AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Memorandum of Understanding between the Bureau of Land Management Uncompahgre Field Office and Gunnison County; Cooperating Agency Status

Action Requested: County Manager Signature

Parties to the Agreement: BLM & Gunnison County

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
Gunnison County has requested, and the BLM has agreed to grant, Cooperating Agency Status pursuant to 40CFR 1501.6, 1501.2, and 1501.8. Under the regulations, the BLM recognizes that Gunnison County is a Cooperating Agency in this process and is recognized to have special expertise as it relates to various aspects of the EIS effort.

Fiscal Impact: In the department budget

Submitted by: B. Lucero for N. Starkebaum **Submitter's Email Address:** Nstarkebaum@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

No fiscal impact is evident in this MOU. Section VII states, "Nothing in this agreement may be construed to require either Gunnison County or the BLM to obligate or pay funds..."

Reviewed by: Bcowan Discharge Date: 7/12/2013

County Attorney Review: (●) Required ( ) Not Required

Comments:

ok db 7/12/13

Reviewed by: DBaumgarten Discharge Date: 7/12/2013 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reviewed by: MBirnie Discharge Date: 7/16/2013

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 7/23/2013 Follow Up Agenda Date: N/A

Revised April 2013

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
BUREAU OF LAND MANAGEMENT
UNCOMPAHGRE FIELD OFFICE
AND
GUNNISON COUNTY

I. INTRODUCTION

The Bureau of Land Management (BLM), Uncompahgre Field Office, is preparing an Environmental Impact Statement (EIS). The BLM anticipates that the EIS process will take approximately one and a half years to complete.

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management's Uncompahgre Field Office ("BLM") and the Gunnison County ("Cooperator") for the purpose of preparing the Bull Mountain Unit Master Development Plan (MDP) EIS. The BLM is the lead federal agency for development of the Bull Mountain Unit MDP EIS. The BLM acknowledges that the Cooperator has special expertise applicable to the EIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by Gunnison County as a Cooperating Agency and the BLM ("the Parties").

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.6 and 1508.5), the BLM's planning regulations (in particular, 43 CFR 1601.0-5, 1610.3-1, and 1610.4), and the Department of the Interior Manual (516 DM 2.5).

Cooperating Agency status provides an opportunity for the BLM and the Cooperating Agency to work together to enhance the BLM's EIS efforts.

This Memorandum of Understanding (MOU) sets forth roles and responsibilities for the Parties for the purposes of collaborative preparation of the EIS.

II. PURPOSE

In carrying forth its responsibilities and mandates under the National Environmental Policy Act and Council of Environmental Quality regulations at 40 Code of Federal Regulations (CFR), Part 1500 and the Federal Land Policy and Management Act (as amended) CFR Part 1600, the BLM

recognizes a compelling need to ensure that the interests of the Cooperating Agencies are accounted for, and that they are meaningfully engaged in the EIS.

As such, Gunnison County has requested, and the BLM has agreed to grant, Cooperating Agency Status pursuant to 40CFR 1501.6, 1501.2, and 1501.8. Under the regulations, the BLM recognizes that Gunnison County is a Cooperating Agency in this process and is recognized to have special expertise as it relates to various aspects of the EIS effort.

III. AGENCY DESIGNATIONS

Appendix A specifies Agency Representatives. Each participating entity will designate one primary representative to attend meetings and to act as a point of contact to ensure coordination and exchange information between the Cooperating Agencies and the BLM during the EIS process. An entity may change its representative at any time by providing written notice to the other party. Cooperating Agencies may also involve “in-house” specialists in discussions, when a specific topic warrants such expertise.

IV. AUTHORITIES FOR AGREEMENT

Authority for the BLM and the Cooperating Agencies to participate in this agreement is provided by the National Environmental Policy Act, 42 USC 4321 et seq. and 40 CFR 1501.6 – Cooperating Agencies, 1506.2 – Elimination of Duplication with State and Local Procedures, and 1508.5 – Cooperating Agency (CA).

Additional authority comes from the Federal Land Policy Management Act, 43 USC 1712 et seq., which mandates coordination of BLM planning and management efforts with the programs of state and local governments which may be affected by those planning actions.

The authorities of Gunnison County to enter into this MOU include, but are not limited to:

1. C.R.S. 29-1-203
2. C.R.S. 30-11-101(1)(k)
3. The Board of County Commissioners of the County of Gunnison, Colorado is a Colorado county, a political subdivision of theState of Colorado, with certain state constitutional and statutory authorities under Colorado law to regulate land use and theenvironment in Gunnison County, and to provide for the public health, safety and welfare in Gunnison County.

V. ROLES AND RESPONSIBILITIES

A. RESPONSIBILITIES OF THE BUREAU OF LAND MANAGEMENT, UFO

The BLM UFO is responsible for the following:

i. To retain, as lead agency, final responsibility for the content of all NEPA documents, which include the Draft EIS, the Final EIS, and the Record Of Decision (ROD). The BLM's responsibilities include determining the purpose of and need for the EIS, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.

ii. To provide the Parties with meaningful opportunities for participation, including involvement in:

- identifying issues and concerns of relevance to the EIS effort,
- identifying or providing data that is suitable, available and relevant to the EIS effort,
- reviewing and commenting on draft sections of the EIS for which the Cooperating Agency[ies] provided input due to their jurisdiction by law and/or special expertise.

iii. To consider and incorporate information and comments provided by the Cooperating Agency[ies] into EIS documents to the extent possible and where appropriate.

B. RESPONSIBILITIES OF THE COOPERATING AGENCY[IES]

Cooperating Agencies in this process are recognized to have jurisdiction by law and/or special expertise as it relates to various aspects of the EIS effort and as such, is responsible for the following:

i. Along with other involved Cooperating Agencies, to participate in the EIS process to the fullest extent possible.

ii. To assist the BLM with the identification of issues and concerns to be addressed through the EIS effort.

iii. To provide information, comments, and technical expertise to the BLM regarding those elements of the EIS, and the data and analyses supporting them, in which it has jurisdiction or special expertise or for which the BLM requests its assistance. This information may include but is not limited to the following:

- approved programs, plans and policies potentially affected by the EIS,

- information regarding project area resources and current and proposed uses and management actions,
- socio-economic data such as demographics, activities and values.

iv. To review and provide comments during specified review periods on preliminary baseline and other technical reports for which the agency has contributed data or other pertinent information.

v. To review and provide comments during specified review periods concerning the following sections of the preliminary Draft EIS:

- preliminary range of alternatives to be considered in detail,
- relevant portions of the “Affected Environment” section (including the socio-economic portion),
- relevant portions of the “Environmental Consequences” section,
- relevant portions of the “Consultation and Coordination” section, including information on consistency reviews.

vi. To provide the BLM with a consolidated comprehensive review of the Draft EIS during public review periods.

vii. To assist the BLM with analyzing and reviewing public comments and data, and with the development of the Final EIS.

C. RESPONSIBILITIES OF THE PARTIES

It is mutually agreed that:

i. The Parties agree to participate in this EIS process in good faith and make all reasonable efforts to resolve disagreements.

ii. The Parties agree to comply with the EIS schedule which includes dates for EIS milestones and timeframes for Cooperator’s [s’] reviews and submissions.

VI. FUNDING

Each entity agrees to fund its own expenses associated with this EIS process.

VII. IMPLEMENTATION, AMENDMENT AND TERMINATION

This agreement becomes effective upon signature by all parties, and may be subsequently amended through written agreement of all signatories. The parties agree to jointly develop a framework for information exchange and feedback within 60 days of the signing of this agreement.

Gunnison County or the BLM may terminate this agreement by providing written notice of termination to the other party. If not terminated sooner, this agreement will end when the Notice of Availability for the Final EIS is published in the Federal Register.

Nothing in this agreement will abridge or amend the authorities and responsibilities of Gunnison County or the BLM or any other party on any matter under their respective jurisdictions.

Nothing in this agreement may be construed to require either Gunnison County or the BLM to obligate or pay funds or in any other way take action in violation of the Anti-Deficiency Act (31 USC 1341) or any State or County law or ordinance.

VIII. SOVEREIGN IMMUNITY

Neither signatory waives their sovereign immunity by entering into this Memorandum of Understanding. Each fully retains all immunities and defenses provided by law with respect to any actions based on or occurring as a result of this agreement.

Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

IX. PROPRIETARY AND CONFIDENTIAL INFORMATION

The Cooperator[s] acknowledge[s] that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes.

Data provided pursuant to this MOU may contain proprietary or pre-decisional BLM information or information provided by another Cooperator or by the project applicant. To the extent permissible under law, any recipient of proprietary or pre-decisional information agrees not to disclose this information to the public, individuals or other entities not a Cooperating Agency on this EIS project. To the extent permissible by law, any recipient of this information agrees not to transmit or otherwise divulge this information without approval from the BLM. Any breach of this provision may result in termination of this MOU.

Requests for information will be made through the points of contact identified in Appendix A, Agency Representatives. Any confidentiality requirements shall survive termination of the MOU.

X. ADMINISTRATION OF THE MOU

This MOU becomes effective upon signature by the authorized officials of the Parties.

This MOU may be amended through written agreement of all signatories.

If not terminated earlier, this MOU will end when the Notice of Availability for the Final EIS is published in the Federal Register. Any Party may end its participation in this MOU by providing written notice to all other Parties.

XI. SIGNATURES

The Parties hereto have executed this Memorandum of Understanding as of the dates shown below.

BUREAU OF LAND MANAGEMENT

_____ _____

Barbara L. Sharrow, Field Manager Date
Uncompahgre Field Office, BLM

GUNNISON COUNTY

_____ _____

Matthew Birnie Date
County Manager

APPENDIX A – AGENCY REPRESENTATIVES

To ensure coordination between the Cooperator[s] and the BLM during the EIS process, each Party may change its representative at will by providing written notice to the other Party[ies].

REPRESENTING: **GUNNISON COUNTY**

Neal Starkebaum
Assistant Director
Gunnison County Community Development Department
221 N. Wisconsin, Suite D
Gunnison, CO 81230
Phone: (970) 641-0360
Email: nstarkebaum@gunnisoncounty.org

REPRESENTING: **BUREAU OF LAND MANAGEMENT**
UNCOMPAHGRE FIELD OFFICE

Jerry Jones
EIS Project Coordinator
Uncompahgre Field Office
2465 South Townsend Avenue
Montrose, CO 81401
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