

**WYOMING STATE PROTOCOL
APPENDIX G
AGREEMENT DOCUMENT TEMPLATE**

PROGRAMMATIC AGREEMENT/MEMORANDUM OF AGREEMENT
AMONG

BUREAU OF LAND MANAGEMENT, OTHER FEDERAL AGENCIES, WYOMING STATE HISTORIC
PRESERVATION OFFICER, ADVISORY COUNCIL ON HISTORIC PRESERVATION (if involved), OTHER
SIGNATORIES, REGARDING _____(NAME OF PROJECT)

WHEREAS, Project description; and

WHEREAS, Undertaking description if different from project; and

WHEREAS, the *Programmatic Agreement among the BLM, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers Regarding the Manner in Which BLM Will Meet Its Responsibilities Under the National Historic Preservation Act* (hereinafter BLM's national PA), State Protocol between the BLM Wyoming State Director and Wyoming State Historic Preservation Officer (WYSHPO) executed on ____, 2014 (hereinafter State Protocol), is incorporated herein by reference; and

WHEREAS, APE definition; and

WHEREAS, Reason for PA/MOA; and

WHEREAS, Any other whereas clauses as needed (determinations of effect, etc.); and

WHEREAS, Tribal consultation/tribes invited, did/did not choose to participate; and

WHEREAS, SHPO consultation; and

WHEREAS, the 1) regulations at 36 CFR Part 800.6(c)(1-3) OR 2) the State Protocol Part V.F.ii.a recognizes three types of signatories to this agreement: **Signatories**, **Invited Signatories** and **Concurring Parties**, which are referred to collectively as **the Parties**. Signatories and Invited Signatories may include any party who assumes responsibilities under this agreement. Concurring Parties have a demonstrated interest in the undertaking or its effects on historic properties, but do not assume responsibilities under the agreement. Concurring Parties may participate in development of the document and may concur with this agreement. The refusal of any Invited Signatory or Concurring Party to sign does not invalidate the PA. Concurring Parties cannot amend or terminate this agreement; and

WHEREAS, 1) the BLM has notified the ACHP according to 36 CFR Part 800.14(a)(1)/OR Protocol IV.A. and the ACHP has elected to participate/not participate OR 2) WHEREAS, the BLM has determined that this undertaking does not meet the thresholds for ACHP participation as found at 36 CFR 800 Appendix A OR Part 5.b. in the national PA; and

WHEREAS, OTHER INTERESTED PARTIES have requested to be consulting parties in actions affecting the (historic properties) and the BLM has invited CONSULTING PARTIES NAME to participate as a ___ (type of party) and they have accepted/not accepted; and

NOW, THEREFORE, the BLM, other FEDERAL AGENCIES, WYSHPO, the ACHP and the OTHER CONSULTING PARTIES agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

BLM will ensure that the following is implemented.

I. STIPULATIONS

AS MANY AS ARE NEEDED. FOLLOW NUMBERING SYSTEM USED IN THE REGULATIONS.

II. CONFIDENTIALITY OF CULTURAL RESOURCE DATA

To the extent consistent with the National Historic Preservation Act, Section 304, and the Archaeological Resources Protection Act, Section 9(a), and other applicable laws and executive orders. Cultural resources data from BLM lands will be treated as confidential by all Parties. The Signatories to this agreement will determine what information may be released to the other Parties. Duplication or distribution of cultural resource data from BLM lands by any Signatory requires written authorization from the BLM.

III. DISPUTE RESOLUTION

- A. Should any Signatory to this PA/MOA provide notice to the BLM of its objection to an action under this PA/MOA, or implementation of the measures stipulated in this PA/MOA, within 30 days of becoming aware of an action, the BLM shall consult with the Parties to this PA/MOA to resolve the objection, unless otherwise specified in this document. If the BLM determines that the objection cannot be resolved, the BLM shall forward all documentation relevant to the dispute to the ACHP. The objecting party must provide reasons for, and a justification of, its objection at the time it initially submits its objection to the BLM. Within 30 days after receipt of all pertinent documentation, the ACHP shall either:
1. Provide the BLM with recommendations, which the BLM shall take into account in reaching a final decision regarding the dispute; or
 2. Notify the BLM that it will comment within an additional 30 days. Any ACHP comment provided in response to such a request will be taken into account, and responded to by BLM with reference to the subject of the dispute.
- B. The BLM responsibility to carry out all actions under this PA/MOA that are not the subject of the dispute will remain unchanged.

IV. AMENDMENT

Any Signatory or Invited Signatory to this agreement may request that the other Signatories consider amending the agreement if circumstances change over time and warrant revision of the stipulations of the agreement. Except in the case of amendments addressing

resolution of disputes pursuant to Section V of this PA/MOA, amendments shall be executed in writing and shall be signed by all Signatories in the same manner as the original PA/MOA.

V. TERMINATION

Any Signatory or Invited Signatory to this PA/MOA may initiate termination by providing written notice to the other Signatories of their intent. After notification by the initiating party, the remaining Signatories and Invited Signatories shall have 90 business days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. In the event of termination, the BLM shall refer to 36 CFR Part 800 to address any remaining adverse effects.

VI. SUNSET TERMS

This PA/MOA shall remain in effect for XX years after the date of execution hereof. The BLM and WYSHPO shall re-evaluate the PA every XX years. The BLM shall ensure the PA/MOA will be re-evaluated and amended, to accommodate any changes to the terms. All Signatories will be consulted during the amendment process (See Section V).

General Provisions

- A. **Entirety of Agreement.** This PA/MOA, consisting of number (xx) pages, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding compliance with Section 106 of the National Historic Preservation Act.
- B. **Prior Approval.** This PA/MOA shall not be binding upon any party unless this PA/MOA has been reduced to writing before performance begins as described under the terms of this PA/MOA, and unless the PA/MOA is approved as to form by the Attorney General or his representative.
- C. **Severability.** Should any portion of this PA/MOA be judicially determined to be illegal or unenforceable, the remainder of the PA/MOA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
- D. **Sovereign Immunity.** The State of Wyoming, the WYSHPO and the Tribes do not waive their sovereign or governmental immunity by entering into this PA/MOA and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of the PA/MOA.
- E. **Indemnification.** Each Signatory to this PA/MOA shall assume the risk of any liability arising from its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify the other Signatories to this PA/MOA.

Execution of this PA/MOA and implementation of its terms evidence that BLM has taken into account the effects of the undertaking on historic properties.

Signatures. In witness whereof, the Parties to this PA/MOA through their duly authorized representatives have executed this PA/MOA on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this PA/MOA as set forth herein.

The effective date of this PA/MOA is the date of the last Signatory signature affixed to these pages.

Signatories:

Bureau of Land Management, ___ Field Office

____ Field Manager _____ Date

Bureau of Land Management, Wyoming State Office

Deputy State Director _____ Date
Resource Policy and Management

Any other federal agencies

Other Federal Agency Officials _____ Date

Wyoming State Historic Preservation Officer

_____, SHPO _____ Date

Advisory Council on Historic Preservation

_____, Executive Director _____ Date

(Other signature lines as needed (applicant, consulting parties, etc.))

Invited Signatories:

Name and title _____ Date

Concurring Parties:

Name and title

Date

Approval as to Form:
Wyoming Attorney General's Office

Senior Assistant Attorney General

Date

List of Appendices as needed.