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PROGRAMMATIC AGREEMENT

AMONG

**THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,
COLORADO STATE HISTORIC PRESERVATION OFFICER,
WYOMING STATE HISTORIC PRESERVATION OFFICER,
AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,
WYOMING**

1. **WHEREAS**, the U.S. Department of the Energy, Western Area Power Administration (WAPA), received a request from ConnectGen Albany County LLC (Applicant) for the proposed Rail Tie Wind Project (Project), to interconnect with WAPA's Ault-Craig 345-kilovolt (kV) transmission line in Albany County, Wyoming (WY); and
2. **WHEREAS**, Applicant's proposed Project would consist of 84 to 149 wind turbines with a generating capability of 3 to 6 megawatts (MW) each, for a combined total generating capacity of up to 504 MW, within an approximate 26,000-acre Project area roughly 15 miles southeast of Laramie, near Tie Siding and bisected in the south by U.S. Highway 287; and in addition to turbines, the proposed facility would include access roads, collection lines, a substation, switchyards, control buildings, three or more meteorological towers, and other related infrastructure, on private and state lands; and
3. **WHEREAS**, pursuant to Section 106 of the National Historic Preservation Act, as amended (NHPA: Public Law 89-665; 54 U.S.C. 300101 et seq. and 54 U.S.C. § 306108), WAPA is required to take into account the effects of its undertakings on historic properties; and with regard to this proposed Project, WAPA defines its "undertaking" as the interconnection — to which the proposed Project is a connected action under the National Environmental Policy Act (NEPA) —, and which WAPA is required to consider the request in accordance with its Open Access Transmission Service Tariff and the Federal Power Act, as amended; and
4. **WHEREAS**, WAPA lacks authority over Applicant's proposed Project, including electrical generation methods, selection and siting of equipment, and construction and operation of the proposed Project; and
5. **WHEREAS**, WAPA, in consultation with the WY State Historic Preservation Officer (WYSHPO) and the Colorado SHPO (COSHPO), defined the area of potential effects (APE) for the undertaking as the area within which historic properties [as defined at 36 CFR § 800.16(l)(1)] may sustain loss of integrity (as defined in 36 CFR § 60.4) by alteration or destruction caused by the proposed Project, and it includes 1) horizontally, the proposed Project footprint, which entails the physical footprint of all Project facilities within an approximately 26,000-acre area where Project facilities could be built; and vertically a maximum depth of 15 feet for the construction of the wind turbine

1 foundations and a maximum height of 675 feet for construction of wind turbines, and 3) a 10-mile
2 APE from the proposed Project area boundary within which historic properties, where “setting”
3 and/or “feeling” are determined critical to a property’s National Register of Historic Places (NRHP)
4 eligibility may be present (Appendix A, herein incorporated by reference); and
5

6 6. **WHEREAS**, WAPA, as the lead Federal agency and in consultation with the CO and WY SHPOs,
7 determined that the proposed undertaking requires the development of a programmatic agreement
8 (PA), because identification efforts and effects on historic properties may not be fully determined
9 prior to approval of the undertaking (36 CFR § 800.14(b)(1)(ii)); and
10

11 7. **WHEREAS**, WAPA consulted with the CO and WY SHPOs, pursuant to 36 CFR Part 800, the
12 regulation implementing Section 106 of the NHPA (54 U.S.C. § 306108), regarding the
13 development of this PA and the APE per § 800.14(b)(ii)), and both SHPOs are participating as a
14 Signatories to this PA; and
15

16 8. **WHEREAS**, WAPA sought input from the SHPOs about the presence of historic properties during
17 the development and early siting of the undertaking, and the SHPOs reviewed the selection of Key
18 Observation Points (KOP) determined relevant to visual analysis with regard to potential adverse
19 visual effects that may occur as a result of the proposed undertaking; and
20

21 9. **WHEREAS**, WAPA notified and requested the Advisory Council on Historic Preservation’s
22 (ACHP) participation in the development of this PA, and the ACHP is participating as a Signatory;
23 and
24

25 10. **WHEREAS**, to date, identification efforts revealed 478 previously identified recorded cultural
26 resources within the overall APE [6 National Register of Historic Places (NRHP) listed, 75 NRHP
27 eligible, 87 NRHP unevaluated, and 310 NRHP not eligible]; of which nine are within the proposed
28 Project area and 469 are within the 10-mile zone, including historic and prehistoric archaeological
29 sites, the Ames Monument National Historic Landmark (NHL), and segments of 12 linear resources
30 such as emigrant trails (Cherokee and Overland), and an intercontinental railroad (Union Pacific)
31 and highway (Lincoln Highway); and of which 390 are located in Wyoming and 88 in Colorado;
32 and
33

34 11. **WHEREAS**, the Ames Monument NHL, so designated by the Secretary of the Interior on October
35 31, 2016, constructed between 1880 and 1882, is a memorial to the Ames Brothers of
36 Massachusetts, designed by the prominent American architect, H. H. Richardson, and built by
37 Norcross Brothers of Worcester, Massachusetts; and
38

39 12. **WHEREAS**, WAPA invited Wyoming State Parks and Cultural Resources to participate in the
40 development of this PA as a Concurring Party, because they own and manage the Ames Monument
41 NHL located within the 10-mile APE within which visual effects would be assessed and 1.09 miles
42 from the Applicant’s proposed Project footprint, and it is both a State Historic Site and a NHL; and
43
44

- 1 13. **WHEREAS**, WAPA, pursuant to 36 CFR § 800.10, invited the National Park Service (NPS) due to
2 potential adverse effects to the Ames Monument NHL and possibly National Historic trails near the
3 Applicant's proposed Project footprint, and the NPS is participating as an Invited Signatory; and
4
- 5 14. **WHEREAS**, WAPA invited the Wyoming Office of State Lands and Investments to participate in
6 the development of this PA as an Invited Signatory, because approximately 4,800 acres of State
7 Trust Lands are within the proposed Rail Tie Wind project boundary; and
8
- 9 15. **WHEREAS**, WAPA as per 36 CFR § 800.14(b)(2)(i), invited the Albany County Historic
10 Preservation Board, Alliance for Historic Wyoming, Lincoln Highway Association, Wyoming
11 Association of Professional Archaeologists, Anna Lee Ames Frohlich, and Mitchell Edwards, to
12 participate in the Section 106 consultation process for this undertaking, as these organizations,
13 special interest groups or persons have demonstrated their interest or standing in the undertaking,
14 and are participating in the development of this PA under 36 CFR § 800.2(c)(5), and each may sign
15 as a Concurring Party; and
16
- 17 16. **WHEREAS**, WAPA, as per 36 CFR § 800.14(b)(2)(ii), invited the following federally-recognized
18 tribes to participate in the Section 106 consultation process and in the development of this PA as
19 Concurring Parties: the Cheyenne River Sioux Tribe, Crow Tribe, Crow Creek Sioux Tribe, Eastern
20 Shoshone Tribe of the Wind River Reservation, Fort Peck Assiniboine and Sioux Tribes, Lower
21 Brule Sioux Tribe, Northern Arapaho Tribe, Northern Cheyenne Tribe of the Northern Cheyenne
22 Indian Reservation, Oglala Sioux Tribe, Rosebud Sioux Tribe, Santee Sioux Nation of Nebraska,
23 Shoshone-Bannock Tribes of the Fort Hall Reservation, Sisseton Wahpeton Oyate Tribes, Standing
24 Rock Sioux Tribe, Yankton Sioux Tribe, and Ute Tribe of the Uintah and Ouray Reservation; and
25
- 26 17. **WHEREAS**, of those tribes listed in Whereas #16, the Northern Arapaho Tribe, Northern Cheyenne
27 Tribe of the Northern Cheyenne Indian Reservation, Rosebud Sioux, Standing Rock Sioux Tribe,
28 Yankton Sioux Tribe, and the Ute Tribe of the Uintah and Ouray Reservation are participating in the
29 Section 106 consultation process for the development of this PA, and may sign as a Concurring
30 Party to the PA; and
31
- 32 18. **WHEREAS**, WAPA agrees that for the life of the PA the agency will consider requests for Section
33 106 consultation as per 36 CFR § 800.14(b)(2)(i) from any agency, organization, special interest
34 group, person or federally recognized Indian tribes to participate in the consultation process at any
35 point in time about this undertaking; and
36
- 37 19. **WHEREAS**, WAPA sought and considered public input about cultural resources and the presence
38 of and effects to historic properties through its NEPA scoping process and comments were
39 considered and addressed, and WAPA will consider all NEPA comments regarding cultural
40 resources and historic properties up to the signing of this document; and
41
- 42 20. **WHEREAS**, ConnectGen Albany County, LLC (and/or by extension its successor) is participating
43 as an Invited Signatory to this PA, and will fund all cultural resource identification, documentation
44 and treatment and mitigation efforts, which may include, but are not limited to, cultural resources
45 literature reviews, surveys, historic building surveys, traditional cultural property surveys, visual
46 analysis of the proposed undertaking's viewshed, noise analysis, reports, site records, a monitoring

1 and discovery plan, historic property treatment plan(s) (HPTP), or other measures agreed upon
2 through consultation, to avoid, minimize or mitigate potential adverse effects to historic properties;
3 and
4

5 21. **WHEREAS**, Applicant is committed to implementing environmental protection measures to reduce
6 direct and indirect impacts to cultural resources, such as, reducing visual impacts when designing
7 the layout of structures, buildings and infrastructure, using setbacks to avoid direct disturbance, and
8 seeking approval from the Federal Aviation Administration to use a sensor-based Aircraft Detection
9 Lighting System to reduce nighttime lighting; and
10

11 22. **WHEREAS**, definitions in Appendix B (herein incorporated by reference) are applicable to this
12 PA;
13

14 **NOW, THEREFORE**, WAPA, Applicant, SHPOs, NPS and ACHP agree WAPA's undertaking, and
15 Applicant's connected action shall be administered in accordance with the following stipulations to satisfy
16 WAPA's Section 106 responsibility.
17

18 **STIPULATIONS**

19
20 The following stipulations will be carried out as follows:
21

22 **I. CULTURAL RESOURCES SERVICES AND PROFESSIONAL STANDARDS**

23
24 A. Applicant shall contract for all cultural resource identification and treatment/mitigation efforts.
25 The cultural resources contractor shall be qualified to conduct cultural resources literature
26 reviews, surveys, historic building surveys, traditional cultural property surveys, visual analysis
27 of the proposed undertaking's viewshed, reports, site records, a monitoring and discovery plan,
28 and historic property treatment plan(s) to minimize or mitigate adverse effects to historic
29 properties. Applicant will ensure that all work conducted under the terms of this PA meets the
30 Secretary of the Interior's Standards for Archeology and Historic Preservation (48 FR 44716)
31 (*Federal Register*, September 29, 1983) and is consistent with the ACHP's guidance on
32 archaeology and all applicable National Park Service guidance for evaluating cultural resources
33 for eligibility to the NRHP. WAPA defines conventions or standards for inventory and survey
34 intensity to adequately identify historic properties within the APE. All inventory/survey
35 activities will meet WAPA and SHPOs reporting/documentation standards, which are available
36 on the CO and WY SHPO websites. All formal Section 106 consultation with the WY SHPO
37 will be submitted in WyoTrack. In CO the Applicant shall obtain appropriate permits to
38 conduct archaeological field work and be in good standing, complying with the reporting
39 standards.
40

41 B. Applicant shall ensure that all cultural resources services will be carried out by or under the
42 direct supervision of a person or persons meeting, at a minimum, the applicable professional
43 qualifications standards set forth in the Secretary of the Interior's (Secretary) *Standards for*
44 *Archeology and Historic Preservation* (48 FR 44716) (*Federal Register*, September 29, 1983)
45 in the appropriate discipline. WAPA must review the cultural resources contractor's

1 professional qualifications, and any permits obtained, to determine that the contractor meets the
2 Secretary's qualifications prior to cultural resources work being conducted.

- 3
- 4 C. WAPA shall consult with federally recognized Indian tribes who wish to participate in the
5 consultation process about the presence of historic properties and properties of traditional
6 religious and cultural significance within the APE. WAPA will consult with tribes at any point
7 in time about this undertaking.
- 8
- 9 D. Applicant shall provide WAPA with full documentation of all their efforts to coordinate with
10 tribes including, but not limited to, copies of all correspondence, telephone logs, meeting
11 agendas, notes, and contact information.
- 12

13 II. PROTECTION OF CONFIDENTIAL INFORMATION

14 To the extent consistent with NHPA (Section 304), the Archaeological Resources Protection Act, Section
15 9(a), regulations or statutes, cultural resource data from this proposed undertaking will be treated as
16 confidential by all consulting parties and will not be disseminated to any person, organization or agency that
17 is not a consulting party to this PA. All archeological locational information is confidential. WAPA may
18 redact locational or tribally sensitive information from cultural resources survey reports or other
19 documentation prior to sharing the information, unless such information is already available on an
20 unrestricted basis in a state cultural resources database or information center, or the tribe whose information
21 is of concern agrees in writing that the information may be shared. Applicant and WAPA will respect
22 confidentiality concerns expressed by tribes for properties of traditional religious and cultural significance
23 (NHPA 101(d)(6)(A)).

24

25 III. INVENTORY, NRHP EVALUATIONS, EFFECTS AND CONSULTATION

26 A. Historic Property Identification:

27 Identification of historic properties will occur by 1) performing a Class I or literature review to
28 identify known cultural resources within the APE, 2) consulting with parties to this PA, and 3)
29 performing a Class III inventory of areas within the Project footprint, as agreed to between
30 WAPA, SHPO and Applicant, which shall be completed prior to construction. Additional
31 literature reviews or Class III surveys may be necessary for substantial scope or APE changes.
32 To ensure no trespassing issues arise, Applicant shall obtain right-of-entries for the lands in the
33 proposed APE prior to initiation of the Class III inventory.

34

35

36 B. NRHP Evaluations and Effects:

- 37 1. Applicant's cultural resources contractor will make recommendations to WAPA about
38 NRHP evaluations of all cultural resources documented within the proposed Project
39 footprint APE. Cultural resources will be evaluated under all four NRHP Criteria and all
40 seven aspects of integrity. Evaluations by the contractor may include limited shovel testing
41 at archaeological sites during surveys to assess eligibility under Criterion D only. Shovel
42 tests may be conducted to assess deposition, integrity and the presence of data needed to
43 address research questions that are considered locally or regionally important. Any artifacts
44 found on private land in a shovel test will be replaced in the shovel test unit after being
45 properly documented, unless otherwise requested by the landowner. Any artifacts found on

1 State land in a shovel test will be collected, analyzed and curated at the University of
2 Wyoming at the Applicant's expense.
3

- 4 2. Effects from the undertaking will be assessed for all historic properties documented within
5 the APE, except only visual effects will be assessed for historic properties that are eligible
6 under NRHP Criteria A and/or C, where setting and/or feeling are integral to the integrity of
7 the resource, and are located within the viewshed of the 10-mile APE.
8

9 C. Consultation: WAPA will consult on NRHP eligibility determinations and effects to cultural
10 resources within the proposed Project footprint, including those properties identified within the
11 APE, where "setting" and "feeling" are integral to their eligibility, and which may be affected by
12 the proposed undertaking:

- 13 1. WAPA will review the contractor's literature review and Class III reports and submit them to
14 consulting parties (except SHPOs) for a **30-calendar day** review period. If additional reports
15 are needed, the same process outlined in this stipulation will be followed. Comments shall
16 focus on the adequacy of documentation, NRHP eligibility recommendations and potential
17 effects to historic properties. WAPA will consider all comments and the contractor shall
18 revise the report(s) if necessary. If comments are not received within the **30-calendar day**
19 review period, WAPA will move forward per Stipulation II.C.2.
20
- 21 2. Class III inventory is only anticipated to occur in WY within the proposed Project footprint.
22 WAPA will submit the Class III inventory report(s), associated site forms and any comments
23 received from consulting parties per Stipulation II.C.1 to the WY SHPO with WAPA's
24 determinations of eligibility and effect for a **30-calendar day** review period. The WY SHPO
25 will comment on WAPA's NRHP eligibility and effect determinations. WAPA will seek
26 consensus on determinations of eligibility. However, if WAPA and the WY SHPO do not
27 agree on eligibility within **30-calendar days**, WAPA will continue to consult with the WY
28 SHPO or request a determination of eligibility from the Keeper of the National Register (The
29 Keeper) pursuant to 36 CFR § 800.4(c)(2) and 36 CFR Part 63. The Keeper's determination is
30 final. For cultural resources that WAPA and the WY SHPO agree are not eligible for listing in
31 the NRHP, no further review or consideration is required under this PA. If comments are not
32 received within the **30-calendar day** review period, WAPA will consider its eligibility and
33 effect determinations as final for the purposes of the proposed undertaking. If changes in the
34 APE require Class III survey in CO, consultation with COSHPO will occur, and the parties
35 follow the same review process as described in this stipulation.
36
- 37 3. WAPA will make a reasonable and good faith effort to engage federally recognized Indian
38 tribes to identify properties of traditional religious and cultural significance and determine if
39 historic properties exist within the APE. Should properties of traditional religious and cultural
40 significance be identified, at Applicant's expense, such resources may be documented or
41 discussed in a separate report.
42

43 D. If WAPA agrees to the interconnection and construction begins, variances may be
44 needed, and additional survey may be necessary in areas not previously
45
46

1 surveyed. Recognizing the potential for high costs associated with construction delays,
2 Applicant, WY SHPO, and consulting parties agree to the process stated below for
3 cultural resources survey, reporting and consultation:

- 4 1. If no cultural resources are identified, WAPA will submit a description and map of
5 the proposed variance and provide the Applicant with a notice to proceed by email
6 without waiting for SHPO review of the final Class III inventory. The draft report
7 will be sent to the SHPO by email. Any comments to WAPA will be accepted by
8 email. WAPA will request that the Applicant's cultural resources contractor revise
9 the report as necessary and WAPA will submit it to the SHPO through WyoTrack
10 on-line for informational purposes. The survey and report will be mentioned in the
11 Annual Report for the undertaking.
12
- 13 2. If cultural resources are identified, and they will be avoided, WAPA will submit its
14 determinations of eligibility and findings of effect and submit a description and map
15 of the proposed variance along with scanned versions of the Wyoming Cultural
16 Properties forms to the SHPO via email who will have **3 business days** from receipt
17 to provide comments to WAPA. If the SHPO does not respond by email within the
18 stated timeframe, WAPA may consider its determinations of eligibility and findings
19 of effect final and provide the Applicant with a notice to proceed by email. If
20 WAPA and the SHPO disagree on eligibility, WAPA will continue to consult with
21 the SHPO to reach consensus or request a determination of eligibility from The
22 Keeper, pursuant to 36 CFR § 800.4(c)(2) and 36 CFR Part 63. The Keeper's
23 determination is final. WAPA may continue to consult on any findings of effect or
24 submit any disagreement on findings of effect to the ACHP for review and
25 comment per 36 CFR § 800.4(d)(1)(iv)(A). Upon completion, the final Class III
26 report and associated Wyoming Cultural Properties forms will be submitted through
27 WyoTrack on-line. The survey and report will be mentioned in the Annual Report
28 for the undertaking.
29
- 30 3. If cultural resources are identified within the variance and the Applicant notifies
31 WAPA that the cultural resources cannot be avoided by the undertaking, WAPA
32 will not provide a notice to proceed for that surveyed area until WAPA has
33 completed consultation as stipulated under Stipulation III.C and potentially under
34 Stipulation IV.
35

36 **IV. HPTP DEVELOPMENT AND RESOLUTION OF ADVERSE EFFECTS**

- 37 A. If WAPA determines that the undertaking will have adverse effects on historic properties,
38 WAPA shall consult with SHPOs, consulting parties and Indian tribes to develop and evaluate
39 adjustments or modifications to the undertaking that could avoid, minimize, or mitigate adverse
40 effects to those properties.

1 B. WAPA will advise the Applicant, to the maximum extent possible, on planning and actions that
2 may be appropriate to minimize adverse effects to the Ames NHL that may be caused by the
3 undertaking (36 CFR § 800.10).

4 C. WAPA, through the Applicant, will resolve adverse effects on historic properties through the
5 development and implementation of one or more HPTP, as described below. The HPTP will
6 provide specific avoidance, minimization, or mitigation measures, commensurate with the
7 adverse effects, including cumulative effects, that may be caused by the undertaking.

8 1. HPTPs will be prepared in consultation with SHPO, consulting parties and Indian tribes,
9 and will be consistent with the Secretary's Standards; the Advisory Council on Historic
10 Preservation's Section 106 Archaeology Guidance (2009); the Historic American Buildings
11 Survey (HABS), Historic American Engineering Record (HAER), and Historic American
12 Landscapes Surveys (HALS) guidance (<http://www.nps.gov/hdp/>); and appropriate state
13 guidelines. WAPA will hold consultation meetings or video conference calls to discuss
14 development of the HPTP.

15 2. HPTP Development, Review and Acceptance:

16 a. WAPA with the Applicant will develop a HPTP outline and consult with the consulting
17 parties to determine HPTP content and specific treatment or mitigation proposed for the
18 historic properties or groups of historic properties adversely affected.

19 b. Once an HPTP is completed and accepted by WAPA, the WAPA will provide the HPTP
20 to the consulting parties for a 30-calendar day review.

21 c. WAPA will take all comments into account and request of the Applicant to revise the
22 HPTP, as appropriate. The Applicant will revise the HPTP and provide it to WAPA
23 within 10 calendar days. WAPA will submit the final HPTP to the consulting parties and
24 the appropriate SHPO for a 30-calendar day review and concurrence. WAPA will
25 endeavor to reach consensus on the HPTP, but if the consulting parties fail to resolve
26 adverse effects in a reasonable timeframe, WAPA will comply with 36 CFR § 800.7 and
27 seek ACHP comment and move forward accordingly. The final HPTP will be appended
28 to Appendix C (herein incorporated by reference) of this PA.

29 3. The introductory content of the HPTP will include the undertaking overview, a list or table
30 of all identified historic properties within the APE, including those determined visually or
31 indirectly affected within the 10-mile APE, maps, and monitoring procedures and discovery
32 protocols, as detailed in Section 4 of this Stipulation.

33 a. The HPTP list or table of historic properties will include state, land ownership, township,
34 range, and section and Smithsonian number. The list or table will also include a field for
35 archaeological properties indicating the probability of buried subsurface deposits,
36 treatment to address the direct and cumulative effects of the undertaking for historic
37 properties and specific groups of historic properties (e.g., archaeological sites, trails, etc.),
38 and identify whether treatment or mitigation must be implemented prior to construction
39 activities occurring in an area (e.g., archaeological data recovery, landscape

1 photography), or will be implemented during or post ground-disturbing activities (e.g.,
2 historical research, installation of an interpretive kiosk, public education materials, etc.).

- 3 b. Subsequent sections or chapters of the HPTP will identify each specific historic property
4 or group of historic properties that will be adversely affected and cannot be avoided and
5 will include the following:
- 6 i. A distinctive name or number (Smithsonian number).
 - 7 ii. A brief description of the historic property.
 - 8 iii. Its location in terms of distance and direction from a project-defined milepost(s) or
9 similar established markers.
 - 10 iv. The type of disturbance that will affect the historic property.
 - 11 v. The nature or kind of each required treatment measure (avoidance, minimization,
12 mitigation) pertaining to each historic property (e.g., landscape photography,
13 archaeological data recovery, etc.).
 - 14 vi. The identification of treatment measures, if any, which must be completed prior to
15 construction activities and/or those measures which may be completed after
16 construction.
 - 17 vii. The documentation and reporting procedures for each proposed treatment measure.
 - 18 viii. Each subsection of the HPTP that concerns an archaeological historic property will
19 incorporate a research design as needed to guide data recovery and other treatment
20 efforts. Existing research designs may be used within acceptable historic context
21 documents when the consulting parties agree that they are appropriate to a specific
22 historic property or group of properties.
 - 23 ix. WAPA released the Draft Environmental Impact Statement to cooperating agencies
24 on January 7, 2021, and discussions began between cooperating agencies about ideas
25 on possible treatment measures for potential adverse visual effects on the Ames
26 Monument NHL and other potential historic properties within the APE that may
27 include one or a combination of the following, but are not limited to:
 - 28 (a) Completion of NRHP nomination forms.
 - 29 (b) Conservation easements.
 - 30 (c) Completion of all technical aspects of HABS, HAER, and HALS
31 documentation such that submittal can be filed with the Library of Congress.
 - 32 (d) Documentation of local or regional resources to be submitted to the
33 appropriate SHPO or State Archives.
 - 34 (e) Purchase of land containing historic properties for transfer to protective
35 management/ownership with willing consent of landowner.
 - 36 (f) Partnerships and funding for public archaeology projects or volunteer public
37 outreach.
 - 38 (g) Print publication (brochure/book)
 - 39 (h) Digital media productions (website/podcast/video/narrated drone footage).
 - 40 (i) Access to historic properties otherwise unavailable to the public.
 - 41 (j) Interpretation of historic properties and development of signage.
 - 42 (k) Ames Monument NHL Preservation.
 - 43 (l) Hiking trail system to connect to the Ames Monument NHL.
 - 44 (m) Physical repairs to Ames NHL; and

1 (n) Partnering with WY SHPO on site stewardship for Ames and surrounding
2 historic properties.
3

4 4. Included in the HPTP will be the procedures for archaeological monitoring, and tribal
5 monitoring, if appropriate, and handling and reporting of discoveries of previously
6 unidentified cultural resources or human remains, and NRHP evaluation, and HPTP
7 treatment implementation, if appropriate.

8 a. Archaeological monitoring will, as appropriate, include archaeological inspection of
9 construction activities by personnel under the direct supervision of a person meeting
10 the Secretary of the Interior's Professional Qualifications standards.

11 b. Monitoring may include tribal monitors within construction areas near historic
12 properties or site types previously identified as significant to tribes or at testing or
13 excavation locations, should it be appropriate and permitted by the landowner.

14 c. Any cultural resource discovered during pre-construction, construction, and/or
15 construction monitoring, will be treated in accordance with the inadvertent discovery
16 protocols in the PA or if human remains or funerary objects be discovered at any time
17 within WY, the Applicant shall comply with the Wyoming Statute 7-4-106. All costs
18 to treat, mitigate, remove and curate any archaeological materials or human remains
19 shall be borne by the Applicant.

20 d. The HPTP will discuss curation of human remains and funerary objects which shall
21 comply with WY state protocol until such time repatriation occurs. Archaeological
22 materials collected during data recovery excavations on state lands shall be curated at
23 the University of Wyoming. Archaeological materials collected during data recovery
24 excavations on private land will be either turned over to the landowner after
25 appropriate analysis is completed. The landowner may donate the materials to a
26 museum or a curation facility.

27 e. After the completion of treatment measures, a preliminary summary report will be
28 prepared and distributed to the appropriate consulting parties.

29 f. The Applicant shall ensure that the final results of treatment efforts are reported to
30 WAPA in a final report, which WAPA will provide to the SHPO.
31

32 V. DISCOVERIES

33

34 A. WAPA and Applicant agree that during the lifetime of this PA if archaeological materials are
35 discovered as a result of the undertaking's construction activity, the discovery will be protected
36 from further disturbance, all earth disturbing activities will cease within 30 meters (100 feet) of
37 the discovery, and heavy equipment will be removed from the area until the discovery is
38 assessed and documented. WAPA will be notified immediately about the discovery. If the
39 discovery is an isolated find and determined by the cultural resources' contractor in consultation
40 with WAPA as not eligible for NRHP listing, it will be documented, and the activity will
41 proceed with no further consultation. For all other discoveries, WAPA may assume the

1 discovery as eligible for NRHP listing pursuant to 36 CFR § 800.13(c) or consult with the tribes
2 and SHPO regarding its eligibility. WAPA will notify the SHPO and tribes by phone within 24
3 hours of the discovery. As required by 36 CFR 800.13, WAPA will also consult with the
4 ACHP if the discovery was, or will be, adversely affected by the construction activity.
5

- 6 B. WAPA and Applicant agree that at any time if human remains are discovered, work shall cease
7 within 30 meters (100 feet) of the discovery. If the PA is still in effect, discoverer shall
8 immediately notify Applicant and WAPA by telephone and in writing within 24 hours of the
9 discovery (email is acceptable). If human remains are encountered after this PA expires, the
10 discoverer shall immediately notify the Applicant who shall contact the SHPO and follow the
11 procedures set forth in Wyoming Statute 7-4-106.
12

13 VI. PA ANNUAL REPORTING AND REVIEW

14
15 Applicant shall prepare an annual letter report to WAPA for the duration of this PA regarding how it has
16 carried out the stipulations of this PA and activities associated with the HPTP. The annual letter report
17 should include Project status and schedule, and if appropriate any APE expansions/modifications, variances
18 or changes in scope, cultural resources monitoring or mitigation activities, HPTP activities, discovery
19 situations, and outstanding tasks to be completed under this PA. The implementation and operation of this
20 PA shall be evaluated on an annual basis by WAPA and the SHPOs. For the first two years from the
21 execution of this PA, WAPA shall hold either a face-to-face meeting or video conference meeting to discuss
22 the status of the project and PA. After the first two years, annual meetings may be held at the request of any
23 Signatory or Invited Signatory. Any Signatory or Invited Signatory may request additional information
24 from Applicant, which they will share with all consulting parties. WAPA shall inform the Signatories and
25 Invited Signatories when all stipulations of this PA have been carried out.
26

27 VII. DISPUTE RESOLUTION

- 28
29 A. If any Signatory or Invited Signatory to this PA objects at any time to any actions proposed or
30 to the manner in which the terms of this PA are implemented, WAPA shall notify the SHPO
31 and other Signatories and Invited Signatories about the objection by email and will consult with
32 the objecting party to resolve the matter. If WAPA determines that such objection cannot be
33 resolved, WAPA will forward the objection to the ACHP for its advisory comments.
34
35 B. If the ACHP does not provide its advisory comments regarding the dispute within **30 calendar**
36 **days**, WAPA may make a final decision on the dispute and proceed accordingly. Prior to
37 reaching such a final decision, WAPA shall prepare a written response that takes into account
38 any timely comments regarding the dispute from the Signatories and Invited Signatories to the
39 PA and provide them and the ACHP with a copy of such written response.
40
41 C. The Signatories' responsibilities to carry out all other actions subject to the terms of this PA that
42 are not the subject of the dispute remain unchanged.
43
44
45
46

1 **VIII. AMENDMENT**

2
3 This PA may be amended in counterparts when such an amendment is agreed to in writing by all Signatories
4 and Invited Signatories who have signed this PA. WAPA will distribute copies of any amendments to the
5 Signatories, Invited Signatories and Concurring Parties. An amendment will be effective after it is signed
6 by all Signatories and filed with the ACHP.
7

8 **IX. TERMINATION**

9
10 If any Signatory or Invited Signatory to this PA determines that its terms will not or cannot be carried out,
11 that Signatory or Invited Signatory shall immediately consult with the other Signatories and Invited
12 Signatories to attempt to develop an amendment. If, within thirty **30 calendar days** (or another time period
13 agreed to by all Signatories and Invited Signatories), an amendment cannot be reached, the Signatory or
14 Invited Signatory who has signed this PA may withdraw their participation in the PA or request that the PA
15 terminated upon written notification to the other Signatories and Invited signatories. All Signatories and
16 Invited Signatories must agree that the terms of this PA will not or cannot be carried out to terminate
17 this PA. If the PA is terminated before the proposed undertaking has started or finished, WAPA shall
18 notify the Signatories and Invited Signatories on the course of action it will pursue, that is either:

- 19 A. follow the procedures outlined in 36 CFR §§ 800.4 - 800.6 for WAPA's undertaking and
20 connected action, or
21
22 B. execute a new PA pursuant to 36 CFR § 800.14(b), or
23
24 C. request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7.
25

26 **X. DURATION OF THIS PA**

27
28 This PA will be in effect for the life of the project (i.e. construction, operation, and decommissioning) from
29 the date of its execution, unless the PA is amended pursuant to Stipulation VII with a new expiration date
30 prior to such time or terminated pursuant to Stipulation IX.
31

32 **XI. WYOMING GENERAL PROVISIONS**

- 33
34 A. Entirety of Agreement. This PA, consisting of thirty-one (31) pages, Appendix A consisting of
35 one (1) page, Appendix B consisting of one (1) page, and Appendix C (number of pages yet to
36 be determined), represents the entire agreement between the Parties and supersedes all prior
37 negotiations, representations and agreements, whether written or oral, regarding compliance
38 with Section 106 of the NHPA.
39
40 B. Prior Approval. This PA shall not be binding upon any Signatory or Invited Signatory who has
41 signed this PA unless this PA has been reduced to writing before performance begins as
42 described under the terms of this PA, and unless the PA is approved as to form by the Wyoming
43 Attorney General or his or her representative.
44
45 C. Severability. Should any portion of this PA be judicially determined to be illegal or
46 unenforceable, the remainder of the PA shall continue in full force and effect, and any

1 Signatory or Invited Signatory who has signed this PA may renegotiate the terms affected by
2 the severance.
3

4 D. Sovereign Immunity. The State of Wyoming and the WY SHPO expressly reserve their
5 sovereign or governmental immunity by entering into this PA, and the tribes do not waive their
6 sovereign immunity by concurring with this PA, and each fully retains all immunities and
7 defenses provided by law with respect to any action based on or occurring as a result of this PA.
8

9 E. Indemnification. Each Signatory to this PA shall assume the risk of any liability arising from
10 its own conduct. Each Signatory agrees they are not obligated to insure, defend or indemnify
11 the other Signatories to this PA.
12

13 EXECUTION of this PA by the Signatories and implementation of its terms are evidence that WAPA has
14 taken into account the effects of its undertaking and connected action on historic properties and afforded the
15 ACHP an opportunity to comment on it in compliance with Section 106. Effective date of the PA is the date
16 the PA is signed by the ACHP and filed with their office.
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1 PROGRAMMATIC AGREEMENT

2
3 AMONG

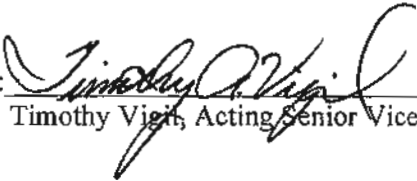
4 THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,
5 COLORADO STATE HISTORIC PRESERVATION OFFICER,
6 WYOMING STATE HISTORIC PRESERVATION OFFICER,
7 AND
8 ADVISORY COUNCIL ON HISTORIC PRESERVATION

9
10 REGARDING

11 THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,
12 WYOMING

13
14
15
16 SIGNATORY

17
18 WESTERN AREA POWER ADMINISTRATION

19
20
21 By:  Date: 6/10/2021
22 Timothy Vigil, Acting Senior Vice President and Rocky Mountain Regional Manager
23

1 **PROGRAMMATIC AGREEMENT**

2
3 **AMONG**

4 **THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,**
5 **COLORADO STATE HISTORIC PRESERVATION OFFICER,**
6 **WYOMING STATE HISTORIC PRESERVATION OFFICER,**
7 **AND**
8 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

9
10 **REGARDING**

11 **THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,**
12 **WYOMING**

13
14
15 **INVITED SIGNATORY**

16
17 **NATIONAL PARK SERVICE - DEPARTMENT OF THE INTERIOR REGIONS 6,7, & 8**

18 **MICHAEL**
19 **REYNOLDS**

Digitally signed by
MICHAEL REYNOLDS
Date: 2021.09.08
14:58:59 -08'00'

20 By: _____ Date: _____

21 Michael T. Reynolds, Regional Director

1 **PROGRAMMATIC AGREEMENT**

2 **AMONG**

3 **THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,**
4 **COLORADO STATE HISTORIC PRESERVATION OFFICER,**
5 **WYOMING STATE HISTORIC PRESERVATION OFFICER,**
6 **AND**
7 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

8 **REGARDING**

9 **THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,**
10 **WYOMING**

11 **INVITED SIGNATORY**

12 **WYOMING OFFICE OF STATE LANDS AND INVESTMENTS**

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By:  _____

Jenifer E. Scoggin, Director

Date: 8/9/2021

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PROGRAMMATIC AGREEMENT

AMONG
THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,
COLORADO STATE HISTORIC PRESERVATION OFFICER,
WYOMING STATE HISTORIC PRESERVATION OFFICER,
AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING
THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,
WYOMING

INVITED SIGNATORY

WYOMING OFFICE OF STATE LANDS AND INVESTMENTS

By: _____ Date: _____
Jenifer E. Scoggin, Director

**WYOMING ATTORNEY
GENERAL'S OFFICE**

JUL 15 2021

Tyler M. Renner #214076
APPROVED AS TO FORM

1 **PROGRAMMATIC AGREEMENT**

2
3 **AMONG**

4 **THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,**
5 **COLORADO STATE HISTORIC PRESERVATION OFFICER,**
6 **WYOMING STATE HISTORIC PRESERVATION OFFICER,**
7 **AND**
8 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

9
10 **REGARDING**

11 **THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,**
12 **WYOMING**

13
14
15 **CONCURRING PARTY**

16
17
18 By: _____ Date: _____
19 Anna Lee Ames Frohlich

20

1 **PROGRAMMATIC AGREEMENT**

2
3 **AMONG**

4 **THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,**
5 **COLORADO STATE HISTORIC PRESERVATION OFFICER,**
6 **WYOMING STATE HISTORIC PRESERVATION OFFICER,**
7 **AND**
8 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

9
10 **REGARDING**

11 **THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,**
12 **WYOMING**

13
14
15 **CONCURRING PARTY**

16
17 **LINCOLN HIGHWAY ASSOCIATION**

18
19
20 By: _____ Date: _____
21 James Davis, Wyoming Member

1 **PROGRAMMATIC AGREEMENT**

2
3 **AMONG**

4 **THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,**
5 **COLORADO STATE HISTORIC PRESERVATION OFFICER,**
6 **WYOMING STATE HISTORIC PRESERVATION OFFICER,**
7 **AND**
8 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

9
10 **REGARDING**

11 **THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,**
12 **WYOMING**

13
14 **CONCURRING PARTY**

15
16 **NORTHERN ARAPAHO TRIBE OF THE WIND RIVER INDIAN RESERVATION**

17
18
19
20 By: _____ Date: _____
21 Ben Ridgley, Tribal Historic Preservation Officer

1 **PROGRAMMATIC AGREEMENT**

2
3 **AMONG**

4 **THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,**
5 **COLORADO STATE HISTORIC PRESERVATION OFFICER,**
6 **WYOMING STATE HISTORIC PRESERVATION OFFICER,**
7 **AND**
8 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

9
10 **REGARDING**

11 **THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,**
12 **WYOMING**

13
14 **CONCURRING PARTY**

15
16
17 **NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE INDIAN RESERVATION**

18
19
20 By: _____ Date: _____
21 Teanna Limpy, Tribal Historic Preservation Officer

1 **PROGRAMMATIC AGREEMENT**

2
3 **AMONG**

4 **THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,**
5 **COLORADO STATE HISTORIC PRESERVATION OFFICER,**
6 **WYOMING STATE HISTORIC PRESERVATION OFFICER,**
7 **AND**
8 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

9
10 **REGARDING**

11 **THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,**
12 **WYOMING**

13
14
15 **CONCURRING PARTY**

16
17 **STANDING ROCK SIOUX TRIBE**

18
19
20 By: _____ Date: _____
21 Jon Eagle, Tribal Historic Preservation Officer

1 **PROGRAMMATIC AGREEMENT**

2
3 **AMONG**

4 **THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,**
5 **COLORADO STATE HISTORIC PRESERVATION OFFICER,**
6 **WYOMING STATE HISTORIC PRESERVATION OFFICER,**
7 **AND**
8 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

9
10 **REGARDING**

11 **THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,**
12 **WYOMING**

13
14
15 **CONCURRING PARTY**

16
17 **THE UTE TRIBE OF THE UINTAH AND OURAY RESERVATION**

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19
20 By: _____ Date: _____

21 Luke Duncan, Chairman

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PROGRAMMATIC AGREEMENT

AMONG

**THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,
COLORADO STATE HISTORIC PRESERVATION OFFICER,
WYOMING STATE HISTORIC PRESERVATION OFFICER,
AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,
WYOMING**

CONCURRING PARTY

WYOMING STATE PARKS, HISTORIC SITES, AND TRAILS

By: _____ Date: _____
Nicholas L. Neylon, Deputy Director

WYOMING ATTORNEY
GENERAL'S OFFICE
JUL 15 2021
Alysa Goldman #214076
Alysa Goldman
APPROVED AS TO FORM

1 **PROGRAMMATIC AGREEMENT**

2
3 **AMONG**

4 **THE U.S. DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION,**
5 **COLORADO STATE HISTORIC PRESERVATION OFFICER,**
6 **WYOMING STATE HISTORIC PRESERVATION OFFICER,**
7 **AND**
8 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

9
10 **REGARDING**

11 **THE INTERCONNECTION OF THE RAIL TIE WIND PROJECT, ALBANY COUNTY,**
12 **WYOMING**

13
14
15 **CONCURRING PARTY**

16
17 **YANKTON SIOUX TRIBE**

18
19
20 By: _____ Date: _____
21 Kip Spotted Eagle, Tribal Historic Preservation Officer