

**MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE
MOAPA BAND OF PAIUTE INDIANS
BUREAU OF LAND MANAGEMENT
AIYA SOLAR PROJECT, LLC
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
RESOLUTION OF ADVERSE EFFECTS FOR THE
AIYA SOLAR PROJECT ON THE MOAPA RIVER INDIAN RESERVATION**



**Bureau of Indian Affairs, Western Regional Office
May 31, 2016**

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WHEREAS, the Regional Director of the Bureau of Indian Affairs, Western Regional Office (BIA/WRO), is responsible as the Agency Official for Western Region for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), and codified in Subpart B of Code of Federal Regulations Title 36, Part 800 (36 CFR 800), and BIA/WRO shall serve as lead agency for the proposed undertaking; and

WHEREAS, the undertaking before BIA/WRO is approval of a lease and rights-of-way for the Aiya Solar Project, a 100 megawatt solar photovoltaic electricity generation facility that will encumber up to 1,000 acres on the Moapa River Indian Reservation (hereinafter referred to as the undertaking); and

WHEREAS, BIA/WRO, in consultation with the consulting parties, has determined that the undertaking will cause adverse effects to the historic properties identified as 26CK10094 (multicomponent site with rock rings, lithics, and ceramics, eligible under Criterion d), 26CK10095 (prehistoric site with rock ring, possible cradle board rest, and lithics, eligible under Criterion d), and 26CK10165 (North/South Road, eligible under Criteria a and d), a historic road that possibly is an offshoot of the Old Spanish Trail/Old Mormon Road (26CK3848), all of which are on Tribal land; and

WHEREAS, the Nevada State Historic Preservation Officer (SHPO) is authorized to enter into this Agreement as a Signatory in order to fulfill its role of advising and assisting federal agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under the following federal statutes: Sections 101 and 106 of the NHPA, 54 U.S.C. 306108, 36 CFR 800.2(c)(1)(i) and 800.6(b), and BIA/WRO has consulted with the SHPO pursuant to 36 CFR 800.6 in the development of this Memorandum of Agreement (Agreement); and

WHEREAS, the Moapa Band of Paiute Indians (Tribe) is a federally recognized Indian tribe, organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, which exercises general governmental jurisdiction over all lands of the Moapa River Indian Reservation; for purposes of this consultation is an Indian tribe as described at 36 CFR 800.2(c)(2)(i)(B) and an Invited Signatory to this Agreement; and

WHEREAS, the Bureau of Land Management Southern Nevada District Office (BLM) will be asked to grant an easement for right-of-way for an associated transmission line and access road for the undertaking that will encumber up to an approximately additional 13 acres and is an Invited Signatory to this Agreement; and

WHEREAS, Aiya Solar Project, LLC (Aiya Solar), as project proponent, intends to construct, operate, and maintain the undertaking under lease terms extending up to a maximum period of 50 years and is an Invited Signatory to this Agreement; and

WHEREAS, BIAWRO has consulted with the Las Vegas Paiute Tribe, Kaibab Band of Paiute Indians, Hualapai Indian Tribe, Fort Mojave Indian Tribe, Hopi Tribe, Colorado River Indian Tribes, Chemehuevi Indian Tribe, and Paiute Indian Tribe of Utah in accordance with 36 CFR 800.3(f)(2); the Hopi Tribe has responded to our request to consult on the undertaking and is invited to concur with this Agreement; and

WHEREAS, BIAWRO has consulted with the National Park Service National Trails System-Intermountain Region, which has joint management responsibilities with BLM for the nearby congressionally-designated Old Spanish National Historic Trail, and is invited to concur with this Agreement; and

WHEREAS, BIAWRO has notified the Advisory Council on Historic Preservation (ACHP) of this determination of adverse effect pursuant to 36 CFR 800.6(a)(1) and that office has notified BIAWRO by letter dated April 12, 2016 that it has declined to participate in this Agreement; and

WHEREAS, BIAWRO is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) for the undertaking and has used the public notification process embodied in NEPA to seek public input and notify the public of the potential effects of the undertaking on historic properties as required in 36 CFR Part 800; and

WHEREAS, no provision of this Agreement shall be construed by any of the Signatories or Invited Signatories as abridging or debilitating any sovereign powers of the Tribe; affecting the trust relationship between the Secretary of the Interior and the Tribe; or interfering with the government-to-government relationship between the United States and the Tribe.

NOW, THEREFORE, BIAWRO, Tribe, BLM, Aiya Solar, and SHPO, as Signatories and Invited Signatories to this Agreement, agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS.

BIAWRO shall ensure that the following stipulations are implemented.

I. HISTORIC PROPERTIES TREATMENT PLAN (HPTP).

- A. BIAWRO, in consultation with the Signatory, Invited Signatories, and Concurring Parties (hereinafter referred to as the consulting parties), shall ensure that Aiya Solar, through its qualified consultant, develops and implements a Historic Properties Treatment Plan (HPTP) to avoid, minimize, or otherwise mitigate adverse effects to historic properties within the area of potential effects (APE) before any ground disturbance occurs within the boundary of any historic property. The HPTP will be consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-44737).
- B. For the historic properties 26CK10094 and 26CK10095, the HPTP will include, but not be limited to:
 - 1. A description of the historic properties, or portions of historic properties, where mitigation is to be carried out;
 - 2. A description of the historic property, or portion of a historic property, that would be adversely affected by the undertaking without prior mitigation accompanied by an adequately justified rationale for the decision;
 - 3. The results of previous research relevant to the undertaking and the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 - 4. The field and laboratory analysis methods to be used, with an explanation of their relevance to the research questions;
 - 5. The methods to be used in data management and dissemination of data to the professional community and the public;
 - 6. A proposed schedule for undertaking tasks, and a schedule for the submission of draft and final reports to the consulting parties;
 - 7. The proposed disposition and curation of recovered materials and records in accordance with 36 CFR 79;
 - 8. Procedures for monitoring, evaluating, and mitigating any unexpected effects to historic properties during construction of the undertaking, including consultation with other parties;

9. A Native American Graves Protection and Repatriation Act (NAGPRA) Plan of Action for the treatment of human remains, in the event that such remains are discovered. The Plan of Action shall describe methods and procedures for the recovery, inventory, treatment, and disposition of Human Remains, Associated/Unassociated Funerary Objects, and Objects of Cultural Patrimony;
10. A plan for the conclusion of mitigation in the event that the undertaking is suspended or terminated that stipulates the procedures to be followed;
11. Preparation of a Preliminary Report of Findings and review process, as well as proposed timelines;
12. Preparation of a Data Recovery Report and review process, as well as proposed timelines.

C. For the North/South Road (26CK10165), the HPTP will describe the requirements for the creation of an interpretive program that adequately captures those values of the historic property that make it eligible for the National Register.

D. Review and Comment on the HPTP.

1. Aiya Solar, through its qualified consultant, shall submit a draft HPTP to BIA/WRO.
2. Upon receipt of the draft HPTP, BIA/WRO will review the document and provide comments to Aiya Solar.
3. Aiya Solar shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO.
4. BIA/WRO shall submit the draft HPTP document concurrently to all consulting parties for review. All consulting parties shall have 30 calendar days from receipt to review and provide written comments to BIA/WRO. BIA/WRO will assume that the lack of response from any consulting party within this review period is a concurrence with the adequacy of the draft HPTP.
5. BIA/WRO shall ensure that any timely written comments received are taken into account during the preparation of the final draft document.
6. BIA/WRO shall submit the final draft document to all consulting parties. The consulting parties shall have 30 calendar days from receipt to review the comments made by other consulting parties, review the revisions, and provide comments to BIA/WRO. BIA/WRO will assume that the lack of response from any consulting party within this review period is a concurrence with the adequacy of the final draft HPTP.
7. BIA/WRO shall ensure that any timely written comments on the final draft document are taken into account during the preparation of the final document.

8. BIA/WRO shall issue an authorization to proceed with the implementation of the HPTP to Aiya Solar once consultation on the HPTP is complete and prior to construction. Authorization will be contingent upon obtaining the necessary permits.
9. BIA/WRO shall ensure that copies of the final HPTP are provided to all consulting parties.

II. PRELIMINARY REPORT OF FINDINGS.

A. Within 14 calendar days after the completion of all fieldwork at 26CK10094 and 26CK10095, Aiya Solar, through its qualified consultant responsible for the work, will prepare and submit a brief Preliminary Report of Findings to BIA/WRO. This report shall contain, at a minimum:

1. A discussion of the methods and treatments applied to each historic property, with an assessment of the degree to which these methods and treatments followed the requirements of the HPTP along with a justification of all deviations, if any, from the approved HPTP; and
2. Topographic site plans for the historic properties depicting all features and treatment areas; and
3. General description of recovered artifacts and other data classes, including features excavated or sampled; and
4. Discussion of further analyses to be conducted, including any proposed changes in the methods or levels of effort from those proposed in the HPTP.

B. Review of the Preliminary Report of Findings.

1. Upon receipt of the draft Preliminary Report of Findings, BIA/WRO will review the document and provide comments to Aiya Solar.
2. Aiya Solar shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO.
3. BIA/WRO will distribute the revised draft Preliminary Report of Findings to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide written comments to BIA/WRO (electronic mail is acceptable). BIA/WRO will assume that the lack of a response within this review period from any consulting party is a concurrence with the adequacy of the document.
4. BIA/WRO will take into account any comments received from the consulting parties.

5. If BIA/WRO revises the draft Preliminary Report of Findings, BIA/WRO will distribute the revised document to all consulting parties. All consulting parties will have 30 calendar days from receipt to review the revisions and provide comments to BIA/WRO.
6. BIA/WRO shall ensure that any written comments received are taken into account during the preparation of the final document.
4. If a Signatory or Invited Signatory objects to any aspect of the report, the BIA/WRO shall resolve the objection according to the Section XI, Dispute Resolution stipulation of this Agreement.
5. Once BIA/WRO finalizes the Preliminary Report of Findings, BIA/WRO will notify Aiya Solar, BLM and the Tribe that construction within the boundary of the mitigated historic properties can commence.

III. DATA RECOVERY REPORT

- A. BIA/WRO shall ensure that within 365 calendar days of completion of data recovery, Aiya Solar, through its contracted qualified archaeologist, prepares a draft comprehensive Data Recovery Report that incorporates all appropriate data analyses and interpretations.
 1. Upon receipt of the draft Data Recovery Report, BIA/WRO will review the document and provide comments to Aiya Solar.
 2. Aiya Solar shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO.
 3. BIA/WRO will distribute the draft Data Recovery Report to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide written comments to BIA/WRO (electronic mail is acceptable). BIA/WRO will assume that the lack of a response within this review period from any consulting party is a concurrence with the adequacy of the document.
 4. If BIA/WRO makes revisions to the data recovery report, all consulting parties will have 30 calendar days from receipt to review the revisions and provide comments to BIA/WRO.
 5. BIA/WRO shall ensure that any written comments received are taken into account during the preparation of the final document.
 6. If a Signatory or Invited Signatory continues to object to any aspect of the report, the BIA/WRO shall resolve the objection according to the Section XI, Dispute Resolution stipulation of this Agreement.

IV. CONTINUATION OF CONSULTATION WITH NATIVE AMERICAN TRIBES

BIA/WRO shall ensure that consultation with the Native American Tribes concurring with this Agreement that may attach religious or cultural importance to affected properties will continue throughout the life of the project.

V. STANDARDS FOR MONITORING, TESTING, AND DATA RECOVERY

All cultural resources work carried out pursuant to this Agreement shall be carried out by or under the supervision of a person, or persons, meeting the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) and under the terms of the permits issued for the archaeological investigations.

VI. CUSTODY OF ARCHAEOLOGICAL RESOURCES AND RECORDS

With exception of human remains or objects that fall under NAGPRA, the disposition of recovered archeological resources shall follow the regulations at 25 CFR 262.8, whereby all such resources are property of the Tribe. BIA/WRO shall deliver all notes, photos, reports, and other records related to the undertaking to the Tribe upon completion of the final Data Recovery Report and are the property of the Tribe.

Subject to the terms and provisions of the Freedom of Information Act (FOIA), all archaeological and ethnographic reports generated by BIA/WRO efforts to comply with NHPA are to be considered confidential and privileged and shall be withheld from the public, pursuant to Section 304 of NHPA (36 CFR 800.11(c)) and Section 9 of the Archeological Resources Protection Act.

VII. DISCOVERIES IN THE APE.

If cultural resources or human remains are discovered in the APE after construction begins, the Aiya Solar Construction Supervisor shall require construction to immediately cease within the area of the discovery, protect the discovery, and promptly report the discovery to the Tribe and BIA/WRO.

- A. If the discovery involves human remains or objects that fall under NAGPRA, the person in charge of construction shall immediately secure the discovery and notify Tribal representatives identified in the NAGPRA Plan of Action in the HPTP provided for in Stipulation I of this Agreement.
- B. If human remains are not involved, the BIA/WRO shall determine if the approved HPTP provided for in Stipulation I of this Agreement is appropriate to the nature

of the discovery. If appropriate, the HPTP shall be implemented by BIA/WRO. If the HPTP is not appropriate to address the discovery, BIA/WRO shall ensure that an alternative plan for the mitigation of adverse effects is developed and provided to the consulting parties for review and comment.

C. The BIA/WRO shall immediately notify the Tribe and SHPO of all discoveries.

VIII. CHANGES IN THE APE.

BIA/WRO may amend the APE as needed, or as requested by any consulting party, without amending the Agreement proper. If this should occur, all consulting parties will receive a formal notification of proposed amended APE. Within 30 calendar days of their receipt of the proposed amendment, any consulting party may request that the MOA be amended in accord with the process outlined in Stipulation X. Following BIA/WRO receipt of the request, the Signatories shall prepare an amendment document.

IX. REVIEW OF PUBLIC OBJECTIONS

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure, or its manner of implementation, be raised by a member of the public, BIA/WRO shall take the objection into account and consult as needed with the objecting party and the consulting parties to this Agreement to resolve the objection.

X. AMENDMENT

If any consulting party to this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms is necessary, that party shall immediately consult with the other consulting parties to develop an amendment to this Agreement pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original Signatories and Invited Signatories is filed with the ACHP.

XI. DISPUTE RESOLUTION

Should any Signatory or Invited Signatory to this Agreement object to any action(s) or plan(s) pursuant to this Agreement, BIA/WRO shall consult with the objecting party within 30 days to resolve the objection. The objection must be identified

specifically and the reasons for objection documented in writing. If the objection cannot be resolved, BIA/WRO shall notify the consulting parties to this Agreement of the objection and shall:

- A. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR 800.2(b)(2). Any comment provided by the ACHP, and all comments from the Signatories or Invited Signatories to this Agreement, will be taken into account by BIA/WRO in reaching a final decision regarding the dispute.
- B. If the ACHP does not provide any comments regarding the dispute within 30 days after receipt of adequate documentation, BIA/WRO may render a decision regarding the dispute. In reaching its decision, BIA/WRO will take into account all written comments regarding the dispute from the Signatories or Invited Signatories to the Agreement.
- C. BIA/WRO will notify all Signatories and Invited Signatories of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. BIA/WRO decision will be a final agency decision.
- D. It is the responsibility of the BIA/WRO to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute.

XII. DURATION AND TERMINATION

This Agreement will expire if its stipulations are not carried out within ten (10) years from execution of the last Signatory signature on the Agreement or until BIA/WRO, in consultation with the consulting parties, determines that all of its terms have been satisfactorily fulfilled.

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 parties to attempt to develop an amendment per Stipulation X, above. If an amendment cannot be reached, any Signatory or Invited Signatory may terminate the Agreement upon written notification to the other Signatories. Within 30 days following termination, the BIA/WRO shall notify the parties if it will initiate consultation to execute an Agreement with the Signatories and Invited Signatory under 36 CFR 800.6(c)(1) or request the comments of the ACHP under 36 CFR 800.7(a) and proceed accordingly.

XII. EXECUTION OF THIS AGREEMENT

Execution and implementation of this Agreement evidences that the BIAWRO has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment on the undertaking and its effects.

Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The BIA/WRO will distribute copies of all signed pages to the consulting parties once the Agreement is executed in full.

SIGNATORY PARTIES:

APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE

By:  Date 5-31-16
ACTING Regional Director

APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE

By:  Date 6/7/2016
State Historic Preservation Officer

INVITED SIGNATORY PARTIES:

APPROVED: BUREAU OF LAND MANAGEMENT, SOUTHERN NEVADA DISTRICT

By: _____ Date _____
District Manager

APPROVED: MOAPA BAND OF PAIUTE INDIANS

By: _____ Date _____
Chairman, Moapa Business Council

APPROVED: AIYA SOLAR PROJECT, LLC

By: _____ Date _____
Vice President, Project Development

CONCURRING PARTY:

APPROVED: National Park Service, National Trails System-Intermountain Region

By: _____ Date _____
Manager