

*For website*

FS Agreement No. 03-MU-11020400-005  
BLM Agreement No.  
Gunnison Energy Corp Agreement No.

**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**USDA FOREST SERVICE**  
**and**  
**USDOJ BUREAU OF LAND MANAGEMENT**  
**and**  
**GUNNISON ENERGY CORPORATION**

This **Memorandum of Understanding (MOU)** is hereby entered into by and between the USDA Forest Service, Grand Mesa, Uncompahgre, and Gunnison National Forest, hereinafter referred to as the Forest Service, the USDOJ Bureau of Land Management, hereinafter referred to as the BLM, collectively referred to as the Agencies, and Gunnison Energy Corporation, hereinafter referred to as the Proponent.

**A. PURPOSE.**

The purpose of this MOU is to articulate the working arrangement whereby a third-party consultant (Prime Consultant) approved by the Agencies will prepare an environmental analysis to analyze the natural gas exploration plan submitted to Agencies by the Proponent (Project). The proposed natural gas well sites shown in Exhibit A are on BLM Public Lands, administered by the BLM out of its Uncompahgre Field Office in Montrose, Colorado, and on National Forest System Lands, administered by the Forest Service for the Grand Mesa, Uncompahgre, and Gunnison National Forest, in Grand Junction and Paonia, Colorado.

**B. STATEMENT OF MUTUAL INTERESTS AND BENEFITS.**

The Forest Service is required to approve a surface use plan of operations before any surface disturbing operation for any of the natural gas wells on National Forest System Lands may proceed and, as part of this approval process, must comply with the National Environmental Policy Act of 1969 (NEPA), the National Forest Management Act of 1976, the Forest Service Regulations at 36 C.F.R. §§ 228.106 – 228.110, and other applicable laws. The BLM is required to approve an application for permit to drill (APD) before any surface disturbing activities for any of the natural gas wells may proceed and, as a part of this approval process, must comply with NEPA, the Federal Land Policy and Management Act of 1976 (FLPMA), the BLM regulations at 43 C.F.R. Part 3160, and other applicable laws. All of these laws, regulations, agency manuals and handbooks, and orders are collectively referred to as the applicable legal requirements.

Based upon a project description and other information provided by the Proponent, and an initial assessment of the Project, the Agencies currently anticipate that the Project will be addressed in an Environmental Assessment (EA), which will be prepared by a contractor (Prime Consultant) in a manner consistent with the applicable legal requirements. The Agencies will manage the EA process to produce those analyses appropriate to the decisions to be made for each proposal, and not excessive or unnecessary work beyond that required by applicable environmental laws, regulations, and written policies.

The parties agree that the analysis will be given a high priority, will be initiated and completed promptly, will utilize existing information and resource specialists to the greatest extent appropriate, will focus on key environmental issues, and will provide an opportunity for full participation by interested members of the public and governmental agencies consistent with the applicable legal requirements. In the event that the Agencies determine that an Environmental Impact Statement (EIS) must be prepared, the parties to this MOU agree to negotiate any amendments to this MOU, which may be necessary as a result of the decision to prepare an EIS.

The Forest Service and the BLM shall be "Joint Lead Agencies" in the preparation of the environmental analysis per the provisions of 40 C.F.R. Part 1501.5(b). The Forest Service will designate a Project Manager who will be the principal point of contact between the Agencies, the Prime Consultant and the Proponent. Upon conclusion of the environmental analysis process, BLM and Forest Service will issue separate decisions. The parties recognize that the Forest Service and the BLM retain responsibility for making decisions with regard to the analysis.

### **C. IN CONSIDERATION OF THE ABOVE, THE PARTIES AGREE AS FOLLOWS:**

1. It is understood by the Proponent and the Agencies that the analysis will be prepared by a Prime Consultant, hired and paid for by the Proponent. The Prime Consultant will be approved by and serve under the direct supervision and control of the Agencies. The Prime Consultant may obtain technical assistance or information from one or more independent, third party subcontractors subject to the Agencies' approval. The combination of the Prime Consultant and any required subcontractors working under the direction of the Forest Service Project Manager should be sufficient to prepare the analysis.
2. Based upon a review of the Project and the information developed to date, the Agencies and the Prime Consultant will make every effort to meet a time schedule mutually agreed upon in writing by the Proponent and the Agencies. The Agencies will expedite, to the extent possible in the timeframe shown on Exhibit B, the preparation and consideration of this environmental analysis, and will exercise diligence in the management of the process. The schedule may be subsequently modified due to events or conditions beyond the control of the parties. In this event, the Agencies will work with the Proponent on a new schedule.

3. Meetings which may be in person, by telephone, e-mail or other appropriate means between the Proponent and the Agencies, for the purpose of exchanging facts and/or information, and updating the status of the analysis, will occur throughout the review, and at a minimum, at the following key points in the process:
  - a. Prior to approval of the Prime Consultant or subcontractors.
  - b. Prior to the determination of an estimated budget.
  - c. Prior to establishing a written time schedule for the preparation of the analysis.
  - d. The prework meeting with the Prime Consultant to review this MOU and the contract.
  - e. Prior to any change in the scope of this analysis which increases the cost of the studies necessary by more than 5% of the total budget.
4. In addition, the Agencies may, through the Project Manager, consult with the Proponent only with respect to technical and economic feasibility at the following times:
  - a. Prior to determination of significant issues that will be addressed in the analysis.
  - b. Prior to determination of mitigation measures.
  - c. Prior to the selection of alternatives to be studied and before making major changes to these alternatives.
  - d. After assimilation of comments on the analysis received by the close of the comment period for the environmental analysis.
  - e. Prior to issuance of the decision documents, particularly with respect to proposed mitigation conditions.
5. These meetings in no way limit the communications between the Proponent and the Agencies regarding questions of procedural matters, scope of analysis, technical feasibility, mitigation, or other matters. All such meetings will generally include the Forest Service Project Manager, BLM designated representative, and the principal contact of the Proponent.

#### **D. THE AGENCIES SHALL:**

1. Consider the views of the Proponent, in approving the Prime Consultant and select the Prime Consultant based on past experience, technical competence, availability to perform work, cost factors, and an absence of conflict of interest.

2. Review and accept the contract to be used by the Proponent to contract with the Prime Consultant. Acceptance will be in writing on the signature page of the contract. The contract will be in accordance with the terms of this MOU.
3. Furnish copies of the following information to the Prime Consultant and/or Proponent:
  - a. The Prime consultant shall be provided with the agreed-upon schedule of work between the Agencies and the Proponent.
  - b. An outline of the format to be used and the contents of the analysis as specified at 40 C.F.R. §§1500-1508.
  - c. A copy of the Forest Plan, Forest Plan environmental analysis, and Record of Decision with all amendments.
  - d. A copy of the BLM Resource Management Plan, Plan environmental analysis, and Record of Decision with all amendments.
  - e. Copies of the statutes, regulations, Executive Orders, Manuals and Handbooks which control or guide the preparation of the analysis and the formulation of the legal concerns related to each of the issues.
  - f. Any final reports prepared by the Prime Consultant or subcontractors and any underlying documents pursuant to the provisions of the Freedom of Information Act.
  - g. The Prime Consultant shall be provided with written comments or reports prepared by the Interdisciplinary Team for inclusion in the administrative record.
  - h. Letters, comments or other materials received by the Agencies from interested parties or agencies in the scoping session, comments on the document, or at other stages in the analysis process.
4. Make their own independent evaluation of the information submitted by the Prime Consultant, subcontractors, the Proponent, or others, and have responsibility for its accuracy (40 C.F.R. § 1506.5(b)). Make the final determination of the inclusion or deletion of material from the analysis and in all instances involving questions as to the content of any material (including all data, analysis, and conclusions).
5. Convene an Interdisciplinary Team (ID Team) as required by 40 C.F.R. § 1502.6 to oversee the environmental analysis. It is anticipated that the ID Team will function principally as a review team, providing technical guidance to the Project Manager, Prime Consultant, and subcontractors regarding the issues and alternatives to be addressed in the environmental analysis. The ID Team will provide input and guidance on the adequacy of existing data and studies, and such additional matters as are useful to the

prompt and efficient completion of the environmental document in compliance with the applicable legal requirements. Every effort will be made to avoid duplication of tasks between the Project Manager, Prime Consultant, subcontractors, and ID Team members and to focus the analysis on significant issues.

6. Provide the necessary personnel and other resources to complete their responsibilities in a timely and professional manner.
7. Upon request, make available the public information determined to be disclosable according to the guidelines specified in the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a.
8. Coordinate the release of the Decision Documents.
9. Supervise the preparation of the analysis in compliance with the applicable legal requirements including, but not limited to, public review of the analysis, analysis of public comments, and decisions documentation. The Agencies will endeavor to foster cooperation among other relevant agencies and to integrate NEPA requirements with other environmental review and consultation requirements in order to avoid, to the fullest extent possible, duplication of efforts by such agencies. (40 C.F.R. §§ 1500.5(g) & (h), 1501.2(d)(2), 1506.2). However, the Agencies will not delegate to any other agency their authority over the scope and content of the analysis or their approval of the Project.
10. Through the Project Manager, develop a protocol, appended as Exhibit C (the "Protocol"), to facilitate communication and coordinate the exchange of information between the Proponent, the Agencies, and the Prime Consultant. This protocol will be determined considering the complexity of the proposed action, the Federal Advisory Committee Act, the Freedom of Information Act, and related agency guidance.
11. The Project Manager will keep the Proponent informed of the status of the analysis and will discuss with the Proponent any additional data needs, and of changes needed in the terms of the third-party contracts.
12. Via the Prime Consultant and subcontractors, and as documented in their respective written contracts, and consistent with the applicable legal requirements:
  - a. Develop a public involvement plan for the public scoping.
  - b. Arrange for and participate in the agency and public scoping meetings and make available to the Proponent and the public any summary of the results.
  - c. Design visual aids for any meetings and/or open houses including maps, handouts, poster boards, mailers, etc.

- d. Develop an information mailer/newsletter and news releases for the scoping period and comment period, as well as for the release of the final analysis and decision documents.
  - e. Develop a mailing list and, at the direction of the Agencies, draft responses to comments for Agency approval.
  - f. Be responsible for conducting and completing all necessary studies, inventories, and suitable reports for all resource values in the scoping process. These resource values may include but not be limited to: Cultural features; sensitive, threatened and endangered plant and animal species; wetlands; visual esthetics; fisheries and riparian zones.
13. Invite the Proponent to attend meetings with federal, state, regional, and local agencies and the public whenever possible and as appropriate (e.g., discussions on procedural matters; physical, biological, and social issues; the proposal and alternative actions; impacts and their mitigation; and other compliance requirements).
  14. Meet with the Proponent as early as possible to discuss the Project description, and various components of the analysis as needed.
  15. Be responsible for the public review of the analysis, public hearings, analysis of public comments, distribution of the documents, within established time frames, with input as required from the Proponent.
  16. Be recipient of all comments on the draft analysis resulting from the public comments. Determine any necessary modification of the text as a result of public comments.
  17. To the fullest extent possible, utilize existing information, inventories, studies, and reports to support the analysis. Accept and utilize information submitted within the established time schedule by the Proponent, consultants working for the Proponent, and other parties provided that such information can be verified by the Agencies and is accurate as required by 40 CFR 1506.5(a) and (c).

**E. THE FOREST SERVICE SHALL:**

1. Establish a principal point of contact for the Forest Service (see H.11) as the Project Manager on all matters relating to the environmental analysis and the preparation of the document. The duties of the Project Manager shall include oversight of all analyses using past relevant studies and reports, and information supplied by the Proponent, the Forest Service, the BLM, other agencies, the Prime Consultant, and any subcontractors where necessary; facilitate communications between the Forest Service, the Proponent, the Prime Consultant, and subcontractors to assure a timely and thorough exchange of relevant information among the parties; oversee the public involvement plan, including, without limitation, all necessary scoping meetings and other public reviews; and be

responsible for other duties as required to complete the analysis. The goal is to facilitate appropriate and efficient communication between the Forest Service, the Prime Consultant, the Proponent, the public, and affected Federal, State and local agencies, to expedite the flow of information necessary for the analysis.

2. Via the Prime Consultant, and consistent with the applicable legal requirements, maintain the official administrative record for the Project until the decisions are signed. At that time, the project record will be delivered to the Forest Service.
  - a. The Forest Service shall provide direction to the Prime Consultant for design, organization, indexing, preparation and maintenance of the administrative record for the project.
  - b. The Prime Consultant and subcontractors shall document the sampling, testing, field observations, literature searches, analysis, recommendation, and other work, which provides source material for the analysis, and any Supplements to them. The Prime Consultant and subcontractors shall also document all the Forest Service's records in a similar and compatible manner.
  - c. The documentation shall be assembled in some organizational system, which will make it possible for the responsible official to refer conveniently to specific documents or pages within documents. The source documents shall be listed. The list shall show the date, author, addresses, subject and document or page number. The list shall be an appendix to the analysis and used to incorporate by reference the items on the list in the analysis.
  - d. The list shall be prepared on a current basis throughout the environmental analysis and documentation processes so that it reflects the following information for each document: date, document number, page number, author, addressee, issue, sub-issue, and by page number. Provision should be made for printing reports of the sorted information.

#### **F. THE BUREAU OF LAND MANAGEMENT SHALL:**

1. Establish a principal point of contact for the BLM (see H.11) on all matters relating to the environmental analysis and the preparation of the document. The duties of the designated BLM representative, in connection with the Forest Service Project Manager, shall include oversight of all analyses using past relevant studies and reports, and information supplied by the Proponent, the Forest Service, the BLM and other agencies, the Prime Consultant, and any subcontractors where necessary; facilitate communications between the Forest Service, the Proponent, the Prime Consultant, and subcontractors to assure a timely and thorough exchange of relevant information among the parties; oversee the public involvement plan, including, without limitation, all necessary scoping meetings and other public reviews; and be responsible for other duties as required to complete the analysis. The goal is to facilitate appropriate and efficient communication between the Forest

Service, the BLM, the Prime Consultant, the Proponent, the public, and affected Federal, State, and local agencies, to expedite the flow of information necessary for the analysis.

2. Prepare and coordinate the BLM decision documents.

**G. THE PROPONENT SHALL:**

1. Establish a principal point of contact (see H.11) for the Proponent on all matters relating to the environmental analysis.
2. Develop and execute a contract with the Prime Consultant for the completion of the analysis on the Project which will be subject to review and written acceptance by the Agencies. The Proponent's views on the selection of a Prime Consultant will be solicited and considered, but the Prime Consultant will be approved by the Agencies.
3. Require a disclosure statement to be executed by the Prime Consultant, the Prime Consultant's professional personnel, and the Prime Consultant's subcontractors stating that the Prime Consultant, the Prime Consultant's professional personnel and the Prime Consultant's subcontractors have no financial interest in the outcome of the analysis or any Biological Assessment pertaining to the project proposed by the Proponent.
4. Provide to the Prime Consultant or the Agencies any justifiable, necessary, or relevant technical or environmental information it may have, which is needed (at the Agencies' discretion) for analysis preparation.
5. Respond to data requests and provide review comments (e.g., on description of the Project and changes thereto) within a reasonable time set by the Agencies. If the Proponent fails to provide requested materials on schedule, the analysis schedule will be adjusted by the Agencies to the extent necessary for timely completion of the proposal.
6. Respond to questions regarding the technical and economic feasibility of mitigation measures and related agreements as requested by the Agencies.
7. Be solely responsible for all Prime Consultant and subcontractor fees, costs, and expenses and make no claim against the Agencies for such fees, costs, and expenses.
8. Fund all reproduction, printing, and distribution of preliminary, draft, and final documents, unless otherwise agreed to by the Agencies.
9. Provide in contracts with the Prime Consultant and any subcontractors that they are not to conduct public surveys or questionnaires without prior approval of the Agencies.

**H. IT IS MUTUALLY AGREED AND UNDERSTOOD BY THE PARTIES THAT:**

1. The Prime Consultant will be under the supervision of the Agencies, and the Agencies will make the final determination concerning the scope and contents of the consultant's work. The contract between the Proponent and the Prime Consultant will specify compliance with all applicable legal requirements.
2. All information and data collected by the Prime Consultant and any subcontractors will be inserted in the administrative record.
3. The complexity and the independent nature of the NEPA process requires a common understanding of the roles of the Agencies' personnel, the Proponent, the Prime Consultant, and other interested persons, agencies, and organizations. The role of the Proponent is the same as it would be if the process were being entirely performed by the Agencies' personnel, with no Proponent financing.
4. The independent nature of the NEPA process creates the need to conduct the process with integrity. The Agencies will establish the process for the efficient flow of communication between the Prime Consultant, the Proponent, and the Agencies. Oral and written communications among ID team members are protected from disclosure to preserve the integrity of the deliberative process. Individuals who disclose this kind of information to the public and/or the Proponent will be excluded from further participation in the analysis.
5. The Prime Consultant is an important part of the interdisciplinary process and will aid and support the Agencies' ID Team.
6. All planning data, maps, files, reports, computer, audio or video tapes, and disks and other records will be made a part of the permanent administrative record.
7. In the event of a challenge to the legality or adequacy of the Agencies' compliance with NEPA with respect to the proposal of the Proponent, the Proponent, the Prime Consultant, the Prime Consultant's professional personnel, and the subcontractors shall, at the Proponent's expense, make available to the federal government all pertinent non-privileged information under their control, and to the extent reasonable, discuss such information with the government, and testify at deposition or trial regarding such information.
8. As required by NEPA, the Agencies will give full consideration to a "No Action Alternative" and other alternatives identified by the ID team that are technically and economically feasible and address the purpose and need and significant issues. The Proponent's financing of this analysis will have no bearing on the consideration given to the "No Action" or other alternatives.
9. Either party, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration. In the event of termination, it is agreed to as follows:

- a. The analysis preparation process will terminate.
- b. All documentation, reports, analyses, and data used in the analysis developed by the Proponent, the Prime Consultant, or the Prime Consultant's subcontractors up to the date of termination will be delivered to the Agencies and be placed in the administrative record.
- c. The Proponent's contract with the Prime Consultant will require the Prime Consultant to submit to the Agencies a written report on the environmental work and analyses done by the Consultant.
- d. Preparation of the analysis may be initiated by the Forest Service, consistent with federal government manpower and budget limitations.

10. This MOU in no way restricts the Agencies or the Proponent from participating in similar activities with other public and private agencies, organizations, and individuals.

11. The principal contacts for this MOU are:

Forest Service:

Susan J. Spear  
District Ranger  
GMUG National Forests  
Paonia Ranger District  
N. Rio Grand Ave. Box 1030  
Paonia, CO 81428  
(970) 527-4131

Bureau of Land Management:

Lynn Lewis  
Uncompahgre Field Office  
2505 S. Townsend  
Montrose, CO 81401  
(970) 240-5300

Proponent:

Trish Diehl  
Oxbow Corporation  
1601 Forum Place  
West Palm Beach, FL 33401  
(561) 640-8711

12. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not

establish authority for noncompetitive award to the Proponent of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

13. Changes within the scope of this MOU shall be made by the issuance of an executed modification signed by all parties.

14. This MOU is executed as of the last date shown below and expires no later than November 5, 2003, at which time it is subject to review and renewal, or expiration.

**THE PARTIES HERETO have executed this MOU.**

For the Bureau of Land Management

*Alamy Bell*  
Signature  
*Field Mgr*  
Title  
*12/10/02*  
Date

For the Forest Service

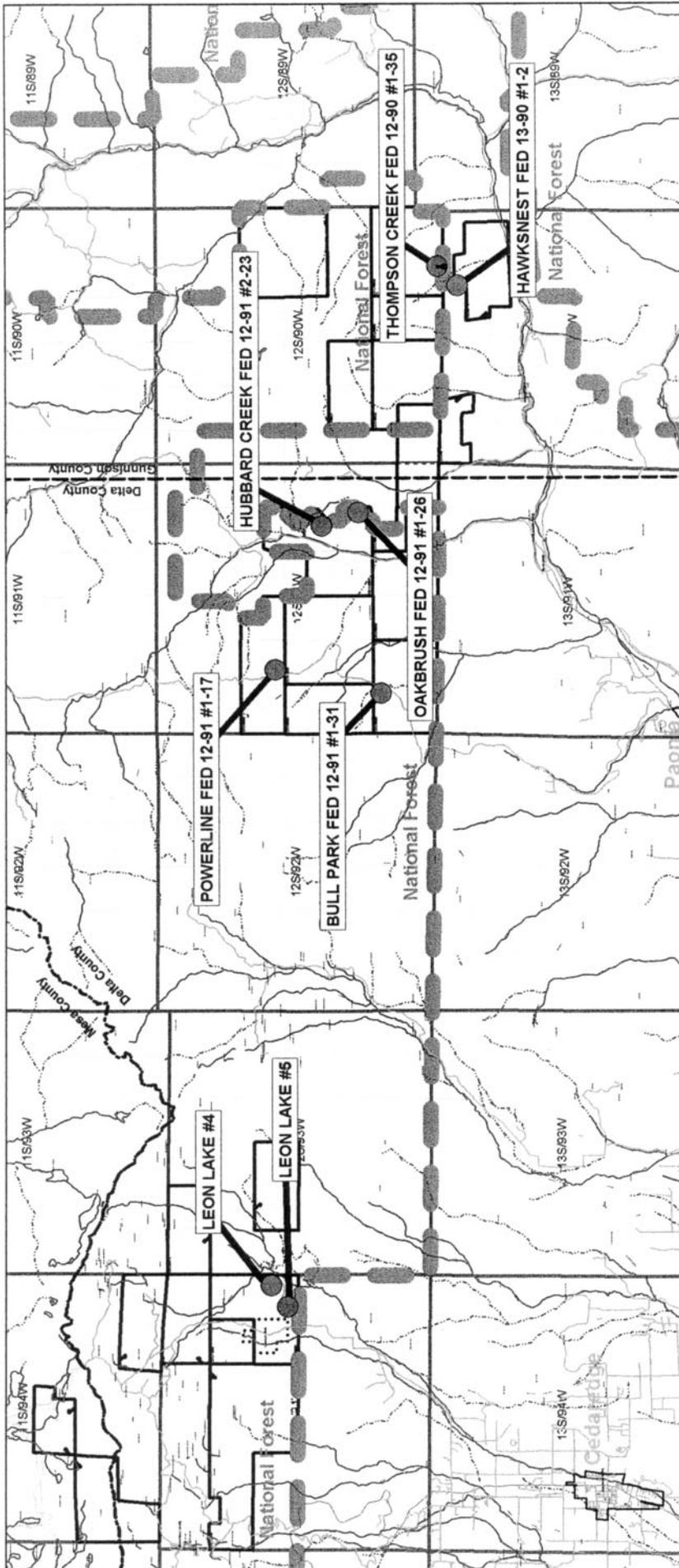
*Robert L. Storch*  
Signature  
*Forest Supervisor*  
Title  
*12/5/02*  
Date

For Gunnison Energy Corporation

*Of Oiehl*  
Signature  
*V. P. Environmental & Regulatory*  
Title  
*11/19/02*  
Date

The authority and format of this instrument has been reviewed and approved for signature.

*Merna Fehlman* *12-4-02*  
Merna Fehlmann DATE  
FS Agreements Coordinator



 <b>GUNNISON ENERGY CORPORATION</b>	
Insectin Drilling Program Delta and Gunnison County, CO	
Map Author: Eric F. Bantz	Scale: 1:27,700
Date: 1 November 2002	





**Legend:**

- Proposed IDP Well
- Directional Well - Surface
- ▬ Natl. Forest Boundary
- ▭ Federal Lease

**Exhibit B**  
**To**  
**Memorandum of Understanding**  
**Preliminary Project Schedule**

Project Initiation:

Sign MOU and approve contract with Prime Contractor	11/18/02
APDs Completed and Submitted	12/02/02
Project initiation meeting	12/09/02 <i>F. 11/02/02</i>

Scoping and Baseline Review

Scoping Period (30 days)	<i>12/20/02</i> <i>01/20/03</i> -12/20/02 to 01/20/03
Review baseline data and fill data gaps	<i>12/20/02</i> <i>01/20/03</i> 12/20/02 to 01/20/03
Line Officer Approval of Issues and Alternatives	<i>01/20/03</i> <i>02/10/03</i> 01/20/03 to 02/10/03

Environmental analysis Preparation and Review

Prepare draft EA	<i>21</i> 12/20/02 to 03/10/03
FS/BLM Review	<i>Checkpoint 3 - 2 wks</i> <i>21</i> <i>4/14/03</i> 03/10/03 to 03/24/03
Revisions by consultant and final review by Agencies	03/24/03 to 04/11/03
Print and distribute EA	04/11/03 to 04/25/03
Public comment period	04/28/03 to 05/28/03
<i>Response</i> Review comments and draft decision documents <i>Checkpoint 4</i>	05/28/03 to 06/25/03
Sign decision documents	06/26/03

It is acknowledged by the Parties that this schedule does not reflect the appeal periods required for NEPA decisions.

EXHIBIT C  
to  
MEMORANDUM OF UNDERSTANDING

COMMUNICATION PROTOCOL

1. All requests for information by the Agencies from the Proponent shall be made by contact (telephone, e-mail or otherwise as convenient) from the Project Manager to the Proponent's principal point of contact. The Project Manager may request the Proponent's principal point of contact to furnish the requested information either to the Project Manager, to the Prime Consultant, or to a Forest Service or BLM employee identified by the Project Manager.
2. All communications from the Proponent to the Agencies regarding the environmental analysis which is the subject of this agreement shall be made by the Proponent's principal point of contact with the Project Manager, unless the Project Manager instructs the Proponent's principal point of contact to communicate directly with another Agency employee or with the Prime Consultant. In addition, the Proponent may communicate directly with the Prime Consultant for purposes other than those described in paragraph 3 below in order to communicate technical information and manage its contract with the Prime Consultant. The parties recognize that the Proponent will need to contact representatives of the Agencies from time to time on matters which do not relate to the environmental analysis which is the subject of this agreement, and nothing contained herein shall limit communication on such other matters.
3. The Proponent shall not seek to influence the Prime Consultant on substantive matters of issue identification, impact analysis, alternative identification and mitigation development other than through discussions with the Project Manager as permitted by the terms of this Agreement.
4. Nothing in this agreement shall prevent the Proponent from participating in public review of the environmental analysis to the same extent as is permitted to any other member of the public.
5. Any information submitted to the Project Manager by the Proponent for purposes of this environmental analysis which the Proponent considers to be confidential commercial or financial information ("Confidential Business Information" or "CBI") exempt from disclosure under the Freedom of Information Act (FOIA) shall be labeled as such by the Proponent. In the event that a member of the public submits a FOIA request which describes Proponent's CBI, the Agencies will notify the Proponent of such request as provided under the terms of the respective Agency regulations (7 C.F.R. § 1.2 and 43 C.F.R. § 2.15).

## PROFESSIONAL SERVICES AGREEMENT

This Agreement is made as of this 1<sup>ST</sup> day of November, 2002, between Gunnison Energy Corporation, a Delaware corporation having a principal place of business at 1601 Forum Place, Suite P2, West Palm Beach, Florida, 33401 hereinafter referred to as "GEC"), and ENSR Corporation, a Delaware Corporation having a place of business at 1601 Prospect Parkway, Fort Collins, Colorado 80525-9769 (hereinafter referred to as "Consultant").

### RECITALS

WHEREAS, GEC is engaged in the business of exploration for and production of oil and gas, and GEC desires to engage the services of Consultant to provide the services set forth herein; and

WHEREAS, Consultant is an independent contractor able and willing to provide such services under the terms and conditions set forth herein,

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties hereto mutually agree as follows:

### AGREEMENT

**Article 1. Period of Performance.** This Agreement shall commence on the date hereof and shall remain in full force and effect until completion or termination as provided herein.

**Article 2. Character and Extent of Services.** Consultant shall perform the services described in Exhibit "A" (the "Services"), which exhibit is attached to this Agreement and incorporated herein by this reference. The Services shall be performed at the time and location set forth in Exhibit A.

**Article 3. Compensation.** The Services shall be performed for the compensation set forth in Exhibits A and B. Unless otherwise indicated herein, Consultant's compensation shall in no event exceed the not-to-exceed amount or amounts referred to in Exhibit "A" except as may be agreed in writing. Consultant shall submit invoices in duplicate to GEC, together with such supporting documentation as GEC may reasonably require, at the end of each month. Invoices shall include:

Federal Tax Identification Number  
or Social Security Number  
Current Agreement Budget  
Gross Amount Invoiced to Date  
Detail of Current Period Billing

GEC agrees to pay the amount due to Consultant for the Services on or before the thirtieth day following receipt of Consultant's invoice, properly documented as set forth above.

**Article 4. Assignment.** Consultant's obligations authorized under this Agreement are not assignable or transferable without prior written approval of GEC.

**Article 5. Responsibility; Liability.** Consultant warrants that it will exercise in its performance of the Services the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. Consultant agrees to correct or re-perform any services not conforming to this standard, at no cost to GEC, if notified within one (1) year following the completion of the Services. Except as set forth in Article 6, Consultant's liability to GEC hereunder shall not exceed Consultant's total compensation for the Services.

**Article 6. Indemnification.** Consultant specifically agrees to hold harmless and indemnify GEC against all loss, liability, damage and expenses, including claims arising out of any injury, disability, death or property damage, to the extent caused by any negligent acts or omissions of Consultant, its employees or agents hereunder. It is understood that the intent of this provision is to absolve and protect GEC from any and all loss, liability, damage and expense caused by or connected with the negligent acts or omissions of Consultant in connection with the work hereunder.

**Article 7. Ownership of Work Product.** All technical data, evaluations, reports and other work product of Consultant hereunder shall become the property of the U.S. Forest Service and the Bureau of Land Management (jointly referred to as the "Agencies") and shall be delivered to the Agencies upon termination of this agreement or upon completion of the Services as authorized hereunder. Consultant may retain copies of its work product hereunder for research and other internal uses; however, no information contained therein shall be disclosed to any third party or used for the benefit of any entity other than GEC without GEC's prior written consent. Consultant shall not be liable for use by GEC of its work product on projects other than that covered by this Agreement.

**Article 8. Independent Contractor Relationship.** In the performance of the Services hereunder, Consultant shall be an independent contractor and not an employee of GEC, with the sole authority to control and direct the performance of the details of the work (subject to supervision by the Agencies), GEC being interested only in the results obtained.

## **Article 9. Legal Requirements.**

Consultant shall comply with all applicable ordinances, laws, orders, rules and regulations pertaining to its Services hereunder, and shall obtain all necessary authority to perform such Services.

**Article 10. Confidentiality.** Consultant shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the Services or the business of GEC and/or any affiliated corporations, or use the same for its own benefit or for the benefit of any entity other than GEC, without the prior written consent of GEC. Consultant shall prevent its employees, agents and subcontractors from disclosing confidential information to unauthorized persons or misusing the same. The aforesaid provisions of confidentiality shall not apply to information which Consultant can demonstrate is or was: (a) in the public domain, (b) in Consultant's possession prior to the time of disclosure, (c) obtained from a third party which Consultant reasonably believed did not obtain the information directly or indirectly from GEC, (d) independently developed by Consultant, or (e) required to be disclosed by law or court order.

**Article 11. Examination of Records.** Consultant agrees that GEC or any of its duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and accounting records of Consultant which pertain to transactions under this Agreement during the pendency of this Agreement and for a period of three (3) years after expiration of this Agreement.

## **Article 12. Insurance.**

a. During the course of performance of the Services, Consultant shall maintain the following insurance coverage at no additional cost to GEC, and Consultant will pay the deductibles under such coverage:

Workmen's Compensation Insurance as required by law, including Employer's Liability Insurance with aggregate limits of not less than \$1,000,000.

Comprehensive Public Liability Insurance covering claims for injuries to or death of one or more persons and damage to property arising out of the performance of Consultant's services, with aggregate limits of not less than \$1,000,000.

Automobile Liability Insurance covering claims for injuries to or death of one or more persons and damage to property caused by motor vehicles, owned or hired, with aggregate limits of not less than \$1,000,000.

Professional Errors and Omissions Insurance covering claims for injuries to or death of one or more persons and damage to property arising out of the performance of Consultant's Services, with aggregate limits of not less than \$1,000,000.

b. Consultant shall obtain endorsements waiving subrogation against GEC and its affiliates under the insurance policies described above except Professional Errors and Omissions. In addition, except as to workmen's compensation insurance and Professional Errors and Omissions, GEC shall be named as an additional insured thereunder.

c. Consultant shall furnish certificates showing that the above insurance coverages and endorsements will be in effect during the term of this Agreement, and specifying that GEC must be given thirty (30) days prior written notice of cancellation, termination, or alteration of the policies evidenced by such certificates.

### **Article 13. Termination of the Agreement.**

a. Termination for Convenience. GEC may upon written notice terminate this Agreement for GEC's convenience, with or without cause, and regardless of whether Consultant is in default. In the event of such termination, GEC shall compensate Consultant for Services performed satisfactorily up to and including the termination day. In addition, for any equipment purchased in connection with the Services, GEC shall compensate Consultant for the charges associated with it unless the order for said equipment can be canceled or the equipment can be returned to the supplier at no cost to Consultant. If the equipment order cannot be canceled or the equipment returned, Consultant shall transfer and assign title to such equipment to GEC within ten (10) days of termination of this Agreement.

b. Termination for Cause. GEC may terminate this Agreement at any time, by giving written notice to Consultant specifying the effective date of termination, if:

(1) Consultant shall become insolvent, or make a general assignment for the benefit of creditors, or any proceeding is brought by or against Consultant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy acts or under any other applicable federal or state law or regulation, or any proceeding is brought seeking the appointment of a receiver or similar officer of court with respect to Consultant's business;

(2) Consultant repeatedly refuses or fails to supply enough properly skilled workmen or equipment or materials of the proper quality or quantity to perform the Services;

(3) Consultant disregards laws, ordinances, government rules or regulations, or repeatedly disregards instructions of the Agencies or GEC's representative which are consistent with this Agreement; or

(4) Consultant is guilty of a material breach or violation of any provision of this Agreement, and fails to remedy such breach or violation within thirty (30) days after receipt of written notice from GEC.

In the event of such termination:

(1) All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other materials prepared (subject however to Consultant's nonexclusive rights to use the same as set forth in Article 7) or equipment purchased by Consultant under this Agreement shall become the property of the Agencies; and

(2) Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

**Article 14. Entire Agreement and Amendments.** This instrument constitutes the entire Agreement between the parties covering the subject matter and supersedes any and all other prior agreements and understandings, either oral or in writing, between the parties hereto with respect to the subject matter hereof. No modification or amendments to this Agreement shall be valid unless in writing and signed by the parties.

**Article 15. Notices.** Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing, or by certified mail, return receipt requested, postage prepaid, effective when received or on the fifth day following the date mailed, whichever is sooner. The addresses for notice shall be those set forth on the first page of this Agreement, unless such addresses are changed by written notice given in compliance with this Article 15.

**Article 16. Liens.**

a. Consultant shall promptly pay all bills incurred by Consultant in performance of the Services hereunder, including, without limitation, bills for labor, services, equipment and materials.

b. Consultant shall not voluntarily permit any laborer's, materialmen's, mechanic's, or other liens to be filed or otherwise imposed on any of GEC's property on the behalf of Consultant or any of its employees, agents, or subcontractors. If any such lien or claim is filed and if Consultant does not cause such lien to be released and discharged forthwith, or file a bond in lieu thereof, GEC shall have the right to pay all sums necessary to obtain release and discharge and deduct all amounts so paid from the payments due then or thereafter hereunder.

**Article 17. Governing Law.** This Agreement and all questions concerning the execution, validity or invalidity, capacity of the parties and the performance of this Agreement, shall be interpreted in accordance with the laws of the State of Florida,

excluding choice-of-law provisions which would direct application of the laws of another state.

**Article 18. Attorneys' Fees.** If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which it may be entitled.

**Article 19. Remedies.** Neither party, not their parent, affiliated or subsidiary companies, nor the officers, directors, agents, employees of contractors of any of the foregoing, shall be liable to the other in any action or claim for incidental, indirect, special, collateral, consequential, exemplary or punitive damages arising out of or related to the Services, whether the action in which recovery of damages is sought is based upon contract, tort (including, to the greatest extent permitted by law, the sole, concurrent or other negligence, whether active or passive, and strict liability of any protected individual or entity), statute or otherwise.

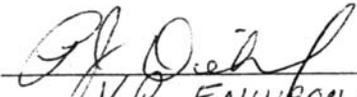
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in their respective names as of the day and year first above written.

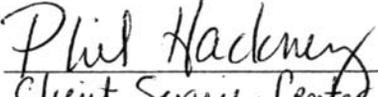
GUNNISON ENERGY CORPORATION

ENSR CORPORATION

"GEC"

"Consultant"

By:   
Title: V.P. ENVIRONMENTAL

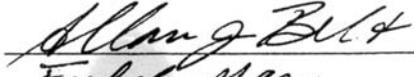
By:   
Title: Client Service Center Manager  
Colorado Operations

Reviewed and accepted by:

U.S. FOREST SERVICE

BUREAU OF LAND MANAGEMENT

By:   
Title: FOREST SUPERVISOR

By:   
Title: Field Mgr

**Exhibit A**  
**To Professional Services Agreement**  
**Between Gunnison Energy Corporation and ENSR Corporation**

**SCOPE OF WORK:**

As the third-party consultant to the U.S. Forest Service (FS) (Paonia Office) and U.S. Bureau of Land Management (BLM) (Montrose Field Office), ENSR will prepare an Environmental Assessment (EA) for Gunnison Energy Corporation's (Gunnison Energy) proposed Natural Gas Exploratory Drilling Project located near Paonia, Colorado. The Project consists of eight exploratory wells and their access roads. The FS, BLM, and Gunnison Energy will determine the EA schedule. ENSR will be responsible for the following tasks:

- Prepare and distribute a Draft EA (30 paper copies) for internal review by the FS and BLM. It is assumed that the EA analysis will address the Proposed Action (eight well pad sites and access roads), No Action Alternative, and possibly one or two alternatives involving the pads or access roads.
- Prepare and distribute the EA for public review (assume 210 paper copies). The EA will incorporate all agency comments and required revisions. ENSR recognizes that multiple revisions may be needed before the EA is accepted by the Agencies for public review.
- Prepare written responses to public comments on the EA and identify EA revisions (i.e., errata) for distribution to the public (assume 210 paper copies). It is assumed that the complete revised EA will not be redistributed.
- Assist the FS and the BLM in preparing portions of the Decision Record.
- Develop a public involvement plan under the direction of the FS and BLM.
- Develop one information mailer/newsletter (assume 500 mailings). Develop three news releases for: 1) scoping period, 2) comment period, and 3) the release of the final analysis and decision documents. The news releases and mailer/newsletter will be available on the project web site.
- Arrange for and participate in the agency and public scoping meetings and make available to the public a summary of the results. It is assumed that three public forums will be held on consecutive nights (Paonia, Cedaredge, and one other location). A database of public scoping comments will be prepared.
- Design visual aids for scoping meetings including maps, handouts, poster boards, mailers, etc.
- Develop an internet site that would provide details on the project during scoping and preparation of the EA. The project web site will be linked to FS and BLM web sites. It is assumed that the web site will be available for 10 months.

- Develop a mailing list at the direction of the FS and BLM.
- Conduct and complete necessary studies, inventories, and suitable reports for all resource values identified in the scoping process. These resource values will include but not be limited to: Air, Cultural Resources, Geology, Land Use, Noise, Recreation, Socioeconomics, Soils, Transportation, Threatened and Endangered and Sensitive Plant and Animal Species, Vegetation, Visual Resources, and Wildlife. A "Roads Analysis Procedures" will be completed as part of the transportation section of the EA. If additional studies are identified during discussions with the FS and BLM, these studies will be included upon additional authorization by Gunnison Energy. ENSR has already completed field studies for wetlands and wildlife habitat characterization for the well pads and access roads.
- Three biological surveys will be conducted in the spring of 2003 (May through June) to collect data on raptors, migratory birds, and sensitive species. Survey results will not be available until after the EA is distributed to the public on April 25, 2003. The results will be used to finalize environmental protection measures for the Decision Record.
- Prepare one visual simulation of one well site from a representative or "typical" viewpoint.
- Collect and review information from the subcontractors. This information will include the following resources: Paleontology and Cultural Resources (Metcalf Archeological Consultants, Inc.), Socioeconomics (Hammer Siler George Associates), and Geology and Surface/Ground Water Hydrology (Wright Water Engineering). ENSR will incorporate the results of the subcontractor studies into the EA.
- Maintain the Administrative Record for the EA analysis under the supervision of the FS.
- Participate in four meetings for the EA:
  - 1) Project initiation meeting with the FS, BLM, and Gunnison Energy in Montrose to review the MOU/contract and discuss the EA analysis.
  - 2) Interdisciplinary (ID) Team meeting in Montrose to discuss the EA issues, data needs, and analysis.
  - 3) Draft EA review meeting in Montrose with the FS and BLM to discuss revisions resulting from agency review of the EA.
  - 4) EA comment response meeting in Montrose with the FS and BLM to review public comments received on the EA.
- A separate Biological Assessment/Evaluation will be prepared for analysis of potential impacts on federally listed, federal candidate, FS sensitive, and BLM special concern species. It is assumed that approximately 15 species will be analyzed in the document.

### **LOCATION OF PERFORMANCE:**

Consultant shall perform the Services at its office in Fort Collins, Colorado; the Gunnison Energy site locations near Paonia, Colorado; and such other locations in Colorado as the parties hereto mutually agree are necessary or appropriate.

### **TIME OF PERFORMANCE:**

Performance of the Services shall be expedited to implement the time line attached as Exhibit B to the Memorandum of Understanding among Gunnison Energy, the FS, and the BLM. However, the parties acknowledge that events beyond Contractor's control may make compliance with that timeline impossible. Contractor shall use all commercially reasonable efforts to insure that its actions or inactions do not result in delays to the schedule contained in the timeline, as such schedule may be revised from time to time.

**COMPENSATION:** Consultant shall be paid for the Services as follows:

- Services - At the stipulated rates.
- Out-of-Pocket Expenses - At Consultant's actual cost.
- Consultant's standard charges for internal reimbursables such as photocopying, phone, fax, and computer charges.
- Permit Application Fees - Not included; these will be paid directly by Gunnison Energy Corporation
- Any Services performed by subcontractors shall be billed at actual cost, without markup or surcharge.

The total value of Services performed under this Agreement, inclusive of out-of-pocket expenses, shall not exceed \$ \_\_\_\_\_ without the prior written approval of Gunnison Energy Corporation.



United States  
Department of  
Agriculture

Forest  
Service

Grand Mesa,  
Uncompahgre and  
Gunnison  
National Forests

2250 Highway 50  
Delta, CO 81416  
Voice: 970-874-6600  
TDD: 970-874-6660

File Code: 1580-2

Date: JAN 6 2 2003

Lynn Lewis  
Bureau of Land Management  
Uncompahgre Field Office  
2505 S. Townsend  
Montrose, CO 81401

Dear Ms. Lewis:

Enclosed is an executed copy of Memorandum of Understanding #03-MU-11020400-005. The purpose of this agreement is to articulate the working arrangement whereby a third-party consultant will prepare an environmental analysis to analyze the natural gas exploration plan..

Susan Spear is the project manager for this agreement. If you have any questions please call Susan @ (970) 527-4131.

We look forward to working with you on this project.

Sincerely,

ROBERT L. STORCH  
Forest Supervisor

Enclosure

✓ cc: Susan J Spear

DISTRICT RANGE \_\_\_\_\_ DATE \_\_\_\_\_  
 MINERAL \_\_\_\_\_  
 LANDS/ENC \_\_\_\_\_  
 RANGE \_\_\_\_\_  
 WILDLIFE \_\_\_\_\_  
 GDA \_\_\_\_\_  
 BLM/BLM ANST \_\_\_\_\_  
 LEO \_\_\_\_\_  
 TIMBER \_\_\_\_\_

JAN 6 2003

✓ S