

**MEMORANDUM OF AGREEMENT
AMONG
THE ENVIRONMENTAL PROTECTION AGENCY,
THE TEXAS HISTORICAL COMMISSION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO
SECTIONS 110(f) AND 106
OF THE NATIONAL HISTORIC PRESERVATION ACT
REGARDING
THE BROWNSVILLE GENERATING STATION
CAMERON COUNTY, TEXAS**

RECITALS

WHEREAS, Tenaska Brownsville Partners, LLC (“Tenaska”) submitted to the U.S. Environmental Protection Agency, Region 6, (“EPA” or “Agency”) a Prevention of Significant Deterioration (“PSD”) permit application under Subchapter I, Part C of the Clean Air Act (“CAA”), and implementing regulations at 40 CFR § 52.21 for Greenhouse Gas (“GHG”) emissions from a proposed 400 MW (nominal, net) or 800 MW (nominal, net) natural gas-fired combined cycle electric power generating station (“Brownsville Generating Station” or “Station”) (hereinafter “Undertaking” as further described in Attachment 1) on a 275-acre parcel of land in Brownsville, Cameron County, Texas (“Station Site”); and

WHEREAS, the EPA’s issuance of a GHG PSD pre-construction permit to Tenaska for the construction of the Station is a federal action which makes the project an Undertaking subject to review under Section 106 of the National Historic Preservation Act (“NHPA”) (16 U.S.C. § 470) and its implementing regulations at 36 CFR Part 800 (“Protection of Historic Properties”); and

WHEREAS, based on information provided by Tenaska, the EPA determined that the Area of Potential Effect (“APE”) includes the Station Site, as well as a transmission interconnect line (“Transmission Interconnect”), water discharge pipeline, water reuse pipeline, natural gas pipeline interconnect, potable water interconnect line, sewer interconnect line, and supplemental water line (collectively, “Service Lines”) (collectively referred to as, “Proposed Project”), as well as an area around the Proposed Project to account for visual, auditory and atmospheric effects, as depicted in more detail in Attachment 2; and

WHEREAS, Tenaska, through its independent consultant, Environmental Resource Management (“ERM”), conducted a cultural resources assessment to support the Agency’s Section 106 obligations, as documented in a report titled *Cultural Resources Assessment: Tenaska Brownsville Generating Station* (“Report”) dated December 18, 2013; and

WHEREAS, based on the data provided in the Report and other information available to the Agency, the EPA determined that the APE contains the following five (5) historic properties that are listed in the National Register of Historic Places (“NRHP”), or that are eligible or

potentially eligible for listing in the NRHP: the Palo Alto Battlefield National Historical Park (“Palo Alto NHP”), the Cameron County Irrigation District No. 6 (“CCID6”), the Cameron County Irrigation District No. 2 (“CCID2”), the Cameron County Drainage District No. 1 (“CCDD1”), and the Port of Brownsville Historic District (collectively, the “Historic Properties”); and

WHEREAS, based on the data provided in the Report, the EPA determined that the APE also contains the Palo Alto Battlefield National Historic Landmark (“Palo Alto NHL”); and

WHEREAS, the EPA initiated consultation with Texas State Historic Preservation Officer (“TXSHPO”), Tenaska, and the National Park Service (“NPS”) on November 1, 2013; and

WHEREAS, the NPS was represented in the Section 106 consultation by representatives of the Palo Alto NHP, the NPS Intermountain Region’s Natural Sounds & Night Skies Division, the NPS Environmental Quality Division, the NPS National Historic Landmarks Program, and the NPS American Battlefield Protection Program; and

WHEREAS, although the EPA’s invitation to participate in the Section 106 process was not accepted by any of the following parties, on November 1, 2013, the EPA invited the Brownsville Historical Association and the Historic Brownsville Museum, and on January 10, 2014, the EPA invited the Cameron County Historical Commission, and 27 federally recognized Indian Tribes from Texas and Oklahoma; and

WHEREAS, relying on the data in the Report, information from the consulting parties, and the Criteria of Adverse Effect outlined in 36 CFR § 800.5(a), the EPA determined that the construction and operation of the Station will result in adverse visual, atmospheric (lighting) and audible effects on the Palo Alto NHL and the Palo Alto NHP, and the Transmission Interconnect Line will result in adverse visual and audible effects on the Palo Alto NHL and the Palo Alto NHP as documented in a report titled *EPA Adverse Effect Determination* dated October 14, 2014; and

WHEREAS, in accordance with 36 CFR §§ 800.6(a)(1) and 800.10(b), the EPA notified the Advisory Council on Historic Preservation (“ACHP”) of the adverse effects of the Proposed Project on the Palo Alto NHL and invited the ACHP to participate in the consultation process via letter dated May 19, 2014; the ACHP elected to participate and notified the EPA by letter dated September 29, 2014; and

WHEREAS, on January 10, 2014, the EPA also notified and invited representatives of the Secretary of the Interior to participate in the consultation pursuant to 36 CFR § 800.10(c) due to the adverse effects on a National Historic Landmark resulting in the NPS, Intermountain Region, National Historic Landmark program’s participation in the consultation; and

WHEREAS, the EPA considered the input of the TXSHPO, ACHP, the NPS, and Tenaska during the consultation process and has presented its formal Section 106 findings and determinations to the TXSHPO, ACHP, NPS, and Tenaska; and

WHEREAS, in addition to the TXSHPO and the ACHP (required signatories), the EPA has invited Tenaska and the NPS to be signatories on the Memorandum of Agreement (MOA) (collectively “Signatories”); and

WHEREAS, the Signatories agree that this MOA and the Stipulations put forth in the MOA resolve the adverse effects of the Undertaking on the Historic Properties and the Palo Alto NHL in accordance with the Section 106 requirements; and

WHEREAS, the NPS is authorized by 16 U.S.C. § 6 to receive moneys for the purposes of the national park and monument system and by 16 U.S.C. § 1j to engage in collaborative efforts to restore natural resources including native wildlife habitat and ecosystems on land inside and outside National Park System units; and

WHEREAS, on October 28, 2014, the EPA proposed to issue to Tenaska GHG PSD Permit No. PSD-TX-1350-GHG to authorize construction of the Station; and

WHEREAS, on December 5, 2014, the EPA provided a subsequent public notice of its formal NHPA Section 106 findings and determinations of effect, and this MOA, for which EPA received no comments; and

WHEREAS, the EPA may only issue the final EPA GHG PSD permit (the “Permit”) to Tenaska following the conclusion of the NHPA 30-day comment period and the conclusion of the NHPA Section 106 consultation, as evidenced by the execution of this MOA; and

WHEREAS, the Permit will become final and effective after the time for filing an administrative appeal has expired or all administrative and judicial appeals processes (including any associated remand actions) are complete (if applicable); and

WHEREAS, as of November 10, 2014, the EPA approved the majority of revisions to the Texas Commission on Environmental Quality’s (“TCEQ’s”) State Implementation Plan (“SIP”) for emissions of GHGs and rescinded the majority of the Federal Implementation Plan (“FIP”); the EPA also retained authority over various permits, such as Tenaska’s, that are covered by EPA’s Transition Process as outlined in 79 Fed. Reg. 66641, 66644 (Nov. 10, 2014); and

WHEREAS, in accordance with the transition process outlined in the FIP, when the Permit is final and effective, the EPA intends to transfer the Permit to TCEQ for future administration; and

WHEREAS, Tenaska has agreed in good faith to implement the terms of this MOA provided that Tenaska commences construction of the Station under authority to construct provided by the Permit, even when such Permit is in the future being administered by the TCEQ;

NOW, THEREFORE, if Tenaska commences construction of the Station as such phrase is defined in 40 C.F.R. § 52.21(b)(9)(i) (“Commence”) under authority to construct provided by the Permit, the EPA, TXSHPO, and the ACHP agree that the Undertaking shall be implemented

in accordance with the following stipulations in order to take into account the effect of the Undertaking on the Historic Properties and the Palo Alto NHL.

STIPULATIONS

The EPA shall ensure that, if Tenaska Commences construction of the Station under authority to construct provided by the Permit, the following Stipulations will be carried out.

I. MINIMIZATION MEASURES

Tenaska shall implement, or cause to be implemented, the following minimization measures:

A. Brownsville Generating Station

1. Paint Color – The taller features of the Station consisting of the combustion turbine (“CT”) enclosures, the heat recovery steam generators (“HRSGs”), the exhaust stacks, and the above ground storage tanks shall be painted in Brush Brown (Munsell Soil Color Chart 10YR 5/3), Shale Green (Munsell Soil Color Chart 5Y 4/2) or another color identified in the U.S. Bureau of Land Management Rocky Mountain Regional Coordinating Committee “Standard Environmental Colors for the painting of permanent Federal Oil and Gas Facilities” mutually agreed to in writing by Tenaska and the NPS. For pre-engineered buildings, Tenaska will choose from the available standard colors the one that most closely matches the color selected for the taller features referenced above or other standard color mutually acceptable to Tenaska and the NPS. Any repainting by Tenaska shall be in the same colors, if available, or, if not, another color mutually acceptable to Tenaska and the NPS.
2. Lighting Plan – The lighting of the Station shall incorporate the below measures, subject to the need to address safety concerns or to comply with applicable regulatory requirements:
 - a. The Station will use outdoor lighting fixtures that are shielded, pointing downward and inward.
 - b. The Station will use high-pressure sodium lamps outdoors that have a warm color in the 2,700-3,500 degree Kelvin range.
 - c. The Station will avoid the use of high mast poles for outdoor lighting.
 - d. The Station will use approximately 30-foot or shorter poles for roadway lighting.

- e. Switches will be provided at the Station for the cooling tower, exhaust stacks, pipe rack lights, and HRSG platform lighting. Other lighting fixtures at the Station will be controlled from the lighting power panels.

The measures above reflect consideration of current NPS lighting best practices. If the NPS updates or revises its lighting best practices to account for new information or improved technologies, Tenaska will give good faith consideration to recommendations received from the NPS in a written notice when maintaining, repairing, or updating lighting at the Station and may implement the NPS recommendations at Tenaska's sole discretion. The NPS notice will include the following text: "NPS requests that Tenaska respond in writing within 60 days, acknowledging receipt of this notice and that Tenaska will give the requested good faith consideration to these recommendations as set forth in the MOA." Tenaska will respond in writing within 60 days, acknowledging receipt of such information and indicating which, if any, of the updated lighting best practices it believes may be appropriate for the Station and, therefore, may receive further consideration as Tenaska maintains, repairs, or procures and installs lighting updates in due course.

3. Sound Barrier – Prior to the commencement of commercial operations, Tenaska shall construct on the Station Site, east of the Station, a 10-foot-tall earthen berm. The berm shall be approximately 1,100 feet in length and will be at a location within the Station's 275-acre parcel that is west of the Transmission Line depicted on Attachment 3, and east of the Station power block.

B. Service Lines

1. Boring and Ditch Restoration – Where the Service Lines will intersect with contributing ditches located within the boundaries of the CCID6, CCID2, and CCDD1 (that is, the NRHP-eligible and NRHP potentially-eligible irrigation and drainage districts), one of the following construction methods will be used: boring underneath the ditch through traditional or horizontal directional drilling; or open cut followed by restoration to pre-existing contours. All ditches currently within the management and/or jurisdiction of the active CCID6, CCID2, and/or CCDD1 will be treated as contributing ditches:
 - a. If using the open cut method to cross a contributing ditch within the boundaries of CCID6, CCID2, and/or CCDD1, Tenaska will be responsible for photographing the open cut site before, during, and after construction. Photographs must be taken looking upstream and downstream to document the ditch's pre- and post-construction condition and contours. The photographs must be submitted to the EPA and TXSHPO within thirty (30) days of the completion of the

open cut and restoration work. The submittal must also include a map or provide the latitude and longitude of the ditch crossing. Submittal of the photographs and location information via e-mail is acceptable.

- b. No pre- or post-construction documentation is required for crossing ditches within CCID6, CCID2, or CCDD1 by boring underneath using traditional or horizontal directional drilling.
2. Aboveground Appurtenances – Aboveground appurtenances for the Service Lines will not be located within two hundred (200) feet of contributing ditches located within the boundaries of the CCID6, CCID2, and CCDD1.

II. MITIGATION MEASURES

A. Funding

Tenaska shall contribute funds to an account managed by the National Park Foundation (“NPF”) for the implementation of mitigation measures (“Mitigation Project Funds”) and the maintenance of mitigation measures (“Mitigation Maintenance Funds,” which, together with the Mitigation Project Funds is referred to herein as the “Aggregate Mitigation Funds”) at the Palo Alto NHP in accordance with and subject to the conditions set forth in this Article II (see Attachment 4). The NPS may change the recipient for the contributions by notifying the Signatories in writing, and from and after the receipt of such notification by each Party, all references to NPF herein shall be deemed to refer to such alternate recipient.

1. Mitigation Project Funds

Tenaska shall contribute Mitigation Project Funds in the aggregate total of \$754,990.00 or, if Tenaska elects the Resaca Utility Alternative (as hereinafter defined), the aggregate total of \$703,490.00, by remitting to the NPF Initial Funding, Annual Project Funding, and, if applicable, Utility Funding, as defined and set forth below:

- a. Tenaska shall remit initial funding in the amount of \$131,840.00 (“Initial Funding”) within ten (10) calendar days of the Station Development Initiation Date, which shall be the latter of: (i) the date financial close has been achieved for the Station or (ii) the date Commencement of construction of the Station occurs pursuant to the Permit. Tenaska shall provide written notice to the Signatories of the Station Development Initiation Date.
- b. Within 120 calendar days after the Station Development Initiation Date, Tenaska shall remit utility funding in the amount of \$51,500.00 (“Utility Funding”) unless prior to such date Tenaska, in its sole discretion, has arranged for Brownsville Public Utilities Board (“BPUB”) to complete by September 30, 2015 the installation

of electric, potable water and sanitary connections of less than 100 yards in length at the Resaca de la Palma Battlefield ("Resaca Utility Alternative"). The NPS and Tenaska may mutually agree in writing to extend the deadlines for the Utility Funding and completion of the Resaca Utility Alternative and shall provide written notice to the EPA and TXSHPO of any such extensions. Tenaska shall provide written notice to the Signatories if it has made the necessary arrangements to implement the Resaca Utility Alternative.

- c. After commercial operation of the Station begins, Tenaska shall remit annual project funding in an aggregate amount of \$571,650 ("Annual Project Funding"), by remitting at least \$285,825 annually until the aggregate amount of the Annual Project Funding is remitted. The first annual payment shall be made within sixty (60) calendar days after commercial operation of the Station begins ("Commercial Operation Date") and the second payment shall be made within one year of the Commercial Operation Date. Tenaska shall provide written notice to the Signatories of the Commercial Operation Date.

The NPS has indicated that the aggregate amount of the Mitigation Project Funds allows for implementation and/or substantial completion of the following Improvement Measures, including payment of the administrative fees to the NPF:

- Cultural landscape restoration for Palo Alto NHP
 - Spartina Grass Measure (hereinafter defined)
 - Cactus removal
 - Woody vegetation removal
- Interactive visitor information kiosk development and support at Palo Alto NHP
- Enhancement of Living History program – uniforms and supplies – at Palo Alto NHP
- Landscape enhancement at Palo Alto NHP/Palo Alto NHL
- Overlook landscape enhancement aluminum silhouettes at Palo Alto NHP
- Replica U.S. cannons for Palo Alto NHP
- Replica Mexican cannons for Palo Alto NHP
- Trail work at Palo Alto NHP
- Resaca Utility Measures (subject to the Resaca Utility Alternative)

Allocation and use of Mitigation Project Funds for the various Improvement Measures will be made at the sole discretion of the NPS. If excess funds from the Mitigation Project Funds are available following payment of the NPF's administrative fees and completion of the Improvement Measures, as those Improvement Measures are prioritized by the NPS, those excess funds may be considered a donation to the NPS and used for other maintenance or improvements

to the cultural landscape or visitor experience at the Palo Alto NHP at the NPS's discretion.

Tenaska's sole obligation with respect to the implementation of the Improvement Measures is to contribute the Mitigation Project Funds to an account managed by the NPF. Tenaska makes no representation as to the cost, implementation or completion of the Improvement Measures.

2. Mitigation Maintenance Funds

Tenaska shall contribute Mitigation Maintenance Funds in the aggregate total of \$1,384,320.00 by remitting at least \$49,440.00 annually, commencing on the second anniversary of the Commercial Operation Date, and each subsequent anniversary thereafter, until such total Mitigation Maintenance Funds are remitted. The NPS shall use the Mitigation Maintenance Funds (1) for payment of the NPF's administrative fees and (2) for cyclical maintenance or replacement of the Improvement Measures in accordance with the NPS's priorities.

3. Administration

- a. The NPS shall be responsible for the direction and supervision of work plans, contractor engagement, and implementation of any Improvement Measures. Tenaska's sole obligation under this Section II (Mitigation Measures) is to remit the Aggregate Mitigation Funds to an account managed by the NPF subject to the conditions and schedule set forth above, or, at Tenaska's sole discretion, on a more expedited schedule.
- b. The NPS shall provide to Tenaska, by written notice, instructions for mailing or wiring the remittances of Aggregate Mitigation Funds to the NPF. Tenaska may rely on such instructions unless and until the date that is thirty (30) days after written notice from the NPS of a change in such instructions.
- c. If Tenaska does not remit a required minimum payment of the Aggregate Mitigation Funds by the applicable due date, before the NPS may make an objection pursuant to Section VII, the NPS shall notify Tenaska in writing and Tenaska may cure such defect by remitting the payment within thirty (30) days of such written notification.

B. Spartina Grass Measure

Tenaska agrees to allow appropriately qualified and insured contractors reasonable access to the Station Site to salvage spartina grass from the spartina grass salvage

area depicted on Attachment 5 and relocate it to the Palo Alto NHP (“Spartina Grass Measure”) on the following terms and conditions:

1. The NPS shall submit a proposed scope of work to Tenaska for approval, which approval shall not be unreasonably withheld, that identifies the means and schedule for the Spartina Grass Measure. The NPS shall not execute ground-disturbing activity in (i) the wetland area labeled “W1ACA001” on Attachment 6 (ii) the “Transitional area” labeled on Attachment 6, and (iii) in or within 25 feet of the Olmito Branch ditch that extends along the south Station Site boundary. The NPS shall specify that the spartina grass salvage area will be accessed by use of the existing road along the North fenceline of the Station Site. Tenaska will provide any comments or objections to the proposed scope of work within fifteen (15) calendar days of receipt. The NPS will revise the scope of work in response to Tenaska’s comments or objections.
2. The NPS shall require that any person, other than an employee of the United States, performing the Spartina Grass Measure on the Station Site shall maintain: (i) Worker’s Compensation Coverage, (ii) Auto Liability Coverage with a \$1,000,000 minimum limit for third party bodily injury and property damage, and (iii) General Liability Coverage with a \$1,000,000 minimum limit for third party bodily injury and property damage. The NPS shall require that any person performing any aspect of the Spartina Grass Measure on the Station Site, other than an employee of the United States, shall provide certificates of insurance to Tenaska before such work is commenced hereunder, which certificates shall name Tenaska and its affiliates as additional insured under all policies required above (except for workers compensation), and provide a waiver of subrogation.
3. The NPS shall use a private contractor to perform the Spartina Grass Measure on the Station Site and such private contractor (“Indemnitor”) shall indemnify and hold Tenaska and its grantees, successors and assigns harmless from any and all liability, claims, costs, losses or damages (including the reasonable costs and expenses of defending such claims), arising or alleged to arise in whole or in part as a result of the performance of the Spartina Grass Measure on the Station Site. The NPS and Tenaska shall give prompt notice to the other party and to the Indemnitor of any claim or alleged liability hereunder. Tenaska shall reasonably cooperate with the Indemnitor and the NPS in defending or resisting such claims. One or two NPS employees, as employees of the United States that cannot provide such indemnity, may observe and direct, but not perform, the Spartina Grass Measure.
4. The NPS shall require that any person performing the Spartina Grass Measure on the Station Site shall covenant and warrant that they will (i) comply with all federal, state and local environmental laws; (ii) be solely responsible for securing any necessary permits or authorizations; and (iii)

conduct the Spartina Grass Measure in a safe and workmanlike manner in a manner consistent with the generally accepted level of care and skill ordinarily exercised by professional contractors performing services of a similar nature.

The Spartina Grass Measure shall be completed on a schedule that is consistent with Tenaska's site excavation and construction schedule. Tenaska shall provide the NPS with notice of the relevant deadlines for the Spartina Grass Measure at least ninety (90) calendar days in advance of such deadlines. Tenaska and the NPS shall work together in good faith to coordinate so that the NPS can execute the Spartina Grass Measure; however, Tenaska is not obligated to delay construction of the Station even if the NPS cannot timely execute the Spartina Grass Measure.

III. METAL DETECTING IN THE VICINITY OF THE FORMER MATAMOROS-PORT ISABEL ROAD

Prior to the initiation of any ground-disturbing pre-construction or construction activity associated with the proposed Transmission Interconnect, Tenaska shall undertake metal detecting within the below-specified portion of the APE for the Transmission Interconnect survey corridor to identify the presence or absence of artifacts or features associated with the use of the former Matamoros-Port Isabel Road during the Battle of Palo Alto ("Artifacts"). Tenaska shall inform the NPS of the date the metal detecting work will begin at least seven (7) calendar days in advance. The NPS may, if available, accompany Tenaska's consultants during the course of the metal detecting work.

A. Qualifications and Standards

Tenaska shall utilize archaeologists meeting the Secretary of the Interior's Professional Qualification Standards as required by NHPA section 112(a)(1)(A). Tenaska shall ensure that all work conducted under this section is performed in a manner consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 Federal Register 44716-44740; September 23, 1983), as amended, to conduct this work and prepare associated documentation. Tenaska shall also ensure that the archaeologists are experienced with metal detecting equipment and methods.

B. Survey Investigations

Investigations shall be conducted in the 100-foot right-of-way for the Transmission Line within the area of interest identified by the NPS, consisting of an approximately 1500-foot-long corridor ("Metal Detection Area"), which investigation area is shown on the Figure appended to this MOA (Attachment 7). Vegetation within the Metal Detection Area will be cleared as level and as close to the ground as possible, while causing minimal ground disturbance prior to the investigations to facilitate the metal detecting for Artifacts. Metal detecting will be conducted along transects spaced at 1.5-meter intervals.

If investigations result in a recommendation by the qualified professional that additional work is required to determine whether NRHP-eligible resources are

present in the Metal Detection Area, then Tenaska can elect either to undertake such work, cause BPUB to undertake such work, or assume that the resource in question is NRHP eligible for the purposes of this MOA, in which case the procedures in this Section shall apply. If Tenaska determines to proceed with additional investigations to determine the NRHP eligibility of resources identified, then the qualified professional representing Tenaska shall consult with TXSHPO and the NPS in developing a work plan prior to commencing work, which will be performed in accordance with the procedures of this Section.

C. Results of the Survey

The principal investigator for the work will prepare a brief letter report summarizing the results of the survey. The report will include the following:

1. Documentation of any cultural materials found within the Metal Detection Area including the location and description of any Artifacts found consistent with general professional standards for Phase I archaeological investigations. If an archaeological site is identified, it will be recorded and registered with TexSite, TXSHPO's software used to record archaeological sites, and given a formal archaeological site number.
2. The qualified professional's recommendation on the NRHP eligibility of any identified cultural materials or additional work that is required to determine NRHP eligibility, and proposing disposition and curation of the Artifacts ("Letter Report").

D. Process for Review

Tenaska will submit the Letter Report electronically to the Superintendent of the Palo Alto NHP (NPS), TXSHPO, and the EPA for review and concurrence.

1. No Historic Properties. If investigations result in a recommendation by the qualified professional that no historic properties are present in the Metal Detection Area and no further work is required, and the NPS, TXSHPO, and the EPA concur or fails to respond within the time specified, then construction activities may proceed, utilizing the Chance Finds Procedures appended to this MOA (Attachment 8).
2. Historic Properties Present. If investigations result in a recommendation by the qualified professional that historic properties are present in the Metal Detection Area, the following steps will be followed:
 - a. Tenaska will consult with BPUB to determine if avoidance of direct effects to such historic properties is possible.
 - b. Tenaska shall schedule a consultation call between the NPS, TXSHPO, and the EPA to discuss the effects of the undertaking on the historic properties and the manner in which Tenaska proposes to

either avoid, or if avoidance is not feasible, mitigate adverse effects to the identified historic properties.

- c. For the purposes of this section, only direct effects to identified historic properties will be considered adverse.
- d. Following the conference call, Tenaska shall electronically submit a letter to the NPS, TXSHPO, and the EPA of either its proposed approach to avoid adverse effects or its proposed offer of mitigation for adverse effects to historic properties. The NPS, TXSHPO, and the EPA shall have ten (10) business days to review Tenaska's letter and provide their concurrence or comments electronically to Tenaska, with copies to the other parties. Tenaska may proceed with the proposed approach after taking into account any comments received from the NPS, TXSHPO, and the EPA. A Party will be deemed to have concurred if that Party provides no response within ten (10) business days from that agency's receipt of Tenaska's Letter Report.
- e. Within five (5) business days of the end of the review period referenced in Section III(D)(2)(d), Tenaska shall electronically submit a letter to the NPS, TXSHPO, and the EPA with their final offer for avoidance or mitigation, as applicable. The NPS, TXSHPO, and the EPA shall have ten (10) business days to review Tenaska's final offer and provide their concurrence to Tenaska, with copies to the other parties. Tenaska may proceed with the proposed avoidance or mitigation after taking into account any comments received from the NPS, TXSHPO, and the EPA and after resort to Stipulation III(D)(2)(f) below, as appropriate. A Party will be deemed to have concurred if that Party provides no response within ten (10) business days from that agency's receipt of Tenaska's final offer.
- f. If Tenaska, the NPS, TXSHPO, and the EPA cannot come to agreement regarding avoidance or mitigation per the above, then Section VII for Dispute Resolution of this MOA shall apply.

IV. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found during construction of the Proposed Project, Tenaska shall implement, or cause to be implemented, the discovery plan included as Attachment 8 of this MOA ("Chance Finds Procedures").

V. ADJUSTMENT TO THE UNDERTAKING

If refinements to the design of the Proposed Project result in segments of a Service Line or the Transmission Interconnect being established outside of the existing survey corridors in an area otherwise undisturbed and that require further identification efforts under Section 106, prior to

construction of such segment, Tenaska shall conduct or cause to be conducted, an archeological inventory consistent with the Texas Historical Commission's *Archeological Survey Standards for Texas* and an aboveground survey for historic properties within unsurveyed portions of the adjusted right-of-way for the segment as a reasonable and good faith effort to evaluate the effect of the adjusted segment of the Proposed Project on historic properties.

A. Qualifications and Standards

All cultural surveys and report preparation will be conducted by qualified persons that meet the professional standards established by the Secretary of the Interior as required by NHPA section 112(a)(1)(A). Tenaska shall ensure that all work conducted under this section is performed in a manner consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 Federal Register 44716-44740; September 23, 1983), as amended.

B. Process for Review

The principal investigator for the work will prepare a letter report ("Supplemental Letter Report"). The Supplemental Report shall document the investigation and be processed as follows:

1. No Cultural Resources. If no cultural resources are identified, it will be documented, and Tenaska will maintain the Supplemental Letter Report for inspection by the EPA and TXSHPO.
2. Evaluation of National Register Eligibility. If cultural resources are identified, Tenaska shall determine their eligibility for the NRHP in accordance with the process described in 36 CFR § 800.4(c) and criteria established in 36 CFR Part 60. If archaeological sites are discovered during the inventory, they will be documented and registered with the Texas Archeological Research Laboratory (TARL) and assigned a site number. This information will be included in the Supplemental Report, if applicable, which shall be submitted to the TXSHPO electronically. The Supplemental Letter Report will also propose disposition and curation of artifacts.

The TXSHPO shall have thirty (30) calendar days in which to review the findings of eligibility and provide a written response to Tenaska. The TXSHPO shall provide a copy of the concurrence to the EPA. Tenaska may proceed upon receipt of written concurrence from the TXSHPO. Failure of the TXSHPO to respond within thirty (30) days of receipt of the finding shall be deemed agreement with the finding. If TXSHPO agrees that cultural resources are not eligible, such consensus shall be deemed conclusive for the purposes of the MOA. Should Tenaska and TXSHPO not agree regarding the eligibility of a property, the EPA may make the determination or may obtain a determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.

3. Finding of No Adverse Effect on Historic Properties. Tenaska shall apply the criteria of adverse effect to identified historic properties in accordance with 36 CFR § 800.5. Tenaska may propose a finding of no adverse effect if the adjusted segment of the Proposed Project's effects do not meet the criteria of 36 CFR § 800.5(a)(1).

Tenaska shall provide to TXSHPO and the EPA documentation of this finding meeting the requirements of 36 CFR § 800.11(e). TXSHPO shall have thirty (30) calendar days in which to review the findings and provide a written response to Tenaska. TXSHPO shall provide a copy of the concurrence to the EPA. Tenaska may proceed upon receipt of written concurrence from TXSHPO. Failure of TXSHPO to respond within thirty (30) days of receipt of the finding shall be deemed agreement with the finding. The EPA shall maintain a record of the finding and provide information on the finding to the public upon request, consistent with the confidentiality requirements of 36 CFR § 800.11(c).

4. Resolution of Adverse Effect. If Tenaska determines that the adjusted segment of the Proposed Project will have an adverse effect on historic properties as measured by criteria in 36 CFR § 800.5.(a)(1), Tenaska shall consult with the EPA and TXSHPO to resolve adverse effects in the following manner:

- a. For historic properties that the EPA, Tenaska, and TXSHPO agree will be adversely affected, Tenaska shall:

- i. Consult with TXSHPO to identify other individuals or organizations to be invited to become consulting parties, including, as appropriate, the NPS. If additional consulting parties are identified, Tenaska shall provide them copies of documentation specified in 36 CFR § 800.11(e) subject to confidentiality provisions of 36 CFR § 800.11(c);

- ii. Consult with TXSHPO to seek ways to avoid, minimize or mitigate adverse effects;

- iii. Prepare an historic property treatment plan which describes mitigation measures Tenaska proposes to resolve the adjusted segment of the Proposed Project's adverse effects and provide this plan for review and comment to the EPA, TXSHPO, and consulting parties. All parties shall have twenty (20) calendar days in which to provide a written response to Tenaska. Treatment plans will consider the use of horizontal directional drilling ("HDD"), rerouting, or other prudent pipeline design or construction methods intended to preserve any substantial archaeological sites discovered.

- b. If adverse effects cannot be avoided, the EPA shall afford the public an opportunity to express its views on the proposed resolution of adverse effects in a manner appropriate to the magnitude of the likely effects on historic properties from the adjusted segment of the Proposed Project.
- c. If the EPA, Tenaska, and TXSHPO fail to agree on whether there are adverse effects on historic properties or how the adverse effects will be resolved, the EPA shall request that ACHP join the consultation and shall proceed in accordance with the dispute resolution process under Section VII.

VI. MONITORING AND REPORTING

By October 30th of each year following execution of the MOA, Tenaska shall provide all Signatories a summary report with a brief description of the status of Stipulations I, II, and III above, and notice of installment payments made during the previous twelve (12) months until the earlier of the dates on which such measures are completed or the MOA expires or is terminated.

VII. DISPUTE RESOLUTION

- A. Should any Signatory to this MOA object in writing to the EPA regarding any actions carried out or proposed with respect to the Proposed Project for implementation of this MOA, the EPA shall notify all the Signatories to this MOA. If after consultation with the Signatories, the EPA determines that the objection cannot be resolved, the EPA shall forward all documentation relevant to the objection to the ACHP, including the EPA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - 1. Advise the EPA that the ACHP concurs in the EPA proposed response to the objection, whereupon the EPA shall respond to the objection accordingly;
 - 2. Provide the EPA with recommendations, which the EPA shall take into account in reaching a final decision regarding its response to the objection; or
 - 3. Notify the EPA that the objection will be referred for comment pursuant to 36 CFR § 800.7, and proceed to refer the objection and comment. The resulting comment shall be taken into account by the EPA in accordance with 36 CFR § 800.7(c)(4), and Part 110(1) of NHPA.
- B. Should the ACHP not exercise one of the above options within thirty (30) calendar days of receipt of all pertinent documentation, the EPA may make a final decision on the dispute and proceed accordingly.

- C. Prior to reaching such a final decision, the EPA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to the MOA, and provide the Signatories, including the ACHP with a copy of such written response.
- D. The Signatories shall take into account any comments of the ACHP provided in accordance with this stipulation with reference only to the subject of the objection. Tenaska's responsibility to carry out all other actions under this MOA that are not the subjects of the objection shall remain unchanged.

VIII. DURATION

The term of this MOA shall expire on the date that is thirty (30) days after the Tenaska issues written notice to all Signatories that all of the following have occurred: (a) construction of the Proposed Project is completed, including painting and installation of pre-engineered Station structures consistent with the color schemes in Section I(A)(1), installation of lighting on the Station consistent with Section I(A)(2)(a-e), and completion of the Service Lines construction consistent with Section I(B), including any necessary restoration of open cuts; (b) construction of the earthen berm is complete, consistent with Section I(A)(3); and (c) remittance of the Aggregate Mitigation Funds to the NPF is complete.

Provided that Tenaska Commences construction of the Station pursuant to the Permit, this MOA shall remain in effect and valid during its term notwithstanding any transfer of the Permit to the TCEQ for future administration.

IX. AMENDMENTS

Any Signatory to this MOA may request that this MOA be amended, whereupon the Signatories will consult with the EPA in accordance with 36 CFR § 800.6(c)(7). The MOA may only be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with ACHP.

If Tenaska determines that it cannot implement the terms of this MOA, or if any Party determines that the MOA is not being properly implemented, that Party may propose to the EPA that this MOA be amended. The EPA shall then notify all Signatories in writing, explaining the reasons for the proposed amendment and affording them at least thirty (30) calendar days to correct any identified deficiencies and/or consult and request that the MOA be amended.

X. TERMINATION

Any Signatory to this MOA may propose to terminate this MOA by providing notice to the other Signatories explaining the reasons for the proposed termination. The Signatories will consult to seek agreement on the amendments or other actions that will avoid termination.

If construction has Commenced under authority to construct provided by the Permit and the Stipulations herein are not yet completed, then prior to termination of this MOA, the EPA shall

either: (a) execute a new MOA pursuant to 36 CFR § 800.6, or; (b) request, take into account, and respond to the comments of the Signatories, including the ACHP in accordance with the procedures under 36 CFR § 800.7.

Following Tenaska's request to the EPA, this MOA shall terminate upon the EPA's confirmation in writing to the Signatories that one of the following events has occurred: (a) at the expiration of the Permit in accordance with the General Permit Condition – Permit Expiration provided no extension has been or will be sought by Tenaska; (b) if the Permit is voided or rescinded at the request of Tenaska prior to Commencing construction of the Station; or (c) as a result of a federal court decision that holds that no GHG PSD permit is required under the CAA prior to construction of the Station.

XI. ASSIGNMENT

This MOA shall be binding upon the Signatories and their respective successors and assigns. Upon written notice to all Signatories, Tenaska may assign this MOA to any entity that is or will be (A) constructing the Station pursuant to the Permit, or (B) operating the Station following construction pursuant to the Permit. Such notice shall include either a copy of the executed assignment document or a written acknowledgment signed by the successor or assign, and updated contact information for the Notice provision of Section XII below. Such assignee shall be deemed a successor to Tenaska and to have assumed Tenaska's obligations, and Tenaska shall be released of any obligations hereunder.

XII. NOTICES

Any notice as provided for in this MOA ("Notice") shall be sent by certified mail, courier service, hand delivery, or email if and only if confirmed by an email in response confirming receipt, as follows:

FOR EPA: U.S. EPA Region 6
Attn: Wren Stenger, Director
Multimedia Planning and Permitting Division (6PD)
1445 Ross Avenue
Dallas, TX 75202
Telephone: (214) 665-6435
Email:Stenger.Wren@epa.gov

FOR TXSHPO: Texas Historical Commission
Attn: Mark Wolfe, State Historic Preservation Officer
For Courier/Delivery:
108 W. 16th Street
Austin, TX 78701
For U.S. Mail:
P.O. Box 12276
Austin, Texas 78711-2276
Telephone: (512) 463.6100

Email: thc@thc.state.tx.us

FOR ACHP: Advisory Council on Historic Preservation
Attn: John M. Fowler
Office of the Executive Director
401 F Street NW, Suite 308
Washington DC 20001-2637
Telephone: (202) 517-0200
Email: jfowler@achp.gov

FOR NPS: Palo Alto Battlefield National Historical Park
Attn: Mark Spier, Superintendent
1623 Central Boulevard, suite 213
Brownsville, TX 78520-8326
Telephone: (956) 541-2785 x222
Email: Mark_Spier@nps.gov

FOR TENASKA: Tenaska Brownsville Partners, LLC
Attn: Larry Carlson
Vice President, Environmental Affairs
14302 FNB Parkway
Omaha, NE 68154
Telephone: (402) 938-1661
Email: lcarlson@tenaska.com

XIII. COORDINATION WITH OTHER FEDERAL REVIEWS

In the event that applications are made for federal funding or additional federal approvals for the undertaking and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this MOA and notifying and conferring with the EPA, TXSHPO, ACHP, and the NPS. Any necessary modifications will be considered in accordance with Section IX (Amendments).

XIV. EXECUTION

This MOA may be signed by the Signatories as one or more identical, duplicate documents with the same effect as if the Signatories had all signed a single document.

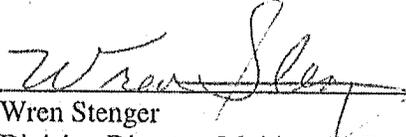
Execution of this MOA by the EPA, TXSHPO, ACHP, the NPS, and Tenaska and implementation of its terms is evidence that the EPA has taken into account the effects of the Proposed Project on the Historic Properties and Palo Alto NHL, and afforded the ACHP an opportunity to comment, concluding the National Historic Preservation Act Section 106 consultation process in accordance with applicable regulations.

The Parties acknowledge that there is no certainty that the Proposed Project will be developed and agree that nothing in this MOA is intended or shall be construed to require Tenaska to develop, finance or complete construction of the Station or to take any action other than those actions set forth herein and subject to the terms herein.

[Remainder of Page Blank; Signature Page Follows]

SIGNATORIES:

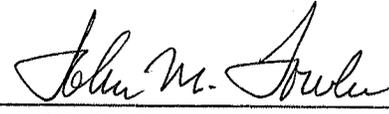
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6

By:  Date: 1/14/15
Wren Stenger
Division Director, Multimedia Permitting
and Planning Division

TEXAS STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Mark Wolfe
Texas State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 1/23/15
John M. Fowler
Executive Director

NATIONAL PARK SERVICE

By: _____ Date: _____
Mark Spier
Superintendent,
Palo Alto Battlefield National Historical
Park

By: _____ Date: _____
Sue E. Masica
Regional Director,
Intermountain Region

SIGNATORIES:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6

By: _____ Date: _____
Wren Stenger
Division Director, Multimedia Permitting
and Planning Division

TEXAS STATE HISTORIC PRESERVATION OFFICER

By: Mark Wolfe Date: 1/9/15
Mark Wolfe
Texas State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 1/23/15
John M. Fowler
Executive Director

NATIONAL PARK SERVICE

By: _____ Date: _____
Mark Spier
Superintendent,
Palo Alto Battlefield National Historical
Park

By: _____ Date: _____
Sue E. Masica
Regional Director,
Intermountain Region

SIGNATORIES:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6

By: _____ Date: _____
Wren Stenger
Division Director, Multimedia Permitting
and Planning Division

TEXAS STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Mark Wolfe
Texas State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler
Executive Director

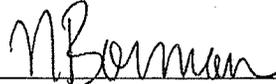
NATIONAL PARK SERVICE

By: Mark E. Spier Date: Jan. 7, 2015
Mark Spier
Superintendent,
Palo Alto Battlefield National Historical
Park

By: Sue E. Masica Date: 1/14/15
Sue E. Masica
Regional Director,
Intermountain Region

TENASKA BROWNSVILLE PARTNERS, LLC
a Delaware limited liability company

By: Tenaska Brownsville I, LLC, Its Manager

By: 
Nicholas N. Borman
Senior Vice President

Date: January 12, 2015