MEMORANDUM OF UNDERSTANDING

Between the

U.S. DEPARTMENT OF THE INTERIOR,

BUREAU OF LAND MANAGEMENT, [\_\_\_\_\_\_\_\_] STATE OFFICE

And

[STATE AGENCY RESPONSIBLE FOR MITIGATION]

To Promote the Conservation of Greater Sage Grouse Habitat

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the United States Department of the Interior (DOI), Bureau of Land Management (BLM), \_\_\_\_\_\_\_ State Office, \_\_\_\_\_\_\_; the \_\_\_\_\_\_\_\_\_\_ [State agency], hereinafter referred to as “\_\_\_\_\_”. All signatories to this MOU will collectively be hereinafter referred to as the “Parties.”

This MOU sets forth objectives and describes how the Parties will coordinate with one another to promote sagebrush habitat conservation and enhancement in [name of State], including the implementation of mitigation to achieve a net conservation gain for actions affecting the Greater Sage-Grouse (*Centrocercus urophasianus*) (GRSG).

1. **BACKGROUND**

[Background on applicable State mitigation program: In 2016, the State of \_\_\_\_\_\_\_\_\_developed the sage grouse mitigation program….etc. etc.]

In September 2015, the BLM and USFS approved Greater Sage-Grouse Plan Amendments and Revisions (GRSG Plans), which incorporate specific conservation measures to conserve GRSG and its habitat in [sub-region at issue, approved by the 2015 GRSG Plans]. The GRSG Plans require that during their implementation, and subject to valid existing rights and consistent with applicable law, in authorizing third-party actions that result in GRSG habitat loss and degradation, the land management agencies will require mitigation that provides a net conservation gain (i.e. [insert definition of net conservation gain]) to the species.

1. **STATEMENT OF PURPOSE**:

The purpose of this MOU is to describe the Parties’ understanding of the relationship between the [name of State mitigation program] and the GRSG Plans. This MOU will further document the planned cooperation between the Parties regarding the use of the [name of State mitigation program] as a tool to provide for compensatory mitigation of residual unavoidable impacts from anthropogenic disturbance that cannot be avoided or minimized to achieve a net conservation gain for GRSG, consistent with the GRSG Plans and Records of Decision (RODs).

1. **OBJECTIVES**

The Parties agree that the following objectives are central to this MOU:

[Here is a list of example objectives. The Parties will need to edit and adapt these as appropriate.]

1. Establishing a framework for state-federal cooperation for purposes of sagebrush habitat conservation management activities;
2. Collaborating to address related issues affecting the sagebrush ecosystem;
3. Promoting economic and conservation goals.
4. Continuity of employment within state and local jurisdictions.
5. [other examples based on issues important to the state]
6. Flexibility and adaptability, including through adaptive management, to achieve net conservation gain;
7. Successful and sustainable multiple use of subject lands
8. Promoting conservation in an innovative and integrated manner;
9. Continued and transparent communications and information-sharing among key stakeholders; and
10. State-federal collaboration to achieve a net conservation gain for sagebrush habitat to further species conservation and enhancement in [State].
11. **AUTHORITIES AND POLICIES**: The following authorities and policies apply to this MOU and will apply to subsequent and mutually agreed to instruments, including:
* The Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq*.; 43 U.S.C. § 1737(b);
* The National Environmental Policy Act (NEPA) 42 U.S.C. §§ 4321 *et seq*.;
* CEQ NEPA regulations, 40 C.F.R. Part 1500;
* DOI NEPA regulations,43 C.F.R. Part 46;
* BLM Planning regulations, 43 C.F.R 1601.0-1 *et seq*.;
* Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment (Nov. 3, 2015);
* Secretarial Order No. 3330, Improving Mitigation Policies and Practices of the Department of the Interior;
* 600 DM 6, Departmental Manual, Landscape-Scale Mitigation Policy;
* BLM’s mitigation policy; BLM IM No. 2013-142;
* BLM’s 2015 Record of Decision and Greater Sage Grouse Approved Resource Management Plan Amendments for [State/Region];
* Other relevant federal/state laws and policies.
1. **STATEMENT OF MUTUAL BENEFIT AND INTERESTS**:

The Parties share a common interest in conserving GRSG habitat in [State]. The BLM manages the public lands, including to conserve, enhance, and restore GRSG habitat consistent with the GRSG Plans. The [State agency] has an interest in working in coordination with the BLM to enhance mitigation options and improve habitat on public lands in [State] by providing for effective mitigation.

Effective interagency cooperation through coordinated project planning and use of the [name of State mitigation program] in appropriate circumstances are of mutual benefit and interest to the Parties of this MOU.

In consideration of the foregoing, the Parties agree as follows:

1. **[State agency] COMMITMENTS**:

[Explain role of the state agency-is it the administrator of the mitigation program? Does it manage, assess, validate a credit and debit system? Does the state have a quantification method for those credits/debits? Does it define disturbance? Etc.]

Consistent with Part V.B below, the [State agency] may participate as a cooperating agency, including participation in BLM pre-application meetings, scoping processes, throughout the comment period, development and analysis of alternatives, and through the issuance of a final decision on a proposed project within GRSG habitat. The [State agency] will work in coordination with the BLM to develop and implement mitigation strategies for proposed activities in GRSG habitat that contribute to or result in a net conservation gain.

1. **BLM COMMITMENTS**:

As appropriate and consistent with applicable law, the BLM will invite the [State agency] to be a cooperating agency in the NEPA process for projects in Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA) [or other applicable habitat categories]. In furtherance of the cooperating agency relationship, and as appropriate, the BLM will also coordinate with the [State agency] during the pre-application and scoping processes, throughout the comment period, development and analysis of alternatives, and through the issuance of a final decision on the proposed project.

Where appropriate and consistent with applicable law, the BLM will consider [name of State mitigation program] in making decisions on proposed uses in PHMA and GHMA [or other applicable habitat categories] that will result in GRSG habitat loss or degradation. The BLM will work with the [State agency] to implement a process to achieve net conservation gain for GRSG.

In considering a proposed use in PHMA or GHMA [or other applicable habitat categories], if the BLM determines that compensatory mitigation is appropriate to address adverse residual impacts to GRSG or its habitat, then the BLM will coordinate with the [State agency] to identify the appropriate compensatory mitigation to consider through the NEPA and other analysis it may prepare for the proposed activity. The BLM will analyze the [State agency] mitigation recommendations in at least one alternative of the NEPA document.

1. **STANDARD PROVISIONS**
2. This MOU is subject, as applicable, to the laws of the United States of America and the State of [State].
3. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

[List contacts]

1. Nothing in this MOU is intended to or will be construed to limit or affect in any way the authority or legal responsibilities of the Parties.
2. Nothing in this MOU binds the Parties to perform beyond their respective authorities.
3. Nothing in this agreement may be construed to obligate the BLM or the United States to any current or future expenditure of resources in excess of available appropriations from Congress. Nor does this agreement obligate the BLM, or the United States to spend funds on any particular project or purpose, even if funds are available.
4. The mission requirements, funding, personnel, and other priorities of the Parties may affect their ability to fully implement all the provisions identified in this MOU.
5. Specific activities that involve the transfer of money, services, or property between or among the Parties will require execution of separate agreements or contracts.
6. Nothing in this MOU is intended to or will be construed to restrict the Parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
7. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
8. Any information furnished between the Parties under this MOU may be subject to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, and [relevant State law].  Specific information that may be confidential shall be marked so by the Party that believes the information to be confidential. The Parties agree to consult one another prior to releasing potentially privileged or exempt documents in accordance with any applicable statute and regulations.
9. All press releases and public statements issued by the Parties concerning or characterizing this MOU will be jointly reviewed and agreed to by delegated staff representing each of the undersigned Parties.
10. All Parties agree to resolve disputes expeditiously.  If a dispute arises among the Parties regarding the terms or the implementation of this MOU, the following steps will be taken: The Parties shall first attempt to resolve the dispute between themselves.. If there is no resolution at this level within 30 days, either Party may elevate the issue to the appropriate officials within BLM and the State. In the event that there is no resolution at this level, within 30 days, the dispute may be elevated by either Party to [the Washington office of the BLM or the Governor’s office].
11. Periodic meetings of the Parties will be scheduled to review progress and identify opportunities for advancing the purposes of this MOU.
12. A Party may terminate participation in this MOU 90 days after providing written notice to the other Parties.
13. A Party may amend or modify this MOU through agreement among all Parties.
14. This MOU becomes effective upon signature of the Parties and, unless terminated, shall be in force for 5 years from the date of the last signature, at which time this MOU shall automatically terminate unless renewed by all the Parties.

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Signature lines for BLM, State