

MEMORANDUM OF UNDERSTANDING

among

COLORADO DEPARTMENT OF TRANSPORTATION

and

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

CENTRAL FEDERAL LANDS HIGHWAY DIVISION

and

U.S. DEPARTMENT OF AGRICULTURE

FOREST SERVICE

REGION 2

for the

Planning, Programming, Project Development, Construction, and Maintenance of

Forest Highways in the State of Colorado

August 1997

1. Parties to Memorandum of Understanding (MOU):

The Forest Highway (FH) Cooperating Agencies consist of representatives of the Federal Highway Administration, Central Federal Lands Highway Division (FHWA), the Colorado Department of Transportation (CDOT), and the USDA Forest Service, Region 2 (FS).

2. Purpose:

The purpose of this MOU is to set forth the general procedures, mutually acceptable to the FH Cooperating Agencies, for the planning, programming, environmental studies, design, construction, and maintenance of FHs in the State of Colorado pursuant to the provisions of Title 23, U.S.C., Sections 116, 202, 203, and 204; Title 23, C.F.R., Chapter 1, Subchapter G, Parts 625, 633 (Subpart C), 645 (Subpart B), 650 (Subparts A, B, and C), 652, 655 (Subpart E), 660 (Subpart A), and 771; Title 23, C.F.R., Chapter 1, Subchapter H, and Title 40, C.F.R., Chapter V, Parts 1500 through 1508. Congress has authorized funds to the FHWA for the construction of FHs (those roads within, or providing access to, the National Forest System) recognizing that substantial benefits will accrue to the State and Nation by the construction and maintenance of these highways. Additionally, the CDOT and the FS have systems planning, maintenance, right-of-way acquisition, and interdisciplinary capabilities available to help in the accomplishment of the work. It is therefore appropriate for the parties to this MOU to set forth the general terms of their cooperation.

3. Other Agreements:

There are existing procedures for appropriating and transferring National Forest System lands, and other operational guidelines are contained in the current MOUs and Memoranda of Agreement (MOA) between the FS and the FHWA. These include the "Memorandum of Understanding Related to Forest Highways Over National Forest Lands," dated May 11, 1981; the "Memorandum of Agreement Between the U.S. Forest Service and the Federal Highway Administration for the Administration of Emergency Relief Available Under 23 U.S.C. 125 for Federal Roads off the Federal-aid System," dated May 25, 1979; and the "Memorandum of Understanding Between the Forest Service and the Federal Highway Administration," dated October 14, 1975 (which prescribes the implementation responsibilities for the elements of the Highway Safety Program Standards). The procedures of these current MOUs and MOAs are incorporated by reference into this MOU.

4. Forest Highway Routes:

This MOU will cover the FH routes approved by the FHWA for inclusion in the designated FH network and any approved amendments. The list of such approved routes may be changed from time to time by mutual agreement of the FH Cooperating Agencies.

5. Program of Projects:

A program meeting will be held annually in accordance with 23 C.F.R. 660.109(a) with representatives from the **FH Cooperating Agencies** who are authorized to commit their agencies to agree on the program of projects. Projects for the FH program are jointly selected from priority lists of projects proposed by the State and the FS. Projects under the jurisdiction of local governments will be proposed by the CDOT which represents political subdivisions of the State for the FH program. Routes need not be designated before a project may be proposed. The route designation and project selection may be considered concurrently as long as the route is designated before FH funds are expended. A minimum five year program is maintained for FH funding. After an agreement has been reached on the program of projects, the FHWA will prepare the approved, updated program and forward copies to the **FH Cooperating Agencies**. The CDOT will incorporate the program of projects into their statewide transportation improvement program (STIP) and will be responsible for coordinating program activities with the local agencies. If necessary, the CDOT will also forward a copy of the program to the appropriate metropolitan planning organization (MPO) for incorporation into their transportation improvement program (TIP).

6. Transportation Planning/Management Systems:

Forest Highways are an integral part of the transportation system in the State. Statewide transportation planning will be performed by the CDOT who will work with the FS and the FHWA on transportation planning activities of mutual concern. The CDOT agrees that in performing these functions, the planning procedures required under 23 C.F.R. 450 will be satisfied. The CDOT agrees to integrate the long range FH transportation plan into the State's long range transportation plan. At that time, future FH projects will be based on the statewide transportation plan. The CDOT agrees to share information with the FHWA on FH routes from their bridge, pavement, and safety management systems. The FS agrees to work with the FHWA and CDOT when amending or revising Forest Management Plans to incorporate land use and transportation planning.

7. Project Agreements:

In addition to this MOU, a project agreement may be entered into between the FHWA and other cooperators including the CDOT, the FS, other government or local agencies or private factions. The purpose of the project agreement will be to accomplish specific project work related to this MOU. A project agreement shall be entered into between the FHWA and a public authority when any of the following conditions apply:

- (a) The cooperator's funds are to be made available for the project or any portion of the project.
- (b) FH funds are to be made available to a public authority for any work.
- (c) Special circumstances exist which make a project agreement necessary for payment purposes or to clarify any aspect of the project.

(d) It is necessary to document jurisdiction and maintenance responsibility.

It is also appropriate to employ a project agreement to explain any element of the project that needs clarification or resolution.

8. Cooperative Funds:

A project agreement will cover any funds that any other cooperator may make available to the project. Funds will be provided in advance of any work. The FHWA will deposit the funds in the Treasury of the United States for the cooperative work. Payments for work performed will be made out of the funds provided by the cooperator as set forth in the project agreement.

9. Development of Projects:

Projects included in an approved program will be undertaken promptly, and the work carried to completion in an expeditious manner following the schedule and priorities of the program. Each of the FH Cooperating Agencies will identify a contact person for coordination of project development activities. Generally, the project will be developed by the FHWA. On occasion, another public authority may be designated as the "developing agency" by the FH Cooperating Agencies. Notwithstanding the developing agency, final plans, specifications, and estimates (PS&E) will be sent to the FH Cooperating Agencies for their review. Should CDOT be designated the developing agency, the project will be managed as a Federal-aid project under the jurisdiction of the FHWA Federal-aid Division office. The project development will be in accordance with the approved Federal-aid procedures.

10. Compliance with Laws and Regulations:

Forest Highway projects will be planned, developed, and constructed according to applicable social, economic, and environmental laws and regulations. The FHWA will generally act as the lead agency responsible for the preparation of environmental documents for the proposed projects, including the public notification and involvement process, with the FS participating as a cooperating agency as defined by the National Environmental Policy Act (NEPA). Each NEPA cooperating agency must document their decisions according to applicable regulations based on the analysis and tier to broader NEPA documents such as the current version of the Forest Plan environmental impact statement (EIS). Under 23 C.F.R. 771.11 and 40 C.F.R., 1500 through 1508, the requirements mandate early and continuing opportunities during project development for public involvement in the identification of social, economic, and environmental impacts and impacts associated with the relocation of individuals, groups, or institutions. The FH Cooperating Agencies agree that appropriate procedures will be established to assure that the public and other agencies are given suitable opportunity for input to each individual project regarding social, economic, and environmental impacts as outlined in the current MOUs and MOAs between the FS and the FHWA referenced in the "Other Agreements" section of this MOU.

All projects will be designed according to 23 U.S.C. 109, 23 C.F.R. 625, and the Manual of Uniform Traffic Control Devices (MUTCD).

11. Rights-of-Way and Rights-of-Entry:

The FHWA Federal-aid procedures (23 C.F.R. 712) and the procedures outlined in the FHWA's publication, Right-of-Way Project Development Guide will be used for right-of-way acquisition. Unless other provisions are specified in a project agreement, the developing agency will be responsible for providing (1) all recorded or maintained records on the existing road and current policy on right-of-way limits, (2) current owner property lists and tax assessor's maps, (3) current ownership information of private property(s), and (4) an ownership update before an appraisal. The developing agency will also perform a current owner title search, do necessary work to tie in properties to the Public Land Survey System, and prepare right-of-way plans and legal descriptions of each property needed for each project. Rights-of-entry needed for surveys and investigation pertinent to the development of the route such as, but not limited to, land surveys, environmental surveys and investigations, and geological investigations will be acquired by the developing agency or their agent. Repair of any damage resulting from these surveys and investigations will be funded as specified in the project agreement. Acquisition of rights-of-way or other interests in property needed for a project and the preparation of the rights-of-way certification letters will be the responsibility of the agency with jurisdiction over the road. The cost of rights-of-way acquisition will be at the jurisdictional agency's expense unless otherwise provided in a project agreement. The appropriation and transfer of the easement over National Forest System lands will be according to the "MOU Between the United States Department of Agriculture, Forest Service, and United States Department of Transportation, Federal Highway Administration, Regarding the Appropriation and Transfer of National Forest System Lands for Highway Purposes."

12. Material Sources, Borrow Sources, and Waste Areas :

Most projects require the development, use, and restoration of sources of materials for roadway construction, borrow sources, and waste areas. As appropriate, the FS and CDOT agree to simplify the use of such areas under their jurisdiction according to applicable land use requirements.

13. Construction of Projects:

Unless otherwise provided in the project agreement for the specified project, the construction of FH projects will be accomplished by the FHWA according to the approved FH Program. For all such projects, and projects constructed by a developing agency, construction will meet the PS&E approved for the project, and will conform with the Federal Highway Act as amended and supplemented, Forest Highway Regulations, Federal Acquisition Regulations (48 C.F.R. 1), and Transportation Acquisition Regulations (48 C.F.R. 12). The exception is when CDOT or a local government is the developing agency; the project may be administered in accordance with approved Federal-aid procedures. Construction will be done by contract entered into by

competitive bids unless the FHWA determines another method to be appropriate. The plans will govern the construction supported by the current edition of the specifications of the developing agency as applicable. All work will be under the direct supervision of the FHWA unless the project agreement modifies this requirement. The project will be undertaken as promptly as possible after the design is completed and funds are made available, and will be carried to completion with all reasonable speed. Minor changes in grade, alignment, surface course, or structures made necessary by unforeseen contingencies or deemed desirable by conditions developed during the progress of the work may be made without the prior or separate approval of the FH Cooperating Agencies. It is necessary for the developing agency to insure that any such changes are not in conflict with any of the environmental or permit considerations developed during project implementation. Major changes will be coordinated with the FH Cooperating Agencies.

14. Utility Relocation:

Utilities that are within the construction limits of the proposed right-of-way will be moved or adjusted according to 23 C.F.R. 645 (Subpart B) subject to applicable individual State and/or project agreement requirements. The relocation or adjustment will be arranged, and if costs are involved, paid for by the agency with jurisdiction over the road unless other provisions are specified in a project agreement. Arrangements for utility relocation, adjustment, or accommodation plans will be completed before advertising a construction contract.

15. Maintenance:

After construction of a FH project, the public authority with jurisdiction over the road will operate and maintain, or cause to be maintained, the highway at their expense in accordance with 23 U.S.C. 116 and 23 C.F.R. 660.115. In the case of local governments, this will be arranged for in a separate agreement. Maintenance is the preservation of the entire highway including the surface, shoulders, the roadside, environmental features, structures, such traffic control devices as are necessary for its safe and efficient use, and environmental protection and erosion control measures. During construction, the contractor will maintain traffic over the project as specified in the construction contract documents. A FH project will be accepted by the jurisdictional agency for operation and maintenance when all construction work has been accepted by the contracting officer. On FH projects administered by the CDOT or a local government, Federal-aid procedures will be used for inspection and acceptance of completed projects. Any environmental commitments noted in the contract will be carried out and maintained or monitored by the public authority with jurisdiction over the road. After construction, the jurisdictional agency will not install, or permit to be installed, any signs, signals, or markings not in conformance with the MUTCD.

16. Other Terms of Agreement:

- A. This MOU will be effective on the date of the latest signature below, and will supersede all prior existing cooperative agreements between the FHWA, FS, and CDOT pursuant to 23 U.S.C. 204, "Federal Lands Highways Program," and 23 C.F.R. 660 (Subpart A) except those agreements involving a commitment of funds or arrangement for the performance of construction work on projects underway but not yet completed and final settlement made. It will continue in effect until cancellation by any party upon giving a 60-day written notice. Renegotiation of any part of this agreement can be initiated in writing anytime by any of the parties.
- B. This instrument is executed as of the last date shown below and expires five years from the last dated signature when it is subject to review and renewal, or expiration.
- C. This instrument is neither a fiscal nor a fund obligating document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between parties to this instrument will be handled according to applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that representatives of the parties will make in writing and will be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for a noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
- D. Modifications within the scope of this instrument will be made by the issuance of a trilaterally executed modification before any changes are performed.
- E. This instrument in no way restricts the cooperating parties from participating in similar activities with other public or private agencies, organizations, and individuals.

COLORADO DEPARTMENT OF TRANSPORTATION
DENVER, COLORADO

By: James E. Siebel

Title: Chief Engineer
Date: August 26, 1997

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION
LAKEWOOD, COLORADO

By: [Signature]

Title: District Engineer
Date: 9/17/97

DEPARTMENT OF AGRICULTURE
FOREST SERVICE, REGION 2
LAKEWOOD, COLORADO

By: [Signature]
TOM L THOMPSON

Title: Deputy Regional Forester
Date: September 16, 1997

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competitive bids unless the FHWA determines another method to be appropriate. The plans will govern the construction supported by the current edition of the specifications of the developing agency as applicable. All work will be under the direct supervision of the FHWA unless the project agreement modifies this requirement. The project will be undertaken as promptly as possible after the design is completed and funds are made available, and will be carried to completion with all reasonable speed. Minor changes in grade, alignment, surface course, or structures made necessary by unforeseen contingencies or deemed desirable by conditions developed during the progress of the work may be made without the prior or separate approval of the FH Cooperating Agencies. It is necessary for the developing agency to insure that any such changes are not in conflict with any of the environmental or permit considerations developed during project implementation. Major changes will be coordinated with the FH Cooperating Agencies.

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Utilities that are within the construction limits of the proposed right-of-way will be moved or adjusted according to 23 C.F.R. 645 (Subpart B) subject to applicable individual State and/or project agreement requirements. The relocation or adjustment will be arranged, and if costs are involved, paid for by the agency with jurisdiction over the road unless other provisions are specified in a project agreement. Arrangements for utility relocation, adjustment, or accommodation plans will be completed before advertising a construction contract.

15. Maintenance:

After construction of a FH project, the public authority with jurisdiction over the road will operate and maintain, or cause to be maintained, the highway at their expense in accordance with 23 U.S.C. 116 and 23 C.F.R. 660.115. In the case of local governments, this will be arranged for in a separate agreement. Maintenance is the preservation of the entire highway including the surface, shoulders, the roadside, environmental features, structures, such traffic control devices as are necessary for its safe and efficient use, and environmental protection and erosion control measures. During construction, the contractor will maintain traffic over the project as specified in the construction contract documents. A FH project will be accepted by the jurisdictional agency for operation and maintenance when all construction work has been accepted by the contracting officer. On FH projects administered by the CDOT or a local government, Federal-aid procedures will be used for inspection and acceptance of completed projects. Any environmental commitments noted in the contract will be carried out and maintained or monitored by the public authority with jurisdiction over the road. After construction, the jurisdictional agency will not install, or permit to be installed, any signs, signals, or markings not in conformance with the MUTCD.

16. Other Terms of Agreement:

- A. This MOU will be effective on the date of the latest signature below, and will supersede all prior existing cooperative agreements between the FHWA, FS, and CDOT pursuant to 23 U.S.C. 204, "Federal Lands Highways Program," and 23 C.F.R. 660 (Subpart A) except those agreements involving a commitment of funds or arrangement for the performance of construction work on projects underway but not yet completed and final settlement made. It will continue in effect until cancellation by any party upon giving a 60-day written notice. Renegotiation of any part of this agreement can be initiated in writing anytime by any of the parties.
- B. This instrument is executed as of the last date shown below and expires five years from the last dated signature when it is subject to review and renewal, or expiration.
- C. This instrument is neither a fiscal nor a fund obligating document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between parties to this instrument will be handled according to applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that representatives of the parties will make in writing and will be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for a noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
- D. Modifications within the scope of this instrument will be made by the issuance of a trilaterally executed modification before any changes are performed.
- E. This instrument in no way restricts the cooperating parties from participating in similar activities with other public or private agencies, organizations, and individuals.

COLORADO DEPARTMENT OF TRANSPORTATION
DENVER, COLORADO

By: James E. Siebels

Title: Chief Engineer
Date: August 26, 1997

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION
LAKEWOOD, COLORADO

By: George Smith

Title: Division Engineer
Date: 9/17/97

DEPARTMENT OF AGRICULTURE
FOREST SERVICE, REGION 2
LAKEWOOD, COLORADO

By: Tom L. Thompson
TOM L. THOMPSON

Title: Deputy Regional Forester
Date: September 16, 1997