

FS Agreement No. 11-MU-11021300-001
Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
TOWN OF RICO, COLORADO
And The
USDA, FOREST SERVICE
SAN JUAN NATIONAL FOREST

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Town of Rico, hereinafter referred to as "Cooperator," and the USDA, Forest Service, San Juan National Forest, hereinafter referred to as the "U.S. Forest Service."

Background: The U.S. Forest Service is the lead agency with responsibility for the completion of the "San Juan National Forest Plan Revision/Bureau of Land Management Resource Management Plan" (Plan Revision), DEIS (Draft Environmental Impact Statement) and FEIS (Final Environmental Impact Statement).

Title: Town of Rico, Participation in Plan Revision Process

- I. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to: 1) Formally designate the Town of Rico as a "Cooperating Agency" in the Plan Revision, DEIS and FEIS; 2) Formalize and provide a framework for cooperation and coordination between U.S. Forest Service and the Town of Rico that will be necessary in order to successfully complete the Plan Revision and Environmental Impact Statement (EIS) in a timely, efficient, and thorough manner; 3) Describe the respective roles, responsibilities, jurisdictional authority, and expertise of each entity in the planning process; and 4) Ensure that the working relationship between U.S. Forest Service and the Town of Rico meets the purpose and intent of the National Environmental Policy Act (NEPA); in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

Under federal law, the U.S. Forest Service is the lead agency for a joint United States Department of the Interior (USDI), Bureau of Land Management (BLM) and United States Department of Agriculture (USDA), United States Forest Service (USFS) Plan Revision. The Plan Revision must conform to requirements of the National Environmental Policy Act (NEPA). U.S. Forest Service has the responsibility for the content of the Plan Revision and its conformance to NEPA, including the Draft Environmental Impact Statements (DEIS) and the Final Environmental Impact Statement (FEIS). U.S. Forest Service is also responsible for requesting the participation of other federal, tribal, state and local government agencies and entities, and cooperatively using their expertise as it conducts the plan revision process.



In pursuing this responsibility, the U.S. Forest Service seeks to enlist the Town of Rico as a "Cooperating Agency" – a special status among interested parties – in order to engage its full participation in the planning process. It is the intention of the MOU to establish an atmosphere of cooperation between the parties where full recognition and respect to the authority and responsibility of both of the government entities is recognized.

Under Colorado Law, the Town of Rico has interests both within their Home Rule Charter authority of town, specific focus encompassing the 3 mile radius, as well as Town of Rico activities, including those activities taking place on National Forest System lands; therefore, it has a high level of interest in the outcome of the Plan Revision. U.S. Forest Service recognizes that the Town of Rico has knowledge and expertise relative to social and economic aspects of the adjacent and surrounding areas, and its subdivisions in providing long-term direction for community growth and development, and in town resources, economic growth and development, town planning, transportation, and other pertinent matters, all of which may be addressed in the Plan Revision.

Additionally, U.S. Forest Service and the Town of Rico both have interests in maintaining the quality of the human environment, the regional economy, the sustainability of the local community, public health, and the regional resource base.

Town of Rico asserts that applicable federal and state law accord it all the rights and privileges regarding access to planning documents and processes contemplated in this MOU. Nonetheless, the Town of Rico desires to enter into the MOU because of its interest in participation with the U.S. Forest Service in a fully collaborative planning process.

The Town of Rico reserves the right to protest and/or object to the proposed decisions of the revised plan.

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

III. TOWN OF RICO SHALL:

- A. Be a cooperating agency in this planning process.
- B. Submit its comments and independent recommendations to U.S. Forest Service in all areas of the plan and for its comments and recommendation to be incorporated in the Plan Revision/EIS to the maximum extent possible.
- C. Agree that all internal working draft documents for the development of the Plan Revision are pre-decisional and will not receive copies of any documents until those documents are available for public review.



- D. Provide information, data, and opinions to U.S. Forest Service regarding those elements of the Plan Revision and EIS, and the data and analyses underlying them, in which it is interested or for which U.S. Forest Service requests information and opinions.
- E. Participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the effectiveness of the proposed Plan Revision and all alternatives.
- F. Receive all drafts available for public review of the Plan Revision and EIS and comment on potential impacts on the Town of Rico, particularly on the environment, roads, and the economy. The Town of Rico's reviews will be within the umbrella of NEPA (preliminary range of alternatives, relevant portions of; affected environment, environmental consequences and consultation and coordination sections) and related legislation regarding the proposed plan and alternatives that may be proposed. The Town of Rico will return comments on the drafts to U.S. Forest Service in a timely manner (within a recommended 30 days of receipt).

IV. THE U.S. FOREST SERVICE SHALL:

- A. Be the lead agency, with responsibility for initiating the plan revision process and EIS. While the U.S. Forest Service sets the established planning schedule and pace of the plan, it will work with the Town of Rico to the extent practical to adhere to this established schedule.
- B. Have responsibility for determining the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected, and what mitigation measures will be included. In meeting this responsibility, U.S. Forest Service will follow all applicable statutory and regulatory requirements.
- C. U.S. Forest Service will develop the Plan Revision under the coordination and involvement requirements of federal law, and include the Town of Rico interests in its Plan Revision conclusions. U.S. Forest Service will provide separate rationale for Town of Rico concerns/issues that are not included in the Plan Revision.
- D. Consider the Town of Rico authority, planning priorities, values and goals as expressed in the Town of Rico land Use Code and Town of Rico Master Plan, and Three Mile Planning area which addresses present and future needs and concerns of the Town of Rico including:



1. Protecting private property rights and property values
2. Economic health
3. Preservation of recreational pursuits
4. Industrial and commercial development (including major pipeline and powerline corridors)
5. Residential development
6. Open space and wildlife
7. Residential density and rural character
8. Infrastructure, services and costs of growth
9. Water quality and quantity
10. Federal lands
11. Intergovernmental relations
12. Historic preservation
13. Recognition and protection of wetlands, headwaters and watersheds

- E. Provide the Town of Rico access to documents underlying the Plan Revision and EIS drafts that have been made available for public review, including technical reports, data, information, analyses, comments received, and working drafts relative to the environmental reviews, preliminary and final plans and NEPA documents, and all comments and information necessary for the EIS and its conclusions.
- F. Incorporate to the maximum extent possible, the comments, recommendations, and/or data submitted by the Town of Rico in the Plan Revision and EIS.

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

- A. The Town of Rico may implement town land use plans, studies, and management guidelines to address town and surrounding area issues involving public lands and other lands within its boundaries as long as those plans are consistent with federal plans. This MOU is not meant to impair the right of the Town of Rico under state and federal law to participate in and influence federal land use planning and administration, including the right to consistency review of federal land use plans and decisions as they relate to the Town of Rico Land use plan.
- B. The Parties agree to participate in the planning process in good faith and make every effort to resolve any perceived areas of conflict.
- C. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.



Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Name: Barbara Betts, Mayor Address: Post Office Box 9 City, State, Zip: Rico, CO 81332 Telephone: (970) 967-2203 FAX: (970) 967-2862 Email: Barbara@telluridecolorado.net	Name: Jennifer Stark, Planner Address: Post Office Box 9 City, State, Zip: Rico, CO 81332 Telephone: (970) 560-5945 FAX: (970) 967-2862 Email: stark@ricocolorado.org

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Mark Lambert, Assistant Center Manager/Planning, Public Service Address: 15 Burnett Court City, State, Zip: Durango, CO 81301 Telephone: (970) 385-1240 FAX: (970) 385-1243 Email: mblambert@fs.fed.us	Name: Beth Redmond, Grants and Agreements Specialist Address: 15 Burnett Court City, State, Zip: Durango, CO 81301 Telephone: (970) 385-1259 FAX: (970) 385-1243 Email: bredmond@fs.fed.us

- D. **NON-LIABILITY**. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this instrument.
- E. **NON-LIABILITY**. The Town of Rico does not assume liability for any third party claims for damages arising out of this instrument.
- F. **NOTICES**. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or Cooperator 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 Cooperator, at Cooperator's 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.

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



- H. ENDORSEMENT. Any of Cooperator's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of Cooperator's products or activities.
- I. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at 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 instruments 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 instrument 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 instrument, 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 instruments must comply with all applicable law

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

- J. 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 instrument, or benefits that may arise therefrom, either directly or indirectly.
- K. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- L. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- M. DEBARMENT AND SUSPENSION. Cooperator 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 Cooperator or 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.

N. 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.

O. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through 9/30/2012 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

P. 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. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

Barbara K. Betts 1-19-2011
BARBARA BETTS, Mayor; Rico Town Board of Trustees Date
Town of Rico, Colorado

Mark W. Stiles 1/21/2011
MARK W. STILES, Forest Supervisor/Center Manager Date
U.S. Forest Service, San Juan National Forest

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

Beth Redmond 01/11/2011
BETH REDMOND, Date
U.S. Forest Service Grants & Agreements Specialist

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.

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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 and employer.