

Working DRAFT

**PROGRAMMATIC AGREEMENT
AMONG
U.S. NUCLEAR REGULATORY COMMISSION
U.S. BUREAU OF LAND MANAGEMENT
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE
POWERTECH (USA) INC.
AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
DEWEY BURDOCK IN-SITU RECOVERY PROJECT
LOCATED IN CUSTER AND FALL RIVER COUNTIES
SOUTH DAKOTA**

Date 12-23-13

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC) received an application from Powertech Inc. (Powertech or applicant) for a new radioactive source materials license to develop and operate the Dewey-Burdock Project (the Undertaking) located near Edgemont, South Dakota in Fall River and Custer Counties (Project) pursuant to NRC's license authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.*; and

WHEREAS, NRC is considering issuance of a license for the Dewey-Burdock In-Situ Recovery [ISR] Project pursuant to its authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. §§ 2011 *et. seq.* which makes the project an Undertaking requiring compliance by NRC with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et. seq.*, and its implementing regulations (36 C.F.R. Part 800 (2004)); and

WHEREAS, if licensed, the proposed Undertaking will use an ISR methodology to extract uranium and process it into yellowcake at the Dewey-Burdock site. The proposed Undertaking boundary consists of approximately 10,580 acres (4,282 ha) located on both sides of Dewey Road (County Road 6463) and portions of Sections 1-5, 10-12, 14, and 15, in Township 7 South, Range 1 East and portions of Sections 20, 21, 27, 28, 29, and 30-35 in Township 6 South, Range 1 East, Black Hill Meridian, (see Appendix A and Figure 1.0, for fuller description of the Undertaking and map of Project area); and

WHEREAS, under the terms of the General Mining Act of 1872 Powertech has filed Federal Lode mining claims and secured mineral rights on 240 acres [97 ha] of public lands open to mineral entry and administered by the U.S. Department of the Interior, Bureau of Land Management (BLM) , and has the right to develop the mining claims as long as it can be accomplished without causing unnecessary or undue degradation to public lands, and is in accordance with pertinent laws and regulations under 43 CFR Subpart 3809; and

WHEREAS, review and approval of a Plan of Operations (POO) for the project that meets the requirements of 43 CFR Subpart 3809 by the BLM-South Dakota Field Office makes the project an Undertaking requiring compliance by BLM with Section 106 of the NHPA, 16 U.S.C. §§ 470 *et. Seq.* and 36 CFR Part 800; and

WHEREAS, the BLM, by letter dated April 7, 2011, has designated the NRC as the lead agency for compliance with requirements of Section 106 of the NHPA regarding the Dewey-Burdock Project

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(ADAMS Accession No. ML11116A091) pursuant to 36 C.F.R. § 800.2(a)(2) of the Section 106 regulations; and

WHEREAS, under the terms of the Safe Drinking Water Act, Powertech has submitted to the Environmental Protection Agency (EPA) two Underground Injection Control (UIC) Permit Applications for ISR uranium recovery and the disposal of treated ISR process fluids at the Dewey Burdock site; the EPA will issue draft permit decisions that meet the requirements of UIC regulations found at 40 CFR Parts 124, 144, 146 and 147; and the EPA is conducting a separate consultation process in part to fulfill agency requirements for government-to-government consultation in accordance with EPA's Policy on Consultation and Coordination with Indian Tribes; and

WHEREAS, the NRC determined a phased process for compliance with Section 106 of the NHPA is appropriate for this Undertaking, as specifically permitted under 36 C.F.R. § 800.4(b)(2), such that completion of the evaluation of historic properties, determinations of effect on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out in phases, as set forth in this Programmatic Agreement (PA); and

WHEREAS, the area of potential effects (APE) for the Undertaking is the area at the Dewey-Burdock Project site and its immediate environs, which may be directly or indirectly impacted by construction and operation activities associated with the proposed project, as described in Appendix A; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i)(C), the NRC, by letter dated April 24, 2013, notified the Advisory Council on Historic Preservation (ACHP) of the potential for adverse effects to historic properties from the Undertaking and invited the ACHP to participate in Section 106 consultation and in the preparation of this PA; and

WHEREAS, the ACHP, by letter, dated October 28, 2013, formally entered the consultation; and

WHEREAS, the NRC initiated consultation with the South Dakota State Historic Preservation Officer (SD SHPO) on December 2, 2009 during a face to face meeting held in Pierre South Dakota; and

WHEREAS, the NRC invited Powertech to participate in Section 106 consultation and preparation of this PA; and

WHEREAS, the NRC invited twenty-three (23) Indian tribes who may ascribe religious and cultural significance to historic properties that may be affected by the Undertaking, including the Cheyenne and Arapaho Tribes of Oklahoma, the Cheyenne River Sioux Tribe, the Crow Nation, the Crow Creek Sioux Tribe, the Eastern Shoshone Tribe, the Flandreau Santee Sioux Tribe, the Fort Peck Assiniboine and Sioux Tribes, the Lower Brule Sioux Tribe, the Lower Sioux Indian Community, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Omaha Tribe of Nebraska, the Pawnee Nation of Oklahoma, the Ponca Tribe of Nebraska, the Rosebud Sioux Tribe, the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Oyate, the Spirit Lake Sioux Tribe, the Standing Rock Sioux Tribe, the Three Affiliated Tribes (Mandan, Hidatsa & Arikara Nations), the Turtle Mountain Band of Chippewa Indians, and the Yankton Sioux Tribe (collectively referred to as Tribes), to each be a consulting party in the Section 106 consultation by letters dated March 19, 2010 (ML100331999) and September 8, 2010 (ML102450647); and

WHEREAS, the following twenty-three (23) tribes participated in consultation with the NRC and BLM regarding the proposed Dewey-Burdock Project: the Cheyenne and Arapaho Tribes of Oklahoma, the Cheyenne River Sioux Tribe, the Crow Nation, the Crow Creek Sioux Tribe, the Eastern Shoshone Tribe, the Flandreau Santee Sioux Tribe, the Fort Peck Assiniboine and Sioux Tribes, the Lower Brule Sioux

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Tribe, the Lower Sioux Indian Community, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Omaha Tribe of Nebraska, the Pawnee Nation of Oklahoma, the Ponca Tribe of Nebraska, the Rosebud Sioux Tribe, the Santee Sioux Tribe of Nebraska, the Sisseton-Wahpeton Oyate, the Spirit Lake Sioux Tribe, the Standing Rock Sioux Tribe, the Three Affiliated Tribes (Mandan, Hidatsa & Arikara Nations), the Turtle Mountain Band of Chippewa Indians, and the Yankton Sioux Tribe ; and

WHEREAS, the NRC offered all twenty-three (23) consulting tribes the opportunity to participate in a tribal field survey to identify properties of religious and cultural significance to them for the proposed Dewey-Burdock project ISR facility by letter dated February 8, 2013; and

WHEREAS, the following seven (7) tribes participated in the tribal field survey: the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Cheyenne and Arapaho Tribes of Oklahoma, the Crow Nation, the Santee Sioux Tribe, the Crow Creek Sioux Tribe, and the Turtle Mountain Band of Chippewa Indians as discussed in details in Appendix A; and

WHEREAS, surveys to identify historic properties have been completed for the project including Class III archeological Surveys, tribal surveys to identify properties of religious and cultural significance, and a line-of-site analysis as discussed in Appendix B; and

WHEREAS, the NRC received tribal survey reports with eligibility recommendations from the Northern Arapaho Tribe, the Northern Cheyenne Tribe, and the Cheyenne and Arapaho Tribes of Oklahoma, as well as field notes from the Crow Nation as discussed in Appendix A; and

WHEREAS, the NRC staff has reviewed and evaluated the results of the applicant's Class III archeological surveys, tribal surveys, and the line-of-sight analysis in the development of initial recommendations concerning eligibility of properties identified within the APE for the Undertaking for inclusion on the National Register of Historic Places (NRHP) as presented in Appendix B ; and

WHEREAS, the NRC is seeking concurrence from the SD SHPO on these eligibility determinations as discussed in Appendix B; and,

WHEREAS, the NRC invited all 23 consulting tribes to be to a party to this PA and to participate in its development; and

WHEREAS, the following Tribes participated in the preparation of this PA: Northern Cheyenne, Cheyenne River Sioux and Oglala Sioux; [TBD-include other tribes as necessary]; and

WHEREAS, each of the twenty-three (23) consulting tribes will be invited to sign the PA as a Concurring Party; and

WHEREAS, the BLM, as a federal agency with a federal action related to this Undertaking has participated in the Section 106 consultation and development of this agreement and will be a signatory; and

WHEREAS, the EPA has participated in discussions of this agreement; and

WHEREAS, the PA will be entered as a condition on the NRC license, if granted; and

WHEREAS, the PA will be entered as a condition of Powertech Inc.'s POO, if approved by the BLM; and

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NOW, THEREFORE, the NRC, BLM, South Dakota SHP, and the ACHP agree that the Undertaking will be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

NRC shall ensure that the following measures are carried out:

STIPULATIONS:

- 1) The NRC will require that Powertech comply with all applicable stipulations and provisions of this PA as a condition of Powertech's license for the Project.
- 2) The BLM will ensure that a Record of Decision on an acceptable POO will not be signed until this PA has been executed by all required signatories.
- 3) The NRC shall not grant a license to Powertech until all required signatories have executed this PA. Upon receipt of a fully executed PA, the NRC will issue the license provided that all other requirements for the license have been met.
- 4) **Identification of Historic Properties for Installation of Power Transmission Lines in Areas to be determined:**
 - a) Powertech will notify the NRC and BLM in writing when any ground-disturbing activities will be carried out on lands outside the license boundary for the installation of electrical transmission. This written notification will occur three (3) months prior to commencing work so that NRC and BLM can appropriately allocate staff resources to the extent possible, acknowledging that additional time may be necessary in the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.
 - b) Powertech, as part of the notification, will provide the NRC and BLM a proposed survey scope including the methods for identifying historic properties within the transmission corridor, reporting requirements, and schedules for the identification effort.
 - c) The NRC will notify other signatories and consulting tribes when additional identification or other studies are proposed and provide all participating parties 30 days to comment.
 - d) Powertech will contract for any required archaeological surveys of the areas of ground disturbance within the transmission corridor and for any necessary testing for evaluations of eligibility for NRC to make NRHP eligibility determinations. Survey and testing will be conducted under the supervision of individuals meeting the Secretary of the Interior's Professional Qualifications Standards in Archaeology.
 - e) The NRC will consult with interested tribes and provide the opportunity to identify and evaluate places of religious and cultural significance to tribes.
 - f) Powertech shall offer to provide funding to tribal representatives for the purpose of completing identification of properties of religious and cultural significance to them.

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- g) The NRC will submit survey reports and other identification and evaluation studies to the BLM, SD SHPO, and Tribes and will request their review and comments to be completed within 45 days.
- h) The NRC may request revisions to reports or additional investigations, as appropriate, based on comments made by BLM, SD SHPO and Tribes. The NRC will provide revised documents to federal agencies, SD SHPO, and Tribes. A second review period with comments to be completed within 30 days may be requested, if necessary.
- i) If no historic properties are identified, then no further work will be required.
- j) The NRC will submit final reports with determinations of eligibility and effect to the SD SHPO for review and concurrence to be completed within 30 days. Other consulting parties will get a copy of the NRC determination for review.
- k) Should any NRHP-eligible properties be found, the assessment of effect and resolution of adverse effect will be addressed following Stipulations 6 and 7.
- l) Objections regarding the NRC determinations of eligibility or effect will be addressed in accordance with 36 CFR Sections 800.4 and 800.5.

5) Unevaluated Properties previously identified within the APE for the Undertaking:

- a) All unevaluated properties will be protected in place by Powertech until an eligibility determination is completed, in accordance with 36 CFR Section 800.4.
- b) If changes in the design or operation of the Project, including changes to the wellfield configurations, will result in ground disturbance that may affect unevaluated properties, Powertech shall sponsor necessary supplemental research and/or field investigations to gather information necessary for the NRC, BLM, consulting tribes, and SD SHPO to evaluate the NRHP eligibility of the affected properties, prior to commencing any ground-disturbance activities.
- c) Powertech will provide in writing proposed investigation methods to the NRC and BLM three (3) months prior to commencing work so that NRC and BLM can appropriately allocate staff resources to the extent possible, acknowledging that additional time may be necessary in the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.
- d) The NRC will notify other signatories and consulting tribes when additional studies to evaluate the NRHP eligibility of currently unevaluated properties will be needed and will provide all parties a 30 day opportunity to comment on the scope, methods, and reporting requirements.
- e) The NRC will submit eligibility evaluation studies to BLM, SD SHPO, and Tribes and will request their review and comments within 45 days.
- f) The NRC may request revisions to the reports or additional investigations, as appropriate, based on comments received from BLM, SD SHPO, and Tribes. The NRC will provide revisions to BLM, SD SHPO and Tribes and will request a second review with comments to be completed within 30 days, as necessary.

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- g) The NRC will submit final reports with determinations of eligibility and effect to SD SHPO for review and concurrence to be completed within 30 days.
- h) If the evaluated properties are found to be NRHP eligible, then avoidance will be the preferred option. If avoidance is not possible and an adverse effect will result, resolution of adverse effects will be addressed following Stipulation 7.
- i) Objections regarding NRC determinations of eligibility or effect will be addressed in accordance with 36 CFR Sections (insert section symbol) 800.4 and 800.5.

6) Assessing Effects:

- a) Based on the results of the Class III archaeological and Tribal surveys, over 250 historic properties (including archaeological sites, historic structures, and properties of religious and cultural significance) have been found within the areas of land disturbance.
- b) The NRC also conducted a line-of-sight analysis to assess the potential for adverse visual effects on all known historic properties located within three miles of the tallest buildings on both the Dewey and Burdock facilities.
- c) In accordance with 36 CFR 800.5 and taking into account tribal input, Class III archaeological survey results, and line-of-sight analysis, the NRC has made its initial effects determination and provided a copy to the SD SHPO on December 16, 2013 for a 30 day concurrence period. The effects determination is presented in Appendix B.
- d) The NRC distributed its determination of effect forwarded to the SD SHPO with associated documentations pursuant to 36 CFR 800.6(a)(3) to all consulting parties, as appropriate, for a 30-day review period. The NRC will consult to resolve any comments received in writing within the specified review period.
- e) If the SD SHPO concurs with NRC's determinations of effect, or if no written objections are received within the 30 day review period, the effect determination is final.
- f) The NRC will consult to resolve any written objections received regarding determinations of effect. If a dispute arises, it will be resolved in accordance with Stipulation 15.
- g) Based on its initial determination of effect, the NRC has found that there will be adverse effects to historic properties within the areas of ground disturbance as the result of this Undertaking (see Appendix B). If the SHPO agrees to the initial effects, determination, the NRC will consult with all signatories and consulting tribes to develop proposals to resolve these effects in accordance process set forth in this PA.

7) Resolution of Adverse Effects:

- a) Powertech will draft a written treatment plan, which identify measures to avoid, minimize, or mitigate adverse effects to historic properties, in accordance with 36 CFR § 800.6. These treatment plans may cover a single property, groups of geographically or functionally related properties, or a specific type of effect, e.g., visual. Draft treatment plans will be submitted for NRC review and approval 90 days prior to construction, so the NRC can appropriately allocate staff resources to the extent possible, acknowledging that additional time may be necessary in

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the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.

- I. The treatment plan shall contain a description of the effects on each historic property and a description of the proposed treatment for each historic property.
 - II. If monitoring by a qualified archaeologist and/or Tribal monitors is part of the strategy for identifying and resolving adverse effects, the treatment plan shall include a Monitoring Plan. The objective of monitoring is to protect extant sites from construction impacts, identify at the time of discovery any archaeological materials exposed during ground disturbance, and protect such resources from damage until the procedures for discoveries per Stipulation 10 are implemented.
 - III. If data recovery is part of the strategy for resolving adverse effects, the treatment plan shall specify all details of the research design, field and laboratory work methodology (including mapping, geomorphological or other specialized studies, controlled scientific excavation methods, analyses of data recovered, and photographic documentation as appropriate), and report preparation.
- b) The NRC will consult with all signatories and consulting tribes concerning the draft treatment plans developed by Powertech. A teleconference may be held to develop and review alternative measures to avoid, minimize, or mitigate adverse effects to individual properties or groups of related properties.
- c) The NRC will submit draft treatment plans to all signatories and consulting tribes for review and comment to be completed within 45 days.
- d) The NRC may ask Powertech to revise draft treatment plans as appropriate based on timely comments received from the consulting parties. The NRC will forward revisions to draft treatment plans with a request for a second review by all signatories and consulting tribes to be completed within 30 days.
- e) The NRC shall direct Powertech to implement the treatment plan once the SD SHPO concurs with the plan.
- f) If, after consultation, the NRC and the SD SHPO cannot agree on appropriate terms for the treatment plan, the NRC will refer the matter to the ACHP for comment pursuant to Stipulation 14 and will consider the ACHP comments in reaching a final decision on measures to resolve the adverse effects.

8) Coordination with Other Federal Reviews:

In the event that the Powertech applies for additional approvals or other assistance from federal agencies for the Undertaking and the Undertaking remains unchanged, the approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with the amendment process in Stipulation 16.

9) Confidentiality:

The NRC and BLM acknowledge the need for confidentiality of certain tribal spiritual and cultural information that has been or may be provided to the NRC and BLM during the consultation process for this Project. Information provided by consulted tribal members, identified as sensitive, and requested to remain confidential will remain confidential to the extent permitted by state and federal laws.

All consulting parties shall restrict disclosure of information concerning the location or other characteristics of historic properties, including properties of religious and cultural significance to tribes, to the fullest extent permitted by law in conformance with Section 304 of the NHPA, South Dakota Codified Laws (SDCL), § 1-20-21.2, Section 9 of the ARPA, and Executive Order on Indian Sacred Sites 13007 (61 FR 26771; May 29, 1996).

10) Unanticipated Discoveries:

If previously unknown historic properties or other characteristics are discovered during the implementation of the Dewey-Burdock Project, all ground disturbance activities shall halt within 200 feet of the area of discovery to avoid or minimize impact until the discovery is properly evaluated by qualified personnel. The following steps shall be taken:

- a) All ground disturbance activity within 200 feet of the discovered artifact should cease until the discovery is properly evaluated.
- b) Powertech will notify the NRC, the BLM (if the site is on BLM land), and the SD SHPO of the discovery within 48 hours.
- c) Powertech will have the unanticipated discovery evaluated for NRHP eligibility by a professional who meets the Secretary of the Interior's Professional Qualifications Standards in Archaeology (36 CFR Part 61) and SD state laws, as applicable.
- d) Powertech will provide results of evaluation and initial eligibility recommendation for NRCs and/or BLMs review and consideration within 10 business days of the discovery.
- e) The NRC and/or BLM (as appropriate), in consultation with the consulting tribes, shall evaluate the historic properties to determine if they meet the NRHP criteria and request SD SHPO concurrence.
- f) If the NRC (and BLM, as appropriate) and the SD SHPO agree that a property is eligible for listing on the NRHP, the NRC and/or BLM (as appropriate), in cooperation with the consulting tribes, will evaluate the potential effects to that historic property according to Stipulation 7 above.
- g) Human remains identified during ground disturbance activities will be evaluated in accordance with Stipulation 11.
- h) Work may continue in other areas of the site; however, ground disturbance activities will not resume in the area of discovery unless the NRC and/or BLM has issued a written notice to proceed.

11) Human Remains:

- a) The NRC, BLM, and Powertech recognize that human remains, funerary objects, sacred objects, and items of cultural patrimony encountered during ground disturbance activities should be treated with dignity and respect.
- b) Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on BLM land will be handled according to Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR PART10). BLM will be responsible for compliance with the provisions of NAGPRA on Federal land.
- c) Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on state or private land will be handled in accordance with applicable law as described in Appendix D– Treatment of Human Remains. Non-Native American human remains found on federal, state, or private land will also be treated in accordance with applicable state law.

12) Disposition of Archaeological Collections:

- a) BLM will curate any artifacts, materials or records resulting from archaeological identification and mitigation conducted on BLM land under its jurisdiction, in accordance with 36 CFR Part 79, “Curation of Federally-Owned and Administered Archaeological Collections.” BLM will consult with Indian tribes as required in 36 CFR Part 79.
- b) Powertech shall ensure that all records and materials (collections) produced during the course of archaeological surveys and/or excavation on federal lands are curated at Billings Curation Center in accordance with the Billings Curation Center Packaging Requirements and provisions of 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections".
- c) Where testing or excavation is conducted on private land, any recovered collections remain the property of the landowner. Powertech will return the collections to landowners with the assistance of the SHPO. Powertech will encourage landowners to donate the collection(s) to the SD Archaeological Research Center or a Tribal entity, in coordination with the NRC, SHPO, and/or participating Tribes. Where a property owner declines to accept responsibility for the collection(s) and agrees to transfer ownership of the collection(s) to SD Archaeological Research Center or Tribal entity, Powertech will ensure curation of the collection(s) in accordance with Stipulation 12.

13) Qualifications:

All historic property identification, evaluation, and mitigation carried out pursuant to this PA shall be performed by or under the direct supervision of qualified individuals in the appropriate historic preservation discipline meeting, at a minimum, the appropriate standards set forth in 36 CFR Part 61.

In recognition of the special expertise tribal experts have concerning properties of religious and cultural significance, the standards of 36 CFR Part 61 will not be applicable to knowledgeable designated tribal representatives carrying out identification and evaluation efforts for properties of religious and cultural significance to them.

14) Compliance Monitoring:

NRC affirms that avoidance of adverse effects to historic properties remains the preferred course of action.

- a) Powertech will ensure employees and/or contractors involved in all phases of the Project are aware of and comply with the requirements of the PA. Compliance with this PA is a condition of the NRC license and a condition of the BLM POO.
- b) Powertech will develop a Monitoring Plan specific to this project that identifies specific areas, activities, and if appropriate, historic properties that will require monitoring during development of the Project to ensure that the requirements of this PA and the treatment plans developed under the provisions of Stipulation 7 are met. The monitoring plan will include provisions for annual reporting of the results of the monitoring program to the signatories and the concurring parties to this PA.
 - i) Powertech will provide the Monitoring Plan to the NRC, which will distribute it to the signatories and consulting tribes to this agreement for a 30 day review and comment period.
 - ii) The NRC will request that Powertech make any necessary revisions to the plan, and the revised Monitoring Plan will remain in effect for all covered ground-disturbing activities during the license period.
- c) Powertech will engage the services of a Monitor with specific responsibilities to coordinate the requirements of the monitoring plan, the treatment plans, and this agreement during project construction.
 - i) The Monitor will meet the Secretary of the Interior's Professional qualifications for Archaeology. Preference will be given to tribal enterprises meeting those qualifications, especially during phases of the monitoring program where sites with religious and cultural significance to the tribes might be affected. In the case of an unanticipated discovery or imminent threat to an avoided historic property, the monitor shall have authority to stop certain construction activities.
 - ii) The Monitor will coordinate with Powertech and its contractors during the construction phases of the Project.
- d) Powertech will provide periodic updates to all consulting parties on the status of the monitoring plan as specified in Appendix C.

15) Dispute Resolution:

Should any required signatory to this PA object in writing within 30 days to any actions proposed or the manner in which terms of this PA are implemented, the NRC shall consult with such party to resolve an objection. When the NRC determines an objection cannot be resolved, the NRC will forward all documentation relevant to the dispute, including the NRC proposed resolution, to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

- a) Advise the NRC the ACHP concurs in the NRC proposed final decision, whereupon the NRC shall respond accordingly;

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- b) Provide the NRC with recommendations, which the NRC will consider in reaching a final decision on the objection; or
- c) Notify the NRC the objection will be referred to the ACHP membership for formal comment and refer the objection to the ACHP membership for comment within thirty (30) days. The NRC will consider comments in accordance with 36 CFR §800.7(c)(4).
- d) Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the NRC may proceed with its proposed response.

Prior to making a final decision on the dispute, the NRC will prepare a written response that addresses timely comments from signatories and concurring parties to the PA. The NRC will provide signatories, concurring parties, and the ACHP with a copy of its written response. The NRC may implement its final decision.

The NRC will consider recommendations and comments made by the ACHP that are related to the objection. NRC responsibilities under this Agreement, which are not the subject of the objection, shall remain unchanged.

16) Amendment:

A signatory to this agreement may request it be amended, whereupon the signatory parties will consult to reach a consensus on the proposed amendment. Concurring parties will be provided an opportunity to consult and comment on the proposed amendment. An amendment will be effective on the date the amended PA is signed by all of the signatories to this PA. The EPA may in the future decide to rely on this agreement in connection with satisfying its section 106 responsibilities, and if so may join the agreement by adding its signature and circulating the amended agreement.

17) Termination:

- a) Any required signatory to this PA may initiate termination by providing written notice to the signatories and concurring parties of their intent. After notification by the initiating signatory, the remaining signatories and concurring parties shall have thirty (30) days to seek agreement on an amendment or other actions and avoid termination. If such consultation fails, the termination will go into effect at the end of the thirty (30) days, unless all the signatories agree to a longer period.
- b) In the event of termination, the NRC will comply with any applicable requirements of 36 CFR §§ 800.4 through 800.7 for the Undertaking covered by this PA.

18) Duration:

Implementation of the stipulations in this agreement must begin within five (5) years from the date of its execution. During that time, the NRC may consult with the signatories and concurring parties to amend the agreement in accordance with Stipulation 16. The agreement will be in place until the termination of the license.

19) Anti-Deficiency Act:

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The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (Pub.L. 97-258, 96 Stat. 923; 31 U.S.C. §1341, Limitations on expending and obligating amounts). If compliance with the Anti-Deficiency Act alters or impairs the ability of the NRC to implement this Agreement, the NRC will consult in accordance with the amendment and termination procedures in this Agreement.

Execution of this PA by the NRC, BLM, SD SHPO, ACHP, and Powertech and the implementation of its terms is evidence the NRC and BLM have taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

Signatories:

United States Nuclear Regulatory Commission

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

United States Bureau of Land Management

By: _____ Date: _____
Title: Marian M. Atkins, South Dakota Field Manager

South Dakota State Historic Preservation Office

By: _____ Date: _____
Title: Jay Vogt, State Historic Preservation Officer

South Dakota Attorney General's Office Approval as to Form

By: _____ Date: _____
Title: _____

Advisory Council on Historic Preservation

By: _____ Date: _____
Title: John Fowler, Executive Director

Invited Signatories:

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Powertech USA, Inc.

By: _____ Date: _____

Title: _____

Concurring Parties:

Cheyenne and Arapaho Tribes

By: _____ Date: _____

Title: _____

Cheyenne River Sioux Tribe

By: _____ Date: _____

Title: _____

Apsaalooke (Crow) Nation

By: _____ Date: _____

Title: _____

Crow Creek Sioux Tribe

By: _____ Date: _____

Title: _____

Eastern Shoshone Tribe

By: _____ Date: _____

Title: _____

Flandreau-Santee Sioux Tribe

By: _____ Date: _____

Title: _____

Fort Peck Assiniboine/Sioux

By: _____ Date: _____

Title: _____

Lower Brule Sioux Tribe

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By: _____ Date: _____
Title: _____

Lower Sioux Tribe

By: _____ Date: _____
Title: _____

Northern Arapaho Tribe

By: _____ Date: _____
Title: _____

Northern Cheyenne Tribe

By: _____ Date: _____
Title: _____

Oglala Sioux Tribe

By: _____ Date: _____
Title: _____

Omaha Tribe of Nebraska

By: _____ Date: _____
Title: _____

Pawnee Nation of Oklahoma

By: _____ Date: _____
Title: _____

Ponca Tribe of Nebraska

By: _____ Date: _____
Title: _____

Rosebud Sioux Tribe

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By: _____ Date: _____
Title: _____

Santee Sioux Tribe of Nebraska

By: _____ Date: _____
Title: _____

Sisseton-Wahpeton Oyate Tribes

By: _____ Date: _____
Title: _____

Spirit Lake Tribe

By: _____ Date: _____
Title: _____

Standing Rock Sioux Tribe

By: _____ Date: _____
Title: _____

Mandan, Hidatsa & Arikara Nation
Three Affiliated Tribes

By: _____ Date: _____
Title: _____

Turtle Mountain Band of Chippewa

By: _____ Date: _____
Title: _____

Yankton Sioux Tribe

By: _____ Date: _____
Title: _____