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IDAHO TRANSPORTATION DEPARTMENT
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ADMINISTRATIVE POLICY 5007

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**MEMORANDUM OF UNDERSTANDING
OR
MEMORANDUM OF AGREEMENT**

Purpose

This Administration Policy implements Board Policy 4007 concerning the authority of approval designation, outlines the process to review and execute Memorandum of Understanding (MOU) and Memorandum of Agreement (MOA).

Legal Authority

Idaho Code 40-317. Transportation cooperative agreements with federal, state and local entities for the construction, improvement and maintenance of any state highway or transportation project.

Idaho Code 49-201(1) (2) and 49-201B. Motor Vehicle Agreement with other states – the Board may enter into agreements, compacts or arrangements with other states for the purpose of conforming procedures for proportional registration of commercial vehicles and other types of reciprocal agreements.

Idaho Code 21-108. Aeronautic Agreements – the Department may enter into any agreement necessary to execute the provisions of the Aeronautics statutes, provided that if federal funds are involved the Department must comply with federal laws and rules or regulations made under applicable federal law.

Idaho Code 67-2326 thru 2333 and 67-2339. General statutory provisions regarding agreements between or among public entities.

General Conditions

Any agreement not covered under Administrative Policy 5001 established between the Idaho Transportation Department (ITD) and other entities (nations, federal, state, or local governmental agencies, businesses, non-governmental organizations, etc.) is considered either an MOU or MOA.

The following shall be used when seeking mutual agreement/commitment through MOU/MOA):

Development:

1. MOU/MOA may be initiated by either ITD personnel or other entities.
 2. The document shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the documented parties.
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Form and Content:

All MOUs initiated by ITD (and, to the extent possible, those initiated by other entities) should contain the elements as suggested in the attached template. If these elements are not contained in a MOU/MOA developed by another entity, ITD should negotiate to have the missing elements included in the document whenever possible.

All MOU/MOAs should be reviewed by ITD's Deputy Attorney General and the Governmental Affairs section for proper form and content after a draft has been completed.

Signature and Filing:

1. A MOU/MOA affecting more than a single district or are statewide in nature shall be reviewed by the appropriate Executive Officer. An MOU/MOA affecting a single district or division may be reviewed by the District Engineer, Division Administrator or by higher authority.
2. Any MOU/MOA will be approved and signed by the Director or delegate.
3. Two (2) signed copies of the MOU/MOA will be sent by the Director's or delegate's staff to each of the other parties to the agreement for signature. Other signatories each return one of the signed documents to ITD. Repeat as necessary.
4. The fully executed document will be uploaded by the business unit to the Memorandum of Understanding Secure Electronic Repository (MOUSER) and entering required fields for notifications, business unit and assigned funding etc.

Review and Modification:

1. All MOU/MOAs must be reviewed by the business unit every three years. Review should consider legal, contact and procedural components.
2. Updates to existing MOUs/MOA, except contact updates, will follow the same process as the development, signature, and filing of new MOUs/MOA.



Brian W. Ness
Director

Date: 3/12/2018

Memorandum of Understanding or Memorandum of Agreement – Template

All Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) initiated by the Idaho Transportation Department (and, to the extent possible, those initiated by other entities) should conform to the following form and content:

MEMORANDUM OF (UNDERSTANDING or AGREEMENT)
Between
THE IDAHO TRANSPORTATION DEPARTMENT
And
THE (NAME OF AGENCY)

PURPOSE:

A statement of the general purpose of the memorandum, abbreviations, and acronyms to be used in the document; and a statement on subordinate memorandums should be included.

AUTHORITY:

Citation of the legal authority for the agreement including Sections 67-2326 through 67-2333 and 67-2339, Idaho Code, and any other provisions of state or federal law or regulation directly pertaining to the memorandum.

RESPONSIBILITIES AND PROCEDURES:

Statements about:

- the objectives of the memorandum;
- the mutual responsibilities of ITD and the other entity(ies) of the memorandum;
- the responsibilities of each individual entity under the memorandum; and
- the responsibilities and coordination of public communication (e.g. media coverage, social media, website information, etc.), when applicable.

FINANCING (when applicable):

The manner of financing that will be adopted for the joint or cooperative undertaking.

LIMITATIONS:

A statement to the effect that *"Nothing in this Memorandum of Understanding between ITD and (name of entity) shall be construed as limiting or expanding the statutory or regulatory responsibilities of any involved individual in performing functions granted to them by law; or as requiring either entity to expend any sum in excess of its respective appropriation. Each and every provision of this memorandum is subject to the laws and regulations of the state of Idaho and of the United States."*

Additionally, the following release of liability should be added. *"Nothing in this Memorandum of Understanding shall be construed as expanding the liability of either party. In the event of a liability claim, each party shall defend their own interests. Neither party shall be required to provide indemnification of the other party."*

EFFECTIVE DATE:

A statement to the effect that *"This Memorandum of Understanding shall become effective upon signature of the Director of ITD or delegate and the signing authority of (name of entity), whichever is most recent."*

METHOD OF TERMINATION:

The method or methods for partial or complete termination of the agreement and for disposing of property upon such partial or complete termination shall at the very least contain a statement to the effect that *"This Memorandum of Understanding shall remain in force unless formally terminated by either party after thirty (30) days written notice to the other party."*

AMENDMENTS:

Amendments to this memorandum shall become effective upon mutual agreement and written approval by the Director of ITD or delegate and the signing authority of (name of entity).

SIGNATURES:

IDAHO TRANSPORTATION DEPARTMENT

By _____ Date _____
Director or delegate

(NAME OF AGENCY)

By _____ Date _____

(Title) _____

