a borrow pit or excess excavated material is removed from USFS land and not incorporated within the highway construction. The contract may be issued to SDDOT, or SDDOT contractor. The contract for a borrow pit in most cases is for the excavation, crushing, screening, and removal. Further processing of the material such as batch plants may require a separate authorization from USFS.
9. If needed, any mineral material sale contract will be issued by USFS to SDDOT or SDDOT's contractor in a timely fashion.
10. Fair Market Value – USFS must collect fair market value for mineral materials taken from NFS land. [36 CFR 228.43(b)] Fair Market Value may be determined by use of existing USFS value schedule (Forest Service Manual Supplement 2850, Section 2856 and "Mineral Material Commodity Rate Schedule for Forests in South Dakota" memo.
11. On completion of a highway construction project, any remaining mineral materials excavated during the project that are removed from NFS Lands and/or sold for commercial purposes or given to a private entity, other than for public projects, must be purchased by SDDOT or by SDDOT's contractor at fair market value [36 CFR 228.59(b)].

Attachment A

12. Borrow Pit Reclamation – USFS contracts and permits will typically contain requirements to rehabilitate the used area. SDDOT will hold the contractor responsible for meeting these requirements and would be responsible/liable for both potential noncompliance and reclamation requirements.

VI. APPROPRIATION OF FEDERAL LANDS**A. Introduction**

The agencies coordinate to establish rights-of-way for transportation purposes for both proposed and existing roads on NFS lands (Title 23 U.S.C.). Such right-of-way allows the Transportation agencies use of such lands for design, construction and operation of transportation facilities. While these easements and uses are in place, USFS maintains the fee simple ownership of the lands. SDDOT will normally maintain vegetation management out to the clear zone limits and maintenance activities as necessary for the transportation facility out to the Right-of-Way (ROW) limits. It is recognized that certain USFS activities, such as vegetation control and wildlife management may encompass lands within the transportation right-of-way. Such activities should not unreasonably interfere with the transportation purposes. It is also recognized that SDDOT may be allowed to spray noxious weeds within the transportation right-of-way.

B. Appropriations Process

1. At the conceptual stage of a project or right-of-way design, SDDOT will conduct a field inspection & review as identified in Section IV. B. 4. of the proposed right-of-way corridor and determine appropriate widths required to accommodate proposed and future construction and maintenance needs. The USFS will be invited to join the inspection. Wherever possible, the width shall match the target width of 150 feet (75 feet each side of centerline). If stipulations are needed to protect USFS interests, they will be proposed at this time if identified in the field review. After preliminary design and NEPA is complete for a highway corridor and following the field inspection review, SDDOT ROW will submit to the FHWA ROW Officer a request for appropriation and transfer of right-of-way. The request will be accompanied by the ROW Construction Plan Sheets, Proposed ROW Plats, NEPA Document, and corresponding Construction Environmental Commitments Plan Sheets Survey, plans and documentation will be in accordance with USFS regional standards. The SDDOT request for rights-of-ways should consider future needs/conditions and endeavor to request and obtain enough right-of-way width as to avoid requesting additional small rights in the future.
2. USFS will review the request for an LOC and, if acceptable, issue an LOC within four months of receipt of the formal request, citing the appropriation and transfer of these lands under provisions of Section 317 of the Act of August 27, 1958 (72 Stat. 916; 23 U.S.C. 317) subject to any corridor stipulations to FHWA, with a copy to SDDOT Right-of-Way. Upon issuance of the LOC, immediate entry on NFS lands is authorized, subject to the terms set forth in the stipulations and the LOC.E. SDDOT Right-of-Way will prepare the draft easement deed. The USFS Regional Office and the FHWA ROW Officer will review the easement deed and, if it meets the requirements of the LOC, will notify SDDOT ROW of the easement deeds acceptance and direct SDDOT ROW to execute the deed and return it to FHWA ROW for FHWA execution and return the executed easement deed to SDDOT Right-of-Way for recording in the respective county public records.
3. SDDOT Right-of-Way will provide one (1) copy of the recorded easement to the FHWA

Attachment A

Right-of-Way Officer who will provide a copy to USFS Regional Office.

4. Where SDDOT is the lead agency for the disbursement of Federal funds for off-system projects (county roads and bridges), SDDOT will make application on behalf of the county for an LOC and easement deed in the name of the county using the above process.
5. The appropriate SDDOT Region Office will comply with USFS procedures for use or occupancy of NFS lands for other transportation related uses outside of the easement areas (ex: borrow pits, waste areas, and temporary construction sites).
6. SDDOT ROW and the FHWA ROW Officer will notify the Regional Office and the Forest Supervisor when the need for the appropriation no longer exists. Upon notification USFS will either (1) accept the road as is, or (2) if a roadway or other improvements are in place and are to be removed, identify rehabilitation standards that SDDOT must complete. Upon completion of the rehabilitation and acceptance of same by USFS, SDDOT ROW will notify the FHWA ROW Officer, in writing, of the relinquishment. In either case, upon receipt of this notice of relinquishment by FHWA, the lands appropriated will immediately revert to USFS and a formal relinquishing document will be prepared.
7. The LOC appropriation will terminate if construction is not started within (10) years, unless agreed otherwise.
8. Conversion of Existing Highways to Easement Deeds in the Absence of Reconstruction ROW Widths:
 - a. Target ROW width is 150 feet, (75 feet either side from centerline), with allowances for cuts, fills, etc. as mutually identified and agreed upon.
 - b. Highway Conversion application packages and processing guidelines:
Prior to submitting a request for conversion of any highway, the SDDOT Area Engineer and USFS District Ranger (or their designated representative(s)) will travel highway(s) involved in conversion request. SDDOT Area Engineer and USFS District Ranger will make a determination as to whether a ROW width of 75 feet from either side of centerline is appropriate. Where the width is not appropriate to cover the area required to operate and maintain the highway, a more appropriate (either reduced or increased) width will be identified for those areas. Once the field review is complete, SDDOT will prepare and submit plats reflecting the agreed upon easement locations and widths being requested to USFS for review, prior to submittal to FHWA. The set of plats will identify the centerline location of the existing constructed highway with sub-meter GPS accuracy (or better). Periodic ties to monuments of record will be provided at approximately one mile intervals. SDDOT will provide the plats in an electronic digital format that is compatible with USFS GIS.
 - c. After review and approval of easement locations by USFS, SDDOT will prepare draft easement deed for submittal to FHWA for review and execution as described above.
9. SDDOT will record final highway easement deed at appropriate courthouses and give copies to FHWA to be distributed to the appropriate USFS Regional Office.

VII. CONSTRUCTION/RECONSTRUCTION

- A. SDDOT Area Engineer and the USFS District Ranger will designate respective Construction Coordinators to provide coordination on matters related to the construction work or changed conditions that may alter the land allocations for approved plans. Changes in right-of-way

Attachment A

requirements or conditions affecting the project NEPA decision that occur during construction or reconstruction activities may necessitate additional NEPA analysis and coordination.

- B. SDDOT Area Engineer will invite the USFS District Ranger and FHWA Operations Engineer (or their representatives) to attend a pre-work construction conference with the successful bidder.
- C. SDDOT Area Engineer and the USFS Construction Coordinator will jointly participate in semi-final and final project inspections.
- D. SDDOT, when constructing the highway, will comply with the final construction plans, conditions and stipulations set forth in the LOC. USFS, acting as the Agent for FHWA, will be responsible for the monitoring and enforcement of these conditions, including written notification, to the SDDOT Area Engineer, of violations of these conditions and any subsequent action necessary to enforce compliance of the conditions. If necessary, USFS will request assistance from the FHWA Operations Engineer. If a Highway contractor is not complying with USFS conditions, USFS will give notice of noncompliance to the SDDOT Area Engineer. If the noncompliance is not corrected within 30 days, FHWA upon notice from USFS will secure compliance informally or, if necessary, take action pursuant to 23 CFR 1.36.
- E. SDDOT, FHWA, and USFS are encouraged to participate in annual coordination meetings and post-construction reviews at the local level. The purpose would be to coordinate and discuss project planning & development, to assess issues and to learn from completed projects.

VIII. OPERATION AND MAINTENANCE

- A. Operations include services such as snow removal and sanding. Maintenance is defined as minor restoration and upkeep to preserve the entire facility including roadway, shoulders, slopes, drainage improvements, safety devices. Maintenance also includes mowing, vegetation removal within the highway easement deed, culvert and ditch cleaning, and other services necessary for its safe and efficient operation. Maintenance does not include activities that change or enhance the operation of the existing facility from which it was originally designed. Maintenance may be performed by SDDOT or by contract.
- B. SDDOT will conduct maintenance activities to preserve scenic, environmental, and safety characteristics of transportation facilities to be compatible with adjacent NFS lands and resources.
- C. With respect to maintenance activities only, the term right-of-way is defined as the legal limits of the easement if an easement exists. When no easement exists, the right-of-way areas will be based on documented historical design/construction plans, if they exist. If neither of these exist then maintenance activities will only be allowed between the existing top of cuts and toe of fills.
- D. SDDOT Area staff will notify the USFS District Ranger of any merchantable timber which may be generated as the result of maintenance activities. USFS will retain the right to this timber and determine whether a timber sale or other authorization for removal is appropriate.
- E. SDDOT may assess right-of-way corridors for potentially hazardous trees, bug damaged trees, and sufficient clear zone/areas. Immediate hazards such as dead, leaning, diseased or damaged trees may be removed as required by SDDOT. Merchantable live trees within

Attachment A

- the ROW that are not immediate hazards may not be removed prior to SDDOT requesting that USFS plan for removal of the trees. USFS shall determine the method of removal within its authorities including removal of such trees in any future timber sale planned in the area or sale of the trees to SDDOT for removal.
- F. USFS shall notify SDDOT of planned timber sales and vegetative management projects and provide maps identifying planned management areas. SDDOT shall review the planning areas for trees that need to be cleared for public safety of the highway. The trees will be identified to the Forest Service for inclusion in timber sales or other vegetation management where possible. If the Forest Service is not able to remove the trees, SDDOT will request authority to do the work.
 - G. Routine maintenance activities within the right-of-way such as minor clearing, normal slough removal, and ditch cleaning will not require coordination providing no waste material is deposited outside the ROW. Removal of waste material from the right-of-way will require coordination with USFS.
 - H. Non-routine maintenance activities within the right-of-way such as significant amounts of clearing, changes in established drainage patterns, and material sources and storage will be mutually agreed upon by the USFS District Ranger and SDDOT Area by conference or other communication prior to commencing work.
 - I. SDDOT Area will coordinate with USFS on any maintenance activities which may affect NFS lands outside the right-of-way.
 - J. All operation and maintenance activities, including snow removal and sanding, will be performed to minimize and control soil erosion and deposition within the right-of-way and adjacent lands.
 - K. For use of biological or chemical control in clearing or vegetation maintenance on NFS lands, SDDOT will: follow the provisions contained in the highway easement deed if within a right-of-way covered by an easement; consult with the USFS District Ranger if within a right-of-way not covered by an easement; or obtain written approval if outside the limits of the right-of-way. USFS may provide conditions protecting the adjacent NFS lands (National USFS/FHWA MOU, Part III. G. 5).
 - L. SDDOT Area may remove immediate hazards, such as rock slides or trees, without formal USFS approval and will promptly notify the USFS District upon removal. Removed material will be disposed of at locations mutually agreeable to SDDOT Area and the USFS District Ranger.
 - M. SDDOT Area will at a minimum, on an annual basis, notify the affected Forest Service District Ranger when fences and cattleguards will be impacted by SDDOT maintenance or highway reconstruction work. The USFS will manage the inspection and maintenance of right of way fences and cattleguards for purposes of livestock management through administration of agency issued grazing permits. Upon agreement by both parties that maintenance of a particular fence or cattleguard is no longer feasible and replacement is needed, replacement will be completed by the SDDOT. Unless the fence is destroyed by a sudden event, the SDDOT will plan, design, and let a fence replacement project within 2 years of the date replacement was agreed upon.
 - N. USFS will notify SDDOT of planned USFS activities which may affect transportation operations or maintenance.
 - O. SDDOT is encouraged to develop and should consult with the Forest Service when

Attachment A

developing Operation and Maintenance Plans and Best Management Practices on highways within NFS lands.

- P. SDDOT Area is responsible for the removal and cleanup of all new releases and existing releases where a responsible party cannot be found or threatened releases of hazardous substances originating on the highway right-of-way, including those that extend beyond the boundaries of the appropriated right-of-way to adjacent National Forest System lands and resources. In the event of threat or damage to adjacent National Forest System lands, USFS will notify SDDOT of its concerns and, if necessary, request assistance from FHWA as provided in Section 111(J) of the National MOU between FHWA and the USFS.
- Q. In the case of emergency situations resulting from natural or catastrophic failures, (floods, slides, and new releases), SDDOT Area may conduct work outside the right-of-way to repair problem areas to mitigate further resource damage or public safety and will promptly notify the USFS District Ranger of actions taken or proposed.
- R. In absence of documented clear zones, or where no recorded highway easement exists, scenic by-way designated highways will have a clear zone of 10 feet and non-scenic highways will have clear zones of up to 30 feet. As opportunities arise, SDDOT will endeavor to obtain easements for those highways areas that do not have a documented right-of-way.

IX. SIGNING

A. General Provisions

Actions defined in this MOU will be coordinated between personnel at equivalent organizational levels within each agency. Forest or Grasslands Supervisors/Region Engineers and District Rangers / Area Engineers or Maintenance Supervisors are encouraged to confer and reach agreements on matters within their scope of responsibility. All requests for signs will be made to the Region Engineer by the Forest or Grasslands Supervisor to maintain consistency within units. Unresolved problems and items requiring approval of higher authority will be referred to the SDDOT Transportation Director of Operations and the appropriate Regional Forester for consideration.

B. Key Points covering all SDDOT System Roadways

1. USFS related signing will be reviewed and approved by the Forest/Grasslands Supervisor and the SDDOT Region Traffic Engineer to assure compliance with this agreement and with all State and Federal Transportation Safety Standards.
2. USFS related signing that is the responsibility of SDDOT shall meet all the state signing specifications, which include the standard signing supports and sign materials. Signs which are the responsibility of USFS shall meet USFS Standards and Specifications.
3. All signs installed within the right-of-way shall meet MUTCD, AASHTO Roadside Design Guide Criteria for Roadside Safety and current NCHRP or MASH crash testing requirements.
4. All outdoor advertising on private lands within the Forest Boundary are subject to the rules and regulations of SDDOT.
5. For the purpose of this agreement, "Direct Access" is defined as a roadway which leads motorists to their destination without having to divert onto another roadway before reaching that destination.

Attachment A

6. The Federal Highway Administration Manual on Uniform Traffic Control Devices is referred to as the MUTCD in this MOU.
7. Signs which are not specifically addressed in this MOU (e.g., interpretive waysides, scenic overlooks) and installed within the right-of-way, shall be mutually agreed upon by SDDOT and USFS.
8. Sign plan inventories shall be developed to aid in SDDOT and USFS efforts in managing signage along roads. Regulatory and warning signs maintain precedence over directional, TOD and special use signs.
9. SDDOT will install and maintain all required Regulatory, Warning and Guide signs as required by MUTCD.
10. In firefighting situations, as necessary without formal SDDOT approval, USFS may provide and install temporary emergency signing and traffic control devices in accordance with Incident Management requirements of Part 6 of the MUTCD for all highways other than interstate. SDDOT may provide assistance with emergency signage.

C. Signing on Interstate Highways

Signing for Interstate highways shall adhere to Section X.B.1-9 above with additional requirements as follows:

1. SDDOT will erect and maintain standard MUTCD signs for National Forests or significant designated recreation areas which are directly accessed by an intersecting highway from an interchange and are within 50 miles of the interstate highway.
2. USFS will not erect any signs within an interstate highway right-of-way.
3. No signs will be allowed for special use facilities other than the Motorist Service Signing provided by State law or policy.
4. Any required signing for prescribed fires will be coordinated between USFS & SDDOT. Subject signing will be placed and maintained by SDDOT. If SDDOT requires payment, SDDOT and USFS will execute a collection agreement prior to installation of said signage. In cases where SDDOT has discretion on requiring payment, it will endeavor to exercise that discretion and not assess a fee to the USFS; the USFS will endeavor to reciprocate in like circumstances.

D. Signing on Non-Interstate Highways

1. On State Non-Interstate Highways within Forest Boundaries
 - a. SDDOT will erect and maintain standard MUTCD signs:
 - i. For identifying entering and leaving National Forest Lands. Signs will only be placed at exterior boundaries, unless significant interior highway lengths are within private lands. Signage that is above and beyond the standard MUTCD signage will be erected and maintained by USFS.
 - ii. For numbered National Forest System Roads (maintained to a USFS Level 3 maintenance standard or higher) which directly access these highways and as recommended by USFS.
 - iii. For designated recreation areas, as shown on Forest/Grasslands Visitor Maps, at their direct access point with the highway.
 - iv. For on-USFS administrative sites or other facilities providing information for the public.

Attachment A

- v. For significant topographic features within the Forest/Grasslands, as coordinated with USFS, e.g., mountain peaks, rivers, special areas, etc. All other topographic features may be signed by USFS at its expense.
 - vi. SDDOT will erect and maintain significant historical site signs as determined by SDDOT and USFS.
- b. USFS will be responsible for:
 - i. Special use permittee signing on the highway right-of-way. Signs shall be in conformance with the Federal and State Outdoor Advertising laws.
 - ii. Incident management includes prescribed fire. USFS may provide and install temporary emergency signing and traffic control devices in accordance with the Incident Management requirements of the MUTCD.
- 2. On State Non-Interstate Highways outside Forest/Grasslands boundaries.
 - a. SDDOT will erect and maintain standard MUTCD signs:
 - i. For designated recreation areas or National Forests/Grasslands, which are directly accessed and are within 20 miles of the highway.
 - ii. For directional signage for USFS administration sites.
 - b. USFS will fabricate, erect and maintain signing for all on-premise USFS Administrative Sites (Offices) at locations and to standards agreed to by SDDOT and/or other parties having official jurisdiction, such as municipalities.

E. Tourist-Oriented Directional Signs (TODS)

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

X. THIRD PARTY OCCUPANCY**A. General Provisions**

The grant of an easement to SDDOT by FHWA is limited to rights for highway use only and excludes any rights for non-highway purposes, facilities, or occupancy by third parties. Fences and cattleguards are often considered facilities that are in place for highway purposes. USFS will consult with SDDOT before any third party occupancy permits or other encumbrances are acted upon, to determine if such occupancy may impact highway safety, maintenance, and efficiency. If it is determined that such impacts would occur, USFS will request SDDOT review and concurrence prior to approving occupancy. SDDOT is encouraged to establish a set of construction and/or maintenance stipulations that can be incorporated by USFS in the authorization and/or operation and maintenance plan.

B. Utility Permits

- 1. SDDOT and USFS will coordinate all requests and approval for utility construction over National Forest land within SDDOT ROW. A special use permit issued by USFS and an SDDOT state highway utility permit will be required to authorize the third party construction of a utility over National Forest lands.
- 2. SDDOT permission shall include requirements that placement will be in accordance with SDDOT Utility Accommodation Regulation.

Attachment A

XI. ACCESS CONTROL

- A. Access to Interstate highways will be only by established interchanges, except for emergency use in accordance with the rules and regulations governing the Interstate Highway System.
- B. SDDOT and USFS will coordinate all requests and approval for road construction over National Forest land within SDDOT right-of-way.
 - 1. USFS Road – USFS will apply for a state highway access permit. New approaches will be at the expense of USFS. Maintenance of gravel road approaches will be the responsibility of USFS. Paved aprons at gravel road approaches will be responsibility of SDDOT to maintain. Paved roads will be maintained by USFS to the normal shoulder line.
 - 2. State, local, tribal or private access – The third party will be responsible for obtaining a state highway access permit. Only upon approval of access by both USFS and SDDOT may a third party construct a highway access over NFS lands. New approaches will be at the expense of the permittee. Maintenance of the road approach will be the responsibility of the permittee.
 - 3. Combined USFS/Private Access – The responsibilities with a joint ownership access road will be negotiated between the parties.
- C. USFS may construct temporary approaches as necessary during firefighting or other emergencies without formal SDDOT approval. USFS will notify the SDDOT Region as soon as practicable. Following emergency use, necessary obliteration and restoration measures will be made at no expense to SDDOT. USFS will take precaution during such emergencies to safeguard highway users.
- D. USFS will apply for temporary access permits for timber sale temporary roads planned as part of a timber sale and will require timber sale purchasers to apply for temporary access permits for temporary roads they propose for use.

Attachment A

APPENDIX A-1 - Potential Issues and Concerns Identified by the USFS

Date:

Federal Project Number:

SDDOT PCN:

USFS Project Coordinator:

Based on the information received on this project (e.g., project scope, purpose and need, alternatives, work limits), the USFS has identified the following as potential issues and concerns to be considered during the development of this project.

Potential inconsistencies with land management plans such as:

--	--

- Anticipated social, economic, and environmental impacts
- Travel demand estimates for the NFS/Public Lands roads
- Potential recreation sites and activities (physical or permitted) located within the project area
- Endangered, threatened, proposed, and sensitive species inventories, biological evaluations, and biological assessment requirements
- Existing and potentially needed wildlife crossings or fish passage
- Potential historic sites, cultural properties, and other recreational resource areas, or refuges that are protected under Section 4(f) 23 CFR 774
- Public lands survey monuments - known locations and requirements for protection
- Potential staging, stockpile or storage areas
- Timber clearing requirements for removal and appraisal
- Potential material sources, disposal sites and borrow pits

Attachment A

- USFS project specific scoping list of interested parties to be used for agency and public coordination and other public involvement requirements
- Facilities, such as cattle guards, stock passes, fences, approaches, signs, etc. necessary to the management of NFS lands to be incorporated into SDDOT project design.
- Other items of special issues or concerns

Description (details of special items and supporting data):

Attachment A

APPENDIX A-2: Coordination Schedule
(To be completed upon request by SDDOT, FHWA, or USFS)

Federal Project Number:

SDDOT PCN:

USFS Project Coordinator:

Date Prepared:

Date Revised:

SCHEDULED TASKS	SCHEDULED	COMPLETED
A. SDDOT/USFS review STIP and/or LRMP to determine project compatibility		
B. SDDOT/USFS provide necessary authorizations for surveys or site investigations		
1. Land surveys, ties, and topo mapping		
2. Material Investigation and boring		
3. Environmental Investigations		
C. SDDOT/FHWA/USFS tentatively determine NEPA document required		
D. CE: _____ EA: _____ EIS: _____		
E. SDDOT/USFS conduct joint reviews		
1. Scoping (Reconnaissance) Review		
2. Project Development Schedule		
3. Project Design Criteria		
4. Design Inspection (if needed)		
F. SDDOT/USFS Coordinate Public Meeting(s)		
G. USFS provides list of potential issues and concerns to be considered during the development of the project		
H. SDDOT/FHWA submit NEPA document to USFS for review		
I. USFS submits NEPA comments (or indicates no comments) to SDDOT		
J. USFS provides a list of Special Use Permits		
K. SDDOT/FHWA submit construction plans to USFS		
1. Preliminary Plans		
2. Plans for Landowner Meeting		
3. Final Inspection Plans		
4. ROW and Utility Plans		
5. Completed Plans		
L. USFS submits plans comments (or indicates no comments) to SDDOT		
M. Timber		

Attachment A

1. USFS determines disposition of timber		
N. Mineral Material		
1. USFS determines use or disposal of excess mineral resources		
O. SDDOT submits ROW plans to FHWA		
P. FHWA submits ROW plans to USFS and requests LOC		
Q. USFS Regional Forester issue LOC with stipulations to FHWA		
R. SDDOT submits final plans to USFS for comment		
S. SDDOT/USFS conduct final project inspection		
T. SDDOT processes easement deed with FHWA		
U. SDDOT sends a draft easement deed to USFS for review		
V. SDDOT records final easement deed and provided USFS with a recorded copy		
SDDOT Construction Coordinator Name, phone number		
USFS Construction Coordinator Name, phone number		

Note:

- Based on the project scope and scale, some of these items may not be necessary and should be agreed upon at the beginning of the project.
- This checklist is to be used with the MOU Implementing Procedures.