

May 2023

**Programmatic Agreement
Among
U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer
Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County, Arizona**

WHEREAS, the U.S. Environmental Protection Agency (EPA) is evaluating an Underground Injection Control (UIC) Class III Area permit application, submitted by Florence Copper Inc., now known as Florence Copper LLC (FC LLC), for the construction and operation of the Florence Copper Project (FCP), Commercial In-Situ Copper Recovery (ISCR) Facility; and

WHEREAS, EPA has determined that issuance of a UIC permit for the proposed FCP Commercial ISCR Facility makes the FCP an “Undertaking” subject to review by EPA pursuant to Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 *et seq.*) and its implementing regulations, “Protection of Historic Properties” (36 C.F.R. Part 800); and

WHEREAS, EPA has identified 1,342 acres as the Undertaking’s area of potential effects (APE), which includes the 1,182 acres owned by FC LLC and the 160-acre Arizona State Trust lease, which is administered by the Arizona State Land Department (ASLD) and held as a mineral lease by FC LLC, (Attachment A, Figure 1); and

WHEREAS, FC LLC will implement the FCP Commercial ISCR Facility, including a wellfield, a processing area with a solvent extraction and electrowinning plant, fire suppression system, fueling area, neutralization plant, electrical substation, switchyard, transmission line extension, pipeline corridors, water impoundments, and additional infrastructure; and

WHEREAS, construction of ISCR wells and related ground disturbing activities is expected to occur in phases over an initial well construction and testing period, up to a 24-year period of mining operations, and post closure monitoring is expected to occur over a minimum five-year period; and

WHEREAS, EPA has determined, pursuant to 36 C.F.R. § 800.5(a), that the Undertaking will have an adverse effect on up to 29 properties that it determined were eligible for inclusion on the National Register of Historic Properties (National Register) and therefore historic properties (see Table 1.2 in the Historic Properties Treatment Plan (HPTP)); and

WHEREAS, the FCP will develop the wellfield operations in phases and EPA has developed this Programmatic Agreement (PA or Agreement) in consultation with the Consulting Parties pursuant to 36 C.F.R. § 800.14(b)(3) in order to set forth the process to resolve adverse effects on historic properties from the phases of project development; and

WHEREAS, EPA initiated consultation with the Arizona State Historic Preservation Officer (SHPO) as SHPO is authorized to enter into this PA in order to fulfill its role of advising and assisting federal agencies in carrying out their responsibilities under Sections 101 and 106 of the NHPA and 36 CFR §§ 800.2(c)(1)(i) and 800.6(b) of the Section 106 implementing regulations, and SHPO is a Signatory to this Agreement; and

WHEREAS, EPA has consulted with FC LLC as the applicant for the UIC permit and the party responsible for implementing any mitigation actions agreed to in this PA, and has invited FC LLC to be an Invited Signatory to this agreement pursuant to 36 C.F.R. § 800.6(c)(2); and

WHEREAS, EPA, in consultation with SHPO, and Consulting Parties, has identified multiple mitigation measures as described in this PA to resolve adverse effects to historic properties and EPA and FC LLC have agreed to implement them; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), EPA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen to participate, and is a Signatory to this Agreement; and

WHEREAS, EPA has consulted with Arizona State Land Department (ASLD) as grantor of the mineral lease and has invited the ASLD to be an Invited Signatory to this PA pursuant to 36 C.F.R. § 800.6(c)(2); and

WHEREAS, EPA has consulted with the Bureau of Indian Affairs, San Carlos Irrigation Project (BIA-SCIP), the federal agency with responsibilities for the North Side Canal, which is eligible for inclusion on the National Register; BIA has agreed that EPA is the lead agency and EPA has invited BIA-SCIP to be an Invited Signatory to this PA pursuant to 36 C.F.R. § 800.6(c)(2); and

WHEREAS, EPA has consulted with the Gila River Indian Community (GRIC), the Tohono O’odham Nation, the Hopi Tribe, the Yavapai-Prescott Indian Tribe, all of whom have identified religious and cultural significance for multiple historic properties within the APE and EPA has invited them to concur in this Agreement; and

WHEREAS, the GRIC conducted sensitivity training for FC LLC staff and contractors during the Production Test Facility (PTF), and will continue to do so during the FCP Commercial ISCR Facility upon request; and

WHEREAS, the Tohono O’odham Nation has identified groundwater in the area as sacred to their Tribe, is opposed to the project’s potential impacts to groundwater, and believes that all impacts to archaeological sites of the Escalante Community should be avoided; and

WHEREAS, the Hopi Tribe supports the identification and avoidance of prehistoric archaeological sites, considers all historic properties associated with the Escalante Ruin Community to have traditional cultural significance, and considers the archaeological remains of former settlements within the identified historic properties to be ancestral “footprints;” and

WHEREAS, the GRIC has identified the Escalante Ruin (AZ U:15:3[ASM]) as a Traditional Cultural Property (TCP) as defined in Bulletin 38 for its association with the cultural practices or beliefs of a living community that are rooted in the Community's history and are important in maintaining the continuing cultural identity of the Community (National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties; 1990, Revised 1992,1998). The GRIC views all historic properties associated with the Escalante Ruin Community to have traditional cultural significance, an interconnectedness, and to be sacred, and opposes the project's potential adverse effects upon these places and to the 29 archaeological sites for the FCP Commercial ISCR Undertaking; and

WHEREAS, EPA has consulted with the National Park Service, Casa Grande Ruins National Monument, Archaeology Southwest, and Town of Florence and has invited all to concur in the PA; and

WHEREAS, EPA has consulted with the Arizona State Museum (ASM), which grants permits for archaeological investigations on state land according to Arizona Revised Statutes (A.R.S.) §41-841 et seq., is responsible for implementation of the Arizona Antiquities Act, and is responsible for coordinating responses to the discovery of any human remains on state and private land under A.R.S. §§ 41-844 and 41-865, and has invited ASM to concur in the PA; and

WHEREAS, pursuant to 36 CFR § 800.2(d)(1) and (2), EPA will solicit and consider public comment throughout the Section 106 process, utilizing accepted practices; and

NOW, THEREFORE, EPA, ACHP, and SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

EPA shall ensure the following measures are carried out:

- I. Roles and Responsibilities and Terminology Regarding Parties to the PA
 - A. EPA is the lead Federal agency responsible for administering and implementing this Agreement. These responsibilities include, but are not limited to, consulting and coordinating with Consulting Parties; conducting Government-to-Government consultation with the Tribes; ensuring all signatories assigned responsibilities under the PA carry out their responsibilities; overseeing all cultural resource management work in coordination with the appropriate Consulting Parties including developing and implementing a historic properties treatment plan (HPTP), and the preliminary and final data recovery reports; and seeking SHPO concurrence with all agency decisions as required by 36 C.F.R. 800 relating to the treatment of historic properties.
 - B. FC LLC is responsible for ensuring training is completed by its employees and contractors on standard operating procedures pursuant to Stipulation X of this agreement; drafting and implementing a HPTP as agreed to by the Signatories

through the consultation process; providing reports to Consulting Parties on behalf of EPA; and implementing additional mitigation measures per Stipulation V of the PA as appropriate.

C. The definitions in this PA follow 36 C.F.R. § 800.16 unless otherwise specified.

1. As in the Section 106 regulations, the term Signatory in the stipulations refers to both mandatory Signatories whose signature is required to legally execute the agreement (see 36 C.F.R. § 800.6(c)(1)) and also parties invited to be Signatories (Invited Signatories) (see 36 C.F.R. § 800.6(c)(2));
2. The term “Party or Parties” refers to Signatories (mandatory and Invited) and to Consulting Parties;
3. The term “Consulting Party” or “Consulting Parties” refers to all the parties that EPA invited into the consultation and consulted with regarding the Undertaking, which depending upon context may include SHPO and ACHP and any Invited Signatories.
4. The term “Participating Tribe” or “Participating Tribes” refers to one or more of the following Tribes: the Gila River Indian Community, the Tohono O’odham Nation, the Hopi Tribe, the Yavapai-Prescott Indian Tribe.

II. Professional Qualifications

- A. For all cultural resource-related activities, FC LLC shall ensure that the work carried out pursuant to this PA meets the *Secretary of the Interior’s Standards for Archaeology and Historic Preservation*, in accordance with Section 112(a)(1)(A) of the NHPA, 54 U.S.C. 306131, and 36 C.F.R. § 800.2(a)(1) of the implementing regulations. All cultural resource-related work shall be conducted by or under the direct supervision of an archaeologist who meets the qualifications set forth therein.
- B. In recognition of the special expertise tribal experts have concerning properties of traditional religious and/or cultural significance, the standards of 36 C.F.R. § 800.2(a)(1) will not apply to tribally designated representatives carrying out identification and evaluation efforts for such properties of tribal interest.

III. Resolution of Adverse Effects

- A. FC LLC shall, if possible, avoid adverse effects to historic properties. For the FCP Commercial ISCR Facility development designs, FC LLC reconfigured the Processing Area, the Pipeline Corridor between the Processing Area and the Wellfield, and the 12.5 kV transmission line to avoid historic properties. In ongoing and future operations, FC LLC will continue to avoid historic properties as required in the HPTP. Other avoidance measures for historic properties may include (but are

not limited to) fencing of sites during construction, and/or monitoring of construction near site areas within a buffer zone.

- B. Where avoidance is not possible, FC LLC shall minimize or mitigate adverse effects to historic properties through the development and implementation of a HPTP. In addition, FC LLC has agreed to additional mitigation pursuant to Stipulation VIII. The HPTP (see Stipulation IV) is developed in consultation with the parties to the Agreement and specifies a program of measures to avoid, minimize (if applicable) and/or mitigate adverse effects. While an initial inventory of cultural resources has been conducted, subsequent selection and implementation of treatment plans may occur in phases but must occur prior to any work or physical disturbance that might affect such resources.
- C. EPA shall ensure in coordination with the appropriate Consulting Parties that the HPTP is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-44737), and the Arizona Antiquities Act. EPA shall make this PA and the associated HPTP a condition of any UIC Permit issued.

IV. Historic Properties Treatment Plan

- A. The HPTP dated April 2022 (Attachment B) will be implemented when the PA is signed. Where the HPTP refers to Florence Copper Inc. it shall mean Florence Copper LLC. The EPA considered comments and input from all Signatories and Consulting Parties on resolving adverse effects of the Undertaking prior to finalizing the HPTP and the PA. The Memorandum of Agreement (MOA) dated October 16, 2015 will terminate when the PA is signed.
- B. As an Attachment to this PA, the terms of the HPTP are binding upon the Signatories and Invited Signatories, as applicable.
- C. Continuing Tribal Consultation
 - 1. EPA shall continue to consult throughout the duration of this PA with all Participating Tribes to determine their interest and specific levels of participation and roles in implementation of the HPTP.
 - 2. EPA shall ensure that all Participating Tribes, as well as any other tribes interested in specific aspects of the HPTP where involvement is voluntary and not mandatory as in Stipulation VIII of this PA, are included in such plans developed for treatment of cultural items found within the APE.
 - 3. The level of involvement shall be coordinated by the EPA, with FC LLC and the cultural resource contractor with responsibility for implementing the HPTP for the duration of the undertaking.

4. The Long-Term Management Plan, HPTP Section 6.0, will be developed in consultation with all Participating Tribes. Protection of the Escalante Ruin (AZ U:15:3[ASM]-Locus 3) will comprise a portion of the Long-Term Management Plan including continued protection, potential interpretation, visitation and use by tribes and potential visitor tours.
- D. The HPTP is specific to the FCP Commercial ISCR Facility actions and its implementation will comport with the sequence of proposed development. It addresses avoidance measures, minimization of impacts to historic properties whenever possible, and mitigation measures where avoidance and minimization are not possible. It also includes the following:
1. The properties or portions thereof where archaeological data recovery treatments are to be carried out, any property or portion of property that would be affected by the undertaking without treatment, and a rationale for untreated portions (i.e., a sampling strategy).
 2. The results of previous research relevant to the Undertaking.
 3. The research questions to be addressed through archaeological data recovery, with an explanation of their relevance and importance. These research questions will consider and, to the extent practicable and appropriate, incorporate Tribal perspectives, as determined through previous and ongoing Tribal consultation.
 4. The field and laboratory analysis methods to be used, with an explanation of their relevance to the research questions.
 5. Specification of the level of effort, textually and on site maps, to be expended on the treatment of the property, including treatment locations and methods of sampling, sample size, and procedures for selection of specific sample units.
 6. A discussion of the transition between Phase I and Phase II data recovery, including time frames for preliminary reports, field visits, and the consultation process.
 7. A discussion of permits and personnel qualifications for archaeological crews, as well as cultural sensitivity orientation and training for archaeological personnel.
 8. The methods to be used in data management and dissemination to the professional community and public, including a proposed schedule for the Undertaking tasks and a schedule for the submittal of draft and final reports to Consulting Parties for review and comment.

9. Procedures for monitoring, evaluating, and treating discoveries of unanticipated or newly identified cultural resources during construction associated with the Undertaking, including consultation with appropriate parties.
 10. A protocol for the treatment of ancestral human remains, in the event that such remains are encountered, describing methods and procedures for the recovery, inventory, treatment, and disposition of ancestral remains, associated and unassociated funerary objects, objects of tribal patrimony, and formally interred animal remains.
 11. A monitoring and discovery plan, for archaeological monitoring of construction.
 12. The results reports preparation and review process, as well as proposed timelines for the report submittals, and reviews.
- E. The HPTP may require revisions or modifications during the implementation of the FCP Commercial ISCR Facility. EPA shall notify Signatories, Invited Signatories, and Consulting Parties in writing of any such need to propose changes to the HPTP. EPA shall provide all parties with the revised language to review for thirty (30) calendar days from the time of receipt. EPA shall take into account any comments provided during that review period. EPA shall forward the final revised language to all Consulting Parties and append the updated HPTP to this PA. Changes to the HPTP in accordance with this stipulation do not require an amendment to this PA.

V. Data Recovery and Synthesis Reports

- A. Within 24 months after completion of all data recovery for each field season, FC LLC shall prepare a draft data recovery report, incorporating all appropriate descriptions, data analyses, interpretations, and dispositions.
1. Upon receipt of the draft data recovery report, EPA shall review and subsequently submit such document concurrently to all Consulting Parties for review.
 2. Consulting Parties shall have 60 calendar days from receipt to review and provide comments on the draft data recovery report to EPA and FC LLC. All comments shall be in writing, with copies provided to the other Consulting Parties.
 3. EPA will take all comments received into consideration when directing FC LLC on revising the draft data recovery report.
 4. If only non-substantive comments are received, FC LLC will make appropriate revisions and forward the final data recovery report to all Consulting Parties for their records.

5. If substantive comments are received EPA and FC LLC will address these in a revised data recovery report, which will be forwarded to all Consulting Parties, in accordance with this Stipulation V.A.
 6. Lack of response by a Consulting Party will not be considered concurrence until EPA has made a good faith effort to contact that party by telephone or email after the review period is over.
 7. After all necessary changes are made and applicable consultation completed, EPA and FC LLC will ensure that the data recovery report is finalized, and copies of this final report shall be provided to all Consulting Parties, as described in the HPTP and HPTP Addendum.
- B. FC LLC shall produce a synthesis report of all of the data recovery for the Life of the Mine within 24 months following the completion of all data recovery, excluding construction monitoring, for the project. The review and comment process shall follow Stipulation V.A, above.

VI. Modifications to the APE

Changes to the APE may affect implementation of the HPTP. EPA shall notify Signatories, Invited Signatories, and Consulting Parties in writing of any such need to make changes to the APE and explain what changes are necessary for implementation of the HPTP. EPA shall provide all parties thirty (30) calendar days from the time of receipt to review the changes and provide written comments to EPA. EPA shall take into account any comments provided during that review period. EPA shall forward the final revised language to these parties and append the updated HPTP to this PA. Changes to the HPTP in accordance with this stipulation do not require an amendment to this PA.

VII. Construction Monitoring

Monitoring by archaeologists and tribal members that want to participate will continue as a component of the development of FC LLC's operations. Monitoring will be conducted in areas where historic properties, cultural resources, and/or material remains of cultural heritage significance may be located or may occur based on previous discoveries during the PTF and any other available information. During construction, a qualified archaeological monitor will observe all ground disturbing activities in areas requiring monitoring. Construction monitoring is addressed in the HPTP, Section 6.2.1.

VIII. Additional Mitigation Measures

Direct and indirect effects to historic properties are partially addressed through data recovery as described in Stipulation III. SHPO and consulting Tribes proposed additional measures to protect the Escalante Ruin (AS U:15:3 [ASM]-Locus 3) and Poston Butte Ball Court (AS U: 15:3 [ASM] Locus 52), as described below and documented in the Escalante Ruin and Poston Butte Ball Court Protection Plan (Protection Plan). FC LLC

has agreed to and is responsible for implementing these additional measures in a timely manner.

- A. For the Escalante Ruin (AZ U:15:3[ASM]-Locus 3), the Protection Plan includes a site stabilization plan that has been developed by FC LLC in consultation with EPA and Participating Tribes to determine appropriate measures for preservation in place. The Escalante Ruins Stabilization Plan is described in the Protection Plan appended to the HPTP.
- B. EPA shall insure the Escalante Ruin (AZ U:15:3[ASM]-Locus 3) will be stabilized in accordance with IV.A above within the time frame determined in the Protection Plan, and in any case before any work or physical disturbance occurs within 20 feet of the site. Any measures for interpretation or visitation by Participating Tribes will be developed within this time frame and in consultation with EPA, FC LLC and Participating Tribes.
- C. For the Poston Butte Ball Court (AZ U:15:3[ASM]-Locus 52), a fencing plan has been developed by FC LLC in consultation with EPA and Participating Tribes, and is included in the Protection Plan.
- D. GRIC may request access, and FC LLC shall allow GRIC such access to the Escalante Ruin and Poston Butte sites for ceremonies, culturally affiliated practices, religious or education purposes, and similar purposes on specific days and times, which such dates and times offered shall be reasonable. GRIC must provide at least 7 days' written notice to FC LLC to ensure protection of traditional practitioners and visitors and minimize impacts on FC LLC operations. FC LLC shall not unreasonably withhold authorization for such access.
- E. Interpretation and cultural protocols may be developed by Participating Tribes for distribution to potential visitors to the sites. FC LLC will support publication of any printed materials as agreed by Participating Tribes and FC LLC.
- F. FC LLC shall contribute five percent of the total cultural resource management budget of the portion of the project on State lands to a historic preservation fund to be used by the Arizona SHPO and/or ASLD for the purpose of developing and maintaining a comprehensive statewide process flow GIS database for tracking projects and sites. SHPO and ASLD will identify a third party to administer the funds before they are deposited in the appropriate state account. FC LLC will deposit the funds concurrent with commencement of data recovery measures. SHPO and ASLD will confirm deployment of funds through demonstration of the GIS database within three years of deposit. Should the GIS database not be deployed within that period, the funds will be forfeited and paid to GRIC.

IX. Public Outreach and Involvement

- A. To the extent expressly requested and authorized by all Participating Tribes, FC LLC in coordination with EPA and Tribes shall disseminate information to the public about the results of data recovery efforts of the historic properties. Public outreach may include site visits, presentations, displays, and publications. Target audiences would include the Tribes, professional and avocational archaeologists, and the general public. This outreach information may include, but not be limited to, presentation of data recovery results at a local archaeological conference and/or a display for Arizona Archaeology Awareness Month activities. Additional information for Public Outreach is addressed in the HPTP, Section 6.5.
- B. Subject to the confidentiality provisions of 36 C.F.R. §800.11(c), EPA will make relevant information regarding the identified historic properties, potential adverse effects, and means of addressing these effects available to the public, as provided in 36 C.F.R. §800.11(e).

X. Training

- A. All persons monitoring construction shall be trained in on-site standard operating procedures (SOPs).
- B. All FC LLC employees and contractors shall have, at a minimum, an on-site briefing regarding SOPs in the event of any discovery of cultural resources. In addition, all FC LLC employees and contractors shall maintain evidence of their participation and completion of training offered by FC LLC on cultural resources and protocols as described in 6.2.2. of the HPTP. Such training shall occur for each such FC LLC employee or subcontractor prior to commencing any work that could affect cultural resources.

XI. Annual Report and Meeting

The Consulting Parties shall evaluate the implementation and operation of this PA on an annual basis. EPA shall coordinate an annual meeting among the Consulting Parties on or near the anniversary date of the execution of this PA to review the progress and effectiveness of this PA. EPA is responsible for setting up this meeting, in coordination with all the Consulting Parties.

- A. Prior to the annual meeting, the EPA and FC LLC will provide Consulting Parties with an annual letter report (Annual Report) to review the progress under this PA and under the approved HPTP. The Annual Report will include an update on project schedule, status, and any ongoing cultural resources monitoring or mitigation activities, discovery situations, proposed future actions, or outstanding tasks (with associated estimated time frames) to be completed under this PA or the HPTP. Consulting Parties will have 30 calendar days to review the Annual Report and provide comments to EPA, who will then consider the comments to develop the agenda for the annual meeting.

- B. The Annual Report shall address issues and describe actions and accomplishments over the past year, as well as plans for the coming year, as appropriate, and shall minimally include the following components:
1. historic property surveys and results;
 2. status of mitigation activities;
 3. ongoing and completed public education activities;
 4. any issues that are affecting or may affect the ability of EPA or FC LLC to continue to meet the terms of this PA;
 5. any disputes and objections received, and how they were resolved;
 6. any additional parties who have become signatories or Consulting Parties to this PA in the past year; and
 7. proposed plans for next year's activities.
- C. Within 14 days after the annual meeting, EPA and FC LLC will summarize the meeting, including proposed action items and how they are to be addressed, in a letter to Consulting Parties. Consulting Parties will have 20 days to review and comment on the meeting notes and, if necessary, provide EPA with any edits to the meeting notes. If changes are needed, the EPA will produce revised meeting notes within 30 days of receipt of comments and will provide the final notes to the Consulting Parties.

Evaluation of the implementation of this PA may also include in-person meetings or conference calls among Consulting Parties, and suggestions for possible modifications or amendments to this PA. If possible, all Consulting Parties should be included in these consultations.

XII. Unanticipated Discoveries

- A. If during the performance of the Undertaking, previously unidentified historic properties are discovered or unanticipated effects are found on historic properties, FC LLC shall immediately cease all work within 25 feet of the discovery, secure the resource, and follow the process outlined in the HPTP for discoveries, including consulting with the EPA, SHPO, and Participating Tribes, and not resuming work in the vicinity of the resource until all adverse effects to such historic property has been avoided, minimized, and mitigated pursuant to this PA and the HPTP.
- B. For any properties that may be of religious and cultural significance to a Participating Tribe, EPA shall insure tribal cultural protocols (HPTP Section 6.1) for protection of the areas shall be enforced until such time that the areas may be avoided or addressed in accordance with tribal preferences.

- C. Following consultation and if determined appropriate for the particular discovery, EPA shall insure that FC LLC implements the HPTP Discovery Plan in Section 6.2.2.

XIII. Human Remains and Associated Funerary Items Burial Agreement

- A. During the Undertaking and associated actions, FC LLC will implement an ASM Burial Agreement for any discovery, treatment and disposition of any human remains and associated funerary items.
- B. The Burial Agreement addresses treatment and disposition of all human remains that are identified as Native American and associated items that may be identified during the proposed data recovery in the HPTP.

XIV. Confidentiality

To the maximum extent allowed by federal and state law, EPA and FC LLC will maintain confidentiality of sensitive information regarding historic properties that could be damaged through looting or disturbance, and/or to help protect a historic property to which a Tribe attaches religious or cultural significance. However, any documents or records the EPA has in its possession are subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552 *et seq.*) and its exemptions, as applicable. EPA shall evaluate whether a FOIA request for records or documents would involve a sensitive historic property, or a historic property to which a Tribe attaches religious or cultural significance, and whether such documents contain information that the EPA is authorized to withhold from disclosure by other statutes including Section 304 of the NHPA. If this is the case, then the EPA will consult with the Keeper of the National Register of Historic Places and the ACHP regarding withholding the sensitive information per 36 C.F.R. §800.11(c). If a Tribally sensitive property is involved, the EPA will also consult with the relevant Consulting Tribes and provide their views to the ACHP before a determination is made in response to a FOIA request.

XV. Dispute Resolution

- A. Should any Signatory, Invited Signatory or Consulting Party under this PA object to any actions proposed or the manner in which the terms of this PA are implemented, EPA shall consult with such party to resolve the objection. If EPA determines that such objection cannot be resolved to the satisfaction of any Signatory, Invited Signatory or Consulting Party, EPA will:
 - 1. Forward all documentation relevant to the dispute, including EPA's proposed resolution, to the ACHP. The ACHP shall provide EPA with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, EPA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, Invited Signatories and Consulting Parties,

and provide them with a copy of the written response. EPA will then proceed to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the 30-day time period, EPA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, EPA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories, Invited Signatories and Consulting Parties, and provide them and the ACHP with a copy of such written response.

- B. EPA's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

XVI. Amendments

- A. This PA may be amended if an amendment is agreed to in writing by all the Signatories, after a reasonable opportunity for consultation with the Consulting Parties, which at a minimum shall include a 15-day period for the consulting parties to review and comment on the proposed amendment.
- B. Any Signatory may request in writing that the PA be amended. If a Consulting Party wishes to propose an amendment, it can request that a Signatory consider making a formal request for such an amendment.
- C. EPA shall coordinate consultation with all Signatories and other Consulting Parties for consideration of a proposed amendment within 30 days of receipt of a request for an amendment. EPA may shorten or extend the time frame for consultation regarding an amendment if agreed to by SHPO and ACHP, however, such time frame may not be less than 15 days.
- D. Consulting Parties shall be provided the opportunity to concur on the amendment. However, the amendment will be effective on the date it is signed by all of the Signatories.

XVII. Termination

- A. If any Signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories and Consulting Parties, to develop an amendment per Section XVI (Amendments). If within 30 days, or another time frame agreed to by all Signatories, an amendment cannot be reached, any Signatory may terminate this PA upon written notification to the other Signatories and Consulting Parties.
- B. After this PA is terminated, EPA must either execute another PA pursuant to 36 C.F.R. § 800.14(b)(3) with the mandatory Signatories pursuant to 36 C.F.R. § 800.6(c)(1) or request, consider and respond to comments of the ACHP under 36

C.F.R. § 800.7(a). EPA shall notify the Signatories and Consulting Parties of the course of action it will pursue. Terminating this PA does not relieve parties of any legal obligations under the NHPA.

XVIII. Duration

- A. This PA shall expire after the initial well construction and testing period, the up to a 24-year period of mining operations, and the minimum five year post-closure monitoring period. Should the commercial ISCR undertaking, including rinsing operations, plugging and abandonment of wells, and post-closure monitoring, not be complete, the PA shall continue until such activities are complete. If any Signatory wishes to extend the duration of the PA, they may propose an amendment to the PA in accordance with Stipulation XVI.
- B. For every year the executed PA is active, the effectiveness of the content of its terms and compliance with these terms shall be reevaluated during the annual review in Stipulation XI. All Signatories and Invited Signatories shall consult, and provide the Consulting Parties the opportunity to participate, on the effectiveness and whether any amendments to the PA or revisions to the HPTP are warranted.

XIX. Emergencies

Should an emergency situation occur that represents an imminent threat to public health or safety, or creates a hazardous condition, FC LLC will address any immediate health or safety hazards and shall notify EPA within 24 hours from the time that FC LLC becomes aware of the circumstances. If the emergency has a potential to adversely affect historic properties, EPA shall immediately notify the SHPO, ACHP, and the other Consulting Parties of the condition that has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the SHPO, ACHP, or the other Consulting Parties desire to provide comment or technical assistance to EPA, they shall submit comments within seven (7) days from notification, if the nature of the emergency or hazardous condition allows for such coordination. If the EPA determines that circumstances do not permit seven days for comment, EPA shall notify the SHPO, ACHP, and the other Consulting Parties and invite any comments within the time available.

XX. Curation

EPA shall ensure that all artifacts, samples and records resulting from the mitigation program are curated in accordance with 36 CFR Part 79, except as determined through consultations with Tribes carried out in accordance with federal and state laws pertaining to the treatment and disposition of Native American Human Remains, Associated/Unassociated Funerary Objects, and Objects of Cultural Patrimony. If artifacts, samples and records resulting from investigations on lands owned, controlled or operated by the State of Arizona are to be curated at the ASM, ASM's standards and

guidelines will be followed. If these items will not be curated at ASM, the repository must be approved by ASM.

XXI. Anti-Deficiency Act

EPA's obligations under this PA which may require the expenditure of federal funds are subject to the availability of appropriated funds, and the stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. The EPA shall make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs EPA's ability to implement the stipulations of this agreement, the EPA shall consult in accordance with the amendment and termination procedures found at Stipulations XVI and XVII of this agreement.

XXII. Coordination with Other Federal Reviews

In the event that another federal agency not initially a party to or subject to this PA receives an application for funding/license/permit for the Undertaking as described in this PA, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this PA and notifying the EPA, SHPO, ACHP and the other Consulting Parties that it intends to do so. Such agreement shall be evidenced by execution and implementation of the terms of this PA and attachments as appropriate.

XXIII. Counterpart Signatures

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Execution of this PA by EPA, ACHP and SHPO, and implementation of its terms are evidence that EPA has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORY PAGE

Programmatic Agreement

Among

**U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,**

**Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

U.S. Environmental Protection Agency, Region IX

By: **Torres, Tomas**
Digitally signed by Torres,
Tomas
Date: 2023.07.26 13:39:40
-07'00'
Tomás Torres

Title: Water Division Director

Date: July 26, 2023

SIGNATORY PAGE

Programmatic Agreement

Among

**U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,**

**Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Arizona State Historic Preservation Officer

By: 
Kathryn Leonard

Title: Arizona State Historic Preservation Officer

Date: 2 Aug 2023

SIGNATORY PAGE

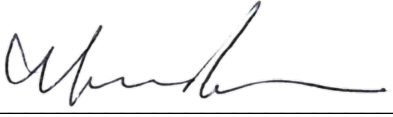
Programmatic Agreement

Among

**U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,**

**Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Advisory Council on Historic Preservation

By: 
Reid Nelson

Title: Executive Director

Date: 8.25.2023

INVITED SIGNATORY PAGE

Programmatic Agreement

Among

**U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
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**Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Florence Copper, LLC

By: 

Richard Tremblay

Title: Senior Vice President, Operations

Date: 

INVITED SIGNATORY PAGE

Programmatic Agreement

Among

U.S. Environmental Protection Agency, Region IX,

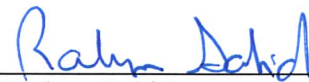
Advisory Council on Historic Preservation, and the

Arizona State Historic Preservation Officer,

Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County

Arizona State Land Department

By: _____



Robyn Sahid

Title: Commissioner

Date: _____

6-15-23

INVITED SIGNATORY PAGE

Programmatic Agreement

Among

**U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,**

**Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Bureau of Indian Affairs, San Carlos Irrigation Project

By: _____
Ferris Begay (Ed)

Title: Project Manager

Date: _____

CONCURRING PARTY PAGE

**Programmatic Agreement
Among
U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,
Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Gila River Indian Community

By: _____
Name:

Title: Governor

Date: _____

CONCURRING PARTY PAGE

**Programmatic Agreement
Among
U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,
Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Tohono O'odham Nation

By: _____
Name:

Title: _____

Date: _____

CONCURRING PARTY PAGE

**Programmatic Agreement
Among
U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,
Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

The Hopi Tribe

By: _____
Name:

Title: _____

Date: _____

CONCURRING PARTY PAGE

**Programmatic Agreement
Among
U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,
Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Yavapai-Prescott Indian Tribe

By: _____
Name:

Title: _____

Date: _____

CONCURRING PARTY PAGE

**Programmatic Agreement
Among
U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,
Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Casa Grande National Monument

By: _____
Name:

Title: _____

Date: _____

CONCURRING PARTY PAGE

**Programmatic Agreement
Among
U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,
Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Town of Florence

By: _____
Name:

Title: _____

Date: _____

CONCURRING PARTY PAGE

**Programmatic Agreement
Among
U.S. Environmental Protection Agency, Region IX,
Advisory Council on Historic Preservation, and the
Arizona State Historic Preservation Officer,
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Arizona State Museum

By: _____
Patrick D. Lyons

Title: Director

Date: _____

CONCURRING PARTY PAGE

**Programmatic Agreement
Among
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Regarding the Florence Copper Project, Commercial In-Situ Copper Recovery Facility,
Florence, Pinal County**

Archaeology Southwest

By: _____
Name:

Title: _____

Date: _____

