AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Grand Mesa, Uncompahgre and Gunnison National Fore

Action Requested:

Parties to the Agreement:

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

Summary:

Please see the attached correspondence

Fiscal Impact:

Submitted by: Josh Ost **Submitter's Email Address:** jost@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ○ Required ◉ Not Required

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required

Yes ○ No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 3/30/2018

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 5

Agenda Date: 4/3/2018

Revised April 2015

USDA United States Department of Agriculture
Forest Service
Grand Mesa, Uncompahgre and Gunnison National Forests
2250 South Main St.
Delta, CO 81416
970-874-6600
TDD: 970-874-6660
FAX: 970-874-6698

File Code: 1900
Date: March 26, 2018

Phil Chamberland
Board of Commissioners Gunnison County
200 East Virginia
Gunnison, CO 81230

Received
County Administration
3/28/18

Dear Commissioner Chamberland:

In June 2017, the Grand Mesa, Uncompahgre and Gunnison (GMUG) National Forests initiated plan revision, a three-phase process to revise the Forest Plan, the overarching document guiding forest management for the long-term.

On **March 30, 2018**, we will publish the formal Notice of Intent (NOI) to initiate the plan revision phase as well as analysis under the National Environmental Policy Act (NEPA). For the 30-day scoping comment period, we are asking for feedback on the preliminary need for change, the distinctive role and contribution of the GMUG, and the proposed management area framework. This draft material will be available on the GMUG's plan revision website.

In addition, the GMUG would also like to invite you to become a formal Cooperating Agency for the Forest Plan Revision and to sign a Memorandum of Understanding (MOU). There might be some counties, agencies, and Tribes for which existing MOUs relating to Cooperating Agency status are already established, but the GMUG is proposing to put new MOUs in place specific to Forest Plan Revision. Last November we asked for your feedback on the draft MOU, and we hope that the revised version (attached) reflects how you'd like to participate throughout this process. If the MOU meets your expectations, **please sign and provide the updated contact information for the designated and alternate representatives** to me at your earliest convenience. If further edits are needed, please contact me so we can do our best to accommodate.

As you review the scoping material, please let us know: Do these needs for change reflect the major issues that we should concentrate on in plan revision? Did we capture the GMUG's unique role and contribution within the broader landscape? Does the management area framework meet the need for direction accessible to both the Agency and the public?

We will host two public webinars in order to further elaborate on this formal scoping period and answer any questions that you might have. Please consider joining us:

Plan Revision Scoping Webinars

Monday, April 2nd	Friday, April 6th
4:00-5:30 p.m.	9:00-10:30 a.m.

https://usfs.adobeconnect.com/gmug-500/

For audio, please call 1-888-844-9904, participant code 8454465#.

For helpful resources, including the NOI and materials related to the Proposed Action, as well as how to comment, visit our website at www.fs.usda.gov/goto/gmug/forestplan. Please contact Shane Walker, Planning and Information Staff Officer at 970-874-6705 or via email at mswalker@fs.fed.us if you have any questions. If you have any concerns, please don't hesitate to contact me directly.

Sincerely,

SCOTT G. ARMENTROUT
Forest Supervisor

Enclosures

United States Department of Agriculture
Forest Service
Washington Office
14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

File Code: 1950 **Date:** SEP 14 1998

Subject: State, Local, and Tribal Governments as Cooperating Agencies Under NEPA

To: Regional Foresters, Staff Directors, Station Directors, Area Director

There has been considerable interest by State, local and tribal governments in working more cooperatively with the Forest Service in our land and resource management planning and project level decisionmaking. The Western Governors' Association recently asked the Forest Service and the Bureau of Land Management to clarify our use of cooperating and joint lead agency provisions under the National Environmental Policy Act (NEPA).

We believe such clarification will foster better understanding and expectations between the Federal agencies and potential cooperators. Enclosed is the joint statement signed by three land management agencies, the Forest Service, Bureau of Land Management, and National Park Service, answering specific questions on cooperating and joint lead agency provisions under NEPA.

This statement was done to clarify existing policy and does not constitute new direction in how you implement provisions of the NEPA or the National Forest Management Act. This statement should be useful to you in making decisions on when and how to involve State, local and tribal governments in any NEPA related environmental analyses. If you have any questions on the content of this statement, contact Bertha Gillam, Range Management Staff, at 202-205-1460; or Joe Carbone, Ecosystem Management Coordination Staff, at 202-205-0884.

ROBERT C. JOSLIN
Deputy Chief for
National Forest System

Enclosure

U.S. Department of the Interior
Bureau of Land Management
Washington, D.C. 20240

U.S. Department of Agriculture
Forest Service
Washington, D.C. 20090

September 2, 1998

Mr. James M. Souby, Executive Director
Western Governors' Association
600 17th Street
Suite 1705 South Tower
Denver, Colorado 80202-5452

Dear Mr. Souby:

Thank you for your letter of January 21, 1998, commenting on the Bureau of Land Management (BLM) and Forest Service (FS) proposed statement clarifying cooperating and joint lead agency provisions under the National Environmental Policy Act. We appreciate and have considered your thoughtful suggestions.

The final statement is attached. Please note that since we last spoke the National Park Service (NPS) has elected to join BLM and the FS as a signatory to this effort. The BLM, FS, and the NPS intend to further improve the environmental analysis process used by Federal land managers by taking advantage of the natural synergies between the Federal land management agencies and State, local and Tribal governments. We will distribute this statement, which is a clarification of current policy, to all our field offices as a reminder of the opportunities that may exist to work with State, local and Tribal governments as cooperating or joint lead agencies.

If you have further questions or need additional information, please contact David Williams, Manager, BLM Planning, Assessment, and Community Support Group, at 202-452-7793; Bertha Gillam, Director, FS Range Management Staff, at 202-205-1460; or Jacob Hoogland, Chief, NPS Environmental Quality Division, at (202) 208-3163.

Sincerely,

Pat Shea
Director, Bureau of Land Management

Mike Dombeck
Chief, Forest Service

Director, National Park Service

Enclosures

cc: National Association of Counties
Joint Center on Sustainable Development
Council on Environmental Quality

STATE, LOCAL, AND TRIBAL GOVERNMENTS AS COOPERATING OR JOINT LEAD AGENCIES WITH THE BUREAU OF LAND MANAGEMENT, THE FOREST SERVICE AND THE NATIONAL PARK SERVICE

Introduction

In the very first sentence of the National Environmental Policy Act (NEPA), the Congress declares that

> ...it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations...to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. [Sec. 101 (a); emphasis added]

Thus, from the very outset of NEPA Congress intended that the Federal government cooperate with State and local governments to achieve "productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans." Creating that productive harmony requires considerable effort, however, because of the complex jurisdictional and management issues related to Federal lands and the fact that State and local governments as well as Indian Tribes own and manage lands which are often near, adjacent to, or intermingled with Federal lands. As an outgrowth of these land ownership patterns, Federal, State, local and Tribal government entities have increasingly sought to coordinate their decisions as a means of improving land management. By embracing closer cooperation during the environmental analysis process, all levels of government can better assess the context of Federal actions and can better integrate decisionmaking within their jurisdictions.

In fact, the benefits of cooperation among Federal, State, local and Tribal governments are clearly reflected in the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR 1500-1508). The regulations emphasize timely agency coordination as a means of dealing with interagency issues (40 CFR 1501.6). The regulations also express a desire that Federal agencies avoid duplication with State, local and Tribal procedures (40 CFR 1506.2).

The following questions and answers (Qs and As) respond to issues raised by some western State and county level government officials, the Western Governors' Association, and discussions with the CEQ regarding participation by non-Federal government entities with Federal land management agencies under NEPA. The Qs and As emphasize to Bureau of Land Management (BLM), Forest Service (FS), and National Park Service (NPS) field offices the opportunities for

State, local, and Tribal government entities to become a "cooperating agency" or a "joint lead agency" in accordance with the CEQ regulations. These Qs and As are simply clarifications of the CEQ regulations, the BLM NEPA procedures (MS 1790 and H-1790-1 and Departmental Manual 516 DM 1-7), the FS NEPA procedures (FSH 1909.15 Ch. 10, at 11.31, 11.31a, 11.31b. (57 Fed. Reg. 43180, 43195-43196, September 18, 1992)), and the NPS NEPA procedures (DO 12 and accompanying handbook and field guide and Departmental Manual 5176 DM 7). They neither broaden nor narrow the rights and responsibilities of the Forest Service, the BLM, the NPS or any other governmental entity.

Although the Qs and As were initially prepared in response to State and local governments' requests to be joint lead and cooperating agencies, Indian Tribes are also afforded similar opportunities by the CEQ regulations. Therefore, the scope of the Qs and As was broadened to include Indian Tribes.

Situations may arise that do not conform to the answers given herein. When this occurs, consult with your Office of the Solicitor or General Counsel, or Washington office program management for guidance on how best to define the working relationship with State, Local or tribal government entities. Further background on the roles and responsibilities of cooperating and joint lead agencies can be obtained from "Answers to 40 most asked questions on NEPA regulations," 46 Fed. Reg. 18026 - 18038 (March 1, 1981), a response to commonly asked questions on this and other topics, prepared by the CEQ. Questions 14a.-d. in that document refer specifically to operational aspects of cooperating agency relationships (see attachment).

Questions and Answers

1. What is a "cooperating agency"?

A cooperating agency assists the lead Federal agency in developing an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The CEQ regulations implementing NEPA define a cooperating agency as any agency that has jurisdiction by law or special expertise for proposals covered by NEPA. See CEQ Regulations for Implementing NEPA, 40 CFR §1501.6. Any Federal, State, local, or Tribal government entity with such qualifications may become a cooperating agency on an EA or EIS by agreement with the lead Federal agency. For example, if a county has jurisdiction by law over some aspect of a proposed project or has special expertise, and wishes to assist in analyzing impacts, it may request cooperating agency designation from the lead Federal agency.

The benefits of granting cooperating agency status may include increasing the efficiency of the NEPA process; maximizing coordination among Federal, State, local and Tribal government agencies; and eliminating duplication between Federal and State/local procedures.

2. **How are State, local or Tribal government entities designated as a cooperating agency?**

The BLM/FS/NPS may invite State, local or Tribal government entities to participate as cooperating agencies, or a State, local or Tribal government entity may request that the BLM, FS, or the NPS grant cooperating agency status. In any case, the Federal lead agency with primary responsibility for preparing the EA or EIS would decide whether: 1) the local government entity meets the CEQ requirements for cooperating agency status (40 CFR §1501.6.), and 2) designation is appropriate. More than one agency or government entity may be designated as a cooperating agency.

In addition, BLM, FS, or the NPS may agree with a State, local or Tribal government entity that specific categories of activities are generally suitable for cooperating agency participation, based on the experience of the Federal agency and the State or local entity involved. However, specific designation of cooperating agency status will take place on a case-by-case basis. Memoranda of understanding or other agreement documents, which are discussed under item 6, play a useful role in specifically setting out the designated responsibilities of the lead Federal agency and each cooperating agency.

3. **What are the responsibilities of a cooperating agency in the preparation of an EA or EIS?**

A cooperating agency participates in the preparation of the EA or EIS by agreeing to:

-Assist in the NEPA analysis at the earliest possible time.
-Participate in the scoping process, which helps define and frame the issues to be addressed in the NEPA document.
-Develop information and prepare environmental analyses (upon request of the lead agency) for portions of the EA or EIS over which the cooperating agency has special expertise.
-Contribute staff support and other resources at the lead agency's request to enhance the NEPA team's interdisciplinary capability.
-Share freely any information and data relevant to the NEPA analysis, thereby facilitating rational, fact-based decision making.
-Rely on its own funds to support its participation in the EA or EIS.

In harmony with the goals of NEPA, participation by cooperating agencies promotes efficiency, cooperation, and disclosure to the public of all relevant information. Prior to the designation of a non-Federal entity as a cooperating agency, the Federal and non-Federal entities should discuss each other's expectations and responsibilities. All parties would thus be assured that any request by the lead Federal agency, pursuant to 40 CFR 1501.6 (b)(3), (4), and (5), could be met by the cooperating agency.

4. **What are the limitations on the role of a non-Federal cooperating agency?**

In becoming a cooperating agency, a State, local or Tribal governmental entity does not gain new authority. BLM, NPS, or the FS retains the exclusive authority to make decisions on projects or programs for which it has responsibility by law. For example, the Federal land management agency retains sole decisionmaking authority for the lands and resources it administers; under the law, this authority cannot be delegated to a non-Federal government entity. Similarly, by becoming a cooperating agency, a non-Federal entity does not give up its authority to make decisions on issues over which it has legal jurisdiction.

The lead Federal agency retains decisionmaking authority over issues relating to the completion of the EA or EIS. That is so, because it is the Federal agency that is charged with carrying out the NEPA process under §102(2)(c) of NEPA. If parties find they cannot agree on issues related to the preparation of the EA or EIS, each will be free to proceed independently in order to meet respective schedules for rendering decisions.

5. **May a non-Federal governmental entity become a "joint lead" agency?**

Yes. The CEQ regulations permit a State or local governmental entity to serve as a joint lead agency with a Federal agency that is preparing an EA or EIS (40 CFR § 1501.5 (b)). The joint lead provision exists primarily to assist in paperwork reduction and in pooling of resources. Joint lead designation may be appropriate if: 1) a State or local agency and a Federal agency have decisions that need to be coordinated, and 2) each agency would otherwise need to prepare separate environmental analyses (e.g., separate EIS-type documents).

6. **How does the NPS, FS or BLM formalize designation of a cooperating or joint lead agency?**

The NPS, FS, or BLM prepares a memorandum of understanding (MOU), letter, or other agreement document that sets forth the working relationship between the Federal agency and the State, local or Tribal government entity serving as a joint lead or cooperating agency. This written agreement formally establishes the expectations, roles, and responsibilities of the parties involved. A single agreement may cover all project participants, or there may be separate agreements, as appropriate. The respective NPS, BLM or FS Washington Office program staff can provide sample MOUs or other types of agreement documents. The appropriate Departmental legal counsel should be consulted before such agreements are executed.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20500

March 16, 1981

MEMORANDUM FOR FEDERAL NEPA LIAISONS, FEDERAL, STATE, AND LOCAL OFFICIALS AND OTHER PERSONS INVOLVED IN THE NEPA PROCESS

Subject: Questions and Answers About the NEPA Regulations

During June and July of 1980 the Council on Environmental Quality, with the assistance and cooperation of EPA's EIS Coordinators from the ten EPA regions, held one-day meetings with federal, state and local officials in the ten EPA regional offices around the country. In addition, on July 10, 1980, CEQ conducted a similar meeting for the Washington, D.C. NEPA liaisons and persons involved in the NEPA process. At these meetings CEQ discussed (a) the results of its 1980 review of Draft EISs issued since the July 30, 1979 effective date of the NEPA regulations, (b) agency compliance with the Record of Decision requirements in Section 1505 of the NEPA regulations, and (c) CEQ's preliminary findings on how the scoping process is working. Participants at these meetings received copies of materials prepared by CEQ summarizing its oversight and findings.

These meetings also provided NEPA liaisons and other participants with an opportunity to ask questions about NEPA and the practical application of the NEPA regulations. A number of these questions were answered by CEQ representatives at the regional meetings. In response to the many requests from the agencies and other participants, CEQ has compiled forty of the most important or most frequently asked questions and their answers and reduced them to writing. The answers were prepared by the General Counsel of CEQ in consultation with the Office of Federal Activities of EPA. These answers, of course, do not impose any additional requirements beyond those of the NEPA regulations. This document does not represent new guidance under the NEPA regulations, but rather makes generally available to concerned agencies and private individuals the answers which CEQ has already given at the 1980 regional meetings. The answers also reflect the advice which the Council has given over the past two years to aid agency staff and consultants in their day-to-day application of NEPA and the regulations.

CEQ has also received numerous inquiries regarding the scoping process. CEQ hopes to issue written guidance on scoping later this year on the basis of its special study of scoping, which is nearing completion.

NICHOLAS C. YOST
General Counsel

Enclosure 2-1

encourage agencies to follow the regulations "to the fullest extent practicable," i.e., if it is feasible to do so, in preparing the final document. Section 1506.12(a).

12b. Are projects authorized by Congress before the effective date of the Council's regulations grandfathered?

A. No. The date of Congressional authorization for a project is not determinative of whether the Council's regulations or former Guidelines apply to the particular proposal. No incomplete projects or proposals of any kind are grandfathered in whole or in part. Only certain environmental documents, for which the draft was issued before the effective date of the regulations, are grandfathered and subject to the Council's former Guidelines.

12c. Can a violation of the regulations give rise to a cause of action?

A. While a trivial violation of the regulations would not give rise to an independent cause of action, such a cause of action would arise from a substantial violation of the regulations. Section 1500.3.

13. Use of Scoping Before Notice of Intent to Prepare EIS. Can the scoping process be used in connection with preparation of an **environmental assessment,** i.e., before both the decision to proceed with an EIS and publication of a notice of intent?

A. Yes. Scoping can be a useful tool for discovering alternatives to a proposal, or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process.

The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.

However, scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

14a. **Rights and Responsibilities of Lead and Cooperating Agencies.** What are the respective rights and responsibilities of lead and cooperating agencies? What letters and memoranda must be prepared?

A. After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. Section 1508.5. The request for cooperation should come at the earliest possible time in the NEPA process.

After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. Section 1501.7(a)(4).

Cooperating agencies must assume responsibility for the development of information and the preparation of environmental analyses at the request of the lead agency. Section 1501.6(b)(3). Cooperating agencies are now required by Section 1501.6 to devote staff resources that were normally primarily used to critique or comment on the Draft EIS after its preparation, much earlier in the NEPA process -- primarily at the scoping and Draft EIS preparation stages. If a cooperating agency determines that its resource limitations preclude any involvement, or the degree of involvement (amount of work) requested by the lead agency, it must so inform the lead agency in writing and submit a copy of this correspondence to the Council. Section 1501.6(c).

In other words, the potential cooperating agency must decide early if it is able to devote any of its resources to a particular proposal. For this reason the regulation states that an agency may reply to a request for cooperation that "other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement." (Emphasis added). The regulation refers to the "action," rather than to the EIS, to clarify that the agency is taking itself out of all phases of the federal action, not just draft EIS preparation. This means that the agency has determined that it cannot be involved in the later stages of EIS review and comment, as well as decisionmaking on the proposed action. For this reason, cooperating agencies with jurisdiction by law (those which have permitting or other approval authority) cannot opt out entirely of the duty to cooperate on the EIS. See also Question 15, relating specifically to the responsibility of EPA.

14b. How are disputes resolved between lead and cooperating agencies concerning the scope and level of detail of analysis and the quality of data in impact statements?

A. Such disputes are resolved by the agencies themselves. A lead agency, of course, has the ultimate responsibility for the content of an EIS. But it is supposed to use the environmental analysis and recommendations of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible, consistent with its own responsibilities as lead agency. Section 1501.6(a)(2).

If the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate. Similarly, where cooperating agencies have their own decisions to make and they intend to adopt the environmental impact statement and base their decisions on it, one document should include all of the information necessary for the decisions by the cooperating agencies. Otherwise they may be forced to duplicate the EIS process by issuing a new, more complete EIS or Supplemental EIS, even though the original EIS could have sufficed if it had been properly done at the outset. Thus, both lead and cooperating agencies have a stake in producing a document of good quality. Cooperating agencies also have a duty to participate fully in the scoping process to ensure that the appropriate range of issues is determined early in the EIS process.

Because the EIS is not the Record of Decision, but instead constitutes the information and analysis on which to base a decision, disagreements about conclusions to be drawn from the EIS need not inhibit agencies from issuing a joint document, or adopting another agency's EIS, if the analysis is adequate. Thus, if each agency has its own "preferred alternative," both can be identified in the EIS. Similarly, a cooperating agency with jurisdiction by law may determine in its own ROD that alternative A is the environmentally preferable action, even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.

14c. What are the specific responsibilities of federal and state cooperating agencies to review draft EISs?

A. Cooperating agencies (i.e., agencies with jurisdiction by law or special expertise) and agencies that are authorized to develop or enforce environmental standards, must comment on environmental impact statements within their jurisdiction, expertise or authority. Sections 1503.2, 1508.5. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should simply comment accordingly. Conversely, if the cooperating agency determines that a draft EIS is incomplete, inadequate or inaccurate, or it has other comments, it should promptly make such comments, conforming to the requirements of specificity in section 1503.3.

14d. How is the lead agency to treat the comments of another agency with jurisdiction by law or special expertise which has failed or refused to cooperate or participate in scoping or EIS preparation?

A. A lead agency has the responsibility to respond to all substantive comments raising significant issues regarding a draft EIS. Section 1503.4. However, cooperating agencies are generally under an obligation to raise issues or otherwise participate in the EIS process during scoping and EIS preparation if they reasonably can do so. In practical terms, if a cooperating agency fails to cooperate at the outset, such as during scoping, it will find that its comments at a later stage will not be as persuasive to the lead agency.

15. **Commenting Responsibilities of EPA.** Are EPA's responsibilities to review and comment on the environmental effects of agency proposals under Section 309 of the Clean Air Act independent of its responsibility as a cooperating agency?

A. Yes. EPA has an obligation under Section 309 of the Clean Air Act to review and comment in writing on the environmental impact of any matter relating to the authority of the Administrator contained in proposed legislation, federal construction projects, other federal actions requiring EISs, and new regulations. 42 U.S.C. Sec. 7609. This obligation is independent of its role as a cooperating agency under the NEPA regulations.

16. **Third Party Contracts.** What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section 1506.5(c). When can "third party contracts" be used?

A. As used by EPA and other agencies, the term "third party contract" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See 40 C.F.R. 6.604(g). The "third party" is EPA which, under Section 1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures. It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with Section 1506.5(c). Federal

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FS Agreement No.

Cooperator Agreement No.

Memorandum of Understanding

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between the

United States Forest Service

Grand Mesa, Uncompahgre

and Gunnison National Forests

And

XXXX Counties

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the following Colorado Counties: XXXXXX, hereinafter referred to as "the Counties" and the United States Department of Agriculture (USDA), Forest Service, Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG NF), hereinafter referred to as the "U.S. Forest Service."

Background: As provided for by the National Environmental Policy Act (NEPA), as well as the 2012 Planning Rule (36 CFR 219), the U.S. Forest Service must prepare an Environmental Impact Statement (EIS) to revise the GMUG National Forests' Land Management Plan (Forest Plan). The EIS process is meant to inform both the U.S. Forest Service and the public about the environmental impacts of the plan revision before a final decision is made.

Title: Grand Mesa, Uncompahgre and Gunnison National Forests Plan Revision – Colorado County Cooperating Agency Agreement

I. PURPOSE:

The purpose of this MOU is to document the cooperation between the parties to elicit the above Counties within the State of Colorado to become cooperating agencies with the U.S. Forest Service, acting as lead agency, for the purpose of preparing a revised Forest Land and Resource Management Plan (Plan) and an Environmental Impact Statement (EIS). The U.S. Forest Service recognizes that the Counties have knowledge, experience and expertise, with respect to environmental, economic, and social impacts/conditions to inform the proposed plan revision process as defined at 36 CFR 219, otherwise known as the 2012 Planning Rule. The Counties recognize that the U.S. Forest Service has final decision-making authority regarding the scope of the analysis. In particular, the U.S. Forest Service is seeking assistance from the Counties to help provide knowledge and information that will help address management issues related to, but not limited to, land use plans, local social and economic conditions and natural resource management concerns related to range, roads, timber, wildlife, fire, recreation, land and water conservation. Additionally, the U.S. Forest Service invites the submittal of other information, data and comments

from the Counties pertaining to the GMUG NF Plan revision process. The establishment of this MOU further promotes responsible, transparent and timely dialogue during the Plan revision analysis between the Counties and the GMUG NF in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Counties all have significant portions of the GMUG National Forest within their borders. It is in the interest of the Counties to provide information and expertise for use in the development of the revised Forest Plan, including the formulation and analysis of options/alternatives. As cooperating agencies, the Counties may assist in reviewing the components of the plan and the monitoring program/proposals as they relate to individual county resources and jurisdiction.

The Forest Service has a mutual interest in incorporating information and expertise provided by the Counties for a complete analysis of impacts and formulation of a full spectrum of alternatives during the Forest Plan revision.

Through this cooperative effort, the U.S. Forest Service and the Counties will be more likely to develop a higher quality revised Forest plan, and gain a greater understanding of how the revised Forest Plan may impact or affect the associated ecological, social and economic concerns of the Counties and their residents. Both parties will benefit through increased communication, sharing of information, and cooperation in implementing their respective missions as a part of the GMUG NF Plan revision process.

In consideration of the above premises, the parties agree as follows:

III. EACH COUNTY SHALL:

- Be identified as a cooperating agency for the revision of the Forest Plan coincident with the initiation of the formal environmental review process under the National Environmental Policy Act.
- Designate a representative and an alternate to participate in the GMUG NF Forest plan revision process. Ensure County designees are full-time or permanent part-time employees of the County government (or their designated employee with authority to act on their behalf), acting in their official capacity (41 CFR 102-3.40(g)).
- Provide the U.S. Forest Service with relevant existing ecological, social and economic resource information for the GMUG NF revision process.
- The Counties may provide individual or collective comments on any aspect of the GMUG NF revision process.
- Provide timely response to any reviews agreed upon by both the US Forest Service and the Counties.
- Assist with public meetings and with distributing Forest Plan revision information and documents to the public as the parties agree.

IV. THE U.S. FOREST SERVICE SHALL:

- Be the Lead Agency for the GMUG National Forests Forest Plan Revision.
- Consider the Counties' input in the development of issues, options and alternatives addressed in the Plan revision process.
- Consider any appropriate County land use management plans as well as other applicable plans as part of the revision process.
- Provide information and drafts to the Counties with adequate time for review. For products that will be released for an *informal* public comment period *not* required by NEPA, provide the Counties with such drafts two weeks prior to the public release; this early review would provide the Counties a longer review period. For products that will be released for a *formal* public comment period that *is* required by NEPA (the Draft EIS), provide the Counties with such drafts one month prior to the public release for a preliminary two-week review period; this early review would provide the Counties the opportunity to provide input that could be incorporated into the Draft EIS. The counties would subsequently have the same 90-day comment period as the public.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

XXX County - Name, Title

Address:

Phone:

Email:

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact

Name: Shane Walker, Planning & Information Staff Officer Address: 2250 Main St. City, State, Zip: Delta, CO 81416 Telephone: (970) 874 – ~~66XX~~6705 FAX: (970) 874 – 6686 Email: ~~tmalecek@fs.fed.us~~mswalker@fs.fed.us	Name: **Becky Cuthbertson** Address: 740 Simms St. City, State, Zip: Golden, CO 80401 Telephone: (303) 275-5068 FAX: 303-275-5453 Email: rcuthbertson@fs.fed.us

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NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the Counties is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To the County's Principal Contact at the address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or the Counties from participating in similar activities with other public or private agencies, organizations, and individuals.

ENDORSEMENT. Any of the Counties contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of products or activities.

NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources: cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

USE OF U.S. FOREST SERVICE INSIGNIA. In order for the Counties to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.

MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.

FREEDOM OF INFORMATION ACT (FOIA). Any records or documents generated/shared as a result of this MOU shall become part of the official record. Documents not marked/flagged proprietary or confidential by the originating office may be released to the public upon request by either party of this MOU. Any request for proprietary/confidential documents will be referred to the originating agency for processing either under the Freedom of Information Act (5 U.S.C. 552) or the Colorado Open Records Act § 24-72-201 *et seq,* C.R.S.

TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) The U.S. Forest Service recognizes and honors the applicability of the Tribal laws and ordinances developed under the authority of the Indian Self- Determination and Educational Assistance Act of 1975 (PL 93-638).

PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. The Counties are encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments

The County's Principal Contact may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. The Counties are requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to The U.S. Forest Service's Office of Communications as far in advance of release as possible.

U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The Counties shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.

NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The Counties shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

> ***In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)***
>
> **To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.**

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.

DEBARMENT AND SUSPENSION. The Counties shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective for five years or at the end of the Forest Plan revision process at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials..

AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU.

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA Is an equal opportunity provider andemployer.

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