

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT,
<<XXX DISTRICT>>, <<XXX FIELD OFFICE>>
AND <<XXX PROPONENT>>
FOR THE PURPOSE OF DEVELOPING AN ENVIRONMENTAL ASSESSMENT TO
ANALYZE ENVIRONMENTAL IMPACTS
ASSOCIATED WITH THE
<<XXX PROJECT>>,
XXX COUNTY, XXX STATE**

Background and Purpose

<<XXX Proponent>> (Proponent) is proposing to conduct <<XXX Project>> at the <<XXX location, XXX State>> (Project). The Proponent proposes to <<XXX project description>>. The Project is needed to assist the Proponent in <<XXX proponent's purpose and need>>.

The purpose of this Memorandum of Understanding (MOU) is to establish an understanding between the Proponent and the Bureau of Land Management (BLM), <<XXX Field Office>>, regarding the respective responsibilities, conditions, and procedures to be followed during the development of an Environmental Assessment (EA) to analyze environmental impacts associated with the Project. To facilitate the timely completion of the required EA, the Proponent agrees to contract with a consulting firm(s) (Contractor) to develop an EA for the Project. Since the Contractor is not a party to the MOU, the Proponent shall be responsible for incorporating the Proponent's covenants and responsibilities under this MOU into any agreement between the Proponent and the Contractor. The Proponent will be responsible for all costs incurred by BLM in the review and finalization the EA.

Authorities

This MOU is entered into under the following authorities:

- A. The *National Environmental Policy Act of 1969, as amended* (Public Law [PL] 91-190, 42 USC 4321, et seq.), and implementing regulations at 40 CFR §§ 1500-1508;
- B. The Department of Interior's NEPA Implementing Regulations at 43 CFR Part 46; and
- C. The *Federal Land Policy and Management Act of 1976* (43 USC 1701, et seq.), Section 307; and applicable Implementing Regulations under Title 43 of the Code of Federal Regulations, sections 2800 and 2900.

NEPA Compliance

The EA will be prepared in accordance with the *National Environmental Policy Act of 1969, as amended* ("NEPA"; 42 USCA Sec. 4321 et seq.) and in compliance with all applicable laws and regulations passed subsequently, including Council on Environmental Quality ("CEQ") regulations (*40 Code of Federal Regulations [CFR] 1500-1508*), Department of the Interior NEPA Regulation, 43 CFR Part 46, Department Manual 516, Environmental Quality [USDI 2004], BLM guidelines (*Handbook H-1790-1 200*), *Guidelines for Assessing and Documenting*

Cumulative Impacts (BLM 1994a) and *Considering Cumulative Effects under the National Environmental Policy Act [CEQ 1997]*. The BLM will use its expertise and professional judgment to ensure that the EA is prepared in conformance with the NEPA, CEQ and other pertinent Federal laws and regulations. The Proponent shall ensure that the Contractor produces a quality EA that meets BLM and NEPA standards.

The EA will assess the environmental impacts of the Project and address a No Action Alternative, a range of reasonable alternatives and alternatives considered but rejected. The alternative analysis will serve to inform the decision-making official and the public. Note that a “range of reasonable alternatives” is a minimum of two (2).

BLM Responsibilities

1. BLM shall have no financial responsibility for paying for costs, fees, services and other monetary obligations related to the preparation of the EA for the Project.
2. BLM’s participation in this MOU and preparation of the EA for the Project in no manner obligates BLM to permit the Project. The BLM’s participation and actions shall be strictly in accordance with NEPA, FLPMA and other applicable laws.
3. BLM will be the Federal agency regulating the preparation of the EA and will use its expertise and professional judgment to see that the requirements of NEPA, CEQ regulations and other pertinent Federal laws and regulations are met.
4. BLM’s <<XXX Field Office>> Field Manager (Field Manager) will designate, for the BLM, a sole point of contact for all matters related to the preparation of the EA by the Contractor.
5. BLM will consult with and keep the Proponent informed on the progress of the EA, as well as any data needs or changes, on at least a bi-weekly basis.
6. BLM will invite the Proponent and the Contractor to attend meetings with Federal, state, regional and local agencies and other groups throughout the NEPA process, as appropriate.
7. BLM will be responsible for diligently initiating any Federal/State Agency and Government-to-Government consultations.
8. BLM will oversee preparation of the EA process, provide guidance as needed and verify that the Contractor and the Proponent consider existing data, environmental descriptions, and analysis in the development of the EA that is available from the Proponent, BLM, and other sources. BLM’s obligations under this paragraph are met if BLM provides direction to the Contractor and the Proponent as to whether or not they are in compliance. The BLM requires that the Contractor and the Proponent provide adequate copies of all maps, reports, and field documents as necessary to allow for a timely review of portions or the entirety of the EA. BLM review of sections or the entirety of the EA should not take longer than 30 days. If the BLM requires more than 30 days to review sections or the entirety of the EA, the BLM will communicate the reasons for the delay to the Proponent in a timely fashion.
9. When requested to do so by the Proponent, BLM will treat specific data provided by the Proponent as confidential and proprietary to the extent permitted by law. This responsibility extends to both internal and Contractor use of the information. In the event that BLM believes it is under a legal requirement to release any confidential or proprietary information, the Proponent shall be provided written notice prior to any such proposed release in accordance with the legal authority mandating the release.

10. BLM shall consult with the Proponent on the Project description as needed, particularly during impact analysis, to assist in improving the Project description to avoid, mitigate, or otherwise address adverse impacts. BLM will direct how the Contractor will consider existing data, environmental descriptions, and analyses available from all sources including the BLM.
11. BLM will provide a mailing list to the Contractor for distribution of the EA to the public.
12. BLM will be solely responsible for the preparation of the Finding of No Significant Impact and Decision Record. The Contractor will be responsible for all costs associated with the reproduction, and mailing of the Decision Record; this document provides decisions and the alternatives considered (including specifying the environmentally preferable alternative) and further defined in 40 CFR Title V Part 1505.
13. During the development of the EA, any claims relating to alleged injury or damage to persons or real or personal property caused by acts or omissions of BLM or the United States shall be brought under the Federal Tort Claims Act, 28 U.S.C. § 1346.

The Proponent Responsibilities

1. The Proponent will be responsible for paying all costs, fees, services and other monetary obligations related to the preparation of the EA for the Project.
2. The Proponent will designate a single-point of contact for BLM on all matters relating to the preparation of the EA.
3. The Proponent will be responsible for developing and executing contracts with the Contractor for: the preparation of the EA. The Proponent will be responsible for all costs incurred by the Contractor in preparing the EA. The Proponent will include in any contract or agreement with the Contractor on the Project a provision providing that the Contractor shall indemnify and hold harmless the United States from any injury or damage to persons or real or personal property resulting from acts or omissions of the Contractor. The Proponent shall further include in any contract or agreement with the Contractor on the Project a provision providing that the Contractor shall provide all documents, or other information, created/produced for the creation of the EA to the Proponent and the Proponent shall forward a copy to BLM, <<XXX Field Office>> designated contact.
4. Prior to awarding the contract, the Proponent shall ensure that the Contractor signs a "No Conflict of Interest" or "Disclosure Statement" stating that the Contractor does not have any interest, financial or otherwise, in the outcome of the Project. The original signed statement shall be promptly provided to BLM <<XXX Field Office>> designated contact.
5. The Proponent shall provide comments on the Contractor-drafted Project description to facilitate preparation of the description of the Proposed Action and voluntary mitigation measures (a.k.a. Operator Committed Measures) to be included as part of the Proposed Action.
6. The Proponent shall timely and completely provide to the BLM, as specified by the <<XXX Field Office>> Manager, any technical and environmental information it may have associated with the development of the EA. Such information is part of the administrative record for the Project. The administrative record for the Project will be maintained at the <<XXX Field Office>>. With respect to the Proposed Action, the Proponent shall share responsibility with BLM for ensuring that the record is complete and accurate.

7. The Proponent shall review the technical, environmental, and socio-economic information in its possession, and to the extent that such information is not restricted by confidentiality agreements, the Proponent shall provide the Contractor with originals of the information necessary for review or input into the EA. The Proponent shall also provide copies of this information to BLM.
8. The Proponent shall ensure that the Contractor provides timely and complete responses to BLM's requests for information, data, or other relevant materials, and provide review comments on the preliminary draft, preliminary final and other sections of the EA within the time limits established by BLM to the extent reasonably possible (or the schedule will be adjusted accordingly).
9. As requested by BLM, the Proponent shall attend meetings and participate in the preparation of appropriate mitigation measures to resolve or lessen adverse impacts. The Proponent shall also ensure that the Contractor or specific representatives thereof will attend BLM meetings as requested by BLM.
10. The Proponent will specify in any contracts or agreements with the Contractor that the Contractor shall be responsible to respond, as necessary, to BLM requests for input, for responding to public comments arising from the draft and final EA and other information (e.g., mapping, public meeting materials, etc.) as deemed necessary by BLM during the preparation of the draft and final EA, and as necessary during preparation of the Decision Record.
11. The Proponent acknowledges that failure on its part or on the part of the Contractor to timely provide complete, accurate, relevant data and documents and analyses for use in the NEPA process for the Project may result in delay of the completion of the NEPA process, data or analyses gaps in a EA or process, or inability to complete the NEPA process for the Project.
12. To the extent allowed by applicable law, the Proponent agrees to indemnify and hold harmless the United States for any injury or damages to persons or real or personal property to the extent such injury or damage is caused by the acts or omissions of the Proponent.
13. The Proponent shall provide originals of all relevant documentation to the Contractor with a copy to BLM. The Contractor shall provide originals of all relevant documentation to the BLM with a copy to the Proponent.
14. The Proponent shall ensure that the Contractor provides the BLM with an electronic copy of the EA in requested software applications. The Contractor will provide fifteen (15) copies of the draft EA and the final EA to BLM.

JOINT Responsibilities

1. The BLM, in cooperation with the Proponent and the Contractor, shall develop an EA preparation schedule (Schedule) that projects key dates. Changes to the Schedule will require advance approval by BLM, the Proponent, and the Contractor (individually a "Party" and collectively the "Parties"). Should a Party not be able to meet a key date requirement, advance notification shall be given to the Parties. The notification shall include a projected date the requirement will be met. The Parties shall use best efforts to adhere to, and assist each other in adhering to, the Schedule.

2. In cooperation with the Proponent and the Contractor, BLM will develop a Public Participation Plan that indicates key milestones in the preparation of the EA, as deemed appropriate by BLM.

Administrative and Legal Provisions

Applicable Law.

The Parties agree to comply with all applicable laws and regulations governing activities under the MOU, specifically the preparation of the EA for the Project.

Term of MOU

The MOU shall commence upon the date last signed and executed by the duly authorized representatives in accordance with provisions listed below in Termination or until a Decision Record on the Project is issued by BLM, whichever occurs first.

Amendments

Either BLM or the Proponent may request changes to the MOU. Any changes, modifications, revisions, or amendments to the MOU, shall be incorporated by written instrument, executed and signed by BLM and the Proponent, and shall be effective in accordance with the terms of *Applicable Law*, above.

Termination

1. Either BLM or the Proponent may terminate the MOU after thirty (30) days written notice to the other party of their intention to do so. During this period, BLM and the Proponent shall enter into negotiations to resolve the disagreement(s). If the disagreement(s) have not been resolved by the end of the thirty-day period, the MOU will terminate. In the event negotiations are progressing, but are not concluded by the end of the thirty-day period, the entity (BLM or the Proponent) initiating the request to terminate may request termination be postponed, in which case the termination shall be postponed for an additional thirty (30) days.
2. In the event of termination of the MOU, BLM may initiate preparation of any remaining analysis and documentation covered by the MOU if the Proponent agrees to pay all costs associated with completion of the EA. The Proponent will be required to submit to BLM copies of all information and records held by the Proponent and the Contractor that were used for EA preparation up to the point of MOU termination, as well as copies of all information and records held by the Proponent and the Contractor needed to support continued preparation of the EA.
3. In the event of termination of the MOU, BLM and the Proponent agree that neither party shall have any administrative, judicial, or equitable right to seek to enforce the MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of the MOU, or to bring any action for breach of the MOU.

Limitations

In executing the MOU and taking any other action contemplated hereby, the Proponent reserves the right to contest, in accordance with applicable regulations of the DOI (e.g., 43 CFR Part 4), within administrative and then judicial proceedings, all appealable decisions concerning the EA

or any other Federal requirements related to the Project. The Proponent recognizes that nothing in the MOU commits BLM to permit the Project or otherwise take action favorable to the Proponent upon all or any part of the EA or the Project.

Entirety of Agreement

The MOU represents the entire and integrated agreement between BLM and the Proponent and supersedes all prior negotiations, representations, and agreements concerning the EA, whether written or oral.

Severability

Should any portion of the MOU be determined to be illegal or unenforceable, the remainder of the MOU will continue in full force and effect, and either BLM or the Proponent may renegotiate the terms affected by the severance.

Exchange of Information

Information provided pursuant to this agreement may be confidential, proprietary or pre-decisional. Upon a request for any information by either party, the party receiving the request will review the requested information internally prior to releasing the information to the requesting party. If any information is considered confidential, proprietary or pre-decisional the releasing party shall designate in writing that information as confidential prior to its release to any other party. Any recipient of information that has been designated in writing as confidential, proprietary or pre-decisional shall not disclose such information to the public or any other person, except if required to do so by law. Should the BLM be required to release information, the BLM will notify the Proponent in advance. Any breach of this provision may result in termination of the MOU. Requests for information will be made through the points of contact identified in the Contacts section, below. BLM and the Proponent recognize that any documents, or other information, created/produced by the Contractor for the EA are to be provided directly to the BLM with a courtesy copy to the Proponent.

Third Party Beneficiary Rights

BLM and the Proponent do not intend to create in any other individual or entity the status of third party beneficiary, and the MOU must not be construed so as to create such status. The rights, duties and obligations contained in the MOU operate only between BLM and the Proponent to the MOU, and inure solely to the benefit of BLM and the Proponent. The provisions of the MOU are intended only to assist BLM and the Proponent in determining and performing their obligations under the MOU. BLM and the Proponent intend and expressly agree that only BLM and the Proponent will have any legal or equitable right to seek to enforce the MOU, to seek any remedy arising out of BLM's or the Proponent's performance or failure to perform any term or condition of the MOU, or to bring an action for the breach of the MOU.

Administrative Consideration

1. In carrying out the terms of the MOU there shall be no discrimination against any person due to race, creed, color, sex or national origin.
2. The terms of the MOU are effective only to the extent that BLM is authorized to take actions, and to the extent that funds are appropriated or otherwise made available.

3. All documents released to the public must reflect the independent judgment of BLM. BLM is responsible for the adequacy and objectivity of all such documents. The Proponent and Contractor shall provide BLM with the necessary support to meet that responsibility.

Contacts

The primary points of contact for carrying out the provisions of the MOU are:

Bureau of Land Management, <<XXX Field Office>>

Project Manager Name

Title

Address

Email:

Ph:

Proponent

Address

Email:

Ph:

Signatures:

Bureau of Land Management

Proponent

Authorized BLM Officer

Title

Authorized Proponent Representative

Title

Date

Date

cc: Third Party Contractor
Address