

**PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. NUCLEAR REGULATORY COMMISSION,
THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
THE BUREAU OF INDIAN AFFAIRS,
THE NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER,
THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICER,
AND UNITED NUCLEAR CORPORATION
REGARDING
THE CHURCH ROCK PROJECT
IN MCKINLEY COUNTY, NEW MEXICO**

WHEREAS, this Programmatic Agreement (PA) addresses the federal undertaking regarding the issuance of a license amendment for the United Nuclear Corporation (UNC) Mill Site pursuant to the Nuclear Regulatory Commission (NRC)'s authority under the Atomic Energy Act of 1954 (AEA), National Environmental Policy Act (NEPA) and implementing regulations (10 CFR § 51), 42 U.S.C. §§ 2011 et. seq. for purposes of NRC's compliance with Section 106 of the National Historic Preservation Act (NHPA), (54 U.S.C. § 306108), and its implementing regulations (36 CFR § 800); and

WHEREAS, the U.S. Environmental Protection Agency (EPA) is overseeing the effort for cleanup of the Northeast Church Rock (NECR) Mine Site under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601 et seq; and

WHEREAS, on September 24, 2018, UNC submitted to the NRC for review and approval a request to amend its license (SUA-1475) to allow waste from the NECR Mine Site to be placed onto the adjacent existing UNC Mill Site for permanent disposal; and

WHEREAS, the activities proposed to excavate and move waste from the NECR Mine Site to the UNC Mill Site are collectively referred to in this agreement as the undertaking or the Church Rock project; and

WHEREAS, the NRC is the lead federal agency for purposes of compliance with the National Environmental Policy Act (NEPA) and initiated consultation under Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, the NRC is preparing an [Environmental Impact Statement \(EIS\)](#) for this action and it includes analyses of potential impacts to cultural, historic, and/or archeological properties and documents the NRC staff's determinations; the NRC is using its NEPA process to facilitate aspects of its Section 106 review under the NHPA (36 CFR § 800); and

WHEREAS, once this agreement is executed, the EPA will become the lead agency for implementation of this PA; and

WHEREAS, the NRC, by letter [dated April 30, 2019](#), invited the following Indian Tribes to participate on Section 106 consultation for the Church Rock project: Navajo Nation, Hopi Tribe,

Acoma Pueblo, Laguna Pueblo, Isleta Pueblo, Tesuque Pueblo, Zuni Pueblo, and White Mountain Apache Tribe; and

WHEREAS, the NRC, by letter dated November 26, 2019, initiated Section 106 consultation with the New Mexico State Historic Preservation Officer (NMSHPO); and

WHEREAS, the NRC, in consultation with the Navajo Nation Tribal Historic Preservation Officer (NNTHPO) and NMSHPO as provided in 36 CFR § 800.4 (a) and 36 CFR § 800.16 (d), established the area of potential effect (APE) for the undertaking as the area at the Church Rock project site (including the NECR Mine and UNC Mill sites) that may be impacted by activities associated with the excavation, transfer, and disposal of mine waste at the UNC Mill Site. The direct APE is defined as the areas that would be affected by ground disturbance, and the indirect APE is the area within one mile of the Church Rock project wherein historic properties may be located that could sustain visual or audible effects; and

WHEREAS, surveys to locate cultural properties that may eligible for inclusion on the National Register of Historic Places (NRHP) have been completed for the undertaking, including background research of existing records and Class III cultural resource reports with the APE; and

WHEREAS, the NRC has made determinations of eligibility for the NRHP for four historic properties on the NECR Mine Site within the direct APE (NM-Q-20-69, NM-Q-20-70, NM-Q-20-71, and NM-Q-20-72), three of which are located on Navajo Nation trust lands and NNTHPO has concurred, one property (NM-Q-20-69) located on privately owned land and NMSHPO has concurred; and

WHEREAS, the NRC has made a determination of eligibility for the NRHP for one historic property on the UNC Mill Site located on private land within the direct APE (LA11617) and NMSHPO has concurred; and

WHEREAS, the applicable requirements of NHPA, and the American Indian Religious Freedom Act, 42 U.S.C. §§ 1996 et. seq., the Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001 et. seq., and 43 CFR §10 (NAGPRA), and the Archeological Resources Protection Act, 16 U.S.C. §§ 1979 et. seq. (ARPA) have been considered in this agreement and this agreement does not waive the responsibilities of the Signatories and Invited Signatory under these Acts and regulations; and

WHEREAS, UNC has participated in the development of this PA, shall implement the undertaking in accordance with this PA, and is invited to sign the PA as an Invited Signatory; and

WHEREAS, the NRC, EPA, NNTHPO, NMSHPO, Bureau of Indian Affairs (BIA), and UNC are collectively hereafter called "Signatories;" and

WHEREAS, the Signatories and Invited Signatory are collectively referred to as the "Parties;" and

WHEREAS, the refusal of any Invited Signatory to sign this PA does not invalidate the PA;

NOW, THEREFORE, the NRC, EPA, BIA, NNTHPO, NMSHPO, and UNC agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

As appropriate, the NRC within its regulatory authority or the EPA within its authority shall ensure that the following measures are carried out:

A. GENERAL STIPULATIONS

1. The NRC will require, as a condition of any license amendment issued to UNC, that UNC comply with all stipulations and other provisions in this PA as they apply to the UNC Mill Site (see Stipulation Section B, Stipulations Applicable to NRC).
2. EPA will require that UNC comply with all stipulations and other provisions in this PA (see Section C, Stipulations Applicable to EPA). EPA will oversee construction and removal activities on the NECR Mine Site and placement activities on UNC Mill Site and ensure the measures provided for in this agreement are carried out to satisfy the terms of this PA.
3. EPA will ensure all work undertaken to satisfy the terms of this PA, including all cultural resource inventory reports and documentation, meets the Secretary of Interior's Standards for Archeology and Historic Preservation (48 FR 44716-42), NMSHPO, and NNTHPO standards, as applicable.
4. UNC shall direct all of its employees, contractors, subcontractors, inspectors, monitors, and any authorized additional parties involved in the Church Rock project not to search for, retrieve, deface, or otherwise impact historic and prehistoric materials (e.g., archeological materials, such as arrowheads, pottery sherds, petroglyphs) and ensure that they receive training regarding the sensitivity of all historic and cultural resources, both Native American and non-Native American. UNC shall cooperate with the NRC, EPA, NNTHPO, and NMSHPO to ensure compliance with ARPA (16 U.S.C § 470), NAGPRA (25 U.S.C. § 3001), and the Cultural Properties Act (New Mexico Statutes Annotated; (NMSA) 1978), as applicable.

B. STIPULATION APPLICABLE TO NRC

Other than for inadvertent discoveries on the UNC Mill Site, as discussed in Stipulation E, Discoveries on Private Land, EPA is the lead agency for overseeing the implementation of this agreement pursuant to each agency's obligations under Section 106 of the National Historic Preservation Act.

C. STIPULATIONS APPLICABLE TO EPA

The EPA will ensure UNC follows the procedures described in the "[Cultural Resources Treatment and Discovery Plan for the Northeast Church Rock Mine Site and UNC Mill Site, McKinley County, NM, USA.](#)"

D. DURATION

This PA will expire 10 years from the date of its execution; if work under this agreement has not been completed one year prior to expiration of this agreement, the signatories shall meet to reconsider the terms of the agreement and amend it in accordance with Stipulation H, Amendments.

E. DISCOVERIES

1. Inadvertent Discoveries of Historic and Cultural Properties

- a. If archaeological artifacts are found as an unanticipated discovery during construction activities, all work in the vicinity of the discovery (as described in the treatment and discovery plan) must cease and the discovery location must be secured against further disturbance.
- b. If the discovery is found on private land (e.g., the Mill Site), UNC shall notify NMSHPO and NRC and EPA of the discovery before close of business the next working day after the discovery. UNC shall promptly ensure that the nature, extent, age, and integrity of the discovery are recorded in sufficient detail and shall provide a recommendation on NRHP eligibility to the NMSHPO, EPA, and NRC. NMSHPO, EPA and UNC will agree to appropriate procedures to address discovery within two working days of receiving UNC's recommendation.
- c. If, in consultation with the NMSHPO, EPA determines that the property is eligible for inclusion on the NRHP, and the property cannot be avoided by construction, EPA shall consult with the NMSHPO and UNC to develop and implement a plan in accordance with the treatment and discovery plan to mitigate adverse effects, and the plan will be developed in accordance with this PA.
- d. If the discovery is found on tribal land (e.g., the Mine Site), UNC shall implement the treatment and discovery plan.

2. Inadvertent Discoveries of Human Remains

- a. If human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered on private land, ground disturbance activities within fifty feet of the discovery shall cease immediately. UNC shall protect the burial and associated objects or artifacts, notify the local law enforcement agency, and notify the Office of the Medical Investigator (OMI). Upon OMI's release of the

discovery to NMSHPO, UNC shall follow the procedures in the treatment and discovery plan, as well as Section 18-6-11.2 of the New Mexico Cultural Properties Act and 4.10.11. New Mexico Administrative Code (NMAC).

- b. If human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered on tribal lands, UNC shall immediately report the discovery to the NNTHPO, and EPA. UNC shall implement the discovery plan.

F. MONITORING AND REPORTING

UNC shall provide all parties to this PA an annual summary report detailing work undertaken pursuant to its terms. A report covering the prior calendar year shall be provided no later than March 1st of each year following the effective date of this PA. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections raised during implementation of this PA.

G. DISPUTE RESOLUTION

Should any signatory or consulting party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, EPA shall consult with such party to resolve the objection. If EPA concludes that such objection cannot be resolved, EPA will:

1. Forward all documentation relevant to the dispute, including the proposed resolution, to the Advisory Council on Historic Preservation (ACHP). The ACHP shall provide EPA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, EPA shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, Signatories, and consulting parties and provide them with a copy of this written response. EPA will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, EPA may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, EPA shall prepare a written response that considers any timely comments regarding the dispute from the signatories and consulting parties to the PA and provide them and the ACHP with a copy of such written response.
3. EPA or NRC responsibility to carry out other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

H. AMENDMENTS

This PA may be amended when such an amendment is agreed to in writing by all signatories. Such amendment shall be effective upon the signature of all signatories to this PA, and the amendment shall be appended to the PA as an Appendix.

I. TERMINATION

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment [as stated above]. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

If the PA is terminated, prior to work continuing on the undertaking, EPA must either (a) execute a PA pursuant to 36 CFR § 800.6; or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. EPA shall notify the signatories as to the course of action it will pursue.

Execution of this PA by the EPA, NRC, NMSHPO, NNTHPO, UNC and implementation of its terms are evidence that NRC and EPA have taken into account the effects of this undertaking on historic properties.

SIGNATURES

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

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

Signatories

U.S. Nuclear Regulatory Commission

Signature: _____ Date: _____

Printed Name and Title: _____

U.S. Environmental Protection Agency Region 9

Signature: _____ Date: _____

Printed Name and Title: _____

U.S. Environmental Protection Agency Region 6

Signature: _____ Date: _____

Printed Name and Title: _____

Bureau of Indian Affairs – Navajo Region Office

Signature: _____ Date: _____

Printed Name and Title: _____

Tribal Historic Preservation Office

Navajo Nation Tribal Historic Preservation Office

Signature: _____ Date: _____

Printed Name and Title: _____

New Mexico State Historic Preservation Office

Signature: _____ Date: _____

Printed Name and Title: _____

Invited Signatory

United Nuclear Corporation (Applicant)

Signature: _____ Date: _____

Printed Name and Title: _____