

**MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES NUCLEAR REGULATORY COMMISSION, WYOMING
STATE HISTORIC PRESERVATION OFFICE, BUREAU OF LAND
MANAGEMENT – RAWLINS FIELD OFFICE, AND LOST CREEK ISR, LLC
REGARDING ARCHEOLOGICAL DATA RECOVERY AT 48SW16604,
SWEETWATER COUNTY, WYOMING.**

WHEREAS, The United States Nuclear Regulatory Commission (NRC) acknowledges and accepts as guidance the Advisory Council on Historic Preservation's (Council) "Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites," published in the Federal Register on May 18, 1999 (vol. 64, no. 95, p. 27085) as part of its revised regulations (36 CFR Part 800) for implementing section 106 of the National Historic Preservation Act of 1966 as amended (NHPA, 16 U.S.C. 470); and

WHEREAS, the NRC, the Wyoming State Historic Preservation Office (SHPO), Lost Creek ISR, LLC (LCI), and Bureau of Land Management – Rawlins Field Office (BLM) (collectively hereafter called "Consulting Parties") agree that site 48SW16604 is a historic property eligible under 36 CFR Part 60.4, Criterion D that will be adversely affected by mining-related activities as presently planned; and

WHEREAS, the NRC, the BLM, and State of Wyoming, and SHPO do not waive their sovereign immunity by entering into this MOA, and each fully retains all immunities and defenses provided by law with respect to any action based on, or occurring as a result of, this MOA; and

WHEREAS, this MOA, consisting of five (5) pages, represents the entire and integrated agreement between the Consulting Parties and supersedes all prior negotiations, representations and agreements, whether written or oral, regarding Section 106 review of the current effects of the Lost Creek ISR project on site 48SW16604.

NOW, THEREFORE, the Consulting Parties agree the project shall be implemented in accordance with the following stipulations to mitigate the adverse effects of mining and construction activities at site 48SW16604 for Lost Creek ISR project.

STIPULATIONS

NRC shall ensure the following stipulations are implemented:

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A. DATA RECOVERY.

1. Prior to the construction of facilities and mining related impacts, the data recovery program for 48SW16604 shall be implemented by LCI in accordance with the Treatment Plan prepared by Centennial Archaeology, Inc., dated January 2008, and incorporated into this MOA by reference.

B. NAGPRA CONSIDERATIONS.

1. To the best of the Consulting Parties' knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001), are expected to be encountered during data recovery work. However, should human remains be encountered, work will immediately stop in the vicinity of the discovery until disposition of remains are determined through applicable State and Federal regulations, including NAGPRA.

C REPORTING.

1. Upon completion of field work, a letter report briefly describing the results of field work, and a statement of confidence that completed investigations have met data recovery plans and adequately mitigated adverse effects, will be submitted by LCI to the Consulting Parties for their review and concurrence. Upon approval of the letter report by the SHPO, LCI may proceed with their approved undertaking and disturb site 48SW16604.
2. A final report detailing results of data recovery efforts and mitigation procedures will be submitted by LCI to the Consulting Parties for review no later than six months following the completion of field work, unless the Consulting Parties mutually agree to an extension of this deadline.

D. PERMITTING AND INSPECTIONS

1. NRC shall require as a condition of any license issued to LCI, that LCI complies with the cultural resource Treatment Plan described in **STIPULATION A.1.** and the provisions in this MOA.

E. AMENDMENTS

1. Any party to this MOA may request that it be amended, whereupon the parties will consult to reach agreement. Such amendment shall be effective upon the signature of all Consulting Parties to this MOA, and the amendment shall be appended to the MOA as an Appendix.
2. Modifications to the Treatment Plan as described in **STIPULATION A** may be executed upon concurrence of all Consulting Parties as long as no modifications to the body of the MOA are required. This modification will not require a formal amendment to this MOA as per **STIPULATION E.1.**

F. DISPUTE RESOLUTION

1. Should any party to this MOA object within thirty (30) days to any activity pursuant to this MOA, NRC shall consult with the objecting party to resolve the objection. If NRC determines the objection cannot be resolved, NRC shall forward all documentation relevant to the dispute to the Advisory Council for Historic Preservation (Council). Within thirty days after the receipt of all pertinent documentation, Council will either:
 - i. provide NRC with recommendations, which NRC will take into account in reaching a final decision regarding the dispute; or,
 - ii. notify NRC that it will provide formal comment. Any Council comment provided in response to such a request will be taken in account by NRC with reference only to the subject of the dispute; NRC's responsibility to carry out all actions under this MOA that are not subject of the dispute will remain unchanged.
2. Nothing in this Section shall be construed or interpreted as a waiver of any judicial remedy that would be available to any party of this MOA.
3. Nothing in this Section shall be construed or interpreted to apply to NRC enforcement actions related to compliance with NRC regulations or license conditions.

G. TERMINATION

1. Any party to this MOA may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period

prior to termination. In the event of termination, NRC will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this MOA.

H. DURATION OF AGREEMENT

1. This MOA shall remain in effect for three (3) years from its date of execution by the signatories (last date of signature), or until completion of the work stipulated, whichever comes first, unless extended by agreement among the signatories pursuant to **STIPULATION C**.

GENERAL PROVISIONS OF THE AGREEMENT

- A. **PRIOR APPROVAL.** This MOA shall not be binding upon either party unless this MOA has been reduced to writing before performance begins as described under the terms of this MOA, and unless this MOA is approved as to form by the Attorney General of the State of Wyoming, or his representative.
- B. **SEVERABILITY.** Should any portion of this MOA be judicially determined to be illegal or unenforceable, the remainder of the MOA shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- C. **THIRD PARTY BENEFICIARY RIGHTS.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOA shall not be construed so as to create such status. The rights, duties and obligations contained in this MOA shall operate only between the parties to this MOA, and shall inure solely to the benefit of the parties to this MOA. The provisions of this MOA are intended only to assist the parties in determining and performing their obligations under this MOA. The parties to this MOA intend and expressly agree that only parties signatory to this MOA shall have any legal or equitable right to seek to enforce this MOA, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOA, or to bring an action for the breach of this MOA.

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DRAFT MOA – September 21, 2009

Signatures: In witness thereof, the parties to this MOA through their duly authorized representatives have executed this MOA on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOA as set forth herein.

The effective date of this MOA is the date of the last signature affixed to this page.

Execution of this MOA by NRC, SHPO, BLM, and Lost Creek ISR, LLC, the submission of documentation and filing of this MOA with the Council pursuant to 36 CFR §800.6(b)(1)(iv) prior to NRC's approval of the undertaking, and implementation of its terms, are evidence that NRC has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

United States Nuclear Regulatory Commission

By: _____ Date: _____
Title: Larry Camper, Director, Division of Waste Management
and Environmental Protection

Wyoming State Historic Preservation Office

By: _____ Date: _____
Title: Mary Hopkins, Interim State Historic Preservation Officer

Lost Creek ISR, LLC

By: _____ Date: _____
Title: Wayne Heili, President

Bureau of Land Management

By: _____ Date: _____
Title: Bill Hill, Deputy State Director, Resource Policy and Management

By: _____ Date: _____
Title: Patrick Madigan, Rawlins Field Office Manager

Wyoming Attorney General's Office Approval as to Form:

By: _____ Date: _____
Title: Don Gerstein, Senior Assistant Attorney General