

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

**Bureau of Land Management
Carlsbad Field Office**

And

Please Fill this section in

For

**Preparation and Implementation of Environmental Assessments
For APD's, ROW's, and Sundry notices
Within the Carlsbad Field Office**

It is understood by BLM and the Proponent that some NEPA documents for projects proposed by the Proponent will be prepared by a third-party contractor (Contractor), under the direct supervision of the BLM, as contemplated by NEPA, with input and participation by the Proponent at the discretion of the BLM. The purpose of this Memorandum of Understanding (MOU) is to establish an agreement between BLM and the Proponent regarding the procedures for the preparation of the EA through completion of the Decision Record (DR) and compilation of the Administrative Record.

It is also understood that the BLM may determine during EA development or scoping that an Environmental Impact Statement (EIS) is required. At that time, a new MOU and project schedule would be developed and BLM would initiate a process for formal review and selection of a NEPA contractor.

The Proponent understands that withdrawal of any application or proposal by the Proponent will end the NEPA process. If this Project falls under a cost recovery agreement, the Proponent would be responsible for costs incurred by BLM in terminating the NEPA process.

AUTHORITY

BLM must comply with NEPA, 42 U.S.C. sec. 4321, et seq., and related requirements, including the Council on Environmental Quality (CEQ) regulations found at 40 CFR 1500-1508 published in the Federal Register, November 29, 1978.

RESPONSIBILITIES

BLM Responsibilities

1. BLM shall assume complete control over the scope and content of the EA. BLM will be the lead agency. As such, the BLM may take over primary responsibility for preparation of all or portions of the EA at any time during the NEPA process. BLM will independently evaluate all information included in the EA and shall take responsibility for its accuracy.
2. In coordination with the Proponent and the Contractor, BLM will establish a Project Schedule with key milestones in relationship to the project schedule. BLM will arrange meetings and conference calls, as necessary,

between BLM, Proponent, Contractor, and any cooperating agencies.

3. As appropriate, the BLM will be responsible for the identifying and inviting cooperating agencies to participate in development of the EA. All consultation and coordination with cooperating agencies will be the responsibility of the BLM.
4. BLM will facilitate the completion of the EA within the time frames specified in the project schedule, subject to extensions due to incompleteness in data, new issues identified during scoping, insufficiency of the EA, changes in project scope, or other conditions that warrant such extension. In addition, BLM will establish an interdisciplinary team to oversee the EA.
5. BLM will determine the adequacy of the EA and will ultimately decide on the inclusion or deletion of all EA material including data, analysis, and conclusions. BLM will determine any necessary modification of the EA as a result of public, cooperating agency, or Proponent submitted comments. BLM will accept the EA from the Contractor as a BLM document after proper review, verification, and approval of its contents. The BLM will provide standards and guidelines outlining requirements for externally generated NEPA documents.
6. BLM will make final effects determinations and undertake consultations to the extent required by Section 7 of the Endangered Species Act (ESA) of 1973, as amended, and Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. BLM will involve the Contractor and Proponent in these consultations as appropriate. BLM is responsible and will initiate and conduct consultation with Native American Tribes, the State Historic Preservation Officer, or, as appropriate, the Tribal Historic Preservation Officer, affected by the Project.
7. BLM will oversee all public involvement efforts. In addition to posting information about the Project on the BLM website, the BLM will determine the need for formal scoping and review periods, news releases, mailings, etc.
8. If applicable, following completion of the scoping and/or public comment period(s), the BLM will gather and consolidate comments, resolve internal conflicting comments, and provide the Contractor with a summary of comments in accordance with the project schedule, as well as a response to comments as BLM deems appropriate. BLM may provide the comments to the Proponent to the extent BLM deems appropriate for assistance with technical or factual issues.
9. BLM will assist in preparation of and lead meetings between the BLM, Contractor, Proponent, and any meetings that may involve the public. BLM will ensure that any materials used for public meetings meet BLM requirements and will prepare and issue any notices. BLM will also collect and process scoping comments with assistance of the Contractor.
10. BLM will designate a primary point of contact to coordinate all matters concerning the Project. Any modifications to the point of contact will be provided in writing to the other parties.
11. BLM will assume responsibility for the design and organization of the Administrative Record.
12. BLM will be responsible for responding to all the public information requests pursuant to the rules and exceptions of the Freedom of Information Act (FOIA), or

other applicable laws.

13. If appropriate for the Project, the BLM, via the Contractor will:
 - Develop a public involvement plan.
 - Develop an information mailer/newsletter or news releases for the EA and DR.
 - Develop a mailing list for circulation of scoping notices and the EA.
14. BLM has discretion to invite the Proponent to attend meetings with federal, state, regional and local agencies, Native American Tribes and other groups to address issues within the scope of the EA, as appropriate under law. BLM will recommend project modifications to the Proponent to mitigate impacts to the environment. Upon concurrence from the Proponent, modifications may be made to the proposed action to reduce or eliminate adverse effects. If any means, measures or practices recommended by the BLM are not incorporated into the proposed action, the BLM may elect to analyze in detail an alternative that includes identified design features.
15. The BLM will provide the Proponent with a list of standard terms and conditions that are applicable to the federal action under consideration that will be incorporated into the applicant's plan of development (POD).
16. The BLM has discretion to provide the Proponent with sections of the EA and other reports for review and input. The BLM will independently review any input and information provided by Proponent and determine final document content.
17. The BLM will be responsible for preparation of the purpose and need statement, identifying issues to be carried forward for analysis, and developing a reasonable range of alternatives.
18. If it is determined by the BLM that the selected alternative will not have significant effects, the BLM will be responsible for preparation of the Finding of No Significant Impact (FONSI) and DR. The BLM will also be responsible for preparation of an unsigned FONSI, if the decision maker decides to release the EA for public review.

Proponent Responsibilities

1. The Proponent will provide a complete, detailed description of the Project (and any connected actions), including scope, purpose and need, and any alternatives identified by the Proponent for BLM review and to the Contractor for inclusion in the EA. The Proponent will provide the supporting expertise, staffing, technical capabilities and environmental information required by BLM for EA preparation.
2. The Proponent will participate in meetings, site-visits and conference calls as requested by the BLM and respond to data requests and provide review comments within the project schedule. If the Proponent fails to meet the schedule, BLM will adjust the schedule to the extent necessary.
3. The Proponent will assist the Contractor in preparation of a POD. The Proponent will submit for BLM review a draft POD that describes in detail the construction, operation, maintenance, rehabilitation and termination procedures for the Project,

including all ancillary facilities.

4. The Proponent will be financially responsible for preparation, printing, and distribution of the EA and other related documents. The Proponent will be financially responsible for the collection, compilation, and display of all data necessary to support the EA. This includes obtaining all land use plans and inventory data from affected agencies, gathering necessary field data to BLM requirements and compilation of the Administrative Record.
5. The Proponent will be financially responsible for the Contractor's costs associated with preparing and editing the EA. The Proponent may be responsible for charges associated with the Project as a matter of Agency cost recovery.
6. The Proponent will be allowed to comment on their purpose and need for action, proposed action, and the technical and economic feasibility of alternatives to the proposed action; **however, the BLM or the Contractor will not provide the Proponent with opportunity to review or comment on the environmental effects analysis or impact conclusions included within the document independent of a public comment period, except to the extent necessary, in BLM's discretion, to provide factual or technical information. Data requests for the Proponent will be routed through the BLM.**
7. Unless otherwise agreed upon, the Proponent will be financially responsible for the development, coordination and completion of all Contractor conducted cultural and historic clearances, biological surveys, and other natural resource surveys associated with the Project as directed by the BLM. This service could be conducted by the Contractor if they have qualified staff members. All associated field data, electronic information, and reports will be provided to and become property of the BLM and will be independently evaluated by BLM. The final decision for all determinations, procedures, recommendations, methods, clearances and surveys will be made by the BLM in consultation with other agencies that have jurisdiction by law. The BLM will provide shape files or other information to assist the Proponent in avoidance of historic properties or special status species.
8. All costs incurred by the Contractor or any subcontractors in connection with the preparation and implementation of the EA will be the sole responsibility of the Proponent. The Proponent will hold harmless and indemnify the United States with respect to any claims, demands, causes of action, and the like that may arise from the performance of the Contractor or subcontractors or any purchases of materials or any services utilized in the preparation and implementation of the EA. The indemnification by the Proponent of the United States does not extend to suits filed by third parties against the agencies involving the legality or adequacy of any federal agency's compliance with NEPA or other federal laws to the extent of the agencies' liability for those issues.
9. The Proponent will establish a primary point of contact for coordination with the BLM and the Contractor on all matters relating to the Project. Any modifications to the point of contact will be provided in writing to the other parties.
10. The Proponent will participate in identification of means, measures, or practices that would reduce or eliminate adverse effects as requested by the BLM.
11. The Proponent will identify and comply with all federal, state, and local laws and regulations and will obtain all required permits that apply to the Project.

12. The Proponent will ensure that the Contractor and any subcontractors have no direct financial interest in the design, construction, or operation of the Project, except for remuneration specifically for preparing the EA and any design necessary for the EA analysis. The Proponent will be responsible for all contract-related costs incurred in connection with the employment of the Contractor and all subcontractors.
13. The Proponent will fund and utilize assistance contractors as required by BLM in addition to the EA Contractor. Assistance contractors may include clerical/administrative support, EA assembly and review, and compliance inspectors. These services will be contracted for directly by the Proponent but will report directly to the BLM. All costs incurred by the assistance contractor in connection with the Project shall be the sole responsibility of the Proponent.

Contractor Responsibilities

1. The Contractor will ensure that they have no financial, economic, or other interest in the planning, design, or operation of the Project.
2. The Contractor will not provide copies of the EA or associated data to the Proponent or other individuals or entities unless authorized by the BLM.
3. The Contractor will meet timeframes and schedules as directed by the BLM. If the Contractor fails to meet the schedule, BLM, via the Contractor, will adjust the schedule to the extent necessary.
4. The Contractor will comply with BLM requests related to content or relevance of material (including all data, analyses, and conclusions) in the EA.
5. The contractor will provide formal response to any comments on draft documents submitted in writing by the BLM.
6. Unless otherwise agreed upon, the Contractor, or a subcontractor approved by the BLM, will be responsible for completing all cultural, biological, and other natural resource clearances consistent with BLM inventory protocol and data management standards and guidelines, including confidentiality requirements.
7. The Contractor will maintain confidentiality and will limit Proponent involvement and communications during EA preparation to those specified in this MOU and in any subsequent communications plan that may be developed. Unless otherwise noted, the Contractor will have no direct communication with the Proponent except specifically authorized by the BLM. The Contractor will work with the BLM to prepare data requests which will be routed through the BLM to the Proponent.
8. The Contractor will help organize, coordinate, and participate in interdisciplinary team meetings, public meetings, and project conference calls. The Contractor will

also prepare draft agendas for and summaries of meetings and conference calls; prepare draft letters and other requested documents; incorporate all BLM comments/changes in the EA; and other items as directed by the BLM.

9. The Contractor will compile the Administrative Record as specified by the BLM. The Administrative Record is to reflect the BLM decision making process and is to conform to the applicable laws and regulations. The Contractor will provide the BLM with a complete Administrative Record at the time a determination of significant effects is rendered on the Project or earlier if requested.
10. The Contractor will not release any information contained within the Administrative Record without the BLM's review and written approval.
11. The Contractor will follow the format and content requirements outlined by the CFO BLM. If the EA does not follow these standards and guidelines, it will be sent back to the Contractor as unacceptable for review.
12. The Contractor will prepare all documents using a writing standard provided by the BLM or a style guide that ensures consistency in usage, terminology, and formatting across the document. Documents that are not standardized will be sent back to the Contractor as unacceptable for review. If it is determined by the BLM that a document does not meet environmental technical writing standards, the document can be sent back to the Contractor without further justification.
13. The Contractor will not submit documents that include contractor logos.
14. The Contractor will establish a primary point of contact for coordination with the BLM and the Proponent on all matters relating to the Project. Any modifications to the point of contact will be provided in writing to the other parties.

EXPIRATION

This MOU shall become effective upon signature of the Proponent and the BLM and shall expire following completion of all projects proposed by the Proponent unless terminated prior to expiration by any parties to the agreement.

MODIFICATION AND AMENDMENT

This MOU may be modified, amended, or supplemented in writing by mutual agreement of all both parties. Modification shall be made by issuance of a fully executed amendment prior to any changes being performed.

NON-FUND-OBLIGATING DOCUMENT

This instrument is neither a fiscal nor a funds-obligation document. Any endeavor involving reimbursement or contribution of funds between the parties will be handled in accordance with applicable laws, regulations, and procedures including those for federal government procurement and printing. Such endeavors will be outlined in a separate CRA (Cost Recovery Agreement) that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for non-competitive award to the cooperator of any contract or other agreement.

TERMINATION

1. This MOU may be terminated prior to expiration with the written consent of either party. Proponents with no standing MOU will not be allowed to submit externally prepared NEPA documents.
2. In the event this MOU is terminated, but the Project is not withdrawn, the BLM will evaluate its capabilities to complete and schedule preparation of the appropriate level of NEPA documentation consistent with personnel and budgetary limitations.
3. In the event this MOU is terminated and the Proponent withdraws its proposal for the Project, the BLM shall be under no obligation to take any other action prior to compliance with NEPA and all other applicable Federal laws and regulations.
4. In the event of termination, BLM shall have delivery of all non-proprietary and non-confidential documentation developed by or in possession of the Contractor in paper or electronic format. In addition, the Proponent shall require the Contractor to submit to BLM in paper or electronic format the environmental work and analyses (i.e. field data, reports, GIS data etc.) done by the Contractor prior to termination of the MOU.

EFFECTIVE DATE

This MOU and any attachments hereto shall become effective upon signature both parties.

SIGNATURES OF AGREEMENT

Bureau of Land Management

Signature

George MacDonell

Typed Name

Field Manager

Typed Title

Date

Proponent/Applicant

Signature

Print Name

Print Title

Date