

1 **Appendix L**

2 **DRAFT PROGRAMMATIC AGREEMENT**

- 1 **7. Whereas**, the Undertaking crosses lands under the jurisdiction of the Tohono O’odham
2 Nation, San Xavier District, and the BLM has consulted with the Tohono O’odham Nation,
3 which is a Signatory to this PA; and
- 4 **8. Whereas**, the Tohono O’odham Nation has assumed the role of Tribal Historic Preservation
5 Office for lands within the reservation boundaries; and
- 6 **9. Whereas**, no provision of this PA will be construed by any of the signatories as abridging or
7 debilitating any sovereign powers of the Tohono O’odham Nation; affecting the trustee-
8 beneficiary relationship between the Secretary of the Interior and Tohono O’odham Nation or
9 individual Indian landowners; or interfering with the government-to-government relationship
10 between the United States and the Tohono O’odham Nation; and
- 11 **10. Whereas**, the BLM has notified the Advisory Council on Historic Preservation (ACHP)
12 pursuant to 36 CFR § 800.6(a) (1)(i)(C) that the Undertaking will have adverse effects on
13 historic properties (3-4-13) and the ACHP has agreed to participate to resolve adverse effects
14 and is a Signatory to this PA (3-19-13); and
- 15 **11. Whereas**, should Western elect to acquire the land rights for the new build portion of the
16 Undertaking in Arizona and New Mexico as part the Undertaking, Western will obtain
17 temporary access rights as well as later permanent land rights in accordance with the
18 Uniform Relocation Assistance and Real Property Acquisition Act of 1970, where land rights
19 across each non-Federal land ownership parcel are appraised pursuant to Federal standards,
20 and BLM invited Western to participate as an Invited Signatory to this PA; and
- 21 **12. Whereas**, the undertaking crosses lands under the jurisdiction of the U.S. Forest Service,
22 Coronado National Forest (CNF), and the BLM has consulted with the CNF and has invited
23 them to be an Invited Signatory to this PA; and
- 24 **13. Whereas**, the Bureau of Indian Affairs (BIA) is the agency responsible for issuing permits
25 and approving ROWs on tribal and allotted lands of the Tohono O’odham Nation, San
26 Xavier District, and the BLM has consulted with the BIA about the effects of the
27 Undertaking on historic properties and has invited them to be an Invited Signatory to this PA;
28 and
- 29 **14. Whereas**, the U.S. Army Corps of Engineers will be responsible for issuing permits under
30 Section 404 of the Clean Water Act for the Undertaking and the BLM has consulted with
31 them about the effects of the Undertaking on historic properties and has invited them to be an
32 Invited Signatory to this PA; and
- 33 **15. Whereas**, the Undertaking crosses lands under the jurisdiction of the New Mexico State
34 Land Office (NMSLO) and the Arizona State Land Department (ASLD) and the BLM has
35 consulted with these agencies about the effects of the Undertaking on historic properties and
36 has invited them to be Invited Signatories to this PA; and
- 37 **16. Whereas**, the BLM has consulted with the New Mexico Department of Transportation
38 (NMDOT) and the Arizona Department of Transportation (ADOT), which may issue ROWs
39 to the Applicant for access to and construction of certain components of the Undertaking, has

- 1 invited them to be Invited Signatories to this PA, and both NMDOT and ADOT have
2 declined to sign; and
- 3 **17. Whereas**, the BLM is responsible for government-to-government consultation with Indian
4 tribes and pursuant to Section 101(d)(6)(B) of the NHPA, 36 CFR § 800.2(c)(2)(ii), the
5 American Indian Religious Freedom Act (42 § U.S.C. 1996), Executive Order 13175, and
6 section 3(c) of the Native American Graves Protection and Repatriation Act (NAGPRA) (25
7 U.S.C. §§ 3001-13), and has formally invited the 21 Indian tribes listed below to participate
8 in consultations regarding the potential effects of the Undertaking on properties to which
9 they ascribe traditional religious and cultural significance; and
- 10 **18. Whereas**, the Gila River Indian Community, the Salt River Pima-Maricopa Indian
11 Community, the Ak-Chin Indian Community, the Hopi Tribe, the Tonto Apache Tribe, the
12 Yavapai-Apache Nation, the Pascua Yaqui Tribe, the San Carlos Apache Tribe, the
13 Mescalero Apache Tribe, the White Mountain Apache Tribe, the Navajo Nation, the Pueblo
14 of Acoma, the Pueblo of Laguna, the Pueblo of Isleta, the Pueblo of Tesuque, the Pueblo of
15 Zuni, the Comanche Indian Tribe, the Fort Sill Apache Tribe of Oklahoma, the Kiowa Tribe
16 of Oklahoma, and the Ysleta del Sur Pueblo have been contacted, invited to engage in
17 consultations, and invited to be Concurring Parties to this PA; and
- 18 **19. Whereas**, the Tohono O’odham Nation, the Gila River Indian Community, the Salt River
19 Pima-Maricopa Indian Community, the Ak-Chin Indian Community, the San Carlos Apache,
20 the Fort Sill Apache, the Mescalero Apache, the Pueblo of Isleta, the Pueblo of Zuni, the
21 Hopi Tribe, and the Ysleta del Sur Pueblo have participated in consultations for this
22 Undertaking and the development of this PA; and
- 23 **20. Whereas**, the Juan Bautista de Anza National Historic Trail is administered by the National
24 Park Service (NPS), Pacific West Regional Office, and the BLM has determined that the
25 Undertaking will likely affect this trail and the BLM has consulted with the NPS and has
26 invited them to be an Invited Signatory to this PA; and
- 27 **21. Whereas**, the Undertaking crosses lands under the jurisdiction of the City of Tucson and
28 Pima County and the BLM has consulted with them about the effects of the Undertaking on
29 historic properties and has invited them to be Invited Signatories to this PA; and
- 30 **22. Whereas**, the Department of the Interior, through the NPS, is responsible for National
31 Historic Landmarks (NHLs) under Section 101 of the NHPA and consults with agencies on
32 undertakings adversely affecting those NHLs; and
- 33 **23. Whereas**, the Undertaking crosses lands under the jurisdiction of Pima County and the
34 Arizona Board of Regents (University of Arizona) concerning the Desert Botanical
35 Laboratory NHL and the Tumamoc Hill Archaeological National Register District and the
36 BLM has consulted with these entities about the effects of the Undertaking on these historic
37 properties and has invited them to be Invited Signatories to this PA; and
- 38 **24. Whereas**, the Undertaking crosses the Desert Botanical Laboratory NHL and the Tumamoc
39 Hill Archaeological National Register District, which are nearly identical in location, and
40 may affect this NHL and National Register District. BLM will follow 36 CFR § 800.10

- 1 (special requirements for protecting NHLs) and/or provisions contained in this PA and the
2 BLM has consulted with the NPS, which administers the NHL Program, and has invited them
3 to be an Invited Signatory to this PA; and
- 4 **25. Whereas**, the ASLD and ADOT intend to use provisions of this PA to address the applicable
5 requirements of the Arizona State Historic Preservation Act (ARS § 41-861 et seq.) and the
6 Arizona Antiquities Act (AAA) (ARS § 41-841 et seq.) on lands owned or controlled by the
7 State of Arizona; and the NMSLO and NMDOT intend to use the provisions of this PA to
8 address the applicable requirements of the Cultural Properties Act (§ 18-6-1 et seq. NMSA
9 1978) and the Cultural Properties Protection Act (§ 18-6A-1 et seq. NMSA 1978); and
- 10 **26. Whereas**, the Arizona State Museum (ASM) has been invited to participate pursuant to
11 36 CFR § 800.6 (c)(2)(iii), as it has defined authority and responsibilities under
12 ARS § 41-841 et seq. that apply to that portion of the Undertaking on state lands in Arizona
13 (state, county, city and municipal lands); and defined authority and responsibilities under
14 ARS § 41-865 that apply to that portion of the Undertaking on private lands and BLM has
15 invited them to be an Invited Signatory to this PA; and
- 16 **27. Whereas**, Southline Transmission, LLC (Applicant), has participated in consultations and
17 BLM has invited them to be an Invited Signatory to this PA; and
- 18 **28. Whereas**, the following have participated in consultations as Consulting Parties in
19 accordance with 36 CFR §§ 800.2(c)(5) and 800.3(f)(1) and (3): the National Trust for
20 Historic Preservation, Archaeology Southwest, and the Town of Marana and the BLM has
21 invited them to be Concurring Parties to this PA; and
- 22 **29. Whereas**, the BLM has provided the public opportunities to comment on the Undertaking
23 and participate in the National Environmental Policy Act (NEPA) process through a Notice
24 of Intent to Prepare an Environmental Impact Statement (EIS) published in the Federal
25 Register on 4/4/2012 for the development of the EIS; held six public scoping meetings in
26 May 2012; published the Draft EIS on ___ and held ___ public meetings in ___. Public
27 meeting materials included information about the NHPA and the Section 106 process and the
28 BLM considered comments received through the NEPA and NHPA processes concerning
29 cultural resources in the development of this PA; and
- 30 **Now, therefore**, the parties to this document agree that the Southline Transmission Line
31 Project shall be completed in accordance with the stipulations established in this PA in order
32 to take into account the effects of the Undertaking on historic properties.

33 **UNDERTAKING DESCRIPTION**

34 The Undertaking encompasses the construction phase of the proposed transmission line Project,
35 which would take place after the BLM ROW grant is issued and includes associated Project
36 facilities as well as reclamation of areas used during construction but not necessary for operation
37 and maintenance of the facilities. The Undertaking may include surveys, geotechnical testing,
38 engineering, mitigation planning and design, or other activities initiated prior to construction of
39 Project facilities. The potential effects on historic properties will be the most extensive and
40 substantial during the construction phase. The Undertaking also encompasses those activities

1 necessary to operate and maintain the transmission line over the life of the Project. Operation and
2 maintenance activities are approved in the ROW grant and confined to the ROW. Changes to
3 approved operations and maintenance activities, including new actions outside of the approved
4 BLM ROW grant, require BLM approval and may necessitate a separate Section 106 review.
5 This PA stipulates the process necessary to comply with Section 106 obligations for construction
6 and reclamation as well as operation and maintenance of the proposed transmission lines and
7 associated facilities.

8 If decommissioning takes place in the future, it will be considered a separate undertaking when it
9 occurs.

10 See **Attachment 1** (in development) for a more detailed description of the Undertaking and
11 **Attachment 2** (in development) for a map of the Undertaking.

12 **DEFINITIONS USED IN THIS AGREEMENT**

13 See **Attachment 3**.

14 **STIPULATIONS**

15 The BLM shall ensure that the Undertaking is carried out in accordance with the following
16 stipulations in order to take into account the effect of the Undertaking on historic properties:

17 I. Identification, Evaluation, and Determination of Effects

18 A. The Area of Potential Effects (APE) (see Attachment 2 (in development) and
19 Attachment 3) is defined as:

20 1. **Direct effects:** The APE for direct effects during construction and reclamation for the
21 new build portion of the Undertaking (from the Afton Substation to the Apache
22 Substation; see Attachment 2, in development) will include all areas likely to be
23 affected by construction and reclamation activities. This APE will be the 200-foot-
24 wide permitted ROW corridor for one 345-kilovolt (kV) transmission line and access
25 roads (within corridor) plus 100 feet on either side of the corridor (400 feet total
26 width). This width will allow for adjustments in transmission line or access road
27 placement to avoid when possible any natural, cultural, or modern features such as
28 outcrops, historic properties, petroglyph sites, and structures. For the upgrade portion
29 of the Undertaking (from Apache Substation to Saguaro Substation; see Attachment
30 2, in development) from an existing 115-kV to a 230-kV transmission line, the APE
31 will be the 150-foot-wide permanent ROW plus 100 feet on either side of the corridor
32 (350 feet total width).

33 a. Proposed new access routes and existing roads requiring improvement outside the
34 transmission line ROW will have a 150-foot wide APE (75 feet from centerline).

35 b. The APE for staging areas, borrow areas, substations, and other transmission
36 infrastructure will include the footprint of the facility and a buffer of 250 feet
37 around the footprint of the proposed activity/facility.

- 1 c. The APE for pulling/tensioning sites that fall outside the ROW will be the
2 footprint of the site plus a 250-foot radius around these points.
- 3 d. Direct effects from operation and maintenance activities will be confined to the
4 ROW.
- 5 2. **Indirect effects:** The APE for indirect effects shall be areas visible and within 5 miles
6 of any project component (including conductors and access roads) or to the visual
7 horizon, whichever is closer, or where consultation identifies a need to expand this
8 APE in certain locations.
- 9 a. BLM will use a geographic information system (GIS) viewshed analysis to
10 identify areas in the indirect effects APE from which the Undertaking may be
11 visible.
- 12 b. The indirect effects APE may extend beyond the 5-mile convention to encompass
13 properties that have traditional religious and cultural importance, including
14 traditional cultural properties, or other geographically extensive historic
15 properties such as trails, when effects have been determined to extend beyond this
16 distance.
- 17 3. **Cumulative effects:** The APE for cumulative effects shall be the same as that for
18 direct and indirect effects combined.
- 19 B. The Applicant shall complete a cultural resources inventory to identify historic properties
20 that could be affected by the Undertaking. This inventory will include:
- 21 1. A Class I, Existing Data Inventory, of all previously recorded cultural resources
22 within 0.25 mile of the APEs described in Stipulation I.A.1, and the entire APE
23 described in Stipulation I.A.2, which shall include a review of historical maps,
24 including 15-minute topographic maps, General Land Office maps and survey notes,
25 and other archival sources for properties that are more than 45 years old that may be
26 affected by the Undertaking.
- 27 2. A Class III, Intensive Field Inventory, of the direct effects APE as defined in
28 Stipulation I.A.1. The Class III inventory will be conducted with sensitivity for non-
29 archaeological locations or other features identified as important through tribal
30 consultation or ethnographic studies.
- 31 a. For the direct effects APE as defined in Stipulation I.A.1, all historic linear
32 cultural resources such as canals, roads, trails, and railroads will be identified and
33 recorded where they intersect the APE and will be fully recorded within the APE.
34 For the indirect effects APE as defined in Stipulation I.A.2, all historic linear
35 cultural resources such as canals, roads, trails, and railroads will be identified and
36 evaluated where the Undertaking would be visible to such linear cultural
37 resources.
- 38 b. All previously recorded cultural resources within the direct effects APE will be
39 revisited with the associated records updated and revised if appropriate, including
40 National Register of Historic Places (NRHP) eligibility recommendations and
41 determinations. Previously recorded cultural resources and newly recorded

1 cultural resources whose boundaries lie partially within the APE will be fully
2 recorded, to the extent practical, regardless of surface ownership.

- 3 c. Previously recorded and newly recorded cultural resources will be referenced by
4 permanent site numbers with Universal Transverse Mercator (UTM) coordinates.
- 5 d. An assessment of visual impacts will be conducted for historic properties within
6 the direct and indirect effects APEs that could be considered visually sensitive
7 and potentially affected by the Undertaking that meet the following criteria:
- 8 1) Viewshed analysis indicates that the Undertaking would be visible from the
9 historic property;
 - 10 2) The historic property is eligible for the NRHP under criteria listed at 36 CFR
11 40 “(a), (b), or (c)”. Under special circumstances, historic properties eligible
12 only under criterion d may be included (e.g., an archaeological site with
13 standing architecture). Inclusion of such properties will be at the discretion of
14 the BLM in consultation with involved land managing agencies and the
15 SHPO/Tribal Historic Preservation Officer (THPO).
 - 16 3) Not less than 60 days prior to commencement of the visual analysis, the BLM
17 will provide a proposed methodology for review and comment by Consulting
18 Parties. All comments will be considered in refining the methodology prior to
19 implementation.

20 C. The Applicant shall prepare a comprehensive Inventory Report incorporating findings
21 from the existing Class I, Existing Data Inventory, and the Class III, Intensive Field
22 Inventory, for each state. This comprehensive Inventory Report shall include NRHP
23 eligibility recommendations and assessments of direct, indirect, and cumulative effects
24 within the APE of the Undertaking as described in Stipulation I.A.

25 D. The Applicant shall submit drafts of the Inventory Report for each state to the BLM. The
26 BLM will provide the reports to the appropriate land managers, the ASM, and concerned
27 tribes within each state for review, concurrent with BLM review. Written comments will
28 be provided to the BLM within 60 calendar days regarding:

- 29 1. The adequacy of the identification effort;
- 30 2. The NRHP eligibility of the cultural resources identified;
- 31 3. The assessment of effects of the Undertaking on the historic properties identified; and
- 32 4. Whether there are any properties of traditional cultural or religious importance to
33 tribes that were not identified in the inventory and that may be affected by the
34 Undertaking.

35 The BLM shall ensure that comments received within 60 calendar days are considered in
36 development of the revised Inventory Reports. The BLM will submit the revised
37 Inventory Reports to the appropriate SHPO/THPO, tribes, and Consulting Parties for a
38 60-calendar-day review and will request SHPO/THPO concurrence on determinations of
39 NRHP eligibility and BLM’s assessments of effects on each historic property identified.
40 In New Mexico, one appendix to the Inventory Report shall include a data compendium

1 with copies of the appropriate New Mexico Cultural Resource Information System
2 (NMCRIIS) and archaeological site and historic structures inventory forms.

3 E. The Inventory Report will accomplish and provide the following:

- 4 1. Completion of the Identification of Historic Properties (except properties found
5 during possible future Variances and Discoveries).
- 6 2. Determinations of Eligibility (except undetermined cultural resources and properties
7 found during possible future Variances and Discoveries).
- 8 3. Determinations of effects on historic properties by the Undertaking (except
9 undetermined cultural resources and properties found during possible future
10 Variances and Discoveries).
- 11 4. Recommendations for treatment measures to be applied to historic properties affected
12 by the Undertaking (except undetermined cultural resources and properties found
13 during possible future Variances and Discoveries).

14 F. As part of its identification efforts, the BLM has consulted with Indian tribes whose
15 aboriginal territories included portions of the Undertaking area or who have previously
16 expressed interest in undertakings within the APE. The BLM shall continue to consult
17 with Indian tribes regarding properties of traditional religious and cultural importance to
18 them that might be affected by the Undertaking and shall provide opportunities for
19 review and comment on draft and final versions of the Inventory Report. The consultation
20 process will remain open for any tribe that expresses a desire to participate.

21 G. When making determinations of NRHP eligibility, the BLM will consider historic sites,
22 districts, buildings, structures, and objects that are significant and meet the integrity
23 criteria. For properties that have traditional cultural values, the BLM shall take into
24 consideration values expressed by the consulted tribes. The BLM shall make NRHP
25 eligibility determinations and provide copies to appropriate Consulting Parties to provide
26 comment, taking into consideration all comments received from the Consulting Parties. If
27 a SHPO/THPO, land managing agency or any tribe disagrees with the BLM's
28 determinations of eligibility, the BLM shall consult with the SHPO/THPO, the land
29 managing agency, and/or tribe to resolve the objection. If a resolution cannot be agreed
30 upon, the BLM shall forward the required documentation to the Keeper of the National
31 Register for final determinations. The BLM shall ensure that the Applicant prepares a
32 revised Inventory Report incorporating BLM's eligibility determinations, or the Keeper's
33 determination, if requested.

34 H. Any cultural resources for which eligibility cannot be determined during the inventory
35 phase of the Undertaking shall be identified in the HPTP and treated as eligible until a
36 determination is made. Additional studies such as testing, research, and oral histories will
37 be completed for all such resources that will be affected by the Undertaking to enable the
38 BLM, in consultation with the land manager and the SHPO/THPO, to make an eligibility
39 determination. The BLM's eligibility determinations for such resources will be submitted
40 to the respective SHPO/THPO and land manager with a Summary Report describing the
41 results of the additional studies and a request for concurrence on the determination of
42 eligibility. The SHPO/THPO will review these eligibility determinations and respond to
43 the BLM within 30 calendar days. If the SHPO/THPO does not respond to the BLM

1 within 30 calendar days, the BLM will assume concurrence with the determination(s) of
2 NRHP eligibility.

3 II. Avoiding and Minimizing the Adverse Effects of the Undertaking on Historic Properties

4 A. The BLM shall, if possible, avoid adverse effects on historic properties, with input from
5 Consulting Parties.

6 1. Avoidance measures for historic properties may include (but are not limited to)
7 realignment of the transmission line, fencing of sites during construction, monitoring
8 of construction near site areas, or placing towers, maintenance roads, and ancillary
9 facilities outside of site boundaries.

10 2. The BLM shall develop avoidance measures for any properties of traditional religious
11 and cultural importance in consultation with the SHPO/THPO and affected tribes or
12 Native American groups who ascribe traditional religious and cultural importance to
13 the properties.

14 3. The BLM shall identify measures to avoid adverse effects from operation and
15 maintenance activities on those historic properties remaining within the ROW, and
16 shall incorporate these measures in the HPTP in accordance with Stipulation III.A.

17 B. Where avoidance is not possible, the BLM shall minimize or mitigate adverse effects on
18 historic properties to the degree possible with input from Consulting Parties.

19 C. If any Indian tribe or other Native American groups have expressed concerns about
20 effects on properties to which they ascribe traditional religious and cultural importance,
21 BLM shall consult with them and the appropriate SHPO/THPO about possible measures
22 to resolve the adverse effects and ensure that those measures are properly considered in
23 the development of the HPTP.

24 D. For state and private land in New Mexico, if the adverse effect is on a property listed in
25 the State Register of Cultural Properties or NRHP, and the property is on land owned,
26 controlled, or operated by a state agency or political subdivision of the state, the agency,
27 or political subdivision shall determine whether NMSA 1978 § 18-8-7 of the Prehistoric
28 and Historic Preservation Act, NMSA 1978, applies. The agency or political subdivision
29 should contact the New Mexico SHPO for assistance in making this determination and
30 satisfying the requirements of 4.10.12 New Mexico Administrative Code (NMAC).

31 III. Resolution of Adverse Effects: Development of the Historic Properties Treatment Plan

32 A. The BLM shall ensure that the Applicant prepares an HPTP for each state that will
33 address the effects of the proposed Undertaking on historic properties, including
34 properties of traditional religious and cultural importance, and traditional cultural
35 properties as discussed in National Register Bulletin No. 38. The HPTP shall address
36 potential direct, indirect, and cumulative effects from construction and reclamation as
37 well as from operation and maintenance of the proposed transmission lines and associated
38 facilities. The HPTP will be incorporated into the POD as an appendix and will:

39 1. Identify the nature of the effects on historic properties and describe the strategies
40 proposed to avoid, minimize, or mitigate those effects.

- 1 2. Identify cultural resources that will be affected by the Undertaking for which NRHP
2 eligibility determinations could not be made, and will specify the strategy for
3 determining eligibility. It will further specify the strategy that will be used in the
4 event that these cultural resources are determined eligible as a result of the
5 testing/study phase. Stipulations I.G and I.H will be followed for determining
6 eligibility.
- 7 3. Be consistent with the Secretary of the Interior's Standards and Guidelines (48 CFR
8 44716-44742); the ACHP's handbook, Section 106 Archaeology Guidance
9 (<http://www.achp.gov/archguide>); the rules implementing the AAA and 36 CFR §
10 800.13, Post-Review Discoveries, and in so doing will incorporate provisions for
11 monitoring and inadvertent Discoveries.
- 12 4. At a minimum, the HPTP will specify and include:
 - 13 a. The historic properties to be affected by the Undertaking and the nature of those
14 effects.
 - 15 b. The historic properties to be avoided and applicable avoidance measures, pursuant
16 to Stipulation II.
 - 17 c. The historic properties where harm will be minimized and applicable measures to
18 minimize harm.
 - 19 d. The properties at which adverse effects will be mitigated through scientific data
20 recovery or other means.
 - 21 e. For archaeological resources, research questions and goals that are applicable to
22 the Undertaking area and that can be addressed through data recovery and
23 archival studies, along with an explanation of their relevance and importance.
24 These research questions and goals will incorporate the concept of historic
25 contexts as defined in National Register Bulletin No. 16.
 - 26 f. Fieldwork and analytical methods and strategies applicable to the Undertaking
27 area, along with an explanation of their relevance to the research questions when
28 dealing with archaeological resources. Treatment methods will be developed for
29 each class of property identified in the Inventory Report and may include, but are
30 not limited to, excavation, scientific studies outside of the ROW, archival
31 research, off-site interpretation, remote sensing, ethnographic studies, and oral
32 history, as appropriate.
 - 33 g. The level of effort to be expended on the treatment of each property. For
34 archaeological resources this will include methods of sampling, i.e., sample size,
35 and rationale for specific sample unit selection.
 - 36 h. Data management and dissemination methodologies, including a proposed
37 schedule of reports.
 - 38 i. A stand-alone Monitoring and Discovery Plan that will be an appendix to the
39 HPTP. It will contain:
 - 40 1) A Monitoring Plan to be used during construction and reclamation.

1 2) A Discovery Plan consistent with Stipulation VI to be used during the entire
2 Undertaking.

3 3) If appropriate, a Monitoring Plan to be used during operations and
4 maintenance monitoring in accordance with Stipulation III.E. This plan will
5 be developed in consultation with the Consulting Parties and will be added
6 after treatment activities are concluded. Any reports resulting from post-
7 construction monitoring will be submitted to the Consulting Parties in
8 accordance with Stipulation X.A.3.

9 4) All monitoring shall follow clearly stated objectives and methodologies for
10 achieving those objectives, such as to ensure impact avoidance or
11 minimization during construction and reclamation; to measure the
12 effectiveness of avoidance, minimization, and mitigation measures; to assess
13 the effects of operations and maintenance activities, or to provide baseline
14 information to help define treatments for historic properties with long-term
15 concerns.

16 j. A Project Termination Plan with provisions for the following programs to be
17 implemented in the event that the Undertaking is terminated for any reason:

18 1) A program outlining the steps to be taken in order to complete any data
19 recovery or other treatment measures that are in progress at the time of Project
20 termination; and

21 2) A component outlining how analysis, interpretation, reporting, and curation
22 for all historic properties will be completed.

23 k. A NAGPRA (of 1990 (25 § U.S.C. 3002)) Plan of Action (POA) that includes
24 methods and procedures for the discovery and/or treatment of human remains,
25 associated funerary objects, and sacred objects that reflect any concerns and/or
26 conditions identified as a result of consultations between the BLM and the
27 appropriate tribes. This POA will be consistent with 36 CFR § 800.13, NAGPRA,
28 and:

29 1) In Arizona on non-Federal and non-tribal land, methods and procedures will
30 be consistent with ARS § 41-844 and ARS § 41-865 and their implementing
31 rules.

32 2) In Arizona, the Applicant, working through the ASM, shall obtain “burial
33 agreements” with Indian tribes pursuant to ARS § 41-844 and ARS § 41-865,
34 that govern Discoveries of human remains and funerary objects on state and
35 private lands. The ASM shall invite tribes expressing interest in the
36 Undertaking to participate in development of burial agreements. The ASM
37 shall provide participating tribes, the Applicant and the BLM with a draft of
38 the burial agreement for a 30-calendar-day review.

39 3) In New Mexico on non-Federal and non-tribal land, the methods and
40 procedures will be consistent with the Cultural Properties Act, NMSA 1978, §
41 18-6-11.2, and 4.10.11 NMAC.

- 1 1. A strategy for cultural resource law and sensitivity training for all Undertaking
2 personnel (including new, added, and replaced personnel) and contractors
3 involved in transmission line construction, construction zone rehabilitation, and
4 operation and maintenance of this transmission line. Instruction will be to a
5 degree commensurate with their involvement in the Undertaking and will include
6 information on the statutes protecting cultural resources, resource sensitivity, and
7 requirements to avoid damage to historic properties and to report Discoveries of
8 cultural resources in accordance with the Monitoring and Discovery Plan. Indian
9 tribes will be provided opportunities to participate in the training program, which
10 could be offered by a variety of means, including training sessions, video
11 programs, or printed materials.
- 12 m. A strategy for a public outreach program to disseminate information about the
13 results of the cultural resource work to the general public. This program may
14 include, but is not limited to, the following: a short report written specifically for
15 the public, a brochure, exhibits for use at public outreach venues such as
16 archaeology awareness fairs, slide or PowerPoint presentation, presentations to
17 local historical and archaeological societies, and lesson plans and educational
18 materials for use in schools, podcasts, website, and/or social media content or a
19 traveling museum exhibit.
- 20 n. A variance review process to be used during operation and maintenance to
21 address any changes in procedure that could have an adverse effect on historic
22 properties in the ROW.
- 23 o. A list of operation and maintenance activities that will not require additional
24 Section 106 review.
- 25 p. A list of operation and maintenance activities that will require additional Section
26 106 review.

27 B. Process for Developing the Historic Properties Treatment Plan

- 28 1. The Applicant shall submit the draft HPTP to the BLM for initial review and
29 comments. The BLM shall provide the SHPO/THPO and other Consulting Parties
30 within each state a copy for review, requesting comments on the adequacy of the
31 proposed treatment measures. These parties will have 45 calendar days to review and
32 comment on the plan. If no comments are submitted to the BLM within the 45-
33 calendar-day review period, concurrence with the draft HPTP will be assumed.
 - 34 a. During this review period, the ASM shall invite tribes expressing interest in the
35 Undertaking to participate in development of burial agreements. The ASM shall
36 provide participating tribes with a draft of the burial agreement for a 30-calendar-
37 day review.
 - 38 b. The BLM will convene at least one consultation meeting in each state with all
39 interested Consulting Parties during the 45-day period.
- 40 2. The BLM shall consolidate the comments from Consulting Parties in each state and
41 advise the Applicant of necessary revisions to the draft HPTP. The BLM shall ensure
42 that all comments are taken into consideration in finalizing the HPTP and that the
43 revised HPTP is distributed to all Consulting Parties for a 21-calendar-day review

- 1 period. The BLM, in consultation with the SHPO/THPO, shall approve the final
2 HPTP. The BLM will notify the Applicant and the Consulting Parties when the final
3 HPTP has been approved.
- 4 C. The BLM shall ensure that all measures in the HPTP are carried out, including data
5 recovery, analyses of recovered materials, other treatment measures, and all reporting
6 requirements. The Applicant shall provide the BLM with a Summary Report of treatment
7 completed at each site. The Summary Report will include a brief characterization of site
8 assemblage/contents, the types of analyses yet to be completed, and a brief description of
9 how the provisions of the HPTP were implemented.
- 10 D. The BLM shall review the Summary Report of treatment that has occurred at each site
11 and provide a copy to the appropriate SHPO/THPO and other Consulting Parties for
12 review, requesting comments and concurrence with eligibility determinations for
13 previously undetermined cultural resources and Discoveries, within 15 calendar days.
14 The BLM shall consider comments submitted during the review period and shall consult
15 with the appropriate reviewer(s) to resolve differences and/or disagreements. If no
16 comments are received within the 15-calendar-day review period, concurrence with the
17 adequacy of the treatment described in the preliminary summary will be assumed.
- 18 E. The BLM shall ensure that the Applicant prepares draft Treatment Reports for each state
19 that incorporate the results of all the site-specific preliminary summaries into a
20 comprehensive regional overview for each state. The final Treatment Reports also will
21 include:
- 22 1. Post-treatment eligibility recommendations for historic properties that have been
23 subjected to treatment measures.
 - 24 2. A listing of historic properties for which post-construction monitoring would be
25 appropriate and the reasons for this (i.e., proximity to Undertaking components with
26 the potential for damage from operation and maintenance, percentage of property
27 remaining in ROW, sensitivity of the property, a property identified as being of
28 particular importance to a tribe(s), etc.).
 - 29 3. The objectives that monitoring could achieve as part of the effort to avoid, minimize,
30 and/or mitigate adverse effects on those properties.
- 31 F. The BLM shall review the draft Treatment Reports and provide a copy to the appropriate
32 SHPO/THPO and other Consulting Parties for a 60-calendar-day review and comment
33 period. The BLM shall consider comments received during the review period and shall
34 consult with the appropriate reviewer(s) to resolve differences and/or disagreements. If
35 no comments are received within 60 calendar days, concurrence with the adequacy of the
36 Treatment Report will be inferred.
- 37 G. The BLM shall ensure that the Applicant prepares a revised Treatment Report that
38 considers comments received on the draft Treatment Report. The BLM shall review the
39 revised Treatment Report and provide copies to the appropriate SHPO/THPO and other
40 Consulting Parties for a 30-calendar-day review period. The BLM shall consider
41 comments submitted during the review period and shall consult with the appropriate
42 reviewer(s) to resolve differences and/or disagreements. If no comments are received
43 within 30 calendar days, concurrence with the adequacy of the revised Treatment Report

1 will be assumed, and the revised Treatment Report shall be considered the final
2 Treatment Report. The BLM shall notify the Applicant when the final Treatment Report
3 has been accepted and will distribute it to the Consulting Parties, if necessary.

4 H. During the treatment phase, if deviations to the approved plan are warranted, the
5 Applicant will submit proposed deviations from the HPTP to the BLM for review prior to
6 implementation. The BLM shall provide copies of the proposed deviation to the
7 appropriate SHPO/THPO, the tribes, the ASM, and land manager(s) within the respective
8 state for a 15-calendar-day review. The BLM shall consider comments received within
9 the review period and shall determine the adequacy of the proposed deviation. The BLM
10 will notify the Applicant when the deviation has been approved.

11 IV. Construction Variance Review Process

12 A. All construction needs cannot be anticipated in advance and areas required for additional
13 work space, access roads, ancillary facilities, reroutes, etc., may be identified at any time
14 following the acceptance of the Inventory Report(s) by the appropriate SHPO/THPO and
15 land managing agencies. If any newly identified construction needs would result in
16 ground-disturbing activities outside of the surveyed areas identified in the Inventory
17 Report, the Applicant will request a variance review from the BLM.

- 18 1. The APEs of all variance areas will be consistent with those defined in Stipulation
19 I.A.
- 20 2. A Class I, Existing Data Inventory, review and a Class III, Intensive Field Inventory,
21 will be performed on all variance areas.
- 22 3. If the proposed variance will affect more than 10 acres of land or more than 1 mile of
23 road, the BLM will provide the Consulting Parties with a description and map of the
24 variance.

25 B. The following process for review and approval of construction variances will be used.

- 26 1. If no cultural resources or properties of traditional cultural or religious importance to
27 tribes are present within the variance APE, the results of the Class I and Class III
28 inventories will be reported on BLM Form AZ-8110-4, Cultural Resource Project
29 Record (for Arizona), or the NMCRIS Investigation Abstract Form (NIAF) (for New
30 Mexico) prior to any access or use. The BLM will provide an expedited review of the
31 variance request, not to exceed 2 working days following receipt, and will provide the
32 Applicant's Cultural Resources Contractor (CRC) with written approval/disapproval
33 of the variance via electronic mail.
- 34 2. If cultural resources or properties of traditional cultural or religious importance to
35 tribes are present within the variance APE, an Inventory Report, as defined in
36 Stipulation I.C, above, will be prepared and submitted to the BLM and the
37 appropriate SHPO/THPO, tribes, and land manager for review. Because variance
38 requests may be necessary in the midst of construction activities, the agencies and
39 tribes will provide an expedited review within 5 working days or less. If no objections
40 to the variance are received, at the end of the 5-day period, the BLM shall provide the
41 Applicant's CRC with written approval of the variance via electronic mail. If
42 objections are received, additional consultation regarding the variance will ensue in
43 accordance with the provisions of this PA.

- 1 a. If historic properties exist in the variance APE and cannot be avoided, a
2 Treatment Plan for those properties will be developed and shall be consistent with
3 the HPTP developed pursuant to Stipulation III of this PA.
- 4 b. Review procedures shall follow Stipulation III.D.
- 5 c. The supplemental Treatment Plan shall be incorporated into the HPTP, and a
6 preliminary Summary Report will be prepared and distributed in accordance with
7 Stipulation III.D.
- 8 d. The BLM shall ensure that the results of such treatment efforts are reported in the
9 final Treatment Report for the Undertaking.
- 10 e. Once the BLM determines that the approved treatment has been completed, the
11 BLM shall provide the Applicant's CRC with written approval of the variance via
12 electronic mail.

13 V. Authorization of Construction

14 Requests for authorizations of construction will be approved only if such authorizations
15 will not restrict subsequent measures to avoid, minimize, or mitigate the adverse effects on
16 historic properties through rerouting of the corridor or placement of ancillary facilities.

- 17 A. **No Historic Properties Present:** Upon the BLM's acceptance of the final Inventory
18 Report for each state, as described in Stipulation I, the BLM, at its discretion and pending
19 compliance with all other applicable laws and regulations, may authorize the Applicant to
20 begin construction on lands under any ownership or jurisdiction, subject to the
21 appropriate jurisdiction's right-of-entry and ROW requirements, where there are no
22 historic properties present.
- 23 B. **No Adverse Effect:** Upon the BLM's acceptance of the final HPTP for each state, the
24 BLM, at its discretion and pending compliance with all other applicable laws and
25 regulations, may authorize the Applicant to begin construction on lands under any
26 ownership or jurisdiction, subject to the appropriate jurisdiction's right-of-entry and
27 ROW requirements, where all effects on historic properties and unevaluated cultural
28 resources will be avoided (as described in the approved HPTP) subject to the appropriate
29 jurisdiction's right-of-entry and ROW requirements.
- 30 C. **Adverse Effect:** Following acceptance of the Summary Report of treatment that has
31 occurred at each site described in Stipulation III.D, the BLM, at its discretion and
32 pending compliance with all other applicable laws and regulations, may authorize the
33 Applicant to begin construction on lands under any ownership or jurisdiction where
34 provisions of the HPTP have been implemented, subject to the appropriate jurisdiction's
35 right-of-entry and ROW requirements.

36 VI. Discoveries during the Undertaking

- 37 A. If potential historic properties are discovered, or unanticipated effects occur on known
38 historic properties, the BLM will implement the Monitoring and Discovery Plan. This
39 plan will be included as a standalone appendix to the HPTP (see Stipulation III.A.4.i) and
40 will incorporate the following:

- 1 1. The Applicant shall ensure that all surface-disturbing activities within 100 feet of the
2 Discovery immediately cease and that measures are taken to protect the cultural
3 resources. The Applicant shall notify the BLM of the Discovery within 24 hours. The
4 BLM shall immediately notify the appropriate SHPO/THPO, tribe(s), and any other
5 agency having jurisdiction over the land involved.
- 6 2. If the discovered cultural resource is subsequently identified by an Indian tribe as a
7 property of traditional religious and cultural importance, the BLM shall consult with
8 the appropriate tribe(s).
- 9 3. In Arizona on non-Federal lands, the BLM shall ensure that the Discoveries are
10 treated in accordance with ARS § 41-841 et seq. and 41-865.
- 11 4. In New Mexico on non-Federal land, the BLM shall ensure that Discoveries follow
12 the process in 4.10.8.20 NMAC.

13 B. Treatment of the discovered cultural resources shall be consistent with the HPTP
14 developed pursuant to Stipulation III of this PA and shall consider NRHP eligibility of
15 the resource in accordance with 36 CFR § 800.13(c), which assumes eligibility.

- 16 1. A preliminary Summary Report with eligibility recommendations(s) will be prepared
17 and distributed in accordance with Stipulation III.D. The BLM shall ensure that the
18 results of such treatment efforts are reported in the final Treatment Report for the
19 Undertaking.
- 20 2. Once the BLM determines that the approved treatment has been completed, the
21 Applicant may resume construction upon receiving written authorization from the
22 BLM.

23 C. If human remains, funerary objects, or objects of cultural patrimony are discovered, BLM
24 will follow the provisions of applicable Federal, state, and local laws, BA (in Arizona and
25 Tohono O'odham Nation), and the NAGPRA POA for the Undertaking, which will be
26 included as an appendix to the HPTP.

- 27 1. In Arizona, the Applicant shall promptly report the discovery of human remains to the
28 BLM, which shall notify the ASM Repatriation Coordinator pursuant to ARS § 41-
29 844 (state lands), and pursuant to ARS § 41-865 (private lands).
- 30 2. In New Mexico, the Applicant shall report the discovery of human remains to the
31 BLM and local law enforcement and treat such Discoveries of human remains on
32 non-Federal lands consistent with § 18-6-11.2 of the Cultural Properties Act, NMSA
33 1978, and 4.10.11 NMAC.
- 34 3. On lands of the Tohono O'odham Nation, the Applicant shall report the discovery of
35 human remains to the BLM and the Tohono O'odham Nation THPO.
- 36 4. Once the BLM has verified that the requirements of NAGPRA or of state laws
37 governing non-Federal and non-tribal lands have been met, the BLM may authorize
38 the Applicant to proceed with construction.

39 VII. Standards for Conducting and Reporting Work

- 40 A. The BLM shall ensure that all work and reporting performed under this PA meets, at a
41 minimum, the *Secretary of the Interior's Standards and Guidelines for Archaeological*

1 *and Historic Preservation* (48 CFR 44716-44742, September 23, 1983) (the Secretary's
 2 Standards) and takes into consideration the ACHP's handbook, Section 106 Archaeology
 3 Guidance (<http://www.achp.gov/archguide>); *Procedures For Performing Cultural*
 4 *Resource Fieldwork On Public Lands in the Area of New Mexico State BLM*
 5 *Responsibilities* (BLM Manual Supplement H-8100-1); *Guidelines for Identifying*
 6 *Cultural Resources* (BLM Manual H-8110); and *Guidelines for Evaluating and*
 7 *Documenting Traditional Cultural Properties* (National Register Bulletin No. 38, 1989).

8 1. In Arizona, on state land, including municipalities, counties, and other political
 9 subdivisions, all activities and documentation shall be consistent with ARS § 41-841,
 10 et seq., and the Arizona State Historic Preservation Act ARS § 41-861, et seq., along
 11 with rules for implementing the AAA and Arizona SHPO guidance on implementing
 12 the Arizona State Historic Preservation Act, and shall conform to specifications and
 13 guidelines contained in *Reporting Standards: Part I and Part II, Standards for*
 14 *Conducting and Reporting Cultural Resource Surveys on State Lands and*
 15 *Recommended Standards for Monitoring, Testing and Data Recovery*, available
 16 online at:

17 <http://www.statemuseum.arizona.edu/frame/index.php?doc=/crservices/standards.pdf>

18 Additionally, *AZ SHPO Standards for Documents Submitted for SHPO Review in*
 19 *Compliance with Historic Preservation Laws* (Revised December 2012) shall guide
 20 reports for all work done in Arizona, available online at:

21 http://azstateparks.com/SHPO/downloads/SHPO_2012_Report_Standards.pdf

22 2. In New Mexico, on state land, including municipalities, counties, and other political
 23 subdivisions, all activities and documentation shall be consistent with the standards in
 24 Title 4, Chapter 10, of the NMAC. All activities and documentation on state land
 25 shall be consistent with the appropriate state standards found in 4.10.8 NMAC,
 26 Permits to Conduct Archaeological Investigations on State Land; 4.10.15 NMAC,
 27 Standards for Survey and Inventory; 4.10.16 NMAC, Standards for Excavation and
 28 Test Excavation; and 4.10.17 NMAC, Standards for Monitoring. The rules are
 29 available online at:

30 <http://www.nmcpr.state.nm.us/nmac/parts/title04/04.010.0008.htm>

31 <http://www.nmcpr.state.nm.us/nmac/parts/title04/04.010.0015.htm>

32 <http://www.nmcpr.state.nm.us/nmac/parts/title04/04.010.0016.htm>

33 <http://www.nmcpr.state.nm.us/nmac/parts/title04/04.010.0017.htm>

34 B. In Arizona, the Applicant shall ensure that its CRC obtains an AAA project-specific
 35 permit from the ASM prior to excavating sites on state lands pursuant to ARS § 41-841 et
 36 seq.

37 C. In New Mexico, the Applicant shall ensure that its CRC obtains a project-specific
 38 excavation permit or other appropriate permit from the Cultural Properties Review
 39 Committee prior to excavating sites on state lands owned, operated, or controlled by the
 40 State of New Mexico pursuant to § 18-6-5 of the Cultural Properties Act, NMSA 1978.
 41 For NMSLO lands, the Applicant shall obtain the appropriate rights-of-entry from the
 42 NMSLO concurrently with the permit application. The Applicant shall ensure that its

1 CRC obtains a permit prior to excavating unmarked human burials on state or private
2 land pursuant § 18-6-11.2 of the Cultural Properties Act, NMSA 1978, or conducting
3 mechanical excavation of archaeological sites on private land in the state of New Mexico
4 pursuant to § 18-6-11 of the Cultural Properties Act, NMSA 1978.

- 5 D. On lands of the Tohono O’odham Nation, the Applicant shall ensure that its CRC obtains
6 a project-specific excavation permit from the Tohono O’odham Nation. This is a permit
7 under the Tohono O’odham Nation Archeological Resources Protection Ordinance. Once
8 secured, the CRC shall approach the BIA for an Archaeological Resources Protection Act
9 (ARPA) permit.

10 VIII. Confidentiality of Records

- 11 A. The BLM will maintain confidentiality of sensitive information regarding historic
12 properties to which a tribe attaches religious or cultural significance to the maximum
13 extent allowed by Federal and state law. However, any documents or records the BLM
14 has in its possession are subject to the Freedom of Information Act (FOIA) (5 U.S.C. §
15 552 et seq.) and its exemptions, as applicable. In the event that a FOIA request is
16 received for records or documents that relate to a historic property to which an Indian
17 tribe attaches religious or cultural significance and that contain information that BLM is
18 authorized to withhold from disclosure by other statutes, including Section 304 of the
19 NHPA and the ARPA, then the BLM will consult with such tribe prior to making a
20 determination in response to such a FOIA request not to withhold particular records
21 and/or documents from disclosure.
- 22 B. All Parties to this PA agree that, to the extent consistent with Section 304 of the NHPA,
23 and the Archaeological Resources Protection Act of 1979 (16 U.S.C. § 470aa-mm), 27
24 Section 9(a), cultural resource data from this project will be treated as confidential by all
25 Consulting Parties and is not to be released to any person, organization, or agency not a
26 Consulting Party to this PA. Duplication or distribution of cultural resource data from this
27 Undertaking by any Consulting Party requires written authorization from the BLM New
28 Mexico State Director.

29 IX. Curation

- 30 A. On all lands other than those of the Tohono O’odham Nation, the Applicant shall arrange
31 curation agreements with repositories approved by the BLM. The BLM shall ensure that
32 all artifacts and records resulting from the inventory and treatment program are curated in
33 accordance with 36 CFR Part 79, except as determined through consultations with Indian
34 tribes carried out in accordance with Federal and state laws pertaining to the ownership of
35 artifacts and treatment and disposition of Native American human remains and funerary
36 objects.
- 37 1. All artifacts recovered from lands owned, controlled, or operated by the State of New
38 Mexico, including associated records and documentation, shall be curated at the
39 Museum of New Mexico, Museum of Indian Arts and Culture.
 - 40 2. All artifacts recovered from lands owned, controlled, or operated by the State of
41 Arizona, including associated records and documentation, shall be curated at the
42 ASM and in accordance with the standards and guidelines required by ASM.

- 1 3. All artifacts recovered from lands of the Tohono O’odham Nation, including
2 associated records and documentation, shall be curated at the Tohono O’odham
3 Nation Cultural Center.

4 X. Undertaking Monitoring, Annual Reporting, and Evaluation

- 5 A. The BLM will be responsible for monitoring activities associated with this Undertaking
6 on all jurisdictions during construction and reclamation.

- 7 1. The BLM will select a 10 percent sample of cultural resources found during the
8 inventory and conduct field inspections while accompanied by the CRC to provide
9 input regarding NRHP eligibility and possible future treatment options.
- 10 2. The BLM will select a 10 percent sample of historic properties identified for
11 mitigation of adverse effects, and conduct field inspections at those historic properties
12 to ensure adequate implementation of the HPTP for those historic properties.
- 13 3. The lead BLM office shall prepare an annual letter report of cultural resources
14 activities pertaining to this Undertaking for all Consulting Parties by December 31 for
15 the duration of this PA. The annual letter report will include an update on Project
16 schedule, status, and any ongoing relevant cultural resources monitoring or mitigation
17 activities, discovery situations, or outstanding tasks to be completed under this PA or
18 the HPTP. The implementation and operation of this PA shall be evaluated on an
19 annual basis by the Consulting Parties. This evaluation, to be conducted after the
20 receipt of the BLM letter report, may include in-person meetings or conference calls
21 among these parties, and suggestions for possible modifications or amendments to
22 this PA.
- 23 4. The BLM shall monitor activities pursuant to this PA. Terms and conditions of
24 monitoring activities are described in the Monitoring and Discovery Plan (Stipulation
25 III.A.4.i). Should the Applicant or its CRC fail to comply with any provision of this
26 PA, the BLM may, at its discretion, counsel the Applicant and/or its CRC regarding
27 performance requirements or suspend the permit under which this PA is executed.
28 Such suspension would result in the issuance of a “stop work” order for the entire
29 Project.
- 30 5. The BLM will remain responsible to inspect for compliance with the terms and
31 conditions of the BLM ROW grant pertaining to historic properties for the life of the
32 grant, and will ensure that the appropriate BLM cultural resources specialist
33 participates in these compliance reviews.

34 XI. Operation and Maintenance of the Transmission Line and Facilities

- 35 A. After construction of the transmission lines, the Applicant (ROW grant holder) will be
36 required to follow all of the terms, conditions, and stipulations concerning the operation
37 and maintenance of the lines that are included in the POD and the ROW grants. These
38 terms, conditions, and stipulations will include any provisions identified in the HPTP that
39 resolve potential adverse effects on historic properties identified within the ROW.

- 40 1. The BLM will be responsible for ensuring that the stipulations in the BLM ROW
41 grant are enforced.

- 1 2. The ASLD will be responsible for ensuring that the stipulations in their ROW grant
- 2 are enforced on ASLD administered lands.
- 3 3. The NMSLO will be responsible for ensuring that the stipulations in their ROW grant
- 4 are enforced on NMSLO administered lands.
- 5 4. The BIA and Tohono O’odham Nation will be responsible for ensuring that the
- 6 stipulations in their ROW grant are enforced on the Tohono O’odham Nation.

7 B. Post-construction evaluation and management of historic properties are described in

8 Stipulation III.E.1–III.E.3.

9 C. Should any variance be necessary during operation and maintenance, the Applicant will

10 follow the variance procedure in the HPTP, and a BLM cultural resource specialist will

11 review the action and make recommendations regarding potential effects and appropriate

12 actions to avoid, minimize, or mitigate any adverse impacts (e.g., using hand tools if

13 mechanical vegetation treatments are proposed in sensitive areas).

14 XII. Decommissioning

15 Should decommissioning of the transmission line and associated facilities be deemed

16 necessary at any point, the ROW grant shall stipulate and the BLM shall ensure that it will

17 be considered a new action for Section 106 review and that historic properties potentially

18 affected by decommissioning will be considered in the BLM-approved Termination and

19 Reclamation Plan in accordance with the pertinent laws, regulations, and policies extant at

20 the time.

21 XIII. Dispute Resolution

22 A. Should any Consulting Party to this PA object at any time to any actions proposed or the

23 manner in which the terms of this PA are implemented, that party shall notify BLM in

24 writing expressing its concern with proposed modifications. The BLM shall consult with

25 such party to resolve the objection. If the BLM determines that such objection cannot be

26 resolved, BLM will:

- 27 1. Forward all documentation relevant to the dispute, including the BLM’s proposed
- 28 resolution, to the ACHP, asking that office to provide BLM with its advice on the
- 29 resolution of the objection within 30 days of receiving adequate documentation. Prior
- 30 to reaching a final decision on the dispute, BLM shall prepare a written response that
- 31 takes into account any timely advice or comments regarding the dispute from the
- 32 ACHP and Consulting Parties, and provide them with a copy of this written response.
- 33 The BLM will then proceed according to its final decision.
- 34 2. If the ACHP does not provide its advice regarding the dispute within the 30-day
- 35 period, the BLM may make a final decision on the dispute and proceed accordingly.
- 36 Prior to reaching such a final decision, the BLM shall prepare a written response that
- 37 takes into account any timely comments regarding the dispute from the Consulting
- 38 Parties, and provide them and the ACHP with a copy of such written response.
- 39 3. The BLM will be responsible for carrying out all other actions subject to the terms of
- 40 this PA that are not the subject of the dispute.

1 XIV. Amendments and Termination

- 2 A. Any Signatory or Invited Signatory to this PA may request that it be amended by
3 informing BLM in writing of the reason for the request and the proposed amendment
4 language, whereupon BLM shall inform the other parties and request their views
5 concerning the proposed amendment. The amended PA shall take effect upon final
6 signature by the ACHP.
- 7 B. Pursuant to 36 CFR § 800.6(c) (8), if any Signatory or Invited Signatory to this PA
8 determines that the terms of the PA cannot be or are not being carried out, then such party
9 must provide written notice to the BLM and the other Signatories and Invited Signatories
10 stating the reasons for the determination and requesting consultation to resolve the stated
11 concerns through amendment of the PA or other means. The Signatories and Invited
12 Signatories shall consult regarding potential amendments to the PA to resolve the stated
13 concerns within 30 calendar days of the written request. If the Signatories and Invited
14 Signatories are unable to amend the PA or agree on other actions to resolve the concerns,
15 and it has been determined that the terms of the PA cannot be or are not being carried out,
16 provided that they consult during the 30-calendar-day period, the objecting party may
17 terminate the PA by providing written notice to the Signatories and Invited Signatories.
- 18 C. In the event that this PA is terminated, the BLM shall comply with 36 CFR § 800.6 (c)
19 (8) and will take reasonable steps to avoid adverse effects on historic properties until
20 another PA has been executed or will request, take into account, and respond to Council
21 comments, in accordance with 36 CFR § 800.7. The BLM will notify all parties to this
22 PA as to the course of action it will pursue.

23 XV. Term of the Programmatic Agreement

24 This PA will expire if the Undertaking has not been initiated within 5 years of the signing
25 of this PA, or the BLM ROW grant expires or is withdrawn. Otherwise, this PA shall take
26 effect from the date of execution and will remain in effect for 15 years or until acceptance
27 of the final Treatment Reports by the Signatories.

28 XVI. Non-endorsement Clause

29 Nothing in this PA should be interpreted to imply that any party endorses the Southline
30 Transmission Line Project. The parties will not take any action or make any statement
31 that suggests or implies such an endorsement based on signing this PA.

32
33 The Execution and Implementation of this PA evidences that the BLM, as lead Federal
34 agency, has satisfied its Section 106 responsibilities with regard to the construction,
35 operation, and maintenance of the Southline Transmission Line Project.

36

1 **ATTACHMENT 1: PROJECT DESCRIPTION**

2

3 **In Development**

4

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1 **ATTACHMENT 2: LOCATION OF UNDERTAKING**

2 **In Development**

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1 historic and/or cultural significance as well as places with important public and scientific uses,
2 and may include definite locations (sites or places) of traditional cultural or religious importance
3 to specified social and/or cultural groups. Cultural resources may be but are not necessarily
4 eligible for the NRHP; these properties have not been evaluated for NRHP eligibility.

5 **Cultural Resource Consultant/Contractor (CRC)** – A qualified and permitted professional
6 consultant in cultural resources (archaeologist, historian, ethnographer, historic architect,
7 architectural historian, or anthropologist) who is responsible for implementing cultural resource
8 inventories and who prepares cultural resource documents, reports, analysis, records, and
9 professional literature. CRCs must meet the Secretary of the Interior’s Professional Qualification
10 Standards and hold appropriate permits from land managing agencies.

11 **Cultural Resource Inventory (from H-8100-1)** –

12 **Class I** – Existing data inventory: Large-scale review of known cultural resource data.

13 **Class II** – Sampling field inventory: Sample oriented field inventory.

14 **Class III** – Intensive field survey: A complete surface inventory of a specific area involving a
15 systematic field examination of an area to gather information regarding the number, location,
16 condition, distribution, and significance of cultural resources present, typically requiring a
17 systematic pedestrian review of an area with transect intervals that shall not exceed 50 feet
18 (15 meters).

19 **Decommissioning** – The action in which the transmission line(s) and/or related facilities such as
20 substations are taken out of commission (cease to operate) and are physically dismantled.

21 **Discovery** – A previously unknown cultural resource identified in the APE during
22 construction, subsequent to the Class III Inventory.

23 **Effects** – Alterations to the characteristics of a historic property qualifying it for inclusion in or
24 eligibility for the NRHP –

25 **Direct effects** are caused by the Undertaking and occur at the same time and place.

26 **Indirect effects** are also caused by the Undertaking and are effects that may be visual,
27 atmospheric, or audible that could diminish the integrity of the properties.

28 **Cumulative effects** are the impacts on cultural resources that result from the incremental
29 impact of the Undertaking when added to other past, present, and reasonably foreseeable
30 future actions, regardless which agency (Federal or non-Federal) or person undertakes such
31 other actions (under 40.CFR § 1508.7). Cumulative effects may be direct or indirect and result
32 from incremental effects related to the Undertaking over time (e.g., increased access because
33 of new roads, future transmission lines along the same corridor, new projects feeding into the
34 Undertaking, etc.). Additional roads and visitors to the area (construction personnel,
35 recreationists, etc.) also increase opportunities for effects from pot hunting, vandalism of
36 historic properties, and disruption of spiritually important sites.

1 **Eligible (for Inclusion in the NRHP)** – Includes both properties formally determined as such in
2 accordance with regulations of the Secretary of the Interior and all other properties that meet
3 the National Register criteria as determined by the Federal agency in consultation with the
4 SHPO/THPO and other parties.

5 **Historic Property** – Any prehistoric or historic district, site, building, structure, or object
6 included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior.
7 This term includes artifacts, records, and remains that are related to and located within such
8 properties. The term includes properties of traditional religious and cultural importance to an
9 Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

10 **Historic Properties Treatment Plan (HPTP)** – A document that details the procedures and
11 techniques for resolving adverse effects on historic properties within the APE through
12 avoidance, minimization, and/or mitigation.

13 **Indian Tribe** – Any Indian tribe, band, nation, or other organized group or community,
14 including a native village, regional corporation, or village corporation, as those terms are defined
15 in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized
16 as eligible for the special programs and services provided by the United States to Indians
17 because of their status as Indians.

18 **Integrity** – Refers to location, design, setting, materials, workmanship, feeling, and
19 association as defined in 36 CFR 60.

20 **Inventory Report** – The Inventory Report documents the results of the cultural resources
21 inventory detailing the areas surveyed, the methodologies used, the cultural framework of the
22 project area, and the cultural resources discovered and documented. It includes assessments of
23 direct, indirect, and cumulative effects within the APE of the Undertaking. It also provides
24 recommendations on NRHP eligibility of all of the cultural resources within the inventoried area.

25 **Monitoring and Discovery Plan** – The Monitoring and Discovery Plan is a component of
26 the HPTP and (1) provides a detailed plan to monitor compliance with stipulations of the
27 HPTP to avoid, minimize, or mitigate adverse effects of the Undertaking, (2) may include
28 specific plans where monitoring is necessary to help resolve adverse effects on historic
29 properties, (3) establishes procedures to follow in the event that previously undiscovered
30 cultural resources are encountered during the Undertaking, and (4) includes a POA
31 developed specifically to address the handling of human remains pursuant to the NAGPRA
32 and applicable state laws. All monitoring plans shall explicitly state the objectives of the
33 monitoring and provide a methodology for attaining these objectives.

34 **Monitoring Report** – A document that summarizes the results of monitoring activities
35 performed as outlined within the HPTP.

36 **NAGPRA Plan of Action (POA)** – A document that establishes procedures for ensuring the
37 proper treatment of Native American remains and related grave goods encountered on
38 Federal lands pursuant to 43 CFR § 10.

- 1 **National Register of Historic Places (National Register, or NRHP)** – The NRHP is the
2 official list of the Nation’s prehistoric and historic places worthy of preservation, including
3 districts, cultural resources, buildings, structures, and objects significant in American history,
4 architecture, archaeology, engineering, and culture and is maintained by the Secretary of the
5 Interior.
- 6 **National Register Criteria** – The criteria of significance established by the Secretary of the
7 Interior for use in evaluating the eligibility of properties for inclusion in the National Register
8 (36 CFR Part 60).
- 9 **Operation and Maintenance** – Activities associated with operation and maintenance of the
10 approved ROW grant over the life of the ROW grant. This includes all activities related to the
11 functioning of the Undertaking after construction and reclamation are completed and prior to any
12 activities related to decommissioning of the Undertaking, in accordance with Stipulation XI.
13 Activities during this this time are generally infrequent, predictable, and routine. Any actions not
14 specifically approved in the ROW grant, such as changes in equipment used or actions outside
15 the ROW require approval of the BLM.
- 16 **Plan of Development (POD)** – The final POD is a BLM approved document that will be an
17 enforceable term and condition as part of the BLM approved ROW authorization. Contributors in
18 the development of the final POD prior to construction will include the ASLD and NMSLO. The
19 Arizona and New Mexico surface managing agencies will be responsible for developing and
20 enforcing their respective stipulations as they deem necessary to mitigate natural and cultural
21 resource impacts, on state administered lands. Should the Arizona and New Mexico agencies
22 choose to adopt the terms, conditions, and special stipulations as outlined in the final POD on
23 their respective state authorized ROWs, responsibility to enforce these final POD terms,
24 conditions, and stipulations is strictly their sole responsibility. Enforcement will be between the
25 state agency and the applicant.
- 26 **Programmatic Agreement (PA)** – A document that records the terms and conditions agreed
27 upon to resolve the potential adverse effects of a Federal agency program, complex Project, or
28 other situations in accordance with 36 CFR § 800.14(b).
- 29 **Right-of-Way (ROW)** – The public lands BLM authorizes to use or occupy under a grant. The
30 PA and the HPTP are appended to the POD, which is an essential component of the ROW grant.
- 31 **Section 106** – Section 106 of the National Historic Preservation Act of 1966 requires
32 Federal agencies to take into account the effects of their undertakings on historic properties
33 and afford the ACHP a reasonable opportunity to comment. The historic preservation review
34 process mandated by Section 106 is outlined in regulations issued by the ACHP. Revised
35 regulations, “Protection of Historic Properties” (36 CFR Part 800), became effective on
36 August 5, 2004.
- 37 **State Historic Preservation Officer (SHPO)** – The official appointed or designated pursuant to
38 section 101(b) (1) of the act to administer the State Historic Preservation Program or a
39 representative designated to act for the SHPO.

- 1 **Summary Report** – A document that summarizes results of treatment activities undertaken on
2 an individual historic property for the purposes of informing the agency and Consulting Parties
3 for the purposes of gaining approval for the Project to go forward prior to the acceptance of the
4 final Treatment Report.
- 5 **Termination and Reclamation Plan** – A document that addresses the removal of Project
6 facilities from permitted areas and addresses reclamation procedures identified by land
7 management agencies in conjunction with project owners, prior to decommissioning.
- 8 **Treatment Report** – A document that presents the complete results of the treatment activities
9 performed on all historic properties (and any undetermined cultural resources for which
10 additional studies were performed to determine eligibility), addresses the research questions
11 developed in the Treatment Plan, and synthesizes the results into a regional overview of the
12 Project area.
- 13 **Tribal Historic Preservation Officer (THPO)** – The tribal official appointed by the tribe’s
14 chief governing authority or designated by a tribal ordinance or preservation program who has
15 assumed the responsibilities of the SHPO for purposes of Section 106 compliance on tribal lands
16 in accordance with Section 101(d) (2) of the NHPA.
- 17 **Undertaking** – A project, activity, or program funded in whole or in part under the direct or
18 indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal
19 agency; those carried out with Federal financial assistance; and those requiring a Federal permit,
20 license, or approval. The Undertaking may include surveys, geotechnical testing, engineering,
21 mitigation planning and design, or other activities initiated prior to construction of Project
22 facilities.