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**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 BASELINE DATA REPORTS  
ASSOCIATED WITH THE  
<<XXX PROJECT>>, <<XXX COUNTY>>, <<XXX STATE>>**

**Background and Purpose**

<<XXX Proponent>> (Proponent) is proposing to <<XXX Type of Project and Location>> (Project). The proposed Project would <<XXX Project Description>>.

The purpose of this Memorandum of Understanding (MOU) is to establish an understanding between the Proponent and BLM regarding the respective responsibilities, conditions, and procedures to be followed during the collection and reporting of baseline data information associated with the Project. To facilitate the timely completion of the required baseline reports, the Proponent agrees to contract the baseline data collection and reporting with a consulting firm (Contractor). Since the Contractor is not a party to the MOU, the Proponent shall contain any covenant or responsibility of the Contractor within the MOU in an agreement between the Proponent and Contractor. The Proponent will be responsible for all costs incurred by BLM in the review and finalization of any and all baseline reports associated with the Project.

**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 appropriate baseline data will be collected, compiled, and reported 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 baseline data and reports are prepared in conformance with the NEPA, CEQ and other pertinent Federal laws and regulations. The Proponent and the Contractor agree to produce baseline data reports that meets BLM and NEPA standards.

**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 baseline reports for the Project.
2. BLM's participation in this MOU and preparation of baseline reports 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 approving all baseline reports 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 baseline reports by the Contractor.
5. BLM will consult with and keep the Proponent informed on the progress of baseline reports, 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 baseline reporting process, as appropriate.
7. BLM is responsible for diligently initiating any Federal/State Agency and Government-to-Government consultations.
8. BLM will (a) provide oversight of the baseline reports preparation process as needed to provide guidance in the preparation of the baseline reports, (b) verify that the Contractor and the Proponent consider existing data, environmental descriptions, and field observations in the baseline reports, which 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 comply. The BLM requires that the Contractor and the Proponent provide adequate copies of all maps, reports, and field notes to allow for a timely review.
9. BLM will establish minimum data and inventory requirements for each resource area to be considered in the baseline reports.
10. 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 any confidential or proprietary information is to be released by BLM, the Proponent shall be provided written notice of any such proposed release in accordance with the legal authority mandating the release.
11. BLM shall consult with the Proponent on the baseline data needs. BLM will direct how the Contractor will consider existing data, environmental descriptions, and analyses available from all sources including the BLM.
12. The Contractor will provide BLM with an electronic copy of all baseline studies in requested software applications. The Contractor will provide three (3) hard copies of all baseline reports to BLM.
13. During the development of the baseline reports, 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.

### **Proponent Responsibilities**

1. The Proponent will be responsible for paying all costs, fees, services and other monetary obligations related to the preparation of baseline reports for the Project.

2. The Proponent will designate a single point of contact for BLM on all matters relating to the preparation of baseline reports.
3. The Proponent will be responsible for developing and executing contracts with the Contractor for the preparation of the baseline reports. The Proponent will be responsible for all costs incurred by the Contractor in preparing the baseline reports. 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 for 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 baseline reports to the Proponent and the Proponent shall forward a copy to BLM.
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 must be provided to BLM.
5. The Proponent shall be responsible for providing the appropriate baseline reports to BLM, in a format acceptable to the BLM.
6. The Proponent shall timely and completely provide BLM, as specified by the Field Manager, any technical and environmental information it may have. BLM shall be provided with all documentation, including, but not limited to, analysis protocols and methodologies and data, rationale, maps, GIS data and its Federal Geographic Data compliant metadata, and any other supporting information used in the preparation of the baseline reports. 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>>. The Proponent and the Contractor 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 analysis or other parts of the baseline reports. The Proponent shall also provide copies of this information to BLM.
8. The Proponent shall timely and completely provide to BLM, responses to information, data, or other required materials requested by BLM, and provide review comments on the preliminary draft, preliminary final and other sections of the baseline reports within the time limits established by BLM to the extent reasonably possible (or the schedule will be adjusted accordingly). BLM is responsible for providing this information to the Contractor in a timely manner.
9. As requested by BLM, the Proponent shall attend meetings and participate in the preparation of appropriate baseline reports. The Contractor, or specific members thereof, will attend BLM meetings as requested by BLM.
10. The Proponent will specify in the contract with the Contractor that the Contractor shall be responsible to respond, as necessary, to BLM requests for input.
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 for use in baseline reports for the Project may result in delay of the completion of the baseline study process and a delay in the BLM making a NEPA level determination 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 Proponent with a copy to BLM.

### **JOINT Responsibilities**

The BLM, in cooperation with the Proponent and the Contractor, shall develop appropriate baseline data report 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.

### **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 baseline reports 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

#### *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 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 baseline data needs covered by the MOU if the Proponent agrees to pay all costs associated with completion of the baseline studies. 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 baseline reports 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 baseline reports.

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 Department of Interior (e.g., 43 CFR Part 4), within administrative and then judicial proceedings, all appealable decisions concerning the baseline reports 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 baseline reports or the Project.

#### *Entirety of Agreement*

The MOU consisting of seven pages and represents the entire and integrated agreement between BLM and the Proponent and supersedes all prior negotiations, representations, and agreements concerning the baseline reports, 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*

Data provided pursuant to this agreement may contain proprietary or pre-decisional BLM or the Proponent information. All records or information requested of either BLM or the Proponent by the other will be reviewed by the releasing entity (BLM or the Proponent) prior to release. Any recipient of proprietary or pre-decisional information agrees not to disclose such information to the public or other parties, except as required by law. Any recipient of this information agrees not to transmit or otherwise divulge this information without approval from BLM or the Proponent or both, except as required by law. 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 baseline reports are to be provided only to the Proponent and the Proponent shall forward to BLM.

#### *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

Title

Address

Email:

Ph:

*Proponent*

Address

Email:

Ph:

**Signatures**

**Bureau of Land Management**

**Proponent**

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Authorized BLM Officer

Title

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Authorized Proponent Rep.

Title

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Date

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Date