

**PROGRAMMATIC AGREEMENT REGARDING
THE WESTERN NEW YORK SCIENCE & TECHNOLOGY
ADVANCED MANUFACTURING PARK
TOWN OF ALABAMA, GENESEE COUNTY, NEW YORK
SHPO # 10PR01963**

Among

**Advisory Council on Historic Preservation;
The United States Army Corps of Engineers Buffalo District; the United States Department
of Energy; the New York State Office of Parks, Recreation and Historic Preservation, State
Historic Preservation Office; the Genesee County Economic Development Center; and the
Genesee Gateway Local Development Corporation**

WHEREAS, the Genesee County Economic Development Center (“GCEDC”) with support from the Genesee Gateway Local Development Corporation (“GGLDC”) (collectively, the “Applicant”), has been working for the last several years on the development of the Western New York Science & Technology Advanced Manufacturing Park (“STAMP”), an advanced manufacturing campus to be developed on approximately 1,261.7 acres of land (“Project”) in the Town of Alabama, New York located along the west side of New York State Highway 77/63 (north of Judge Road) approximately five miles north of the I-90/New York State Thruway (“STAMP Site”); and

WHEREAS, a map of the STAMP Site showing the individual parcels (“Parcels”) that comprise the STAMP Site is attached hereto as *Exhibit A*.

WHEREAS, 1366 Technologies, Inc., (“1366 Technologies”) has recently committed to build a commercial scale solar wafer production facility (“1366 Facility”) on Parcel 8 of the STAMP Site; and

WHEREAS, the construction and operation of the 1366 Facility will require that certain infrastructure be installed including: (i) a sewer line from the STAMP Site to existing sewer lines in the Village of Medina, New York (map of sewer infrastructure route attached hereto as *Exhibit B*) and (ii) a water line from the STAMP Site to existing water lines in the Village of Oakfield, New York (map of the water infrastructure route attached hereto as *Exhibit C*) (collectively, the “Infrastructure Routes”); and

WHEREAS, a joint permit application was made in November 2013 pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), to the United States Army Corps of Engineers, Buffalo District (“Corps”) (Department of the Army Application No. 2010-00964), and the New York State Department of Environmental Conservation (“NYSDEC”) (New York State Department of Environmental Conservation No. 8-1820-00020/00002) by Applicant for activities within wetlands and waters of the United States in association with the development of the Project, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (“NHPA”), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800 and 33 CFR Part 325, Appendix C; and

WHEREAS, the construction of the 1366 Facility will be funded, in part, through loans from the United States Department of Energy (“DOE”) and in part through funding from the New York State Department of Economic Development d/b/a Empire State Development (“ESD”); and

WHEREAS, the ESD has also provided funding to assist with planning and land acquisition activities associated with the Project and will continue to help fund the development of STAMP in the future; and

WHEREAS, the Corps and the DOE, in consultation with the New York State Office of Parks, Recreation and Historic Preservation State Historic Preservation Office (“SHPO”), have determined that the undertaking’s Area of Potential Effects (“APE”), as defined in 36 CFR 800.16(d) and the permit area as defined in 33 CFR Part 325, Appendix C, is the STAMP Site and the Infrastructure Routes; and

WHEREAS, in March 2010, the GCEDC sponsored a Phase IA Literature Search and Sensitivity Assessment (“Phase IA”) of the entire STAMP Site (excluding Parcels 24, 25, 26, 27, 28, 29 and 30 which were not part of the STAMP Site at that time); and

WHEREAS, in April 2013, the GCEDC sponsored a Phase IB Field Investigation (“Phase IB”) on parcels 1, 2, 3, 6, 11, 18 and 22 of the original STAMP Site. In addition, Phase IB work was completed for the majority of Parcel 8, (except for an approximately 7.5 acres of upland area between two wetlands), Parcel 9 (except for approximately three acres surrounding an existing structure), and Parcels 12, 16 and 17. Delineated wetlands identified for avoidance and protection, including all of Parcel 7, were not surveyed; and

WHEREAS, in November and December 2015, the GCEDC sponsored a Phase IB on parcel 15 of the original STAMP Site; and

WHEREAS, in April and May 2016, the GCEDC sponsored a Phase IB on: (i) parcel 14; (ii) on the remainder of parcel 12; (iii) on the approximately 7.5 acres of upland area between two wetlands on Parcel 8; and, (iv) on the approximately three acres surrounding an existing structure on Parcel 9 (a map showing all areas within the STAMP Site where Phase IB work has been completed or is not required is attached hereto as *Exhibit D*); and

WHEREAS, in January 2016, the GCEDC sponsored a Phase IA for the off-site Infrastructure Routes; and

WHEREAS the Phase IB work on the STAMP Site has identified twenty-seven (27) archeological sites (20 Pre-contact, 6 Historic and 1 Stray Find), twenty-five (25) of which (1 through 24 and 26), were recommended by the SHPO for Phase II Site Evaluation (“Phase II”) to determine National Register eligibility which are shown on the map attached hereto as *Exhibit E*; and

WHEREAS, in November and December 2015, the GCEDC sponsored Phase II studies on Archeological Sites 3, 4, 6, 7 and 23.

WHEREAS, the Corps has determined in consensus with the Tonawanda Seneca Nation (“TSN”), the Seneca Nation of Indians (“SNI”) and the SHPO, that Sites 4, 7 and 23 are not National Register eligible and that Sites 3 and 6 are eligible for listing on the National Register of Historic Places and should be either avoided or subject to Phase III Data Recovery (“Phase III”); and

WHEREAS, in April and May 2016, the GCEDC initiated Phase II field work on Site 5 and Phase III field work was completed at Sites 3 and 6; and

WHEREAS, Phase IB work has not yet been carried out at Parcels 4, 5, 10, 13, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, and on small portions of Parcels 16 and 17 (see *Exhibit D*); and

WHEREAS, Phase IB work has not yet been carried out on the off-site Infrastructure Routes; and

WHEREAS, Phase II studies have not yet been carried out at Archeological Sites 1, 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24 and 26; and

WHEREAS, such studies may be undertaken in stages over several years as specific projects that may impact these areas are identified; and

WHEREAS, the Corps, TSN, SNI, the DOE and the SHPO have consulted in accordance with Section 106 of the National Historic Preservation Act (16 USC 470), and its implementing regulations “Protection of Historic and Cultural Properties” (36 CFR Part 800); Corps regulations at 33 CFR Part 325, Appendix C; “Interim Guidance for Implementing Appendix C of 33 CFR Part 325 with the New Advisory Council on Historic Preservation Regulations at 36 CFR Part 800” dated April 25, 2005; and “Clarification of Revised Interim Guidance for Implementing Appendix C of 33 CFR Part 325 with the Revised Advisory Council on Historic Preservation (“ACHP”) Regulations at 36 CFR part 800 dated 25 April 2005”, dated January 31, 2007; and

WHEREAS, Applicant has undertaken an extensive outreach and consultation with the TSN regarding the development of the STAMP Site which is adjacent to TSN tribal lands in western Genesee County, New York; and

WHEREAS, TSN representatives have monitored all archeological field work conducted by Applicant at the STAMP Site; and

WHEREAS, the Corps and the DOE have determined, by consensus with the TSN, the SNI and the SHPO that the proposed undertaking will potentially have an adverse effect on historic properties; and

WHEREAS, the Corps and the DOE have consulted with the TSN and the SNI, who attach religious and cultural significance to the area and landscape where the APE is located and to the historic properties identified during the archeological investigations, and invited the TSN

and the SNI to participate in the consultation to develop this Programmatic Agreement and to sign this Agreement as invited signatories; and

WHEREAS, the Corps and the DOE have invited the Applicant and ESD, to also participate as concurring parties (collectively, TSI, SNI, ESD and the Applicant are referred to herein as the “Concurring PA Parties”); and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the Corps and the DOE expect to notify the Advisory Council on Historic Preservation (“ACHP”) of its potential adverse effect determination providing the specified documentation, and the ACHP will participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii) and (b)(2); and

NOW, THEREFORE, the Corps, the DOE; the ACHP and the SHPO (collectively, the “signatory parties”) agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the potential effect of the undertaking on historic properties; provided, however, that nothing in this PA is intended or shall be construed as an endorsement of the undertaking by the TSN and/or the SNI.

The Corps and the DOE will condition its authorization, and shall condition any further authorization it may issue regarding the Project to ensure that the following terms and conditions, including the implementation of any subsequently approved Site Assessment/Data Recovery Plans (“SA/DRPs”) and Archeological Site Avoidance Plans (“AAPs”), shall be completed in a timely manner and with adequate resources.

STIPULATIONS

1. Construction Activity Associated with the 1366 Facility (Pending Activities):

- a. Applicant shall complete all Phase IB field work on any areas identified as requiring field work in the final approved Phase IA Report for the off-site Infrastructure Routes. Following completion of this field work, Applicant will {upload draft reports to the SHPO Cultural Resource Information System database (“CRIS”)} {provide copies of reports to the Corps, the DOE and the Concurring PA Parties by email (by regular mail)} for review by the Corps, the DOE and the Concurring PA Parties. Comments regarding draft reports will be submitted by Concurring PA Parties to the Corps and the DOE within {21}{30}{45} calendar days of the {uploading of such draft reports to CRIS}. The Corps and the DOE will take into account any comments received from the Concurring PA Parties prior to approving final versions of these reports which approval shall be issued within {21}{30}{45} calendar days of the {uploading of such draft reports to CRIS}.
- b. Applicant has completed Phase IB field work on parcel 14 and on the remainders of parcels 8, 9 and 12 and Phase III field work at Sites 3 and 6. Applicant shall {upload draft reports to CRIS} {provide copies of reports to the Corps, the DOE and the Concurring PA Parties by email (by regular

Comment [pl1]: Method of distribution to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl2]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl3]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

mail)) for review by the Corps, the DOE and the Concurring PA Parties. Comments regarding draft reports will be submitted by Concurring PA Parties to the Corps and the DOE within {21}{30}{45} calendar days of the {uploading of such draft reports to CRIS}. The Corps and the DOE will take into account any comments received from the Concurring PA Parties prior to approving final versions of these reports which approval shall be issued within {21}{30}{45} calendar days of the {uploading of such draft reports to CRIS}.

Comment [pl4]: Method of distribution to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl5]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl6]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

- c. Prior to commencing any construction work related to the 1366 Facility including but not limited to: (i) construction of the entrance road between Route 77 and Crosby Road; (ii) construction of the 1366 Facility access road between Crosby Road and the 1366 Facility Parcel; (iii) construction at the 1366 Facility Parcel; (iv) construction at the Utility Area; (v) construction at the electrical substation, all of which are shown on *Exhibit F* attached hereto, and/or (vi) the Infrastructure Routes, shown on *Exhibit B and Exhibit C* (collectively, “1366 Related Construction Work”), pursuant to 36 CFR 800.4(b) (2), Applicant shall complete any necessary archeological site assessment fieldwork and any data recovery field work as required. Applicant may only commence 1366 Related Construction Work after any necessary identification and assessment investigations have been completed and reported on, and any necessary approved SA/DRPs and/or AAPs have been carried out as required by the Corps and the DOE in consultation with the Concurring PA Parties, and upon receipt of all applicable authorizations and permits.
- d. Applicant may but shall not be required to complete any further archeological assessment studies on Archeological Site 5 prior to commencement of 1366 Related Construction Work provided that there shall be no ground disturbance in the immediate vicinity of Archeological Site 5.
- e. The DOE shall not be required to review or approve any activities at the STAMP Site that do not directly relate to 1366 Related Construction Work as herein defined or future expansion of, or improvements for, the 1366 Facility. However, the DOE shall be treated as a Concurring PA Party for any activities on, or improvements for, the STAMP Site that do not relate directly to the 1366 Facility.

2. **Completion of Archeological Site Identification Surveys (Phase IB):**

- a. Applicant shall complete all Phase IB field work at Parcels 4, 10, 25, 26, 28, 29, 30 and on that portion of Parcel 16 which still requires Phase IB work (see *Exhibit D*), within 12 months of the signing of this PA. Phase IB field work shall be completed at Parcels 5, 13, 19, 20, 21, 24 and 27 and on that portion of Parcel 17 which still requires Phase IB work (see *Exhibit D*) within a reasonable period of time after Applicant acquires

these parcels. Following field work, Applicant shall {upload draft reports to CRIS} {provide copies of reports to the Corps, the DOE and the Concurring PA Parties by email (by regular mail)} for review by the Corps, the DOE and the Concurring PA Parties. Comments regarding draft reports will be submitted by Concurring PA Parties to the Corps and the DOE within {21}{30}{45} calendar days of the {uploading of such draft reports to CRIS}. The Corps and the DOE will take into account any comments received from the Concurring PA Parties prior to approving final versions of these reports which approval shall be issued within {21}{30}{45} calendar days of the {uploading of such draft reports to CRIS}.

Comment [pl7]: Method of distribution to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl8]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl9]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

3. **Phasing of Additional Assessment (Phase II) and Data Recovery Investigations (Phase III):**

- a. Pursuant to 36 CFR 800.4(b) (2), Applicant may carry out any necessary SA/DRPs on additional Project parcels in a phased manner. Project parcels and construction phases are depicted on a map attached hereto as *Exhibit G*. Applicant may alter the projected timing of any project construction phase, as set forth on the map in *Exhibit G* at its discretion.
- b. Applicant may commence construction work on each Project parcel after any necessary identification and assessment investigations have been completed and reported on, and any necessary approved SA/DRPs and/or AAPs have been carried out for each parcel as specified in these PA Stipulations and upon receipt of all applicable authorizations and permits.

4. **Completion of Archeological Site Assessment Investigations (Phase II):**

- a. In addition to its obligations pursuant to PA stipulation 1 above, Applicant will sponsor appropriate archeological assessment studies for any other site proposed for disturbance in association with the development of STAMP according to a testing plan developed in consultation with the Corps and the Concurring PA Parties, and the DOE as necessary. Applicant may carry out archeological site assessment investigations of additional Project parcels in a phased manner pursuant to PA Stipulation 3 above.
- b. For each construction phase of the project, Applicant shall {upload a draft Site Assessment Work Plan to CRIS} {provide copies of reports to the Corps, the DOE and the Concurring PA Parties by email (by regular mail)} for review by the Corps, the DOE and the Concurring PA Parties. Comments regarding draft Site Assessment Work Plans will be submitted by Concurring PA Parties to the Corps and the DOE within {21}{30}{45} calendar days of the {uploading of such draft Site Assessment Work Plans to CRIS}. The Corps and the DOE will take into account any comments received from the Concurring PA Parties prior to

Comment [pl10]: Method of distribution to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl11]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

approving final versions of Site Assessment Work Plans which approval shall be issued within {21}{30}{45} calendar days of the {uploading of such draft Site Assessment Work Plans to CRIS}.

Comment [pl12]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

- c. At least fourteen (14) days prior to commencement of any site assessment fieldwork, Applicant shall notify the Corps, the DOE and the Concurring PA Parties. Specific Points of Contact for each of these parties are listed in *Appendix A* of this PA. Due to the proximity of the TSN lands to the STAMP Site, the TSN shall continue to be offered the opportunity to have representatives on site during all field work at Applicant's expense. The SNI shall also be offered the opportunity to have representatives on site during all field work at their own expense.
- d. Following the completion of Archeological Site Assessment fieldwork for each project phase, Applicant will {upload End of Fieldwork Letters with the results and recommendations for additional archeological work or avoidance to CRIS}{provide copies of reports to the Corps, the DOE and the Concurring PA Parties by email (by regular mail)} for review by the Corps, the DOE and the Concurring PA Parties. Comments regarding End of Fieldwork Letters will be submitted by Concurring PA Parties to the Corps and the DOE within {21}{30}{45} calendar days of the {uploading of such End of Fieldwork Letters to CRIS}. The Corps and the DOE will take into account any comments received from the Concurring PA Parties prior to approving final versions of End of Fieldwork Letters which approval shall be issued within {21}{30}{45} calendar days of the {uploading of such End of Fieldwork Letters to CRIS}.

Comment [pl13]: Method of distribution to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl14]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl15]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

5. **Development of Treatment Plans for all Archeological Sites Determined Eligible for Inclusion in the National Register:**

- a. Prior to performing any ground disturbance in the immediate vicinity of identified archeological sites, Applicant will develop treatment plans for all archeological sites identified within the APE for the undertaking. Treatment plans will be developed in consultation with the Corps, the Concurring PA Parties, and the DOE to the extent that the ground disturbance is related to the construction and/or operation of the 1366 Facility. Applicant may develop and execute treatment plans for sites located on different project parcels in a phased manner pursuant to Stipulation 3 of this agreement. Archeological treatment plans may include DRPs and/or AAP's or proposals for other mitigation to resolve the adverse effects of the undertaking on specific archeological sites. Treatment plans should include specific procedures to follow in the event certain sensitive features are encountered during data recovery and should include a provision for weekly status updates to the Concurring PA Parties. Treatment plan may also include the Site Assessment Work Plan described above, where appropriate.

- b. Applicant will {upload a draft of each Treatment Plan to CRIS}{provide copies of reports to the Corps, the DOE and the Concurring PA Parties by email (by regular mail)} for review by the Corps, the DOE and the Concurring PA Parties. Comments regarding Archeological Site Treatment Plans will be submitted by Concurring PA Parties to the Corps and the DOE within {21}{30}{45} calendar days of the {uploading of such Archeological Site Treatment Plans to CRIS}. The Corps and the DOE will take into account any comments received from the Concurring PA Parties prior to approving final versions of Archeological Site Treatment Plans which approval shall be issued within {21}{30}{45} calendar days of the {uploading of such Archeological Site Treatment Plans to CRIS}. Once data recovery fieldwork has begun, Applicant may request modifications to the Data Recovery Plan in order to deal appropriately with the archeological materials encountered. For revisions to the Data Recovery Plan, Applicant shall {upload a written request to CRIS for review by the Corps, the DOE and the Concurring PA Parties}. Comments regarding modification requests will be submitted by Concurring PA Parties to the Corps and the DOE within 5 calendar days of the uploading of such modification requests to CRIS. The Corps and the DOE will take into account any comments received from the Concurring PA Parties prior to making a decision on the proposed amendment which decision shall be issued within 10 calendar days of the uploading of such modification request to CRIS.
- c. Proposals for mitigation, other than data recovery or avoidance, must include provisions for review and approval of compliance and completion by the Corps in consultation with the Concurring PA Parties, and the DOE as necessary.

Comment [pl16]: Method of distribution to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl17]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl18]: Time periods to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

6. Execution of Archeological Site Avoidance Plans:

- a. All areas containing archeological sites to be avoided as referenced in Archeological Site Avoidance Plans shall be clearly identified on the construction/grading plans and fenced during all ground disturbance/construction activities. A copy of the plans showing avoidance areas shall be submitted to the Corps and/or DOE for review prior to initiation of any construction activity.
- b. Within sixty (60) days after the treatment plan has been approved for any project parcel, Applicant shall {upload to CRIS for review by the Corps, the DOE and the Concurring PA Parties}, a draft of the deed covenants for any area within that parcel containing archeological sites that will be protected from current and future development. The Corps, in consultation with the Concurring PA Parties, and the DOE as necessary, will have sixty (60) days to approve the deed covenants.

Comment [pl19]: Method of distribution to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

- c. Applicant must file the deed covenants with the Genesee County Clerk within thirty (30) days of approval and provide evidence of the filing to the Corps, the Concurring PA Parties, and the DOE as necessary.

7. **Execution of Fieldwork and Data Analysis for Archeological Site Data Recovery:**

- a. At least fourteen (14) days prior to commencement of any Archeological Site data recovery fieldwork, Applicant shall notify the Corps, the DOE and the Concurring PA Parties. Due to the proximity of the TSN lands to the STAMP Site, the TSN shall continue to be offered the opportunity to have representatives on site during all field work at Applicant's expense. The SNI shall also be offered the opportunity to have representatives on site during all field work at their own expense.
- b. Following the completion of archeological data recovery fieldwork for each project parcel phase. Applicant will {upload End of Fieldwork Letters to CRIS for review for review by the Corps, the DOE and the Concurring PA Parties}. End of Fieldwork Letters will reference the SA/DRP and any amendments, summarize the fieldwork carried out, provide any provisional results or interpretations that can be made, and will be, accompanied by comprehensive maps that illustrate the fieldwork carried out. Comments regarding End of Fieldwork Letters will be submitted by Concurring PA Parties to the Corps and the DOE within 21 calendar days of the uploading of such End of Fieldwork Letters to CRIS. The Corps and the DOE will take into account any comments received from the Concurring PA Parties prior to approving final versions of End of Fieldwork Letters which approval shall be issued within 45 calendar days of the uploading of such End of Fieldwork Letters to CRIS. The Corps and/or the DOE may require additional fieldwork if either determines that additional work is necessary to carry out the stipulations of the approved SA/DRP.
- c. Upon final approval by the Corps and/or the DOE of the End of Fieldwork letter, and upon receipt of all applicable authorizations and permits, Applicant may commence construction work within the construction phase addressed by the End of Fieldwork letter.
- d. Following completion of data analysis associated with the archeological data recovery fieldwork for each project parcel (project phase), Applicant will produce a report of the results of the archeological data recovery investigations for that project parcel (project phase). Applicant will {upload the draft report to CRIS for review by the Corps and/or the DOE and the Concurring PA Parties} no later than 365 days following Corps and/or DOE approval of the End of Fieldwork Letter for each project parcel (project phase). Comments regarding these reports will be submitted by Concurring PA Parties to the Corps and the DOE within

Comment [pl20]: Method of distribution to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

Comment [pl21]: Method of distribution to be discussed and mutually agreed upon between the Corps, the DOE and the Concurring PA Parties.

21 calendar days of the uploading of such reports to CRIS. The Corps and the DOE will take into account any comments received from the Concurring PA Parties prior to approving final versions of the reports which approval shall be issued within 45 calendar days of the uploading of such reports to CRIS. Applicant shall upload a final version of the report to CRIS no later than 90 days after Corps/DOE approval.

8. Human Remains:

- a. In the event that any human remains and/or associated funerary objects are discovered during the archeological field work, pre-construction, or construction activities, all work in the immediate vicinity of the human remains must cease immediately and the Corps, the DOE and the Concurring PA Parties must be notified immediately. The area containing the human remains and/or associated funerary objects must be covered and protected from the elements and protected from disturbance and vandalism. Work in that area may not recommence until clearance is given by the Corps in consultation with the Concurring PA Parties, and the DOE as necessary.
- b. Procedure and protocol for treatment and disposition of the human remains shall comply with the SHPO and Seneca Nation of Indians human remains protocols attached in *Appendix B* respectively.

9. Curation:

- a. The curation of the collection recovered during construction on the STAMP Site shall meet or exceed the Standards for Cultural Resource Investigations and the Curation of Archeological Collections in New York State (NYAC, 1994), as applicable, and the curation requirements of 36 CFR 79. "Collection" means all archeological materials, excluding human remains and associated funerary objects, which are dealt with pursuant to PA stipulation 8 above, that are excavated or removed during a survey, excavation or other ground disturbance, and associated records that are prepared or assembled in connection with the survey, excavation or other study.
- b. After the completion of all archeological work required pursuant to this PA, ownership of the collection shall be offered for transfer to the TSN. To the extent that the TSN does not desire to take ownership of the collection or any portion thereof, ownership of the collection shall be offered for transfer to the SNI. Any portion of the collection that is not transferred to the TSN or the SNI shall be transferred to a facility that meets the standards set forth in 36 CFR 79.

10. Land Acquisition:

- a. Upon receipt of all applicable authorizations and permits, Applicant may acquire additional land for the STAMP Project provided however, that Applicant shall not physically disturb such additional acquired land or commence construction work until after any necessary identification and assessment investigations have been completed and reported on, and any necessary approved treatment plans (archeological site data recovery plans or archeological site avoidance plans) have been carried out for each parcel as specified in these PA Stipulations

11. Duration:

- a. This PA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, the Corps may consult with the DOE and the Concurring PA Parties to reconsider the terms of the PA and amend it in accordance with Stipulation 16 below.

12. Post-Review Discoveries:

- a. If potential historic properties are discovered or unanticipated effects on historic properties found, Applicant will halt work in the vicinity of the historic properties and notify the Corps, the DOE and the Concurring PA Parties as soon as practicable.
- b. Applicant will employ a qualified historic preservation professional to evaluate the property and make a recommendation to the Corps regarding the eligibility of the property for inclusion in the National Register of Historic Places. The Corps will, within five business days from receipt of the recommendation, determine the eligibility of the property in consultation with the Concurring PA Parties, and the DOE as necessary.
- c. If the property is determined eligible for inclusion in the National Register, Applicant will provide a draft treatment plan for the property to the Corps. The Corps will review the treatment plan in consultation with the Concurring PA Parties, and the DOE as necessary. The Corps will provide the draft treatment plan to the Concurring PA Parties, and the DOE as necessary for a 5 business day review period. The Corps will take into account any comments of the Concurring PA Parties and/or the DOE received within the five business day review period before approving a final treatment plan.

13. Time Periods for Comments:

- a. Comments received after the expiration of any review period prescribed in this PA shall be taken into account where practicable prior to finalization of the report or determination to which they pertain.

14. Monitoring and Reporting:

- a. Annually following the execution of this PA until it expires or is terminated, Applicant shall provide the Corps, the DOE and the Concurring PA Parties, a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received.

15. Dispute Resolution:

- a. Should any or the Principal PA Parties or any of the Concurring PA Parties object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Corps and/or the DOE shall consult with such party to resolve the objection. If the Corps and/or the DOE determines that such objection cannot be resolved, the Corps and/or the DOE will:
 - i. Forward all documentation relevant to the dispute, including the Corps' and/or DOE's proposed resolution, to the ACHP. The ACHP shall provide the Corps and or the DOE with its advice on the resolution of the objection within fifteen (15) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps and/or the DOE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. The Corps and/or the DOE will then proceed according to its final decision.
 - ii. If the ACHP does not provide its advice regarding the dispute within the fifteen (15) day time period, the Corps and or the DOE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps and/or the DOE shall prepare a written response that takes into account any timely comments regarding the dispute from the Concurring PA Parties, and provide them and the ACHP with a copy of such written response.
 - iii. The Corps' and/or the DOE's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

16. Amendments:

- a. This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories.

17. Termination:

- a. If any Principal PA Party 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 16, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any Principal PA Party may terminate the PA upon written notification to the other signatories.
- b. Once the PA is terminated, and prior to work continuing on the undertaking, the Corps 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. The Corps shall notify the signatories as to the course of action it will pursue.

Execution of this PA by the Corps, the DOE and the SHPO and implementation of its terms evidence that the Corps and the DOE have taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATURE for:

United States Army Corps of Engineers

Diane C. Koslowski
Chief, Buffalo District Regulatory Branch

Date: _____

SIGNATURE for:

United States Department of Energy

Name
Title

Date: _____

CONCURRING PA PARTIES

SIGNATURE for:

Name
Title

Date: _____

SIGNATURE for:

Name
Title

Date: _____

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SIGNATURE for:

Name
Title

Date: _____