MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF LAND MANAGEMENT-CALIFORNIA,
MCCOY SOLAR, LLC,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE MCCOY SOLAR ENERGY PROJECT
RIVERSIDE COUNTY, CALIFORNIA

WHEREAS, McCoy Solar, LLC (Applicant) has applied for a right-of-way (ROW) grant on public lands managed by the Bureau of Land Management (BLM) and has submitted a plan of development (POD) to construct, operate and maintain a photovoltaic solar electric generation facility and a 230 kilovolt (kV) generation tie line (gen-tie) on public lands managed by the BLM, including construction of access and maintenance roads, laydown and staging areas, and support facilities and infrastructure (hereinafter, the "Project"); and

WHEREAS, the BLM has determined that the issuance of a ROW (proposed federal action) to the Applicant in accordance with the Federal Land Policy and Management Act (FLPMA) 43 U.S.C. § 1701, et seq., and authorization of the Project is an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470(f), and its implementing regulations at 36 C.F.R. § 800 (2004); and

WHEREAS, the BLM has consulted with the California State Historic Preservation Officer (SHPO) pursuant to 36 CFR § 800 of the regulations implementing Section 106 of the NHPA, and in accordance with the regulations at 36 C.F.R. § 800.6(c), and is a Signatory to this Agreement; and

WHEREAS, in accordance with the regulations at 36 C.F.R. § 800.6(a)(1), BLM has notified the Advisory Council on Historic Preservation (ACHP) regarding the effects of alternatives of the undertaking on historic properties and has invited the ACHP to participate in consultation to resolve the potential effects on historic properties, and as per its letter dated March 2, 2012, the ACHP is participating; and

WHEREAS, the BLM has prepared the *Final Environmental Impact Statement for the McCoy Solar Energy Project* (2012) to identify the Project alternatives for purposes of the National Environmental Policy Act (NEPA), has comparatively examined the relative effects of the alternatives on known historic properties, and has provided the public opportunities to comment on the Project through the National Environmental Policy Act (NEPA) process consistent with 36 C.F.R. § 800.2(d)(3), including public scoping meetings and public meetings held in September and October 2011 and June 2012. Public meeting materials included information about the NHPA and the Section 106 process, and BLM considered comments received through the NEPA and the NHPA processes concerning cultural resources in the development of this Agreement.; and

WHEREAS, Riverside County is the lead agency for compliance with the California Environmental Quality Act (CEQA) and has certain responsibilities under State laws and regulations to take into account and mitigate the impacts on historical resources eligible for or included in the California Register of Historical Resources (CRHR), Cal. Pub. Res. Code, Sec. 5024.1, and has participated in consultation and is invited to participate in this Agreement as a Concurring Party; and

WHEREAS, the Applicant has participated in this consultation per 36 C.F.R. § 800.2(c)(4), will be the entity to whom the BLM may grant a ROW, and has the responsibility for carrying out the specific terms of this Agreement under the oversight of the BLM, and is an Invited Signatory to this Agreement; and

WHEREAS, the BLM has authorized the Applicant to retain a qualified consultant to conduct specific identification efforts for this undertaking including a review of the existing literature and records, cultural resource surveys, ethnographic studies, and geomorphological studies to identify historic properties that might be located within the Area of Potential Effect (APE) as defined at 36 C.F.R. § 800.16(d); and

WHEREAS, the reports entitled *Cultural Resources Class III Survey Report for the Proposed McCoy Solar Energy Project, Riverside County, California*, prepared by AECOM, November 2011, and; *Results of Archaeological Testing and Evaluation of Site CA-RIV-9696 at the McCoy Solar Energy Project*, letter report prepared by AECOM, January, 2012, and; *Literature Review for the Native American Ethnographic Assessment for the McCoy Solar Energy Project, Riverside County, California*, prepared by AECOM, June 2012, and; *Draft Ethnographic Assessment for the McCoy Solar Energy Project, Riverside County, California*, prepared by AECOM, January 2013, present the results of identification and evaluation efforts; and

WHEREAS, the BLM has i has determined, in consultation with SHPO, that the archaeological sites designated CA-RIV-053T, CA-RIV-2486, CA-RIV-3419, CA-RIV-10194, CA-RIV-10225, CA-RIV-10240, CA-RIV-10242, CA-RIV-10245, CA-RIV-10246, and CA-RIV-10222 are eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, the BLM has determined, in consultation with SHPO, that alternatives are under consideration that would have an adverse effect on seven archaeological sites designated CA-RIV-10194, CA-RIV-10225, CA-RIV-10240, CA-RIV-10242, CA-RIV-10245, CA-RIV-10246, and CA-RIV-10222, and the Desert Training Center/California-Arizona Maneuver Area which are eligible for inclusion in the NRHP; and

WHEREAS, the BLM has identified 18 archaeological sites which remain unevaluated for the NRHP, and the BLM will manage all unevaluated archaeological sites within the APE as eligible for inclusion in the NRHP under 36 C.F.R. § 60.4(d) (hereinafter "Criterion D") for project management purposes, and through the imposition of monitoring and avoidance measures, the BLM has found that the significant information values retained by these resources would not be affected by the undertaking; and

WHEREAS, pursuant to 36 C.F.R. § 800.2(c)(2)(ii) and Executive Order 13175, the BLM is responsible for government-to-government consultation with federally recognized Indian tribes and is the lead federal agency for all tribal consultation and coordination; and

WHEREAS, the BLM has formally notified and invited federally recognized tribes including the Agua Caliente Band of Cahuilla Indians, Augustine Band of Cahuilla Indians, Cabazon Band of Mission Indians, Cahuilla Band of Mission Indians, Chemehuevi Indian Tribe, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Fort Yuma Quechan Tribe, Morongo Band of Mission Indians, Ramona Band of Mission Indians, San Manuel Band of Mission Indians, Soboba Band of Luiseno Indians, Torres-Martinez Desert Cahuilla Indians and Twenty-nine Palms Band of Mission Indians (Tribes) to consult on the undertaking and participate in this Agreement as Concurring Parties; and

WHEREAS, the BLM recognizes its government-to-government obligation to consult with Indian tribes that may attach religious and cultural significance to historic properties that may be affected by the proposed undertaking and will continue to consult with the affected tribes regarding their concerns under Section 106; in addition, the BLM will comply with the American Indian Religious Freedom Act (AIRFA), Native American Graves Protection and Repatriation Act (NAGPRA), and Executive Orders 13007 and 13175;

WHEREAS, the California Unions for Reliable Energy, as an organizations, and Mamie Harper, Priscilla Eswonia, Stacia Baillie, Michael Tsosie, and David Harper, as individuals, have been invited to consult on this undertaking and this Agreement, have been afforded consulting party status pursuant to 36 C.F.R. § 800.3(f)(3), and have been invited to be Concurring Parties to this Agreement. The BLM will continue to consult with any consulting party that requests such consultation regardless of their decision to concur by signature in this Agreement. BLM shall continue to consult throughout the implementation of this Agreement, however only consulting parties that have concurred in this Agreement by signature shall have rights with regard to implementation of the terms of this Agreement; and

NOW, THEREFORE, the BLM, SHPO, and ACHP (hereinafter "Signatories"), and the Applicant (hereinafter "Invited Signatory"), agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the undertaking on historic properties, resolve such adverse effects through the process set forth in this Agreement, and provide the ACHP with a reasonable opportunity to comment in compliance with Section 106.

STIPULATIONS

The BLM shall ensure that the following measures are implemented:

I. DEFINITIONS

The definitions found at 36 C.F.R. § 800.16 and in Appendix B shall apply throughout this Agreement. If there is a conflict between the definitions in the implementing regulations and Appendix B, the regulations shall govern.

II. AREA OF POTENTIAL EFFECTS

The APE is depicted in Appendix C to this Agreement. The APE, as currently defined, encompasses an area sufficient to accommodate all of the proposed and alternative Project components under consideration as of the date of execution of this Agreement. The APE includes all areas where potential direct effects may occur, as well as indirect visual, auditory, and atmospheric effects, and cumulative effects. If BLM selects a Project alternative for implementation, the APE shall be defined by operation of this Agreement to exclusively encompass the area of that selected alternative. If it is determined in the future that the undertaking may directly or indirectly affect historic properties located outside the defined APE, then the BLM, in consultation with SHPO and pursuant to 36 C.F.R. § 800.4(a)(1), shall determine and document modifications to the APE using the following process:

a) Consulting Parties to this Agreement may propose that the APE established herein be modified. If the Signatories and Invited Signatory decide that such modification is warranted, the BLM shall modify the APE as agreed. Modifications of the APE (Appendix C) made as a result of continuing consultation among the Consulting Parties do not require the Agreement to be amended.

b) If the Signatories and Invited Signatory agree to the proposal, then the BLM will prepare a description and a map of the modification to which the Signatories and Invited Signatory agree. The BLM will keep copies of the description and the map on file for its administrative record and distribute copies of each to the other Consulting Parties within 30 days of the day upon which agreement was reached.

c) Where modification to the APE adds a new geographic area, the BLM shall take the steps necessary to identify, evaluate and take into account the effects of the undertaking on historic properties in the new geographic area in accordance with this Agreement.

d) If the Signatories and Invited Signatory cannot agree to a proposal for the modification of the APE, then they will resolve the dispute in accordance with Stipulation XI of this Agreement.

III. AVOIDANCE, PROTECTION, AND MITIGATION MEASURES

a) Avoidance and Protection Measures

Where known archaeological sites can be avoided, the BLM will implement the management or protective measures identified in Table 1 of Appendix A and the following:

i. Archaeological sites that can be protected from direct impacts, but are within 100 feet, including buffer areas, of proposed construction activities will be identified and labeled as Environmentally Sensitive Areas (ESAs). This includes archaeological sites determined eligible for inclusion in the NRHP and sites that have not been formally evaluated, but are being treated as eligible and avoided for project management purposes.

ii. The ESAs will be designated by marking the boundaries of sites with appropriate buffer zones using temporary fencing or other easily recognizable boundary defining materials. ESAs will have a minimum buffer of 50 feet beyond the outer limits of the site extent, as demonstrated by surface and/or subsurface indications. Should a larger or smaller ESA buffer be necessary for an individual site, the Applicant and the BLM will consult to determine the appropriate buffer size.

(1) These areas will be shown on the engineering plans for the undertaking as off-limits to construction activities.

(2) Once established, an ESA will define areas where construction activities cannot occur, in order to prevent effects to historic properties within the designated ESA.

iii. ESAs will be identified and established prior to initiation of ground disturbing activities in the vicinity of the site and will be maintained and monitored for the duration of the work effort in the ESA vicinity.

iv. Violations of permits, stipulations or other requirements will be investigated by the BLM and subject to requirements and/or penalties under the Act for the Preservation of American Antiquities of 1906 (Antiquities Act), Archaeological Resources Protection Act of 1979 (ARPA), Federal Land Policy and Management Act of 1976, the rights-of-way regulations at 43 C.F.R. § 2805.12 and/or other relevant laws and regulations.

b) Mitigation of Adverse Effects

Should BLM approve an alternative that adversely affects archaeological site CA-RIV-10194, CA-RIV-10225, CA-RIV-10240, CA-RIV-10242, CA-RIV-10245, CA-RIV-10246, CA-RIV-10222, and/or the Desert Training Center/California-Arizona Maneuver Area (DTC/C-AMA) the BLM will resolve the adverse effects as follows:

i. The BLM shall ensure that the adverse effect of the undertaking on archaeological site CA-RIV-10222 is resolved through sampling, scientific study and the engineered capping of the remainder of the site. Due to the property's scientific or information values as defined in Criterion D of 36 C.F.R. § 60.4, the qualifying criteria for inclusion on the NRHP, sampling, scientific study, and engineered capping to include soil and geotextile fabric, is the appropriate treatment for the documentation and preservation of the archaeological values at the site. A historic properties treatment plan (HPTP) will be prepared and included as Appendix E to this Agreement. Amendment of the HPTP will not require amendment of this Agreement.

ii. The BLM shall ensure that the adverse direct effects of the undertaking on archaeological sites CA-RIV-10194, CA-RIV-10225, CA-RIV-10240, CA-RIV-10242, CA-RIV-10245, CA-RIV-10246 will be resolved through extensive and detailed mapping of all features at each site. Due to the Criterion D values of these archaeological sites, as defined in 36 C.F.R. § 60.4, this additional documentation will preserve the scientific and information values present at each site.

iii. The adverse cumulative effects of the undertaking on the Criteria A-C values of the DTC/C-AMA, as defined in 36 C.F.R. § 60.4, will be resolved through the development of 30 minute documentary film to be made available to the public. The BLM will ensure that the Applicant will conduct interviews of 8 to 10 WWII veterans who trained at the DTC/C-AMA. The veterans interviewed shall be located in the contiguous United States and shall be in a state of mental and physical health that warrants their participation. These interviews should be conducted using high-definition video recording techniques. A historian familiar with the DTC/C-AMA should be present at all interviews. The interviews should be used to create the 30 minute documentary film about the DTC/C-AMA. The interviews and documentary film are intended to further document the significance of the DTC/C-AMA as a whole, including the associative Criteria A-C values of the property.

c) Within 45 days of the issuance of the Notice to Proceed for this undertaking, the Applicant will identify to the BLM the consultant(s) who, under contract to the Applicant, will be responsible for developing and completing the mitigation products described in items III(b)(i) – (iv) above.

i. Prior to carrying out any activities related to any mitigation measure, the consultant(s) shall meet with the BLM and the Applicant to discuss the goals of the Project and work plan requirements, including lines of communication, deliverables, schedules, and any terms and conditions.

ii. Within 45 days of meeting with the BLM and the Applicant, and prior to initiation of any work, the consultant(s) will provide the BLM with draft work plans for completing work required in the mitigation measures.

(1) Each work plan shall document lines of communication, key personnel, and provide appropriate natural and cultural context to support the research design and methods proposed for completion of the mitigation measure. The work plans shall also include a schedule of milestones and timeline for completion of the work.

(2) The BLM will provide copies of the draft work plans to the Consulting Parties in accordance with the communication and reporting procedures in Section VII of the Agreement.

iii. Upon approval of each work plan by the BLM, the BLM will authorize the Applicant and the consultant(s) to initiate work on the mitigation measure.

d) General Mitigation Stipulations

i. Any products or studies described in the mitigation measures required by this Agreement will be developed in a manner to allow other proposed undertakings that may occur in the region to augment or expand the scope of the products or studies, provided that such augmentation or expansion proposed by other undertakings are the

result of consultation under Section 106 or is an appropriate mitigation measure developed through the National Environmental Policy Act (NEPA) or CEQA process, cost sharing is provided as appropriate and developed in consultation with the Applicant and the BLM, and that no additional burden (e.g., cost or schedule) be placed on the Applicant.

ii. Should the undertaking be approved by the BLM, mitigation measures will be initiated after the ROW is granted and prior to the issuance of a Notice to Proceed for construction in those portions of the undertaking addressed by the subject mitigation measures. Mitigation measure III (b)(ii) must be completed prior to the issuance of a Notice to Proceed in that portion of the undertaking.

iii. Within thirty (30) days after the BLM has determined that all work required by a work plan has been completed, the BLM shall notify and submit a summary report to the Consulting Parties. Within twelve (12) months after BLM has determined that all work required by a work plan has been completed, or pursuant to an alternative schedule required by any work plan implementing the terms of this Agreement, the Applicant will submit a written draft technical report to the BLM that documents the results of implementing the work plan. The BLM will provide draft technical reports for each work plan to the Consulting Parties for review as provided in Stipulation VII (a).

iv. Copies of the final technical reports documenting the results of implementing each work plan will be distributed by BLM to the Consulting Parties and to the appropriate California Historical Resources Information System (CHRIS) Regional Information Center.

IV. MONITORING

a) Archaeological Monitoring

i. The Applicant, in consultation with the other Consulting Parties to this Agreement, may develop a comprehensive archaeological monitoring plan that will be in effect during construction of the Project. A comprehensive archaeological monitoring plan that has been approved by the BLM shall take precedence over those stipulations regarding monitoring provided below. A draft comprehensive archaeological monitoring plan may be incorporated into the plan for post-review discoveries and unanticipated effects and attached as Appendix E to this Agreement. In the absence of a comprehensive archaeological monitoring plan, Paragraphs (1) through (4) of Stipulation IV shall apply.

(1) The Applicant shall ensure that archaeological monitors will be on site during construction to observe grading, trenching or other ground disturbing activities for any facilities, roads or other Project components related to the undertaking near ESAs and in other areas designated for full-time monitoring, as detailed in Stipulation III, Appendix A, and/or Appendix E.

(2) The Applicant shall ensure that archaeological monitors will meet the standards specified in Stipulation VIII (a), will be approved and permitted by the BLM, will be familiar with the types of historic and prehistoric archaeological resources that are likely to occur in the APE, and will be directly supervised by a principal archaeologist (PA).

(3) The Applicant shall ensure that the PA will submit bi-weekly documentation of archaeological monitoring activities to the BLM by email. Documentation will include the location of archaeological monitoring activities for the reporting time period, as well as a description of any archaeological resources identified and any actions taken. The PA will prepare a monthly field monitoring verification report with the compiled monitoring observations, results, and actions taken for submission and approval to the BLM. The BLM will provide copies of bi-weekly and monthly archaeological monitoring reports to the Consulting Parties, unless otherwise directed by a Consulting Party.

(4) Upon completion of all archaeological monitoring tasks and requirements related to Project construction and implemented pursuant to this Agreement, the Applicant shall ensure that the PA will submit within three months of completion of Project construction a final monitoring report to the BLM for review and approval. The final monitoring report will describe the monitoring program and its findings and results, and present a detailed professional description, analysis, and evaluation of any cultural resources that were encountered and evaluated during construction. The BLM will provide a copy of the monitoring report to the Consulting Parties.

ii. Long Term Management Plan for Sites within the APE

(1) The Applicant, in consultation with the other Consulting Parties to this Agreement, will establish and fund a Long Term Management Plan (LTMP) for the post-construction archaeological monitoring, and condition assessment of sites in the APE of the selected alternative which could be affected by on-going operation and maintenance activities. The Applicant shall submit a draft LTMP to the BLM within nine (9) months from the date of the issuance of the Notice to Proceed for the undertaking. The BLM will submit the LTMP to the Consulting Parties for review following the provisions of Stipulation VII (a). The LTMP will be included as Appendix F to this Agreement, upon BLM approval.

V. POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS

a) The Applicant, in consultation with the other Consulting Parties to this Agreement, shall develop a comprehensive plan to manage post-review discoveries and unanticipated effects which shall be attached as Appendix E to this Agreement.

b) If human remains and/or associated funerary objects compose all or part of the discovery, then the BLM shall follow the process described in Stipulation VI.

c) The BLM, at its discretion, but in consultation with SHPO, can assume eligibility of the discovered archaeological property under Criterion D pursuant to 36 C.F.R. § 800.13 (c), and notify all Consulting Parties to the Agreement within 48 hours of the discovery. The adverse effects to the historic property will be resolved through implementation of the Archaeological Monitoring, Post-Review Discovery, and Unanticipated Effects Plan included in Appendix E to this Agreement. A report of the completed actions will be provided to all Consulting Parties.

VI. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN

a) The BLM shall ensure that any Native American human remains, funerary objects, sacred objects, and/or objects of cultural patrimony discovered on BLM administered lands during implementation of the terms of the Agreement will be treated in accordance with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) (Pub. L. 101-601) and 43 C.F.R. § 10.

b) In consultation with the Tribes, the BLM shall develop a written plan of action pursuant to 43 C.F.R. 10.5(e) to manage the inadvertent discovery or intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The written plan of action shall be finalized prior to any Notice to Proceed for the undertaking. The finalized plan of action shall be included as Appendix G to this Agreement.

c) The BLM shall ensure that Native American human remains, funerary objects, sacred objects, and/or objects of cultural patrimony on non-federal lands are treated in accordance with the California Public Resources Code at Sections 5097.98 and 5097.991, and of the California Health and Safety Code at Section 7050.5(c).

VII. COMMUNICATION AND REPORTING

a) The BLM shall submit all documents referenced in the Agreement, including appendices, work plans, and final reports, to the Consulting Parties in complete but draft form for review via certified mail and/or email. Consulting Parties will be afforded 30 days following receipt of a draft document to submit written comments to BLM unless otherwise mutually agreed to by the Consulting Parties. The BLM will provide Consulting Parties with written documentation indicating whether and how the document will be modified in response to comments. Unless Consulting Parties object to the revisions in writing to the BLM within 30 days following receipt of the revised document, BLM may finalize the document.

   i. If a Consulting Party objects to the revisions during the comment period, the BLM will consult with the objecting party for no more than 30 days to resolve the objection. If the objection is resolved, the BLM will notify Consulting Parties of the resolution and may revise and finalize the document. If the objection cannot be resolved, the BLM shall follow the procedures in Stipulation XI (c).

ii. The BLM will provide a copy of the final document to the Consulting Parties via certified mail and/or email.

b) The BLM shall prepare a letter report on a biennial schedule summarizing the fulfillment of the stipulations contained within this Agreement. The report will be submitted to all Consulting Parties to this Agreement via certified mail and/or email by December 31, 2013, for the initial reporting period and every two years thereafter for the duration of this Agreement.

i. The implementation and operation of this Agreement shall be evaluated on a biennial basis by the parties. This evaluation, to be conducted after the receipt of the BLM letter report, may include in-person meetings or conference calls among these parties, and may provide suggestions for modifications or amendments.

ii. During the construction phase of the undertaking, the Consulting Parties will meet annually between January and March to discuss the fulfillment of the stipulations contained within this Agreement.

VIII. ADMINISTRATIVE STANDARDS

a) PROFESSIONAL QUALIFICATION STANDARDS. All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recordation, treatment, monitoring, and disposition of historic properties and that involve the reporting and documentation of such actions in the form of reports, forms or other records, shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (PQS), as appropriate (48 Fed. Reg. 44738-44739 dated September 29, 1983). However, nothing in this Stipulation may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of persons who do not meet the PQS, so long as the work of such persons is directly supervised by someone who meets the PQS.

b) DOCUMENTATION STANDARDS. Reporting on and documenting the actions cited in this Agreement shall conform to every reasonable extent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed Reg. 44716-40 dated September 29, 1983), as well as, the BLM 8100 Manual, the California Office of Historic Preservation's Preservation Planning Bulletin Number 4(a) (December 1989), Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports, and any specific and applicable county or local requirements or report formats.

c) CURATION STANDARDS. On BLM-administered land, all records and materials resulting from the actions required by this Agreement shall be curated in accordance with 36 C.F.R. § 79, and the provisions of the NAGPRA regulations, 43 C.F.R. § 10, as applicable. To the extent permitted under Sections 5097.98 and 5097.991 of the California Public Resources Code and by private property owners, the materials and

records resulting from the actions required by this Agreement for private lands shall be curated in accordance with 36 C.F.R. § 79. The BLM will seek to have the materials retrieved from private lands donated through a written donation agreement.

IX. IMPLEMENTATION OF THE UNDERTAKING

a) The BLM may authorize construction activities, including but not limited to those listed below, to proceed in specific geographic areas where there are no historic properties; where there will be no adverse effect to historic properties; where an archaeological monitoring and post-review discovery process or plan is in place per Stipulation IV and V, or in areas where a mitigation plan has been approved and initiated, and field work completed. Such construction activities may include:

   i. Demarcation, set up, and use of staging areas for construction of the undertaking;
   ii. Conduct of geotechnical boring investigations or other geophysical and engineering activities;
   iii. Grading and construction of buildings and support facilities;
   iv. Construction of transmission lines.

b) Initiation of any construction activities on federal lands shall not occur until after the BLM issues the Record of Decision, ROW grant, and Notice(s) to Proceed.

X. AMENDMENTS TO THE AGREEMENT

This Agreement may be amended only upon written agreement of the Signatories and Invited Signatory.

a) Upon receipt of a request to amend this Agreement, the BLM will immediately notify the other Consulting Parties and initiate a 30 day period to consult on the proposed amendment, whereupon all Consulting Parties shall consult to consider such amendments.

b) If agreement to a proposed amendment cannot be reached within the 30 day period, resolution of the issue may proceed by following the dispute resolution process set forth in Stipulation XI.

c) Amendments to this Agreement shall take effect on the dates that they are fully executed by the Signatories and Invited Signatories.

d) Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the Consulting Parties do not require the Agreement to be amended.

e) The terms of this Agreement are a condition of any ROD and the ROW grant that the BLM may issue and are binding on the Applicant. For purposes of this Agreement, changes in the corporate name of the Applicant or reassignment of the ROW to a

subsidiary company or other entity may be authorized by the BLM and does not require the Agreement to be amended.

XI. DISPUTE RESOLUTION

a) Should the Signatories or Invited Signatory object at any time to the manner in which the terms of this Agreement are implemented, the BLM will immediately notify the other Signatories and Invited Signatory and consult for no more than 30 days to resolve the objection.

b) If the objection can be resolved within the consultation period, the BLM may authorize the disputed action to proceed in accordance with the terms of such resolution.

c) If the objection cannot be resolved through such consultation within the consultation period, the BLM will forward all documentation relevant to the objection to the ACHP with copies to the Consulting Parties to the Agreement. Any comments provided by the ACHP within 30 days after its receipt of all relevant documentation will be taken into account by the BLM in reaching a final decision regarding the objection. Within 14 days the BLM will render its final decision and notify the Consulting Parties in writing.

d) The BLM's responsibility to carry out all other actions under this Agreement that are not the subject of the objection will remain unchanged.

e) At any time during implementation of the terms of this Agreement, should an objection pertaining to the Agreement be raised by a Concurring Party or a member of the interested public, the BLM shall immediately notify the Consulting Parties, consult with the SHPO about the objection, and take the objection into account. The other Consulting Parties may comment on the objection to the BLM. The BLM shall consult with the objecting party for no more than 30 days. Within 14 days following closure of consultation, the BLM will render a final decision regarding the objection and proceed accordingly after notifying all parties of its decision in writing. In reaching its final decision, the BLM will take into account all comments from the parties regarding the objection.

XII. TERMINATION

a) If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories and Invited Signatory to amend this Agreement in accordance with Stipulation X above. If resolution regarding an amendment has not been reached within sixty (60) days, a Signatory or Invited Signatory may terminate the Agreement upon 10 days' written notification to the other Signatories and Invited Signatory. Following written notification, the terminating Signatory or Invited Signatory will inform the Concurring Parties.

b) If the Agreement is terminated, and prior to work continuing on the undertaking, the BLM shall either (a) execute a new Agreement pursuant to 36 C.F.R. § 800.6 or (b)

request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The BLM shall notify the other Signatories and Invited Signatory to the Agreement as to the course of action that it will pursue.

XIII. ADDITION/WITHDRAWAL OF PARTIES TO/FROM THE AGREEMENT

a) Should conditions of the undertaking change such that other federal agencies, state agencies, Indian tribes, tribal organizations or other organizations or individuals not already party to this Agreement request in writing to participate, the BLM will notify the Consulting Parties and consider the request to participate in the Agreement. Should the BLM agree to the request to participate, the Agreement shall be amended following the procedures in Stipulation X.

b) In the event that the Applicant applies for additional federal funding or other federal approvals, such funding or approving agency may comply with Section 106 and 36 C.F.R. § 800.2 (a)(2) by agreeing in writing to the terms of this Agreement and notifying and consulting with SHPO and ACHP. Any necessary modifications will be made in accordance with Stipulation X to this Agreement.

c) Should a Concurring Party determine that its participation in this Agreement is no longer warranted, the Concurring Party may withdraw from participation by informing the BLM. The BLM shall inform the Consulting Parties of the withdrawal. Withdrawal of a Concurring Party to the Agreement does not require an amendment of the Agreement.

XIV. DURATION OF THIS AGREEMENT

a) This Agreement will expire if construction has not been initiated and the BLM ROW grant expires or is withdrawn, or the stipulations of this Agreement have not been initiated, within five (5) years from the date of execution. Prior to such time, the BLM may consult with the other Signatories and Invited Signatory to reconsider the terms of the Agreement and amend it in accordance with Stipulation X above.

b) Unless the Agreement is terminated pursuant to Stipulation XII, another agreement executed for the undertaking supersedes it, or the undertaking itself has been terminated, this Agreement will remain in full force and effect for the 30 year term of the ROW grant or until BLM, in consultation with the other Signatories and Invited Signatory, determines that implementation of all aspects of the undertaking has been completed and that all terms of this Agreement have been fulfilled in a satisfactory manner. The effective period of this Agreement may be extended as provided in Stipulation X. Upon a determination by BLM that implementation of all aspects of the undertaking have been completed and that all terms of this Agreement have been fulfilled in a satisfactory manner, BLM will notify the Consulting Parties in writing of the agency's determination. This Agreement will terminate and have no further force or effect 30 days after BLM so notifies the Consulting Parties to this Agreement, unless BLM retracts its determination before the end of that period.

XV. EFFECTIVE DATE

a) This Agreement and any amendments shall take effect on the date that it has been fully executed by the Signatories.

b) Execution and implementation of this Agreement is evidence that the BLM has taken into account the effect of the undertaking on historic properties, afforded the ACHP a reasonable opportunity to comment, and that the BLM has satisfied its responsibilities under Section 106. The BLM shall be responsible for managing historic properties within the APE for this undertaking pursuant to the NHPA. The Signatories and Invited Signatory to this Agreement represent that they have the authority to sign for and bind the entities on behalf of whom they sign.

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SIGNATORY PARTIES

U.S. BUREAU OF LAND MANAGEMENT

BY: _____ DATE: 2/19/2013

John R. Kalish
Manager, Palm Springs – South Coast Field Office

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ Jenan Saunders DATE: 2/20/13

for Carol Roland-Nawi
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ DATE: 2/22/13

John M. Fowler
Executive Director

PARTIES INVITED TO CONCUR IN THE AGREEMENT

RIVERSIDE COUNTY
CALIFORNIA UNIONS FOR RENEWABLE ENERGY
AGUA CALIENTE BAND OF CAHUILLA INDIANS
AUGUSTINE BAND OF CAHUILLA INDIANS
CABAZON BAND OF MISSION INDIANS
CAHUILLA BAND OF MISSION INDIANS
CHEMEHUEVI INDIAN TRIBE
COCOPAH INDIAN TRIBE
COLORADO RIVER INDIAN TRIBES
FORT MOJAVE INDIAN TRIBE
FORT YUMA QUECHAN TRIBE
MORONGO BAND OF MISSION INDIANS
RAMONA BAND OF MISSION INDIANS
SAN MANUEL BAND OF MISSION INDIANS
SOBOBA BAND OF LUISENO INDIANS
TORRES-MARTINEZ DESERT CAHUILLA INDIANS
TWENTY-NINE PALMS BAND OF MISSION INDIANS
MAMIE HARPER
PRISCILLA ESWONIA
STACIA BAILLIE
MICHAEL TSOSIE
DAVID HARPER

Invited Signatory

MCCOY SOLAR, LLC

BY: _____ DATE: 2/20/13

TITLE: Michael O'Sullivan
Senior Vice President