

PROGRAMMATIC AGREEMENT

AMONG THE
USDA FOREST SERVICE TONTO NATIONAL FOREST,
ARIZONA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
REGARDING
COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT
ON THE RESOLUTION COPPER PROJECT
AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA

PREAMBLE

The U.S. Department of Agriculture (USDA) Forest Service (Forest Service) Tonto National Forest acknowledges the continued opposition to the Resolution Copper Project by Indian Tribes (Tribes). The purpose of this preamble is to clearly articulate the opposition to the Resolution Copper Project, which has been communicated to the Forest Service by Tribes. The Forest Service has consulted with and is continuing to consult with the Fort McDowell Yavapai Nation, the Gila River Indian Community, the Hopi Tribe, the Mescalero Apache Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe. Participation in consultation has varied per individual tribe. The Gila River Indian Community, Hopi Tribe, Pueblo of Zuni, Salt River Pima-Maricopa Indian Community, White Mountain Apache Tribe, Yavapai-Apache Nation, Tonto Apache Tribe, and Mescalero Apache Tribe have engaged regularly and meaningfully in consultation with the Forest Service and have provided substantial input into individual projects. The Fort McDowell Yavapai Nation and Yavapai-Prescott Indian Tribe provided substantial input to the ethnohistoric study and have attended several field visits and formal meetings. The San Carlos Apache Tribe has provided substantial project-level input including partnering with the Forest Service to list Oak Flat on the National Register of Historic Places.

With the inclusion of U.S. Department of the Interior Bureau of Land Management (BLM)-administered lands in the analyses for the Resolution Copper Project and Land Exchange Environmental Impact Statement (EIS), additional Tribes that do not typically consult with the Forest Service but regularly consult with the BLM in southern Arizona were sent letters on December 12, 2018, regarding an alternative being considered on BLM-administered land (the Peg Leg alternative). These Tribes are the Ak-Chin Indian Community, Fort Sill Apache Tribe, Pascua Yaqui Tribe, and the Tohono O'odham Nation. The Forest Service, in coordination with the BLM, will continue to engage these Tribes in consultation on the undertaking along with other previously identified Tribes, consistent with their preferences.

Furthermore, representatives of the Hopi Tribe, the Mescalero Apache Tribe, the Pueblo of Zuni, the San Carlos Apache Tribe, the Tonto Apache Tribe, and the White Mountain Apache Tribe have crafted the following statement: *The Tribes have had the opportunity to be active in the consultation, review, and comment processes of the project and it has been made clear to the Forest Service that no Tribe supports the desecration/destruction of ancestral places where ancestors have lived, as these are considered alive and sacred. It is a tribal cultural imperative that these places should not be disturbed for any reason. For tribal members, continued access to the land and all its resources is necessary for their culture and they have expressed that access should be accommodated for present and future generations. Tribal members have communicated that participation in the design of this destructive activity has caused*

considerable emotional stress and brings direct harm to the traditional way of life to Tribes; however, it is still deemed necessary to ensure ancestral homes and ancestors receive the most thoughtful and respectful treatment possible.

- 1. WHEREAS**, Resolution Copper Mining, LLC (Resolution Copper), proposed a General Plan of Operations (GPO) to conduct mining operations on land currently administered by the U.S. Department of Agriculture (USDA) Forest Service (Forest Service) Tonto National Forest, land administered by the Arizona State Land Department (ASLD), and private land near Superior, Pinal County, Arizona; and
- 2. WHEREAS**, the GPO details Resolution Copper's proposed mining operations as consisting of five locations: East Plant Site, West Plant Site, Magma Arizona Railroad Company (MARRCO) corridor, filter plant and loadout facility, and tailings storage facility, with associated pipeline and/or power line corridors, with the five locations presented in Appendix A; and
- 3. WHEREAS**, the GPO includes the mining and processing (concentrator and filter plant/rail loadout) operations, transportation corridors for conveying concentrate and tailings, utility corridors, and a tailings facility as described in the final Resolution Copper Project and Land Exchange Environmental Impact Statement (EIS); and
- 4. WHEREAS**, the Forest Service and Resolution Copper have developed alternatives for comparative analysis and compliance with the National Environmental Policy Act (NEPA, 42 United States Code [U.S.C.] 4321 *et seq.*) that involve lands and surface resources administered by the U.S. Department of the Interior Bureau of Land Management (BLM) Tucson Field Office, Forest Service, ASLD, or lands held as private property; and
- 5. WHEREAS**, analysis of the proposed action and alternatives under NEPA has proceeded contemporaneously with the preparation of this Programmatic Agreement and the Forest Service has coordinated, to the extent practicable, NEPA and National Historic Preservation Act (NHPA; 54 U.S.C. 306108) procedures; and
- 6. WHEREAS**, on December 12, 2014, Congress passed the Southeast Arizona Land Exchange and Conservation Act (Section 3003 of Public Law 113-291; herein called the land exchange), which directs a land exchange between the U.S. Government (USDA and U.S. Department of the Interior) and Resolution Copper. In the exchange, Resolution Copper will receive 2,422 acres of National Forest System (NFS) land known as the Oak Flat Federal Parcel (selected lands) in exchange for 5,344 acres of private land (offered lands) owned by Resolution Copper, in a total of eight parcels. After completion of formal BLM cadastral surveys, the final land exchange acres comprise 2,422.11 acres that will go to Resolution Copper and 5,459.39 acres that will go to the U.S. Government. Lands going to the USDA Forest Service consist of: Apache Leap South End Parcel (140 acres) near Superior in Pinal County; Tangle Creek Parcel (148 acres) in Yavapai County; Turkey Creek Parcel (147 acres) in Gila County; Cave Creek Parcel (149 acres) near Cave Creek in Maricopa County; and East Clear Creek Parcel (640 acres) near Payson in Coconino County; lands to be administered by the BLM as public lands consist of: Lower San Pedro River Parcel (3,120.16 acres) near Mammoth in Pinal County; Appleton Ranch Parcel (955.54 acres) near Elgin in Santa Cruz County; and Dripping Springs Parcel (160 acres) near Kearny in Gila and Pinal Counties; and
- 7. WHEREAS**, the Forest Service acknowledges that, should the land exchange described above be consummated, certain activities currently proposed in the GPO will no longer be subject to Forest Service regulation nor require Forest Service authorization, and that remaining proposed activities on NFS lands post-land exchange may ultimately be authorized, under a variety of authorities and by multiple instruments. However, for ease of discussion here, all such activities will be discussed in the context of, and as proposed and detailed by, the GPO; and

8. WHEREAS, the overall Resolution Copper Project encompasses 43,905 acres and multiple land ownerships and administrative jurisdictions as shown on Figure A.1 in Appendix A, and consists of the selected lands leaving Federal ownership (2,422 acres) and offered lands being incorporated into the jurisdiction of the U.S. Government (5,459 acres) per the land exchange, and the project components and all alternatives associated with the GPO (36,024 acres not including those also within the land exchange); and

9. WHEREAS, the land exchange authorized by the Southeast Arizona Land Exchange and Conservation Act and the authorization of the use of Federal land that is not included in the exchange constitute a Federal undertaking (Undertaking) as defined by 36 Code of Federal Regulations (CFR) 800.16(y) which requires compliance with Section 106 of the NHPA, and Section 3003(c)(9)(C) of Public Law 113-291 mandates that impacts to cultural and archaeological resources are assessed under NEPA. If the land exchange does not take place, the approval of the GPO for operations on the Federal land identified for exchange by the Forest Service would also constitute a Federal undertaking; and

10. WHEREAS, on August 9, 2019, the Forest Service identified the tailings alternative location known as Skunk Camp on NFS, ASLD, and private lands as the agency preferred alternative; and

11. WHEREAS, the Forest Service is the Federal lead agency for the Section 106 compliance process as mandated by the land exchange; and

12. WHEREAS, the area of potential effects (APE) consists of a 6-mile buffer around the GPO project footprint (including the tailings facility alternatives) and the Oak Flat Federal Parcel (selected lands), including where the buffer has been extended outward to 7 miles to the east to include the community of Top-of-the-World and up to 9 miles southeast to incorporate additional historic mining areas, as well as the historic districts of Globe and Miami, and the compensatory mitigation parcels required by any Department of the Army permit issued by the U.S. Army Corps of Engineers (USACE) pursuant to Section 404 of the Clean Water Act (Section 404 permit), which is designed to capture direct, indirect, and cumulative effects within three zones—physical effects within the project footprint and Oak Flat Federal Parcel (selected lands), auditory effects within 2 miles of the project footprint and Oak Flat Federal Parcel (selected lands), and visual/atmospheric/socioeconomic effects within 6 miles of the project footprint and including the historic districts of Globe and Miami)—as shown on Figure A.1 in Appendix A of this Programmatic Agreement (Agreement), and further described in Stipulation IV; and

13. WHEREAS, the Forest Service has determined due to the scale and complexity of the Undertaking, that it will develop this Agreement pursuant to 36 CFR 800.14(b)(1) and (b)(3), to address historic property identification requirements and resolution of adverse effects; and

14. WHEREAS, the Forest Service has consulted with the Arizona State Historic Preservation Office (SHPO) pursuant to 36 CFR 800.6 on the Undertaking and the APE, and SHPO is authorized to enter into this Agreement in its role of advising and assisting Federal agencies in carrying out their Federal responsibilities under Sections 101 and 106 of the NHPA, at 36 CFR 800.2(c)(1)(i) and 36 CFR 800.6(b), and SHPO is a Signatory to this Agreement; and

15. WHEREAS, the BLM Tucson Field Office may be responsible for issuing Federal authorizations related to the mitigation, construction, operations, maintenance, and reclamation of portions of the proposed Undertaking on BLM-administered lands, depending on which alternative is selected and any potential, subsequent APE modification. Such BLM authorizations must also comply with Section 106 of the NHPA, pursuant to this Agreement, and applicable portions of the Archaeological Resources Protection Act (ARPA; 16 U.S.C. 470aa–470mm), the American Indian Religious Freedom Act (42 U.S.C. 1996), and the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3001 *et seq.*), and the BLM is participating as an Invited Signatory to this Agreement; and

16. WHEREAS, depending on which alternative is selected, a Section 404 permit may be required. Off-site compensatory mitigation to offset unavoidable adverse impacts to waters of the United States may be needed if a Section 404 permit is required. Three compensatory mitigation sites have been identified and inventoried for cultural resources: the MAR-5/ORRS Mitigation Site, the Queen Creek Mitigation Site, and the H&E Farm Mitigation Site (see Figure A.1 in Appendix A). The USACE intends to utilize this Agreement to fulfill its Section 106 responsibilities for this Undertaking, including any off-site compensatory mitigation, and recognizes the Forest Service as the lead Federal agency under 36 CFR 800.2(a)(2) to act on its behalf under Section 106, and USACE is an Invited Signatory to this Agreement; and

17. WHEREAS, the Salt River Project Agricultural Improvement and Power District (SRP), a public municipal corporation and political subdivision of the State of Arizona, is expected to construct and maintain electrical transmission facilities and associated access routes under a Special Use Permit from the Forest Service as well as a right-of-way granted by ASLD in support of the Undertaking and is an Invited Signatory to this Agreement; and

18. WHEREAS, the Undertaking includes State Trust land administered by the ASLD, and the ASLD has responsibility to comply with applicable requirements of the Arizona State Historic Preservation Act (Arizona Revised Statutes [ARS] 41-861 *et seq.*) on State Trust land in Arizona, and the ASLD is an Invited Signatory to this Agreement; and

19. WHEREAS, the Arizona State Museum (ASM) has been invited to participate in consultations regarding resolution of adverse effects because it has mandated authority and responsibilities under the Arizona Antiquities Act (AAA), ARS 41-841 *et seq.*, that apply to that portion of the Undertaking on State Trust land, and mandated authority and responsibilities under ARS 41-865 that apply to that portion of the Undertaking on private land, and ASM is an Invited Signatory to this Agreement; and

20. WHEREAS, Resolution Copper, the applicant, is invited to participate in the Section 106 consultation process under 36 CFR 800.2(c)(4) and in the development of this Agreement per 36 CFR 800.6(a)(2); it has obligations and duties to implement measures to resolve adverse effects as required under both the land exchange and the Agreement, and is an Invited Signatory under 36 CFR 800.6(c)(2)(iii); and

21. WHEREAS, in accordance with 36 CFR 800.6(a)(1), the Forest Service notified the Advisory Council on Historic Preservation (ACHP) of the Undertaking, and the ACHP has chosen to participate in this Agreement as a Signatory (letter dated December 21, 2017); and

22. WHEREAS, the Forest Service has assumed the lead Federal agency status for government-to-government consultation with Tribes, and has the delegated authority of the Secretary of Agriculture to implement the Southeast Arizona Land Exchange and Conservation Act including the mandate to “consult with Resolution Copper and seek to find mutually acceptable measures to—(i) address the concerns of the affected Indian tribes; and (ii) minimize the adverse effects on the affected Indian tribes resulting from mining and related activities on the Federal land conveyed to Resolution Copper under this section. (Sec. 3003(c)(3’))”; and

23. WHEREAS, during project initiation for the GPO in 2008, the Forest Service initiated consultation with the Tribes for the prefeasibility exploration plan for the Resolution Copper Project via a letter dated June 6, 2008, for the tailings hydrological and geotechnical testing via a letter dated May 13, 2014, and for the land exchange in 2015 via a letter dated August 4, 2015, and for the EIS via a letter dated April 1, 2016 (see Appendix S of the final EIS for the list of tribal consultation conducted to date), and continues to consult with the federally recognized Tribes with which it regularly consults because they have traditional territory claims to the area in which the Tonto National Forest is located—the Fort McDowell

Yavapai Nation, the Gila River Indian Community, the Hopi Tribe, the Mescalero Apache Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe; and

24. WHEREAS, alternative locations have been proposed for detailed consideration in the EIS for the permanent disposal and management of the mine tailings, including an alternative on BLM-administered land, and BLM routinely consults with four additional Tribes—the Ak-Chin Indian Community, the Fort Sill Apache Tribe, the Pascua Yaqui Tribe, and the Tohono O’odham Nation—that may also have traditional and/or cultural interests within the APE, and the BLM and Forest Service initiated consultation with these Tribes via a joint letter dated December 12, 2018; and

25. WHEREAS, the Forest Service recognizes that the landscape to be affected by this Undertaking is sacred to many Tribes and has been for many generations and continues to this day to be utilized for cultural and spiritual purposes and that some Tribes have declared that they consider some adverse effects from the Undertaking to be unmitigable and consider the resolution of effects in this Agreement to be insufficient; and

26. WHEREAS, the Forest Service is committed to respecting the sensitive and private nature of tribal traditional knowledge under the authority of 25 U.S.C. Section 3056 and Forest Service Handbook (FSH) titled *American Indian and Alaska Native Relations Handbook* (FSH 1509.13), and Tribes have the opportunity to designate information they consider to be confidential prior to all final reports being drafted; and

27. WHEREAS, according to the Indian Claims Commission map of *Indian Land Areas Judicially Established 1978*, the APE is located within the adjudicated territory of the “Pima-Maricopa,” the “Yavapai,” and the “Apache,” who are represented by the Fort McDowell Yavapai Nation, the Gila River Indian Community, the Mescalero Apache Tribe, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe; and

28. WHEREAS, the Forest Service directed the completion of pedestrian surveys to cover the portions of the physical APE that include the Oak Flat Federal Parcel (selected lands), GPO project components (East Plant Site, West Plant Site, MARRCO corridor, and filter plant and loadout facility), the proposed tailings locations for Alternatives 2, 3, 4, 5, and 6, and the Section 404 compensatory mitigation parcels. See Appendix B: Previous Survey Coverage and Identified Cultural Resources; and

29. WHEREAS, for portions of the physical APE that have not already been surveyed for historic properties, the Forest Service proposes to complete remaining identification and evaluation needs in phases, pursuant to 36 CFR 800.4(b)(2), and complete all inventory of the physical APE for the final selected alternative before ground-disturbing activities occur; and

30. WHEREAS, the Forest Service commissioned an ethnographic and ethnohistoric study¹ regarding places of traditional religious or cultural importance to Tribes within and adjacent to the area of Resolution Copper’s proposed action, Oak Flat, and the Superstition Wilderness Area. Through the study, multiple Tribes identified ancestral home places (archaeological sites), water features (springs, seeps, and

¹ Hopkins, M.P., C. Colwell, T.J. Ferguson, and S.L. Hedquist. 2015. *Ethnographic and Ethnohistoric Study of the Superior Area, Arizona*. Prepared for Tonto National Forest and Resolution Copper. Tucson, Arizona: Anthropological Research LLC. September 14.

waterways), and resource collection areas (plants, minerals, etc.) to be historic properties of traditional religious and cultural importance in the APE; and

31. WHEREAS, the Forest Service had inventories for properties of traditional religious and cultural importance conducted through a tribal monitoring program, which consisted of trained tribal monitors working both with archaeological survey crews and independently to record places of traditional or cultural significance and to identify those places that would qualify as historic properties under Section 106 of the NHPA; and

32. WHEREAS, within the APE, the Forest Service has formally listed one traditional cultural property (TCP), the *Chi'chil Bildagoteel* Historic District, in the National Register of Historic Places (NRHP), and several historic properties of traditional religious and cultural importance that have been identified by tribal representatives and will be evaluated as TCPs by the Forest Service in consultation with SHPO. The evaluation process for these TCPs is currently ongoing and determinations of eligibility to the NRHP have yet to be completed. More TCPs are expected to be identified; and

33. WHEREAS, archaeological inventories completed to date have identified 644 archaeological sites (both prehistoric and historic) within the APE for physical effects (see figures in Appendix B for identified historic properties and previous survey report references); and

34. WHEREAS, the Forest Service, in consultation with the SHPO, has determined that of the 644 archaeological sites identified, 506 sites have been determined eligible for listing in the NRHP, and 116 sites have been determined not eligible for the NRHP; 21 sites are unevaluated for NRHP eligibility and will require additional eligibility evaluation; and one site is exempt from Section 106 consultation because it is an in-use gas pipeline, per the ACHP's *Exemption Regarding Historic Preservation Review Process for Projects Involving Natural Gas Pipelines* (67 Federal Register 16,364, April 5, 2002); and

35. WHEREAS, the Forest Service has conducted a preliminary Class I literature review of the 6-mile visual/atmospheric/socioeconomic APE for historic properties listed in or eligible for the NRHP under Criteria A, B, and/or C (properties where effects on setting could alter the characteristics that make the property eligible for the NRHP) in October 2018 and September 2020. No ground-disturbing activities are planned outside the physical APE; therefore, properties eligible only under Criterion D were not included. The search included records at the Tonto National Forest Supervisor's Office, BLM, ASM Archaeological Records Office, and via AZSITE and NRHP online databases, and identified 14 historic buildings, structures, or districts listed in the NRHP and 37 archaeological sites eligible for the NRHP under Criteria A, B, and/or C; and

36. WHEREAS, the Forest Service finds that the Undertaking will result in adverse effects on historic properties that have been determined eligible for the NRHP under Criteria A, B, C, and/or D, and has consulted with the SHPO, pursuant to 36 CFR 800.5(a), regarding the implementation of Section 106 of the NHPA; and

37. WHEREAS, the Forest Service has prepared a Historic Properties Treatment Plan (HPTP) to address adverse effects on historic properties within the Oak Flat Federal Parcel (selected lands), and comments received from the SHPO and Tribes during the review of the Oak Flat HPTP were incorporated and the SHPO has concurred with the proposed treatments in the HPTP; and

38. WHEREAS, the Forest Service has prepared a Research Design to address adverse effects on historic properties within the GPO project areas and tailings alternatives, comments have been received from the SHPO and addressed, and the GPO Research Design has been sent to the Tribes for review; and

39. WHEREAS, the Forest Service has sought and considered the views of the public concerning this Undertaking through use of and in coordination with the agency's public involvement under NEPA, as provided for in 36 CFR 800.2(d)(3), and the public outreach included involving interested parties in the NEPA process, providing project information to the public, giving them opportunities to comment on the project including Section 106 issues through five public scoping meetings held on April 4, 5, 6, March 31, and June 9, 2016, two alternatives workshops held on March 21 and 22, 2017, and draft EIS public meetings on September 10, 12, 17, 19, October 8, and 10, 2019; and

40. WHEREAS, the Forest Service has also held three workshops specifically to identify public concerns and comments about Section 106 compliance and plans for this Agreement on June 13, 14, and 15, 2018, held a workshop for Consulting Parties to discuss this Agreement on December 11, 2019, and has received comments on this Agreement as it was presented in the draft EIS; and

41. WHEREAS, Archaeology Southwest, Arizona Mining Reform Coalition, Boyce Thompson Arboretum, Inter Tribal Association of Arizona, Scott Wood, and Tom Wright provided noteworthy comments on the development of this document; and

42. WHEREAS, the Forest Service, in consultation with all Consulting Parties, will explore both standard and alternative measures to resolve adverse effects and provide the best use of available funding and resources as it seeks to resolve adverse effects on historic properties; and

43. WHEREAS, participation as a Concurring Party does not imply endorsement of the Undertaking, and per 36 CFR 800.6(c)(3), the refusal of any party invited to become a Concurring Party will not invalidate this Agreement nor will it preclude them from participating in further consultation; and

44. WHEREAS, definitions used in this Agreement are outlined in Appendix C of this document or as defined in 36 CFR 800.16; and

NOW THEREFORE, the Forest Service, SHPO, and the ACHP agree that this Agreement shall be implemented in accordance with the following stipulations to address the effects of the Undertaking on historic properties.

STIPULATIONS

The Forest Service shall ensure that the following stipulations are carried out:

I. ROLES AND RESPONSIBILITIES

A. USDA FOREST SERVICE TONTO NATIONAL FOREST

1. The Signatories agree that the Forest Service is the lead Federal agency for administering and implementing this Agreement with responsibilities that include:
 - consulting and coordinating with the Consulting Parties;
 - engaging in government-to-government consultation with affected Tribes regarding issues of concern related to the Undertaking;
 - carrying out the Forest Service's responsibilities in accordance with applicable laws and authorities ensuring that all Signatories fulfill their obligations;
 - making determinations of NRHP eligibility and findings of effect for historic properties;
 - overseeing all cultural resource management work including additional historic property inventory in coordination with appropriate land-managing agencies, and drafting and/or assembling all submissions to the Consulting Parties, including additional historic properties inventory reports (if needed), plans to resolve adverse effects such as HPTPs, and the preliminary and final Treatment Reports;
 - seeking SHPO concurrence with agency decisions as required by 36 CFR 800 relating to the treatment of historic properties;
 - implementing the plans to resolve adverse effects; and
 - notifying SHPO and the other Consulting Parties of the selection of the tailings alternative within 14 days of the issuance of the final Record of Decision (ROD).
2. The Forest Service shall generally follow the Forest Service policy, *Consultation with Indian Tribes and Alaska Native Corporations* (Forest Service Manual 1563.1), the Tribal Consultation Plan included in the Agreement (see Appendix F), and shall proceed in full and complete compliance with Federal laws, regulations, policies, and executive orders to guide its tribal consultation procedures and relationships.

B. RESOLUTION COPPER MINING, LLC

1. Per Section 3003(c)(7)(A) of Public Law 113-291, Resolution Copper "shall agree to pay, without compensation, all costs that are associated with the land exchange and any environmental review document." As part of the environmental review process, Resolution Copper is financially responsible for all work that is associated with complying with the NHPA and the Arizona State Historic Preservation Act (ARS 41-861 *et seq.* and ARS 41-865).
 - a. This work includes, but is not limited to: inventories of archaeological sites, historic buildings and structures, and properties of traditional religious and cultural importance within the APE; evaluation of all historic properties for inclusion in the NRHP; recommendations of effect of the Undertaking on historic properties for review and consideration by the Forest Service; and creation and implementation of treatment plans and any other mitigation measures for the historic properties within the APE as agreed to by the Signatories to this Agreement through the consultation process.

C. BUREAU OF LAND MANAGEMENT

1. For the purposes of this Undertaking, the BLM recognizes the Forest Service as the lead Federal agency and shall work in coordination with the Forest Service to comply with Section 106 of the NHPA. The BLM will participate only in those activities related to its jurisdiction or decision-making authorities, unless otherwise invited by the Forest Service. The BLM's status as a Consulting Party and Invited Signatory to this Agreement does not affect its independent responsibilities under applicable Federal statutes and regulations that may pertain to the agency's special expertise and/or jurisdictional authorities.
2. The BLM retains jurisdiction and management authority of all resources and historic properties on BLM-administered lands. If the selected alternative or any subsequent APE modification involves BLM-administered lands, the BLM, in cooperation with the Forest Service, will engage in government-to-government consultation with affected Tribes to develop a NAGPRA Plan of Action. This Agreement does not substitute for the authority of the BLM in its NAGPRA-related consultations, nor the authority of the Tribes to engage in government-to-government consultations with the BLM.
3. Should ambiguities or contradictions arise among project-related treatment plans and the BLM's NAGPRA Plan of Action, the BLM NAGPRA Plan of Action shall prevail on BLM-administered lands.
4. If an alternative that does not involve BLM-administered land becomes the selected alternative, the BLM's responsibilities and involvement in this Agreement shall cease. The BLM will cease being an Invited Signatory to this Agreement, will withdraw, and will formally notify the Signatories and Consulting Parties of its withdrawal. Such change will not require an amendment to this Agreement.

D. U.S. ARMY CORPS OF ENGINEERS

1. For purposes of this Undertaking, the USACE recognizes the Forest Service as the lead Federal agency and shall work in coordination with the Forest Service to comply with Section 106. USACE will only participate in those activities within their defined permit area per 33 CFR 325 Appendix C(1)(g) and associated USACE guidance. This also extends to compensatory mitigation activities that may be required of Resolution Copper in any Section 404 permit, if issued. The USACE's status as a Consulting Party and Invited Signatory to this Agreement does not affect its independent responsibilities under applicable Federal statutes and regulations that may pertain to the agency's special expertise and/or jurisdictional authorities.
2. If an alternative that does not require a Section 404 permit becomes the selected alternative, the USACE's responsibilities and involvement in this Agreement shall cease. The USACE will cease being an Invited Signatory to this Agreement, will withdraw, and will formally notify the Consulting Parties of its withdrawal. Such change will not require an amendment to this Agreement.

E. ARIZONA STATE LAND DEPARTMENT

1. The ASLD, in coordination with the ASM, the Forest Service, and the SHPO, will be responsible for reviewing all cultural resources work completed on State Trust land, including inventories, determinations of eligibility and findings of effect, HPTs, and the preliminary and final reports. ASLD shall work in close coordination with the Forest Service to complete the Section 106 process and in close coordination with ASM to ensure compliance with the Arizona Antiquities Act (ARS 41-841 *et seq.*). The ASLD shall retain responsibility for the management of cultural resources that are located on ASLD land within the APE of this Undertaking during the duration

of this Agreement. The ASLD will participate only in those activities in those areas related to its jurisdiction or decision-making authorities, unless otherwise invited by the Forest Service.

F. SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

1. As described in the GPO and the EIS for the Undertaking, SRP will be responsible for constructing, operating, and maintaining electrical transmission facilities and associated access routes for the Resolution Copper Project. Upon submission of a complete application, the Forest Service shall review the application for compliance with the EIS and this Agreement, and issue a Special Use Authorization to SRP for all electrical transmission facilities on Forest Service lands in accordance with the final ROD. SRP will pursue easements and/or other land rights across ASLD and private lands, as necessary.
2. In coordination with Resolution Copper and SRP, the Forest Service shall ensure that necessary identification and evaluation of potentially affected historic properties and resolution of any adverse effects that may result from SRP's construction are carried out prior to construction and according to the provisions of this Agreement. Identification and evaluation of potentially affected historic properties and resolution of any adverse effects resulting from operation and maintenance will be governed by the Special Use Authorization, easements, and/or other land rights.

II. PROFESSIONAL QUALIFICATIONS AND PERMITS

- A. For all cultural resource-related activities, Resolution Copper shall ensure that its cultural resources contractors use qualified historic preservation professionals that meet the Secretary of the Interior's standards (48 Federal Register 44,716, September 29, 1983), as per Section 112(a)(1)(A) of the NHPA and 36 CFR 800.2(a)(1).
- B. For cultural resource-related activities on Federal land, the Forest Service and/or BLM shall ensure that all agency personnel responsible for historic properties shall meet Professional Qualification Standards as defined by the Office of Personnel Management: Heritage Program Professionals (GS-170 historian, GS-190 anthropologist, and GS-193 archaeologist; see definition in Appendix C). For work on Forest Service-administered land, only Heritage Program Professionals may make management recommendations and review and recommend approval of heritage work done by qualified personnel. For work on BLM-administered land, only BLM-designated Cultural Heritage Program Specialists may make recommendations and review and recommend approval of heritage work done by BLM employees, contractors, and volunteers.
- C. For cultural resource-related activities on Federal land, Resolution Copper shall ensure that all necessary permits and permissions are obtained from the appropriate land-managing agency prior to any fieldwork, including applicable ARPA permits and Field Authorizations for any ground-disturbing activities.
- D. For all cultural resource-related activities on State Trust land, Resolution Copper shall ensure that its cultural resources contractors obtain an Arizona Antiquities Act (AAA) Permit from the ASM prior to conducting archaeological activities on State Trust land pursuant to ARS 41-841 *et seq.* Archaeologists working on State Trust lands also must be qualified under the rules implementing the AAA. Resolution Copper shall also ensure that its cultural resources contractors obtain a burial agreement from the ASM prior to all ground-disturbing activity on State Trust and private lands pursuant to rules implementing ARS 41-844 and 41-865.

- E. In recognition of the special expertise of tribal experts concerning properties of traditional religious and cultural significance, the standards of 36 CFR 61 will not apply to tribally designated representatives carrying out or assisting in identification and evaluation efforts for such properties of tribal interest.

III. COORDINATION WITH OTHER FEDERAL REVIEWS

- A. In the event that another Federal agency not initially a party to or subject to this Agreement receives an application for funding/license/permit for the Undertaking as described in this Agreement, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this Agreement and notifying the Forest Service, the SHPO, and the ACHP that it intends to do so. If the Federal agency appears to have a significant role in the Undertaking, the Signatories may invite the agency to sign the Agreement in accordance with Stipulation XX.
- B. In the event that an above Federal agency's application for funding/license/permit does not match the Undertaking as described in this Agreement, that agency may complete a separate review to fulfill its Section 106 responsibilities or request of the Signatories that the Agreement be amended to account for those changes in the Undertaking, in accordance with Stipulation XVIII.

IV. AREA OF POTENTIAL EFFECTS

- A. The APE consists of a 6-mile buffer around the Oak Flat Federal Parcel (selected lands), the GPO project areas, and tailings alternatives, except where it has been extended outward to 7 miles to the east to include the community of Top-of-the-World, and up to 9 miles southeast to incorporate additional historic mining areas, as well the historic districts in Globe and Miami, and the compensatory mitigation lands required by the Section 404 permit, if issued, to take into consideration potential direct, indirect, and cumulative effects of the Undertaking.
- B. Within the 6-mile APE, the Forest Service has identified three "zoned" sub-APEs to tailor its historic property identification efforts and assessment of effects. The Forest Service has identified one zone as the location where physical effects may occur within the GPO project areas and Oak Flat Federal Parcel (selected lands); the Forest Service has identified a second zone as where the auditory effects may occur within 2 miles of the project footprint; and the Forest Service has identified a third zone as the area where the visual/atmospheric/socioeconomic effects may occur within 6 miles of the project area and within the historic districts of Globe and Miami.
- C. **Physical effects:** The APE for physical effects will include the Oak Flat Federal Parcel (selected lands) leaving Federal management under the land exchange and the project areas associated with the GPO, which includes all areas likely to be affected by such activities associated with construction, operations, and reclamation (see Appendix A of this Agreement). The physical effects APE associated with the GPO will be modified as necessary to allow for adjustments in construction, operations, and access road placement. When possible, adjustments to the physical APE may also be made to avoid effects on natural, cultural, or modern features such as outcrops, historic properties, and historic properties of traditional religious and cultural importance.
- D. **Auditory effects:** The APE for auditory effects including noise and vibrations shall be areas within 2 miles from any project component (including any access routes, facilities, and relocated facilities) per the noise analysis area of the EIS. The boundary may be adjusted if consultation with Tribes or other Consulting Parties identifies a need to expand the APE in certain locations (see Appendix A of this Agreement).

- E. **Visual/Atmospheric/Socioeconomic effects:** The APE for visual/atmospheric/socioeconomic effects shall be areas within 6 miles from any project component (including any access routes, facilities, and relocated facilities), except where it has been extended outward 7 miles to the east to include the community of Top-of-the-World, and up to 9 miles southeast to incorporate additional historic mining areas, and the historic districts in Globe and Miami (see Appendix A of this Agreement).
- F. **Cumulative effects:** The APE for cumulative effects shall be the same as that for the physical, auditory, and visual/atmospheric/socioeconomic effects combined.
- G. The Forest Service shall ensure that any significant modification of the APE will occur in consultation amongst the Consulting Parties. The Forest Service shall notify the Consulting Parties to the Agreement in writing of any proposed modifications to the APE and provide a map showing the proposed modification. Consulting Parties shall have 30 calendar days to respond to the proposed modifications; if no response is received, the Forest Service shall make a good-faith effort to contact the Signatories and, if no response is received, shall proceed with the modifications and any subsequent historic property identification efforts, if needed. Modifications to the APE will not require an amendment to the Agreement.

V. TRIBAL CONSULTATION

- A. In compliance with Chapter 10, Consultation with Indian Tribes and Alaska Native Corporations of the Forest Service Handbook titled *American Indian and Alaska Native Relations Handbook* (FSH 1509.13), the Forest Service shall engage Tribes in government-to-government consultation throughout the duration of the Undertaking through in-person meetings, telephone calls, and on-site field visits. Information and documents will be provided to the Tribes via mail, email, or in person.
- B. The Forest Service has prepared for the purposes of this project a Tribal Consultation Plan (see Appendix F) that was distributed to the Tribes and Signatories on October 29, 2019, for a 30-day comment period. Comments received were considered for incorporation into the final Tribal Consultation Plan. The Tribal Consultation Plan procedures will be used by the Forest Service for continuing consultation after the execution of this Agreement (see Appendix S of the final EIS for the list of tribal consultation conducted to date). Consultation will be flexible and tailored to feedback from each Tribe. The Forest Service will take every opportunity to accommodate tribal preferences for how consultation will be conducted.
- C. Per the Tribal Consultation Plan (see Appendix F of this Agreement), the Tonto National Forest Supervisor, or other Tonto National Forest line officer as designated by the Forest Supervisor, and the appropriate tribal relations personnel will meet at least once per year with each consulting Tribe for the duration of this Agreement to provide updates on the implementation of the Agreement and status of the Undertaking. Additional meetings with the associated cultural groups (Apache, Akimel O'odham, Puebloan, and Yavapai) will be accommodated as requested. Project updates will be regularly provided via telephone, email, and formal letter correspondence to tribal leaders and representatives.
- D. Pursuant to 36 CFR 800.2(c)(2) and 36 CFR 800.4, the Forest Service and other Federal land-managing agencies will make a good-faith effort to consult with Tribes on the identification of all historic properties, with an emphasis on those that have traditional religious and cultural importance to one or more tribes, evaluations of NRHP-eligible historic properties that may be effected by the Undertaking, and resolution of adverse effects as described in Stipulations VI through IX. This process will also fulfill the State Trust tribal consultation responsibility under ARS 41-2051.

- E. All parties to this Agreement shall respect confidentiality concerns expressed by Tribes to the extent allowed by law (see Stipulation XIII).

VI. IDENTIFICATION OF HISTORIC PROPERTIES

- A. **Physical APE Identification.** The Forest Service will conduct a Class III pedestrian survey, per 36 CFR 800.4, to identify historic properties within the project's ground disturbance footprint of the GPO, Oak Flat Federal Parcel (selected lands), and the final selected tailings alternative (see Appendix A: Table A-1, APE for Physical Effects by Project Alternative). Historic properties inventory surveys conducted to date are shown in Appendix B of this Agreement. Any remaining inventories of the physical APE will be completed prior to the commencement of project-related ground disturbance. The Forest Service shall coordinate review of these inventories with the SHPO, Tribes, and land-managing agencies per Stipulation VI.E.
- B. **Tribal Monitor Inventories.** Separate inventories are being conducted with tribal monitors and tribal field visits to identify historic properties of traditional religious and cultural importance within the entire APE areas, including physical, auditory, and visual/atmospheric/socioeconomic APEs and the 404 mitigation lands, depending on the alternative selected. The Forest Service shall coordinate review of these inventories per Stipulation VI.F.
- C. **Inventory for Modifications.** If additional areas are identified that need historic property inventories due to necessary changes in the GPO, alternative refinements, or permitting/licensing requirements after the signing of this Agreement, the Forest Service shall ensure that all inventories will be carried out in conformance with the Stipulations in the Agreement. If there is a need to change the boundary of the physical APE due to unforeseen project modifications, the Forest Service will consult with the SHPO and other Consulting Parties on the newly proposed APE boundaries, per Stipulation IV.G.
- D. **Auditory and Visual/Atmospheric/Socioeconomic APE Inventories.** Within 6 months of the issuance of the draft ROD, the Forest Service shall conduct an inventory of the auditory and visual/atmospheric/socioeconomic APEs through a Class I literature review and reconnaissance survey, if necessary, to identify historic properties which may be affected by the Undertaking. The Forest Service shall coordinate these identification efforts with SHPO, Tribes, and other Consulting Parties per Stipulation VI.E.
 - 1. For the auditory and visual/atmospheric/socioeconomic APEs, the Forest Service shall ensure that a Class I inventory is conducted to identify archaeological sites, historic buildings and structures, historic districts, and historic properties of traditional religious and cultural importance. The Class I inventory will review records held by the Forest Service, ASM, SHPO, Tribes, and other relevant museums and archives. Windshield surveys may be conducted within the APEs to identify historic properties not identified by the Class I inventory.
 - 2. For the visual effects within the visual/atmospheric/socioeconomic APE, the Forest Service will require use of visual modeling to determine areas from which the Undertaking is visible (see Sections 3.11 and 3.12 of the final EIS). Within those identified areas, windshield or reconnaissance surveys will be conducted, if necessary, to identify historic properties not identified by the Class I inventory that may be affected by the Undertaking, including historic properties of traditional religious and cultural importance.
 - 3. The Forest Service will seek to identify historic properties in the communities of Superior, Top-of-the-World, Globe, and Miami which are located within the visual/atmospheric/socioeconomic APE. Four previous inventories of historic buildings have been conducted in Superior and one each in Miami and Globe; the Globe Commercial and Civic Multiple Resource Area is listed in the NRHP. If the Forest Service determines that there may be adverse effects on historic

properties in these communities, the Forest Service shall ensure that, if needed, the existing surveys in Superior, Miami, and Globe will be revised/updated and a new windshield survey of Top-of-the-World is conducted to identify historic properties.

4. Assessment and finding of effects, if any, outside the current auditory and visual/atmospheric/socioeconomic APEs will not be known until the draft ROD is completed. If the analysis for the final EIS demonstrates that there will be adverse effects on historic properties outside the current APEs, the Forest Service will extend an APE per Stipulation IV.G and ensure that any necessary inventories, evaluation, and effects assessment are completed per Stipulations VI through VIII. Adverse effects as described in this Stipulation VIII, including those identified after the draft ROD is published, will be addressed using the funds described in Stipulation IX.
- E. **Review of Identification Efforts:** The Forest Service shall ensure that the draft inventory report(s) generated through the identification efforts of historic properties will be reviewed and revised in three steps:
1. The draft inventory of historic properties report(s), which will include NRHP eligibility recommendations, will be concurrently reviewed by both the Forest Service and other land-managing agencies (BLM or ASLD), if appropriate, for a 30-day comment and review period. Comments will then be incorporated into a revised draft report. The Forest Service will submit the revised draft historic properties inventory reports to SHPO and the Tribes for a 30-day review and comment period.
 2. If the comments received from the SHPO and Tribes significantly change the recommendations, the comments will be addressed in the inventory report, and a second 30-day review period will be initiated.
 3. If the Forest Service does not receive a response from a Consulting Party during these review periods, the Forest Service shall make a good-faith effort to contact the party by email and telephone. If, after a reasonable and good-faith effort to reach an unresponsive party (14 days), there is no response, the Forest Service may proceed to the next step prescribed by this Agreement (Stipulation VII).
- F. **Review of Identification Efforts by Tribal Monitors.** The Forest Service shall ensure that the draft inventory report(s) generated from the work of the tribal monitor surveys showing the results of the efforts to identify historic properties of traditional religious and cultural importance will be reviewed and revised in the steps outlined below.
1. The Forest Service Tribal Relations Specialist assigned to the Resolution Copper Project shall review the draft inventory reports on historic properties of traditional religious and cultural importance. The Forest Service Tribal Relations Specialist shall then distribute the report to the Tribes for a 30-day comment and review period.
 2. The Tribes will use the information provided in the Tribal Monitoring reports to identify historic properties of traditional religious and cultural importance located within the APEs and will submit that information to the Forest Service using the Tonto National Forest Tribal Evaluation/Recommendation Form that will be provided with the draft monitoring reports.
 3. The Forest Service shall ensure that confidential information provided by the Tribes to the Forest Service will remain confidential per 25 U.S.C. 3056, which prohibits the disclosure of confidential tribal information on sites or resources used for traditional and cultural purposes.

VII. EVALUATION OF HISTORIC PROPERTIES

- A. The historic properties identified as of October 1, 2020, are listed in Appendix B of this Agreement. In total, 644 archaeological sites have been recorded within the Oak Flat Federal Parcel (selected lands), GPO project areas, and the proposed tailings location for Alternatives 2, 3, 4, 5, and 6. Of these, 506 sites have been determined eligible for the NRHP, and 116 sites have been determined not eligible for the NRHP. Another 21 sites are unevaluated for NRHP eligibility. One site is exempt from Section 106 consultation because they are in-use gas pipelines, per the ACHP's *Exemption Regarding Historic Preservation Review Process for Projects Involving Natural Gas Pipelines* (67 Federal Register 16,364, April 5, 2002).
- B. The Forest Service shall evaluate cultural resources of traditional religious and cultural importance for NRHP eligibility in accordance with the criteria set forth in National Register Bulletin 38: *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. As part of the evaluation process, the Forest Service and/or the appropriate land-managing agency shall invite Tribal Historic Preservation Officers and/or designated Tribal Representatives, as well as elders and traditional practitioners, to visit the resources identified by the tribal monitors and included in the inventory reports of historic properties of traditional religious and cultural importance per Stipulation VI.F. The relevant information gathered during these visits will be incorporated in the site evaluations. The Forest Service shall submit the determinations of eligibility for the cultural resources of traditional religious and cultural importance to the SHPO for a 30-day review and concurrence on the determinations and effect.

The Forest Service has identified one historic property of traditional religious and cultural importance in the physical APE, which has been listed on the NRHP as a historic district. Additional historic properties of traditional religious and cultural importance are present in the physical APE and the Forest Service is working with Tribes to complete the NRHP eligibility for these properties. More historic properties of traditional religious and cultural importance are likely to be identified and evaluated through tribal consultation, historic property inventory efforts, and the efforts of tribal monitors as described in Stipulation VI.F.

- C. The Forest Service shall ensure all cultural resources identified during any additional Class I literature review, Class III inventory, historic building surveys, and through tribal consultation will be evaluated by the Forest Service for their eligibility for the NRHP in accordance with 36 CFR 800.4(b)(2) and in consultation with other appropriate land-managing agencies. The Forest Service shall, where possible, make determinations of eligibility and findings of effect upon completion of all inventory reports in coordination with Tribes and other land-managing agencies, when appropriate. The SHPO shall be afforded 30 days to review and concur on the determinations (see Stipulation VI.E).
- D. If the NRHP eligibility of cultural resources cannot be determined at the time of initial inventory, the Forest Service shall either (a) ensure that an eligibility testing program is conducted according to the provisions outlined in Stipulation IX below, or (b) treat unevaluated cultural resources as eligible for the NRHP. The Forest Service shall submit subsequent NRHP eligibility determinations, in concurrence with other land-managing agencies, if appropriate, to the SHPO and Tribes for review and concurrence.
- E. Should the SHPO or other Consulting Party disagree with the eligibility determinations, pursuant to 36 CFR 800.4(c)(2), the Forest Service shall obtain a determination of eligibility from the Keeper of the National Register pursuant to 36 U.S.C. 63. For historic properties found not eligible for the NRHP, no further protection or consideration of the site will be afforded for compliance purposes.

VIII. FINDINGS OF EFFECTS

- A. The Forest Service has applied the criteria of adverse effect per 36 CFR 800.5(a) and finds that the Undertaking will have an adverse effect on historic properties. For the physical APE, there will be different strategies employed to assess effects on historic properties because there are two parts to this Undertaking: 1) the Oak Flat Federal Parcel (selected lands) that will leave Federal ownership within 60 days of the publication of the final EIS, and 2) the development of the GPO project area. When the Oak Flat Federal Parcel (selected lands) leaves Federal ownership it will no longer have adequate and legally enforceable laws and regulations to ensure long-term preservation of historic properties identified within the Parcel (selected lands). Therefore, the criteria of adverse effect can be applied to all historic properties, including the listed TCP, located within the Parcel pursuant to 36 CFR 800.5(2)(vii). For historic properties in the GPO area and outside of the Oak Flat Federal Parcel (selected lands), the Forest Service, in consultation with the appropriate land-managing agency, SHPO, Tribes, and other Consulting Parties, will apply the criteria of effect on each identified historic property on a property-by-property basis.
- B. The Forest Service shall assess the visual effects on historic properties in the visual/atmospheric/socioeconomic APE. These will include properties where the eligibility is in any way contingent on its visual setting using viewshed simulations of the visibility of project components and factoring qualities such as distance from the project component, intervening landforms and/or human-made constructions, and overall modifications to the visual landscape. The assessment of visual effects on historic properties will be accomplished in consultation with the SHPO, Tribes, and other appropriate Consulting Parties. This analysis will be completed within 2 years of issuing the draft ROD.
- C. The Forest Service shall assess effects, other than visual effects, on historic properties in the visual/atmospheric/socioeconomic APE using data collected on auditory and socioeconomic impacts for the final EIS and any supplementing information. The assessment of effects on historic properties will be accomplished in consultation with the SHPO, Tribes, and other Consulting Parties. This analysis will be completed within 2 years of issuing the draft ROD.
- D. For disputes regarding findings of effects, the Forest Service shall consult with the disputing party to seek agreement regarding the findings of effect. The Forest Service will notify the ACHP of the dispute, pursuant to 36 CFR 800.4(d)(1)(ii) and 800.5(c)(3) and per Stipulation XIX.

IX. MEASURES TO ADDRESS ADVERSE EFFECTS

A. Overview

Because of the size and complexity of the Undertaking, the Forest Service shall implement measures to resolve adverse effects on historic properties using multiple methods all aimed at providing a comprehensive program.

There are two types of measures that have been developed: on-site and off-site measures. On-site measures are actions designed to address and/or resolve physical effects that will have an adverse impact on the historic integrity of properties such as archaeological sites. The majority of the on-site measures will likely apply to historic properties located within the physical APE. Off-site measures are those actions designed to address adverse effects on the historic integrity of historic properties that cannot be resolved with on-site measures. The majority of these off-site measures are broad and will address effects that cannot be resolved using direct on-site measures. The off-site measures are intended to address effects on historic properties or important tribal features with a broad presence, that is landscape in scale such as a TCP, and adverse effects on historic properties within the auditory and visual/atmospheric/socioeconomic APEs. The on-site and off-site measures to resolve adverse

effects were identified and developed in consultation with the affected Tribes and other Consulting Parties, and are designed to help meet the mandate from the Southeast Arizona Land Exchange and Conservation Act to “*consult with Resolution Copper and seek to find mutually acceptable measures to – (i) address the concerns of the affected Indian tribes; and (ii) minimize the adverse effects on the affected Indian tribes resulting from mining and related activities on the Federal land conveyed to Resolution Copper under this section*” (Section 3003(c)(3) of Public Law 113-291). However, through the consultation process, types of adverse effects on historic properties such as TCPs, important tribal cultural features, and sacred places have been identified that are considered unmitigable and cannot be resolved.

B. On-site Measures

1. Oak Flat HPTP: The Forest Service has completed preparation of an archaeological HPTP for the Oak Flat Federal Parcel (selected lands) to resolve adverse effects on historic properties eligible for the NRHP under Criterion D. The Oak Flat HPTP is attached to this Agreement as Appendix E. The Forest Service shall begin implementation of this Oak Flat HPTP within 1 month of execution of this Agreement. The implementation of the Oak Flat HPTP will begin prior to the formal transfer of the selected lands. The work is not likely to be completed prior to the land transfer. However, the transfer will not disrupt the completion of the measures listed in the HPTP.
2. GPO Research Design and Treatment Plans: The Forest Service has prepared an archaeological Research Design (GPO Research Design) in consultation with SHPO, Tribes, and appropriate managing agencies to guide the development of treatment plans to address adverse effects on historic properties within the GPO project areas, and the Section 404 permit compensatory mitigation parcels (i.e., West Plant Site, MARRCO corridor, tailings facility, etc.), depending on the final alternative that is selected. The Forest Service determined, in consultation with the Consulting Parties, that the multiple treatment plans approach, rather than a single GPO HPTP, is needed because the GPO covers several large areas, each with its own cultural background and topography. The individual Treatment Plans will be tiered to the GPO Research Design, and tailored to fit the mitigation needs of each GPO project area. The Forest Service may begin development of the Treatment Plans in consultation with all of the appropriate Consulting Parties as soon as all of the effects are identified in a GPO project area. The implementation of the individual GPO Research Design Treatment Plans will begin after the issuance of the final ROD for components on NFS lands and after issuance of a right-of-way/lease and completion of purchase at auction for components on Arizona State Trust land. The work identified in the Treatment Plans will be completed prior to the proposed ground-disturbing activities in the GPO project areas.
 - a. If Alternative 5 (Peg Leg) is selected, the Forest Service shall ensure that the Treatment Plan for the tailings alternative area and associated infrastructure will be prepared in direct coordination with the BLM and submitted to SHPO, the Tribes, and other Consulting Parties for review and comment.
 - b. If Alternative 6 (Skunk Camp) is selected, the Forest Service shall ensure that the Treatment Plan for the tailings alternative area, associated infrastructure, and the Treatment Plan for the Section 404 permit compensatory mitigation parcels will be prepared in direct coordination with the ASLD and USACE and submitted to SHPO, the Tribes, and other Consulting Parties for review.
 - c. When appropriate, the Treatment Plans for the GPO project areas shall include measures other than data recovery to resolve adverse effects, to the extent practicable, on historic properties that are eligible for the NRHP under Criterion D (see Off-site Measures listed below).

- d. When appropriate, adverse effects on historic properties identified within the GPO project areas may be avoided through design or facility placement, and any avoidance measures to be taken will be clearly outlined in the Treatment Plans.
- e. The Treatment Plans for the GPO project areas shall include a plan for NRHP-eligibility testing of unevaluated sites that will be adversely affected by the Undertaking. Testing shall be conducted as part of the first stage of work at each GPO project area or Section 404 permit compensatory mitigation parcels (if needed). Once testing fieldwork is complete, the Forest Service shall ensure that a technical report is prepared detailing the eligibility recommendation for each site tested. The Forest Service shall submit a copy of the technical report, with the determinations of eligibilities to the appropriate land-managing agency, Tribes, and other Consulting Parties for a 30-day review and comment period. The Forest Service will address any comment received and then submit the report to SHPO for concurrence on the eligibility recommendations.
- f. The Forest Service shall ensure that the data recovery strategy specified in the GPO Research Design in conjunction with the Treatment Plans is consistent with the *Secretary of the Interior's Standards and Guidelines* (48 Federal Register 44716–44742), the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (64 Federal Register 95:27085–27087), and guidance from the Forest Service and SHPO.
- g. The Forest Service and ASLD shall ensure that the archaeological strategies for work conducted on State Trust land specified in the GPO Treatment Plans are consistent with ARS 41-841 *et seq.* and ARS 41-865. The Forest Service shall ensure that the archaeological strategies for work conducted on private lands specified in the GPO Research Design are consistent with ARS 41-865.
- h. The Forest Service shall ensure that the GPO Research Design and its associated Treatment Plans specify at a minimum:
 - i. the results of previous research and a research design that discusses the questions to be addressed through data recovery, archival research, analysis, and interpretation, with an explanation of their relevance and importance;
 - ii. the archival, field, and laboratory methods to be used, with an explanation of their relevance to the research questions;
 - iii. if the data recovery is to be phased (i.e., conducting eligibility testing first), a discussion of the transition between Phase I and Phase II including time frames for review of preliminary reports and field visits/consultations;
 - iv. the process for interfacing the results of eligibility testing, the resultant determinations of eligibility, and any prior excavations performed as a result of the Undertaking with the relevant data recovery methodology;
 - v. shall incorporate, where appropriate, tribal perspectives into the culture history, research design, data recovery methods, analysis, and interpretation;
 - vi. a description of the properties or portions of properties where data recovery is to be carried out, and any property or portion of property that would be affected by the Undertaking but will not receive data recovery treatment, and a rationale for dealing with affected properties or portions that will not receive data recovery (e.g., discussion of the sampling strategy, avoidance, etc.);
 - vii. specification of the methods and level of effort to be expended on the treatment of each historic property;
 - viii. a discussion of permits and personnel qualifications for archaeological crews;

- ix. the proposed disposition and curation of recovered materials and records in accordance with relevant state and Federal laws (36 CFR 79);
 - x. a schedule for the submittal of draft and final reports (Preliminary Treatment Report[s] and Final Treatment Report[s]) to Consulting Parties for review and comment; and
 - xi. when appropriate, the methods to be used in the management and dissemination of the resultant data to the professional community and the public, including a proposed schedule for tasks outlined in the GPO.
3. Visual, Atmospheric, Auditory, Socioeconomic, and Cumulative Effects Mitigation Plan(s): Within 9 months of the issuance of the final ROD, the Forest Service shall prepare, in consultation with SHPO and the other Consulting Parties, a draft plan or plans outlining a process to mitigate visual, atmospheric, auditory, and cumulative effects (indirect or direct) identified within the visual/auditory/atmospheric/socioeconomic APEs. The draft plan or plans shall be submitted for review and comment to SHPO and the appropriate Consulting Parties per Stipulation IX.E. The plan or plans shall include at a minimum:
- a. Per Stipulation VI.D, methods for identifying historic properties within the APEs.
 - b. Results of data searches and other historic properties identification processes in the APEs for visual, atmospheric, auditory, and cumulative effects and a description of the historic properties that will be adversely affected and the types of effect (direct, indirect, or cumulative).
 - c. A description of measures to minimize or mitigate adverse effects on historic properties including schedules for implementation and reporting requirements.
4. Resource Salvage. The Forest Service shall facilitate the salvage of resources (e.g., culturally important plants and mineral resources) to address the loss of access to traditional collection areas and a loss of access to the *Chi'chil Bildagoteel* Historic District within the Oak Flat Federal Parcel (selected lands). To the extent practicable and in collaboration and partnership with Tribes, an inventory will be conducted to identify the natural resources within the Oak Flat Federal Parcel area, pipeline corridor, and tailings storage facility footprint. When the inventory is complete, the resources will be “salvaged” (collected) and the material gathered will be distributed amongst the Tribes for traditional and cultural use.
5. Access to Oak Flat: Resolution Copper shall provide access to the surface of the Oak Flat Campground to members of the public and Tribes, to the maximum extent practicable and consistent with health and safety requirements, until the operation of the mine precludes public access for safety reasons as determined by Resolution Copper and as set forth in the Southeast Arizona Land Exchange and Conservation Act (Section 3003 of Public Law 113-291). Resolution Copper, with the input of the Forest Service and Tribes, shall develop an Oak Flat Campground Management Plan prior to completion of the land exchange. The management approach is to be consistent with the current Forest Service management of the campground, but would also incorporate additional measures to accommodate requests to periodically close the campground to the public for traditional and ceremonial purposes.

C. Off-site Measures

- 1. The Emory Oak Collaborative Tribal Restoration Initiative: Within 6 months of the issuance of the final ROD, Resolution Copper shall fund, through a collection agreement with the Forest Service, the implementation of the treatments for the Emory Oak Collaborative Tribal Restoration Initiative, a multi-year restorative fieldwork program for Emory oak groves located in the Tonto and Coconino National Forests. Developed through consultation with the Forest Service and

Tribes, the program is designed to restore and protect Emory oak groves that are accessed by Apache communities for traditional subsistence gathering and ensure their sustainability for future generations. This Tribal Restoration Initiative is designed to partially address the adverse effects on the loss of the oak groves within the *Chi'chil Bildagoteel* Historic District, which is within the Oak Flat Federal Parcel (selected lands). The Forest Service shall direct the identification and restoration work of the Emory oak groves and fieldwork in consultation with tribal elders from Yavapai-Apache Nation, White Mountain Apache Tribe, San Carlos Apache Tribe, and Tonto Apache Tribe, and Northern Arizona University. Program treatments under consideration for Emory oak groves include installation of select fencing to exclude cattle and large herbivores, invasive plant species control, shrub canopy thinning, prescribed burns, hand thinning, mastication, and reseedling through seed transplantation to increase recruitment of juvenile oaks. The initial funding will be for implementation of the treatments. Longer-term maintenance and monitoring funding of this program is addressed under Foundation for Tribal Program Funding in Stipulation IX.C.2 below.

2. Foundation for Tribal Program Funding: Resolution Copper shall fund, through an endowment managed by an organization recognized as exempt under Internal Revenue Code section 501(c)(3), tribal programs to partially address effects on the *Chi'chil Bildagoteel* Historic District and other historic properties significant to Tribes. The programs will be available to the following Tribes: the Fort McDowell Yavapai Nation, Gila River Indian Community, Hopi Tribe, Mescalero Apache Tribe, Pueblo of Zuni, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, and Yavapai-Prescott Indian Tribe. The endowment shall be funded as agreed upon by the Secretary of Agriculture and Resolution Copper in a separate agreement pursuant to the Southeast Arizona Land Exchange and Conservation Act. The separate agreement will be completed prior to publication of the final EIS and will include funding and timing commitments for when funds will be made to the endowment. The endowment shall fund three tribal programs:
 - a. Tribal Monitor Program. Funds the development, administration, training, salary, and/or funding of tribal monitors to work on Section 106 and 110 projects on public lands; and
 - b. Emory Oak Collaborative Tribal Restoration Initiative funding. Funds the maintenance and monitoring for the Emory Oak Collaborative Tribal Restoration Initiative (see Stipulation IX.C.1 above), including oak grove treatments, monitoring and research, cultural research or/activities, and educational activities. Funding shall commence upon the completion of the program set forth in Stipulation IX.C.1 above; and
 - c. Tribal Youth Program. Funds the development of a Tribal Youth Program in partnership with the Forest Service and consulting Tribes to provide cultural and educational opportunities to tribal youth. This program is still in the early phases of development.
3. Tribal Cultural Fund: Resolution Copper shall establish a cultural fund, through an endowment managed by an organization recognized as exempt under Internal Revenue Code section 501(c)(3), to partially address the physical and visual effects on the *Chi'chil Bildagoteel* Historic District and other historic properties significant to Tribes. The concept of this fund was developed through government-to-government consultation and its purpose is to provide a fund from which Tribes could request financial support for activities that do not fit under the other tribal-related funding programs. Examples of tribal requests include but are not limited to direct funding to assist with new and existing tribal projects and programs. The Tribal Cultural Fund shall be endowed and administered as agreed upon by the Secretary of Agriculture and Resolution Copper in an agreement pursuant to the Southeast Arizona Land Exchange and Conservation Act. The separate agreement will be completed prior to publication of the final EIS and will include funding and timing commitments for when funds will be made to the endowment. Monies from

the cultural fund will be available to the following Tribes for completion of cultural preservation projects: the Fort McDowell Yavapai Nation, Gila River Indian Community, Hopi Tribe, Mescalero Apache Tribe, Pueblo of Zuni, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, and Yavapai-Prescott Indian Tribe.

4. Tribal Education Fund: To partially address effects on the *Chi'chil Bildagoteel* Historic District and other historic properties significant to Tribes, Resolution Copper shall establish a fund, through an endowment to be managed by an organization recognized as exempt under Internal Revenue Code section 501(c)(3), dedicated to funding scholarships for tribal members pursuing post-high school education, at a college, university, vocational school, or accredited two-year program. Scholarships will be awarded based upon a committee's review of applicants. The endowment shall be funded as agreed by the Secretary of Agriculture and Resolution Copper in an agreement pursuant to the Southeast Arizona Land Exchange and Conservation Act. The separate agreement will be completed prior to publication of the final EIS and will include funding and timing commitments for when funds will be made to the endowment.
5. Copper Triangle Community Development Fund: Resolution Copper shall establish a fund, through an endowment to be held by an organization recognized as exempt under Internal Revenue Code section 501(c)(3), to be focused on the built environment located within the visual/atmospheric/socioeconomic and cumulative effects APE. The primary purpose of the fund is to address effects from the Undertaking on historic properties and other community infrastructure within the communities of Superior, Miami, Globe, Kearny, Hayden, and Winkelman. The monies in the fund will financially support a revolving loan program that will be administered by an organization that has experience in managing, investing, distributing, and reporting funds held for 501(c)(3) purposes and will be overseen by an appropriate governance structure that will be developed, and will permit the implementation of the funding described in this stipulation. Applications for use of monies from the Community Development Fund shall be reviewed by a committee consisting of representatives from SHPO, the applicable administering organization, and the affected communities. All funded projects must comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties and compliance with these Standards will be determined by SHPO. The endowment will be funded within 60 days of Notice to Proceed. Specific parameters for the Community Development Fund shall be defined through consultation between Resolution Copper, applicable administering organization, and SHPO, and must include:
 - a. availability to municipalities, counties, non-profits, private citizens, and private organizations;
 - b. preference for projects participating in other historic preservation incentive programs;
 - c. preference for projects agreeing to repay funds within 5 years of award, with extensions possible.
6. Archaeological Database Funds: In recognition of the substantial loss of cultural resources and historic properties on State Trust lands occurring through development of the preferred alternative, Resolution Copper shall fund the creation and/or enhancement of existing electronic archaeological databases to assist the State of Arizona with management of these assets. The funding shall be deposited into a restricted fund for the State's use in two installments. The first installment shall be deposited within 6 months of either (i) issuance of the final ROD, or (ii) state funding of the electronic database project, whichever is later. So long as the first installment has been funded, the second installment shall be funded within 60 days of Notice to Proceed. If the first installment has not been made at the time of Notice to Proceed, both first and second installments shall be made when the state funds the electronic database project

7. Castleberry Campground: Resolution Copper shall establish an alternative campground site known as Castleberry, within 18 months of the issuance of the final ROD, to mitigate the loss of Oak Flat Campground, an NRHP-eligible Depression-era historic property and an important local recreation facility. The new Castleberry Campground will be located on private property owned by Resolution Copper near the town of Superior that contains numerous prehistoric and historic-era historic properties. All efforts will be made to avoid effects on these properties when developing the campground facilities. If effects on any of the identified historic properties from construction of the Castleberry Campground cannot be avoided, an HPTP will be developed pursuant to the stipulations in this Agreement to address the effects, and implemented prior to the campground being constructed. Also, a plan will be developed in consultation with the Tribes to install interpretive signs at a few historic properties located near the Castleberry Campground.

D. Oak Flat HPTP, GPO Research Design, including Treatment Plans, Funding Plans Implementation

1. The Forest Service shall begin implementation of the Oak Flat HPTP within 1 month of execution of this Agreement and will continue after the land exchange. The Tribes and other Consulting Parties have reviewed and commented on the Oak Flat HPTP and the SHPO has concurred on the measures in the plan.
2. The preliminary development of the plans for the Tribal Cultural Fund and the Copper Triangle Community Development Fund, for example (see Stipulation IX.C), has been initiated. The funds will not be available for distribution until after the issuance of the final ROD and after issuance of rights-of-way and purchase of State Trust land.
3. The Forest Service may begin development of the GPO Research Design and Treatment Plans after all of the effects have been identified within a project area. The implementation of the GPO Research Design and associated Treatment Plans will not occur until after the issuance of the final ROD and after issuance of rights-of-way and purchase of State Trust land. The implementation of measures in the Treatment Plans, like the excavation of sites, will be authorized after the Treatment Plans have been reviewed by the Tribes and other Consulting Parties and the SHPO has concurred.
4. If in-field modifications of the Oak Flat HPTP or GPO Research Design and Treatment Plans are necessary, the Forest Service shall consult with SHPO, the Tribes, and the affected land-managing agency, if needed, about the modification. They shall have 30 days to provide comments; the Forest Service shall address any comments received. If the Forest Service does not receive a response during the review period, the Forest Service shall make a good-faith effort to contact the party by email and telephone. If, after a reasonable and good-faith effort to reach an unresponsive party over the next 14 days, there is no response, the Forest Service may proceed with modifications to the Oak Flat HPTP or GPO Research Design, including the Treatment Plans. Modifications will be discussed and justified in the report(s) of the work.

E. Document Review Process

1. This review process will be applied to both the development of the draft Treatment Plans as described in Stipulation IX and the review of the Treatment Plan implementation reports.
2. Upon receipt of a draft document, the Forest Service shall submit the draft to SHPO, Tribes, and appropriate land-managing agency for the opportunity to review and comment. All parties will have 30 calendar days from receipt of the document to review and provide comments to the Forest Service.
3. The Forest Service will address comments and resubmit the report, if needed, to the SHPO, Tribes, and appropriate land-managing agency for a 30-day review of the updated draft document.

4. The Forest Service shall reach out to the Tribes and offer to schedule in-person meetings to discuss the content of the documents and/or their comments on the documents.
5. If the Forest Service does not receive a response from SHPO, Tribes, or the appropriate land-managing agency during these review periods, the Forest Service shall make a good-faith effort to contact the party by email and telephone. If, after a reasonable and good-faith effort to reach an unresponsive party over the next 14 days, there is no response, the Forest Service may proceed.
6. Copies of the final documents in electronic and hard-copy format shall be provided by the Forest Service to SHPO, Tribes, and the appropriate land-managing agency.

F. Preliminary Treatment Report(s)

1. The Forest Service shall ensure that Preliminary Treatment Reports summarizing the implementation of work listed in each Treatment Plan as described in Stipulation IX are prepared within 30 days after fieldwork is completed. The Preliminary Treatment Report is intended to provide a brief overview of treatments implemented and the results of the work. The review of the Preliminary Treatment Reports should be completed prior to the issuance of a Notice to Proceed from the Forest Service. The full documentation of the treatment and analysis will then be provided in the Final Treatment Report.
2. The Preliminary Treatment Report for archaeological work will contain at a minimum:
 - a. Descriptions and justifications of any changes in field methods from those presented in the Oak Flat HPTP or Treatment Plans in the GPO Research Design.
 - b. A map of each treated site showing excavated areas, feature locations, areas monitored, and other data as appropriate.
 - c. A list of features identified at each site, brief descriptions, extent of investigation, and assessment of function and age.
 - d. A summary of the data recovery results, including summary descriptions of recovered artifacts and samples, by class.
 - e. A discussion of any suggested changes or refinements to the research questions or analyses identified in the research design that might be warranted based on the preliminary findings and the character of the recovered assemblages.
 - f. A schedule for the completion of all analyses and submission of the Final Treatment Report.
3. Preliminary Treatment Reports for all other mitigation strategies (non-archaeological) will include:
 - a. A description of the work conducted in accordance with the Treatment Plans.
 - b. Any deviations from the plans with justifications.

G. Results of work conducted, and deliverables completed.

1. Final Treatment Report(s)
 - a. The Forest Service shall ensure that draft Final Treatment Reports will be prepared for each treated project component (i.e., the selected lands, GPO and 404 compensatory lands, etc.). The Final Treatment Reports will provide complete documentation of all treatments including analysis of materials and interpretation of the results.
2. The Forest Service shall ensure that draft Final Treatment Reports are completed within 1 year of completion of applicable fieldwork, and Final Treatment Reports within 2 years of completion of applicable fieldwork or mitigation tasks.

3. The Draft and Final Treatment Report(s) will contain at a minimum:
 - a. Discussion of the methods and treatments applied to the historic properties with an assessment of the degree to which these methods and treatments followed the direction provided by the plans.
 - b. Discussion of any changes in methods from those proposed in the plans.
 - c. A topographic plan view map for each treated historic property investigated, depicting all features, treatment areas, and other data as appropriate.
 - d. Final descriptions, drawings, and/or photographs for each feature.
 - e. Final descriptions and analyses of all recovered data classes.
 - f. Final interpretation of each site according to the research contexts identified in the plans.
 - g. Overall synthesis of the data recovery and analysis results with an interpretation of perceived patterns.
 - h. Interpretation of the project results in a regional context.
 - i. The reporting requirements in the ASM Burial Agreement or NAGPRA Plan of Action will be followed. Culturally sensitive information associated with human remains and funerary objects will be treated as confidential and summarized in a separate appendix.
 - j. A schedule for the completion of all curation and repatriation requirements.
4. The Forest Service shall direct Resolution Copper in the completion of the Final Treatment Report to address all comments. Electronic and hard copies of the Final Treatment Report will be provided to the Forest Service and in turn to the SHPO, Tribes, and appropriate land-managing agencies. Resolution Copper, on behalf of land-management agencies, is responsible for filing this documentation with the curation repository for their collections.

H. Monitoring and Discovery Plan

1. In accordance with Stipulation XVII of this Agreement, the Forest Service shall ensure a separate Monitoring and Discovery Plan is prepared, in consultation with the Tribes and other Consulting Parties, after issuing the final ROD and prior to the initiation of ground-disturbing activities for the Resolution Copper Project. Pursuant to 36 CFR 800.12, the Monitoring and Discovery Plan will describe procedures for the monitoring, evaluating, and the treatment of newly discovered archaeological features during construction of the mine facilities and other ground-disturbing activities. The process for addressing the uncovering of human remains during project implementation will be addressed in the NAGPRA Plans of Action or ASM Burial Agreement.

As part of the Monitoring and Discovery Plan, the Forest Service shall, in cooperation with Resolution Copper, and in consultation with Tribes, develop a cultural and archaeological sensitivity training program for the mine construction personnel. Training may consist of written instructional materials, classes with videos and/or PowerPoint demonstrations, and tailgate sessions, and should include tribal participation, whenever possible.

I. NAGPRA Plan of Action and Burial Agreements

1. The Forest Service has prepared, in consultation with the Tribes, a NAGPRA Plan of Action for the Oak Flat Federal Parcel (selected lands) to apply while the parcel is in Federal ownership. The Plan of Action will be included as an appendix to the Oak Flat HPTP. An ASM Burial Agreement will be completed for the Oak Flat Federal Parcel after the land is transferred to private ownership. These documents will be developed in accordance with Stipulation X of this document.

2. The Forest Service shall prepare a second NAGPRA Plan of Action to cover all federally administered lands excluding the Oak Flat Federal Parcel. An ASM Burial Agreement for State Trust and private lands will be completed, if appropriate. These documents will be developed in accordance with Stipulation X of this Agreement and will be included in an appendix to the GPO Research Design and appropriate Treatment Plans.

X. TREATMENT OF HUMAN REMAINS AND FUNERARY OBJECTS

The Forest Service shall treat human remains, associated funerary objects, sacred objects, and objects of cultural patrimony identified on Forest Service land in compliance with NAGPRA, ARPA, and the Forest Service Region 3 policy for the treatment and disposition of Native American human remains and associated funerary objects recovered from Forest Service Southwestern Region lands (Region 3 Supplement 2300-99-3 to Forest Service Manual, Chapter 2360 – Special Interest Areas, Section 2361.29–Recovery, Curation and Public Use, 08/12/1999).

The Forest Service and the BLM have NAGPRA responsibilities that are specific to a Federal agency’s jurisdictional authority. As stated in Stipulation IX.I, two NAGPRA Plans of Action shall be developed in consultation with the affected Tribes regarding the treatment and disposition of any human remains, funerary objects, sacred objects, objects of cultural patrimony, objects of tribal patrimony, or formal non-human burials discovered on Federal land. The first Plan of Action has been developed and will be attached as an appendix to the Oak Flat HPTP and will be specific to that Oak Flat area. The second Plan of Action will be developed specifically for Federal lands in the GPO project areas and will be attached to the GPO Research Design.

Human remains, funerary objects, sacred ceremonial objects, or objects of national or tribal patrimony identified on lands controlled by the State of Arizona, its Counties, or municipalities will be treated in compliance with ARS 41-844, and on private land, they will be treated in compliance with ARS 41-865 under the jurisdictional authority of the Director of the ASM. Resolution Copper shall be responsible for ensuring that its archaeological contractor obtains a Burial Agreement with the Director of the ASM for archaeological investigations on State, County, municipal, or private lands, and for notifying ASLD of the discovery.

Discoveries of human remains, sacred objects, or objects of cultural patrimony will be treated according to the plans incorporated into the Oak Flat HPTP and GPO Treatment Plans, NAGPRA Plan of Action, and ASM Burial Agreement, if applicable, and following the laws pertinent to the entity that owns or manages the land.

XI. AUTHORIZATION OF PROJECT ACTIVITY IMPLEMENTATION

- A. For activities on Forest Service-administered land, ground-disturbing/GPO activities may be authorized by the Forest Service line officer once the Forest Service line officer and the Tonto National Forest Heritage Program Manager, in consultation with the SHPO, pursuant to Stipulations VI through IX, determines that:
 1. No historic properties are present within the physical APE at the location of the proposed activity as identified per Stipulation VI and evaluated for their NRHP eligibility per Stipulation VII; or
 2. Historic properties that are present within the physical APE at the location of the proposed activity will not be adversely affected as determined per Stipulation VIII; or
 3. The Oak Flat HPTP or appropriate GPO Treatment Plans has been fully implemented for historic properties that are present at the location of a proposed activity that will have an adverse effect per Stipulation IX, and the draft Preliminary Treatment Report documenting compliance with the

applicable treatment plans has been accepted by the Forest Service and the SHPO with the understanding that a full report is in preparation per Stipulation IX.

- B. For activities on BLM-administered land, ground-disturbing/GPO activities may be authorized once the Forest Service line officer, the Tonto National Forest Heritage Program Manager, the BLM Field Manager, and the BLM Cultural Heritage Program Specialist, in consultation with the SHPO, pursuant to Stipulations VI through IX, determine that:
 - 1. No historic properties are present within the physical APE at the location of the proposed activity as identified per Stipulation VI and evaluated for their NRHP eligibility per Stipulation VII; or
 - 2. Historic properties that are present within the physical APE at the location of the proposed activity will not be adversely affected as determined per Stipulation VIII; or
 - 3. The GPO Treatment Plan has been fully implemented for historic properties that are present within the physical APE at the location of a proposed activity and that will be adversely affected per Stipulation IX, and the Preliminary Treatment Report documenting compliance with the GPO Treatment Plan has been accepted by the Forest Service, the BLM, and the SHPO with the understanding that a full report is in preparation per Stipulation IX.
- C. For activities on ASLD land, ground-disturbing/GPO activities may be authorized by the Forest Service line officer once the Forest Service line officer, the Tonto National Forest Heritage Program Manager, and the ASLD Cultural Resources Section Manager, in consultation with the SHPO, pursuant to Stipulations VI through IX, determine that:
 - 1. No historic properties are present within the physical APE at the location of the proposed activity as identified per Stipulation VI and evaluated for their NRHP eligibility per Stipulation VII; or
 - 2. Historic properties that are present within the physical APE at the location of the proposed activity will not be adversely affected as determined per Stipulation VIII; or
 - 3. The GPO Treatment Plan has been fully implemented for historic properties that are present within the physical APE at the location of a proposed activity and that will be adversely affected per Stipulation IX, and the Preliminary Treatment Report documenting compliance with the GPO Research Design has been accepted by the Forest Service, the ASLD, and the SHPO with the understanding that a full report is in preparation per Stipulation IX.
- D. For activities located on non-Federal lands within the USACE's permit area associated with a Section 404 permit, ground-disturbing/GPO activities may be authorized by the Forest Service line officer once the Forest Service line officer, the Tonto National Forest Heritage Program Manager, and the USACE Commander or his/her designee, in consultation with the SHPO, pursuant to Stipulations VI through IX, determine that:
 - 1. No historic properties are present within the physical APE at the location of the proposed activity as identified per Stipulation VI and evaluated for their NRHP eligibility per Stipulation VII; or
 - 2. Historic properties that are present within the physical APE at the location of the proposed activity will not be adversely affected as determined per Stipulation VIII; or
 - 3. The GPO Treatment Plan has been fully implemented for historic properties that are present within the physical APE at the location of a proposed activity and that will be adversely affected per Stipulation IX, and the Preliminary Treatment Report documenting compliance with the GPO Treatment Plan has been accepted by the Forest Service with the understanding that a full report is in preparation per Stipulation IX.

- E. Although execution and implementation of this Agreement would satisfy USACE's NHPA responsibilities for the Undertaking, such an authorization for ground-disturbing activities by the Forest Service shall not be construed as, nor negate, the need for any required Section 404 permit.

XII. COMMUNICATION AMONG PARTIES TO THE PROGRAMMATIC AGREEMENT

Electronic mail (email) will serve as the preferred official correspondence for all communications regarding this Agreement and its provisions. See Appendix D for a list of contacts and email addresses. Contact information in Appendix D may be updated as needed without an amendment to this Agreement. It is the responsibility of each Consulting Party to immediately inform the Forest Service of any change in name, email address, or telephone number for any point-of-contact. The Forest Service shall forward this information to all Consulting Parties by email.

XIII. CONFIDENTIALITY

- A. To the maximum extent allowed by Federal law, the Forest Service shall 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 and cultural significance. However, any documents or records the Forest Service 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, and also to the prohibition on disclosure in Section 3056 of 25 U.S.C. 32A, which protects confidential tribal information shared with the Forest Service.
- B. The Forest Service shall evaluate whether a FOIA request for records or documents would involve a sensitive historic property, a historic property to which a Tribe attaches religious and cultural significance, or confidential information provided to the Forest Service, and if such documents contain information that the Forest Service is authorized to withhold from disclosure by other statutes including 25 U.S.C. Section 3056, Section 304 of the NHPA, and the provisions of the ARPA. If this is the case, the Forest Service shall consult with the Keeper of the Register regarding withholding the sensitive information per 36 CFR 800.11(c). If a tribally sensitive property is involved, the Forest Service shall also consult with the relevant Tribe prior to making a determination in response to a FOIA request.
- C. Information on historic properties of traditional religious and cultural importance will not be withheld from Tribal Council, Tribal Historic Preservation Officer, or Tribal Cultural Resource Program Director—designated tribal representatives.
- D. Per ARS 39-125, the release of information on archaeological discoveries and places or objects on State land is subject to approval by the appropriate officer. The officer may decline to release information if that release creates a reasonable risk of damage to those resources.

XIV. EMERGENCIES

Should an emergency situation occur that represents an immediate threat to life or property and may affect historic properties, the Forest Service shall immediately notify the SHPO, Tribes, Resolution Copper, and land managers (as applicable) as to the situation, the potential effects on historic properties, and the measures taken to respond to the emergency or hazardous condition. Should land managers or Tribes desire to provide technical assistance to the Forest Service, they shall submit comments within 7 calendar days from notification, if the nature of the emergency or hazardous condition allows for such coordination.

XV. CURATION

The Forest Service shall ensure that all records and materials resulting from compliance with Section 106 for the Undertaking are curated at a repository approved by the Forest Service or participating land-managing agency, and that the facility meets the standards set forth in the 1980 ACHP Handbook on Treatment of Archaeological Properties and the 1990 Guidelines for 36 CFR 79. To the extent not inconsistent with Federal law, the Forest Service shall ensure that all materials recovered from State Trust and private lands and the associated reports will be curated at the ASM, Huhugam Heritage Center, or other approved repository. Curation costs will be the responsibility of Resolution Copper.

XVI. ANNUAL REVIEW OF PROGRAMMATIC AGREEMENT AND ANNUAL REPORT

- A. The Forest Service shall host an annual meeting among the Consulting Parties within 60 days of the anniversary date of the execution of this Agreement to review the progress and effectiveness of this Agreement. The Forest Service is responsible for setting up this meeting, in coordination with all the Consulting Parties.
- B. No less than 60 days prior to the annual meeting, the Forest Service shall provide Consulting Parties with an Annual Report to review the progress under this Agreement and under the approved Oak Flat HPTP and GPO Treatment Plan. The Annual Report will include:
 - 1. acreage of new historic property inventories and results of inventory including NRHP determinations;
 - 2. status of measures to resolve adverse effects and associated activities;
 - 3. monitoring efforts;
 - 4. unanticipated discoveries,
 - 5. ongoing and completed public education activities;
 - 6. any issues that are affecting or may affect the ability of the Federal agencies to continue to meet the terms of this Agreement;
 - 7. any disputes and objections received, and how they were resolved;
 - 8. any additional parties who have become Signatories or Consulting Parties to this Agreement in the past year; and
 - 9. proposed plans for next year's activities.
- C. Consulting Parties will have 30 calendar days to review the Annual Report and provide comments to the Forest Service, which will then consolidate the comments to develop the agenda for the annual meeting.
- D. Within 14 calendar days after the annual meeting, the Forest Service shall summarize the meeting, including proposed action items and how they are to be addressed, in a letter to Consulting Parties. After the meeting, Consulting Parties will have 20 calendar days to review and comment on the meeting notes and, if necessary, provide the Forest Service with any edits to the meeting notes. If changes are needed, the Forest Service will produce revised meeting notes within 30 calendar days of receipt of comments and will provide the final notes to the Consulting Parties.

- E. The Forest Service shall prepare and release a public version of the Annual Report based on the approved report and meeting notes within 30 days of the annual meeting. The public version will be intended to provide an update on the Undertaking to interested parties and will not contain any sensitive information.
- F. Evaluation of the implementation of this Agreement may also include in-person meetings or conference calls among Consulting Parties. If the Forest Service does not receive a response from a Consulting Party, the Forest Service shall make a good-faith effort to contact the party by email and telephone. If modifications or amendments to this Agreement are proposed during the evaluation, the process to address the proposed modifications or amendments will follow the steps described in Stipulation XVIII.
- G. The Tribal Consultation Plan (Appendix F) will be reviewed annually in consultation with the affected Indian Tribes. The annual review will begin 30 days prior to the review of the Agreement to allow affected Tribes enough time to respond with suggested changes. Any and all changes, edits, additions, or subtractions to stipulations of this Tribal Consultation Plan must meet any and all applicable laws, regulations, policies, and requirements necessary to maintain its legal status and effectiveness. As review occurs, consideration of tribal staff and funding capacity, and the needs to assist Tribes in completing consultation on this review, will be considered. Should Tribes require additional time to provide meaningful input, they will be granted an additional 60 days to respond with comments.

XVII. POST-REVIEW DISCOVERIES OF CULTURAL RESOURCES

- A. The Forest Service shall ensure that procedures regarding post-review discoveries pursuant to 36 CFR 800.13 are included as provisions of the GPO or authorizing instrument. The protocol to be followed will also be identified in a Monitoring and Discovery Plan that will be developed after the signing of the final ROD (see Stipulation IX.H).
- B. In accordance with the Monitoring and Discovery Plan, the Forest Service shall ensure that the on-site project manager immediately halts ground-disturbing activities within a 100-foot radius of any new discovery of cultural resources, clearly marks the area of discovery, takes steps to ensure that the area is protected and secured, implements additional measures, as appropriate, to protect the discovery from looting and vandalism, and has a professional archaeologist inspect the area and vicinity to determine the extent of the discovery and provide recommendations to the Forest Service regarding NRHP eligibility, effect, and mitigation treatment.
- C. The Forest Service shall notify the SHPO, affiliated Tribes, and applicable land managers within 48 hours of the discovery and shall provide its assessment of the NRHP eligibility of the discovery and measures proposed to resolve adverse effects. The Forest Service shall take into account the recommendations of the SHPO, Tribes, and applicable land manager on eligibility and treatment of the discovery, as tiered off of the Oak Flat HPTP or the GPO Research Design, and shall notify Resolution Copper of any appropriate actions required to resolve adverse effects.
- D. If the post-review discovery consists of human remains, funerary objects, objects of cultural patrimony, or sacred objects, the Forest Service shall follow the procedures outlined in the applicable NAGPRA Plan of Action for discoveries on Federal land or those outlined in the Burial Agreement for discoveries on State Trust or private land per ARS 41-844 and ARS 41-865 (see Stipulation X). In addition, human remains and funerary objects shall be treated in accordance with Stipulation X.

- E. The Forest Service, in coordination with any applicable land manager, may allow construction activities to proceed in the area of discovery after the Forest Service has determined that implementation of the actions taken to address the discovery pursuant to this Stipulation and the Monitoring and Discovery Plan have been completed.

XVIII. AMENDMENTS

- A. This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. Any Signatory may propose an amendment in writing to the Forest Service. The amendment will be effective on the date that a copy signed by all of the Signatories is filed with the ACHP.
- B. Copies of the amendment shall be provided by the Forest Service to all Signatories to this Agreement.

XIX. DISPUTE RESOLUTION

Should any Signatory, or Concurring Party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the Forest Service shall consult with such party to resolve the objection for a period of no more than 30 days from the date of the objection, and shall include a site visit if one is requested as a part of the consultation. The Forest Service shall notify the Signatories and other Concurring Parties of the objection. If the Forest Service determines that such objection cannot be resolved:

- A. The Forest Service shall forward all documentation relevant to the dispute, including the Forest Service's proposed resolution, to the ACHP. The ACHP shall provide the Forest Service with its opinion on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Forest Service shall prepare a written response that takes into account any timely opinion or comments regarding the dispute from the ACHP, other Signatories, and Concurring Parties, and provide them with a copy of this written response. The Forest Service shall then proceed according to its final decision.
- B. If the ACHP does not provide comments regarding the dispute within the 30-day time period, the Forest Service may make a final decision on the dispute and proceed accordingly. At the time of reaching a final decision, the Forest Service shall prepare a written response that takes into account any timely comments regarding the dispute from the other Signatories and Concurring Parties to the Agreement and provide them and the ACHP with a copy of such written response.
- C. The responsibilities of the Forest Service to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XX. ADDITIONAL INVITED SIGNATORIES

If additional Federal and State land-managing agencies or other agencies are identified as having an active role in the Undertaking because of project or regulatory changes after execution of this Agreement, they are invited to become Invited Signatories after execution of this Agreement. The process for becoming an Invited Signatory is for the agency to request approval for joining the Agreement from the Forest Service. Upon approval, the Forest Service shall send the signature page found at the end of this Agreement to the agency for their signature. The agency shall then return the signed signature page to the Forest Service. If an agency does not request to be an Invited Signatory, they will be considered a Consulting Party to this Agreement.

XXI. TERMINATION, WITHDRAWAL, AND SUSPENSION

- A. If any Signatory to this Agreement determines that its terms will not or cannot be carried out, the Forest Service shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation XVIII. If, within 30 calendar days (or another time period agreed to by all Signatories), an agreement about an amendment cannot be reached, any Signatory may terminate this Agreement upon written notification to the other Signatories.
- B. Once this Agreement is terminated, and prior to work continuing on the Undertaking, the Forest Service must either (a) execute a memorandum of agreement pursuant to 36 CFR 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. The Forest Service shall notify the Signatories as to the course of action it will pursue.
- C. At any point after the execution of this Agreement, and after providing written notice to the Signatories and Invited Signatories, a Signatory Federal agency or Invited Signatory may determine that it no longer has Section 106 responsibilities associated with the Undertaking because the Undertaking has changed, or the relevant alternative was not selected. The Signatory Federal agency or Invited Signatory shall provide written notice to all the Consulting Parties. Such a decision by a Signatory or Invited Signatory will not affect this Agreement with regard to other land managers and/or permitting entities who are Invited Signatories and will not require an amendment to this Agreement.
- D. If the Resolution Copper Project is suspended or terminated for any reason, in-process mitigation will be completed according to the appropriate plan to the extent applicable. This includes data recovery and mitigation of adverse effects on historic properties of traditional religious and cultural importance. Resolution Copper shall be responsible for the costs associated with completion of the mitigation. For data recovery, the Forest Service shall ensure that any in-process data recovery fieldwork is completed and that all analysis, interpretation, reporting, curation of artifacts, and repatriation of remains be completed within 1 year of Resolution Copper Project suspension or termination. For other mitigation, the Forest Service shall, in consultation with the land-managing agencies, SHPO, and Tribes, develop steps for completion of the mitigation within 1 year of the suspension or termination. The Forest Service shall notify the Consulting Parties of the suspension or termination via letter and shall ensure that completed reports are submitted for review as described in Stipulation IX.G.I and that a memorandum of agreement would be executed for any unresolved adverse effects per Stipulation XXI.B.

XXII. TRANSFER OF PERMITS TO SUCCESSOR

Any transfer or assignment of the permits for the Undertaking to another party other than Resolution Copper will require the assignee or successor to replace Resolution Copper in this Agreement, and to assume all responsibilities and obligations of Resolution Copper under this Agreement for mitigation of adverse effects, and to be bound to the terms of this Agreement. Any transfer or assignment of the permits for the Undertaking to another party will require the assignee or successor to sign an amendment to this Agreement to become an Invited Signatory at the time of transfer or assignment. All Consulting Parties will be notified if an amendment to transfer or assign the duties of Resolution Copper to another party is proposed.

XXIII. DURATION OF PROGRAMMATIC AGREEMENT

This Agreement shall be in effect for 20 years and can be extended (in accordance with Stipulation XVIII) if needed until the completion of all requirements of this Agreement. If the requirements of this Agreement are completed prior to 20 years, the Signatories may amend the Agreement to force its expiration according to Stipulation XXI.

XXIV. ANTI-DEFICIENCY ACT

The Forest Service's obligations under this Agreement are subject to the availability of appropriated funds, and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 U.S.C. 1341). The Forest Service shall make reasonable and good-faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the Forest Service's ability to implement the stipulations of this Agreement, the Forest Service shall consult in accordance with the amendment and termination procedures found at Stipulations XVIII and XXI of this Agreement.

XXV. AUTHORIZING SIGNATURES

In witness hereof, the following authorized representatives of the parties have signed their names on the dates indicated, thereby executing this Agreement. This Agreement may be signed by the Signatories and Invited Signatories using photocopy, facsimile, or counterpart signature pages. The Forest Service will distribute copies of all signed pages to the Consulting Parties, once the Agreement is executed.

Execution of this Agreement by the Forest Service, the SHPO, and the ACHP, and implementation of its terms, serves as evidence that the Forest Service has taken into account the effects of this Undertaking on historic properties and has afforded the ACHP an opportunity to comment.

APPENDICES

- A. Area of Potential Effects
- B. Previous Survey Coverage and Identified Cultural Resources
- C. Glossary, Acronyms, and Abbreviations
- D. Key Project Staff and Contact Information
- E. Oak Flat Historic Properties Treatment Plan and Addendum
- F. Tribal Consultation Plan

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NATIONAL HISTORIC PRESERVATION ACT
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AND SOUTHEAST ARIZONA LAND EXCHANGE
NEAR SUPERIOR, ARIZONA**

USDA Forest Service Tonto National Forest

By: _____

Printed Name: Sandy Watts

Title: Forest Service Southwest Regional Forester

Date: _____

By: _____

Printed Name: Neil Bosworth

Title: Forest Supervisor, Tonto National Forest

Date: _____

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Arizona State Historic Preservation Office

By: _____

Printed Name: Kathryn Leonard

Title: State Historic Preservation Officer

Date: _____

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The Advisory Council on Historic Preservation

By: _____

Printed Name: John M. Fowler

Title: Executive Director

Date: _____

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Resolution Copper Mining, LLC

By: _____

Printed Name: Andrew Lye

Title: Vice President

Date: _____

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Arizona State Land Department

By: _____

Printed Name: Lisa Atkins

Title: State Land Commissioner

Date: _____

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U.S. Department of the Interior, Bureau of Land Management

By: _____

Printed Name: Raymond Suazo

Title: Bureau of Land Management Arizona State Director

Date: _____

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United States Army Corps of Engineers, Los Angeles District

By: _____

Printed Name: David J. Castanon

Title: Chief, Regulatory Division

Date: _____

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Arizona State Museum

By: _____

Printed Name: Patrick Lyons

Title: Director

Date: _____

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Salt River Project Agricultural Improvement and Power District

By: _____

Printed Name: Michael A. Jones

Title: Senior Director Corporate Strategy, Planning & Innovation

Date: _____

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Ak-Chin Indian Community

By: _____

Printed Name: Robert Miguel

Title: Chairperson

Date: _____

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Fort McDowell Yavapai Nation

By: _____

Printed Name: Bernadine Burnette

Title: President

Date: _____

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Fort Sill Apache Tribe

By: _____

Printed Name: Lori Gooday Ware

Title: Chairwoman

Date: _____

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Gila River Indian Community

By: _____

Printed Name: Stephen Roe Lewis

Title: Governor

Date: _____

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Hopi Tribe

By: _____

Printed Name: Timothy L. Nuvangyaoma

Title: Chairman

Date: _____

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Mescalero Apache Tribe

By: _____

Printed Name: Gabe Aguilar

Title: President

Date: _____

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Pascua Yaqui Tribe of Arizona

By: _____

Printed Name: Peter Yucupicio

Title: Chairman

Date: _____

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Pueblo of Zuni

By: _____

Printed Name: Val R. Panteah, Sr.

Title: Governor

Date: _____

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Salt River Pima-Maricopa Indian Community

By: _____

Printed Name: Martin Harvier

Title: President

Date: _____

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San Carlos Apache Tribe

By: _____

Printed Name: Terry Rambler

Title: Chairman

Date: _____

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Tohono O'odham Nation

By: _____

Printed Name: Ned Norris, Jr.

Title: Chairman

Date: _____

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Tonto Apache Tribe

By: _____

Printed Name: Jeri DeCola

Title: Chairwoman

Date: _____

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White Mountain Apache Tribe

By: _____

Printed Name: Gwendena Lee-Gatewood

Title: Chairwoman

Date: _____

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Yavapai-Apache Nation

By: _____

Printed Name: Jon Huey

Title: Chairman

Date: _____

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Yavapai-Prescott Indian Tribe

By: _____

Printed Name: Robert Ogo

Title: President

Date: _____