APPENDIX G – Memorandum of Agreement on Historical Preservation

DRAFT

MEMORANDUM OF AGREEMENT

AMONG

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX,

ARIZONA STATE HISTORIC PRESERVATION OFFICER,

ADVISORY COUNCIL ON HISTORIC PRESERVATION,

ARIZONA STATE LAND DEPARTMENT, AND

FLORENCE COPPER, INC. FOR THE

FLORENCE COPPER PRODUCTION TEST FACILITY

Whereas, the United States Environmental Protection Agency, Region IX (EPA) is evaluating an Underground Injection Control (UIC) permit application submitted by Florence Copper, Inc. (formally Curis Resources (Arizona), Inc.) for the Florence Copper Production Test Facility (PTF); and

Whereas, EPA is complying with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 CFR Part 800; and

Whereas, the undertaking and the components of the proposed PTF include 24 injection and extraction wells, point of compliance and supplemental monitoring wells, a process solution impoundment pond and temporary processing facilities, an above-ground pipeline, a 69 kV power line, a 22-foot wide access road, and core hole plugging and abandonment, and a full description of the undertaking is provided in the Treatment Plan; and

Whereas, EPA has consulted with the following parties to identify historic properties, assess effects, and resolve potential adverse effects to historic properties from this undertaking and develop this Memorandum of Agreement (MOA or Agreement):

> Florence Copper, Inc., (FC) as the applicant for the UIC permit, the party assuming responsibility for implementation of the proposed Treatment Plan, and an invited signatory to this MOA; and

The Arizona State Historic Preservation Officer (SHPO), a signatory to this MOA; and

The Advisory Council on Historic Preservation (ACHP), which elected to participate in the consultation and is a signatory to this MOA; and

The Arizona State Land Department (ASLD), as grantor of the mineral lease for FC's PTF and is an invited signatory to this MOA; and

The Gila River Indian Community (GRIC), Tohono O'odham Nation, Hopi Tribe, and Yavapai-Prescott Indian Tribe (Tribes), participated in the consultation and are invited as concurring parties to this MOA; and

The National Park Service, Archaeology Southwest, and the Town of Florence (other Consulting Parties), participated in the consultation and are invited as concurring parties to this MOA; and

The Arizona State Museum (ASM), as grantor of permits for archaeological investigations on state land according to Arizona Revised Statutes (ARS) § 41-841 et seq., the Arizona Antiquities Act (AAA), and for coordinating responses to the discovery of any human remains on state and private land under ARS §§ 41-844 and 41-865, and is invited as a concurring party to this MOA; and

Whereas, the Area of Potential Effect (APE) constitutes160 acres on State Trust land administrated by the ASLD and 1,182 acres surrounding it and owned by FC (see Appendix 1, a map of the APE); and

Whereas, FC provided an assessment of 1995 survey data and resurveys since 2004 to identify historic properties. Through consultation, EPA solicited additional information from all consulting parties to assist in identifying properties, pursuant to 36 CFR § 800.4. As a result, EPA identified fifty-one (51) total historic properties within the APE. Two of the historic properties were subject to intensive data recovery to mitigate effects from a project in 1997; and

Whereas, the GRIC has identified the "Escalante Ruin" (AZ U:15:3(ASM)) as having traditional cultural significance; and EPA has completed a consensus Determination of Eligibility under Criterion A of 36 C.F.R. 60.4 for its Traditional Cultural Value with concurrence from the SHPO to treat the site as a Traditional Cultural Property for purposes of this consultation; and

Whereas, EPA, in consultation with the SHPO, ACHP, Tribes, and other consulting parties, has determined that this undertaking may adversely affect historic properties; and

Whereas, the Hopi Tribe views all historic properties associated with the Escalante Ruin Community to have traditional cultural significance, an interconnectedness, and to be sacred, and the Tohono O'odham Nation has identified groundwater in the area as sacred to their Tribe; and

Whereas, the GRIC views all historic properties associated with the Escalante Ruin Community to have traditional cultural significance, an interconnectedness, and to be sacred, and opposes the project's potential adverse effects on the Escalante Ruin; and

Whereas, FC will coordinate with the GRIC to develop and implement cultural sensitivity training; and

Whereas, the "Historic Properties Treatment Plan for the Proposed Florence Copper Inc. Florence In-Situ Copper Recovery Project Production Test Facility, Florence, Pinal County, Arizona" WCRM, 2014 (Appendix 2, Treatment Plan) has been drafted to avoid, minimize, and resolve adverse effects to historic properties and revised to reflect review and comments by consulting parties, including the Tribes, and will be implemented in accordance with the terms of the MOA; and

Whereas, members of the public will be informed through public notice of the proposed federal action for this undertaking and afforded an opportunity to express their views on resolving adverse effects of the undertaking, which EPA will consider in this Section 106 consultation prior to final decision making; and

Whereas, any further in-situ copper recovery on FC's property, beyond the proposed PTF operation, would require an additional UIC permit application and federal permit action. Should FC, or any other applicant, submit such an application, EPA would initiate consultation pursuant to Section 106 under NHPA for a new undertaking; and

Whereas, FC and SHPO have discussed the importance of formalizing an Historic Property Management Plan for the entire FC property if there is a proposal for further in-situ copper mining beyond the proposed PTF;

Now, therefore, the EPA, SHPO, ACHP, ASLD, and FC agree that the proposed FC PTF shall be implemented in accordance with the following stipulations in order to resolve the adverse effects on historic properties from this undertaking.

Stipulations

EPA shall ensure the following measures are carried out.

I. Resolution of Impacts on Historic Properties

A. FC will carry out the avoidance, minimization and mitigation measures as directed in accordance with the Treatment Plan. In summary:

1. Seven historic properties would be potentially directly affected by the FC PTF.

a) Five of the seven historic properties are proposed for data recovery in the Treatment Plan.
b) The other two of the seven historic properties are proposed for avoidance, monitoring during construction, protective fencing and other measures in the Treatment Plan.

2. Fourteen (14) historic properties would have potential indirect and cumulative effects from the FC PTF.
   a) Two of the 14 historic properties are proposed for specific, formal avoidance measures (i.e., physical barriers and fencing) and monitoring in the Treatment Plan.
   b) The Treatment Plan proposes avoidance of the other twelve of the 14 historic properties and monitoring of these properties.

B. The Escalante Ruin (AZ U:15:3(ASM)) is expected to have limited ground disturbance from plugging and abandonment activity of one existing core hole at the southwestern edge of the site. During this activity and any other nearby activities, this historic property will be subject to formal avoidance and minimization measures to address the potential for direct, indirect and cumulative effects.

C. All other historic properties in the APE not identified in Stipulations I.A.1 and 2 above are not expected to have direct, indirect, or cumulative effects from the FC PTF. However, the Treatment Plan notes that of these, 28 properties will be avoided and monitored during proposed PTF-related activity, including well field construction, core hole abandonment, construction of access roads, above-surface pipelines, water impoundment areas, processing plant construction, copper recovery and rinsing operations, plugging and abandonment of wells, and post-closure monitoring.

II. Historic Properties Treatment Plan Process

A. Comments and input on resolving adverse effects of the undertaking will be considered prior to finalization of the Treatment Plan and the MOA.

B. The Treatment Plan may require revision or modification during the implementation of the PTF. EPA shall notify the consulting parties to this MOA in writing of any such need to make changes to the Treatment Plan. EPA shall provide the consulting parties with the revised language to review for (15) calendar days from time of receipt. EPA shall take into account any comments provided during that review period. EPA shall forward the final revised language to the consulting parties and

append the updated Treatment Plan to this MOA. Changes to the Treatment Plan in accordance with this stipulation do not require an amendment to this MOA.

III. Public Involvement and Confidentiality

Subject to the confidentiality provisions of 36 CFR §800.11(c), EPA will make relevant information regarding the identified historic properties, potential adverse effects, and means of addressing these effects available to the public.

IV. Reporting

A. In addition to Project Reporting in accordance with Project Administration and Data Dissemination Section of the Treatment Plan, FC will carry out the following:

1. FC will distribute the preliminary reports to EPA and all consulting parties for review and comment following completion of Phase I fieldwork and completion of Phase II data recovery. Consulting parties will have 15 days to respond with any comments. FC shall consider any comments provided during a review period of fifteen days from receipt of each preliminary report. FC shall submit to EPA an outline of how the comments were considered for review.

2. FC will send the draft final report to EPA and all consulting parties for review and comment documenting all of the excavation and analytical investigations and the results of the synthetic research studies within 24 months of the completion of the data recovery. FC shall address all comments from consulting parties provided during a review period of thirty days from receipt.

B. FC will carry out reporting of formal monitoring of all ground disturbance and a program of periodic site revisits and condition assessments to all historic properties under the Archaeological Monitoring and Site Condition Assessments Section of the Treatment Plan. The following reporting measures will also apply:

1. As noted in the Treatment Plan, FC shall provide a brief formal report with the site condition assessment form to EPA and SHPO if evidence of a disturbance is noted in a historic property during periodic site inspections. EPA shall provide the report to all consulting parties for review and comment within thirty days from receipt. EPA shall consider input submitted within the thirty day review period and make a recommendation for further action.

2. FC shall provide an annual summary report of site inspections to EPA and all consulting parties in December of each calendar year.

V. Inadvertent Discoveries

A. In accordance with the monitoring and discovery provisions in the Treatment Plan, FC shall report to EPA and SHPO any newly discovered properties or any inadvertent effects on historic properties as described in the Archaeological Monitoring and Site Condition Assessments Section.

B. EPA shall follow the post-review discovery requirements pursuant to 36 CFR § 800.13(b)(3) and (c) to resolve any such effects and to determine eligibility of newly discovered properties.

VI. Human Remains and Associated Funerary Items Burial Agreement

A. During all proposed PTF-related activity, FC will implement the Arizona State Museum Burial Agreement (Case 2012-012), as noted in Section X of the Treatment Plan, for any discovery, treatment and disposition of any human remains and associated funerary items. The Arizona State Museum Burial Agreement (included as Appendix B of the Treatment Plan) is in accord with ARS§§ 41-844 and 865, and was developed in consultation with affected Tribes.

B. The Burial Agreement addresses treatment and disposition of all human remains that are identified as Native American and associated items that may be identified during the Treatment Plan's proposed data recovery.

VII. Annual Review of the MOA

A. FC shall produce an annual report that summarizes the implementation of the Treatment Plan. FC shall submit the annual report to EPA and SHPO in December of each calendar year. FC may combine this annual report into one report with the summary report of site inspections.

B. EPA will send the annual report to the consulting parties for a 30-day review and comment period. EPA and FC will address any comments received during the comment period and recommend actions, if necessary, in accordance with the provisions in the MOA.

VIII. Dispute Resolution

A. If any party to this MOA objects in writing to EPA regarding any action carried out or proposed with respect to the undertaking or implementation of this MOA, EPA shall consult with the objecting party to resolve the objection. If EPA determines the objection cannot be resolved through consultation, EPA shall forward all documentation relevant to the objection to the ACHP. Within 30 days of receipt of all documentation, including EPA's proposed response to the objection, the ACHP shall exercise one of the following options:

1. Advise EPA that the ACHP concurs with EPA's proposed response to the objection, whereupon EPA will respond to the objection accordingly; or

2. Provide EPA with recommendations, which EPA shall take into account in reaching a final decision regarding its response to the objection; or

3. Notify EPA that the objection will be referred for Council comment pursuant to 36 CFR Section 800.7(a)(4) and proceed to refer the objection and comment. EPA shall take the resulting comments into account in accordance with 36 CFR Section 800.7(c)(4) and Section 110(l) of NHPA.

B. Should the ACHP not exercise one of the above options within 30 days after receipt of all documentation, EPA may move forward with its proposed response to the objection.

C. At any time during implementation of the measures stipulated in this MOA, should a member of the public raise an objection in writing pertaining to such implementation to any signatory party to this MOA, that signatory party shall immediately notify the other signatory parties in writing of the objection. EPA shall consult with the objecting party and with the other signatories for no more than thirty (30) days to resolve the objection. EPA will take all comments from the other signatory parties into account. Within thirty (30) days following closure of the consultation period, EPA shall make a determination regarding the objection and notify all parties of this decision in writing, including a copy of the response to the objecting party. EPA's decision regarding resolution of the objection will be final.

IX. Amendments

Any signatory party to this MOA may propose to amend this MOA, whereupon EPA shall consult with the other parties to this MOA to consider such amendment(s). The

amendment will be effective on the date a copy of the amendment signed by all of the signatories is filed with the ACHP.

X. Termination

A. If EPA determines that it cannot implement the terms of this MOA, or if the SHPO or ACHP determines that the MOA is not being properly implemented and dispute resolution under Stipulation VIII has been completed or is not possible, that signatory may propose to the other parties to this MOA that it be terminated.

B. The signatory proposing to terminate this MOA shall notify all parties to this agreement, explain the reason(s) for termination and afford them at least 30 days to consult and seek alternatives to termination.

C. If within 30 days (or another time period agreed to by all signatories) the parties cannot agree on amendments or other actions to avoid termination, any signatory may terminate this MOA by written notification to the other signatories.

D. If this MOA is terminated, and where feasible, prior to work continuing on the undertaking, EPA shall either;

1. Consult in accordance with 36 CFR Section 800.6 to develop and execute a new MOA; or

2. Refer the matter to the ACHP who may either provide staff comments, or refer the matter to the ACHP Membership to comment in accordance with 36 CFR Section 800.7. If the ACHP chooses to provide the EPA with staff comments, the EPA agency official shall take into account such comments and respond to the ACHP staff in writing. If the ACHP chooses to comment per 36 CFR 800.7, EPA shall take into account and respond to the ACHP comments per 36 CFR 800.7; and

3. EPA shall notify the signatories as to the course of action it will pursue.

XI. Duration

This MOA shall expire seven years from the date of its execution. Should the FC PTF undertaking, including rinsing operations, plugging and abandonment of wells, and post-closure monitoring, not be complete, or if any signatory wishes to extend the duration of the MOA, they may propose an amendment to the MOA in accordance with Stipulation IX prior to its expiration.

XII. Execution

Execution of this MOA and implementation of its terms evidence that the EPA has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that the EPA has taken into account the effects of the Undertaking on historic properties.

Signatories:

_____ _____
EPA Date

_____ _____
Arizona SHPO Date

_____ _____
ACHP Date

Invited Signatories:

_____ _____
ASLD Date

_____ _____
Florence Copper, Inc. Date

Concurring Parties:

_____ _____
Gila River Indian Community Date

_____ _____
The Hopi Tribe Date

_____	_____
Tohono O'odham Nation	Date
_____	_____
Yavapai-Prescott Indian Tribe	Date
_____	_____
National Park Service	Date
_____	_____
Archaeology Southwest	Date
_____	_____
Town of Florence	Date
_____	_____
Arizona State Museum	Date