PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE NEVADA DEPARTMENT OF TRANSPORTATION, THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING IMPLEMENTATION OF FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF NEVADA

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. 101 et seq., implements the Federal-aid Highway Program (Program) in the state of Nevada by funding and approving state and locally sponsored transportation projects that are administered by the Nevada Department of Transportation (NDOT); and

WHEREAS, the Nevada FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the state of Nevada complies with Section 106 of the National Historic Preservation Act (NHPA), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004); and

WHEREAS, NDOT administers Federal-aid projects throughout the State of Nevada as authorized by Title 23 U.S.C. 302; and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Programmatic Agreement (Agreement) in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Nevada and for affording the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, the responsibilities of the Nevada State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

WHEREAS, FHWA has determined that implementation of the Program in Nevada may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the SHPO and the ACHP pursuant to 36 CFR 800.14(b); and

WHEREAS, FHWA recognizes that it has a unique legal relationship with Indian Tribes (Tribes) set forth in the Constitution of the United States, treaties, statutes, and

court decisions, and the consultation with an Indian tribe must, therefore, recognize the government to government relationship between the federal government and Tribes; and

WHEREAS, the Battle Mountain Band Council, the Confederated Tribes of the Goshute, Duck Valley Sho-Pai Tribes, Duckwater Shoshone Tribes, Elko Band Council, Ely Shoshone Council, Fort McDermitt Pai-Sho Tribes, Fort Mohave Indian Tribe, Fallon Paiute-Shoshone Tribe, Lovelock Paiute Tribe, Las Vegas Paiute Tribe, Moapa Business Council, Pyramid Lake Paiute Tribe, Pahrump Paiute Tribe, Reno Sparks Indian Colony, South Fork Band Council, Summit Lake Paiute Tribe, Timbisha Shoshone Tribe, Te-Moak Tribal Council, Wells Band Council, Winnemucca Colony Council, Walker River Paiute Tribe, Washoe Tribal Council, Yerington Tribal Council, and the Yomba Shoshone Tribe were provided a draft of this Agreement, were invited to share their views, and did not respond with comments on this Agreement; and

WHEREAS, NDOT has participated in the consultation and has been invited to be a signatory to this Agreement; and

WHEREAS, NDOT intends to utilize this Agreement to assist FHWA in Section 106 compliance for the Recreation Trails program, and the Nevada Division of State Parks (NDSP) was invited to be a signatory on this agreement; and

WHEREAS, Federal-aid projects as administered by NDOT may require issuance of permits pursuant to Section 404 of the Clean Water Act, and FHWA has consulted with and has invited the U.S. Army Corps of Engineers (Corps) to be a signatory to this Agreement; and

WHEREAS, FHWA has consulted with and has invited the Bureau of Land Management, Nevada (BLM); the Humboldt-Toiyabe Forest (USFS); and the Corps to be signatories to this Agreement because they are cooperating agencies (hereinafter referred to as cooperating federal agencies) and can use this PA to meet their Section 106 of NHPA responsibilities; and

WHEREAS, FHWA and BLM have entered into a Memorandum of Understanding (MOU), as amended, Concerning Operating Procedures for Processing Federal-Aid Highway Rights-of-Ways from the BLM in the MOU (Handbook Chapter 14). MOU Stipulation V.B. states that FHWA is the lead Federal Agency for Federal-Aid funded projects. MOU Stipulation V.C. states that NDOT will work with FHWA to comply with Section 106 of the NHPA. This Agreement spells out the process whereby MOU Stipulations V.B and V.C. are executed. This Agreement does not apply to Mineral Material Site Exploration activities or non Federal-Aid funded projects on BLM administered lands; and

WHEREAS, the Nevada Department of Transportation Cultural Resources Handbook (Handbook) describes the details of the application of this Agreement; and

WHEREAS, FHWA, ACHP, SHPO, NDOT, BLM, USFS, Corps and NDSP are collectively referred to herein as the "signatories" or individually as "signatory"; and

NOW, THEREFORE, the signatories agree that the Program in Nevada shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in Nevada and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

STIPULATIONS

FHWA, assisted by NDOT, will ensure that the following measures are carried out:

I. PURPOSE AND APPLICABILITY

A. This Agreement sets forth the process by which FHWA will meet its responsibilities under Section 106, 110(d), and 110(f) of the NHPA, with the assistance of NDOT, for all FHWA undertakings implemented by NDOT. This Agreement establishes the basis for considering the effects of FHWA undertakings on historic properties and establishes alternative procedures to implement Section 106 for the review of such undertakings by FHWA, SHPO, and ACHP.

B. This Agreement shall not apply to undertakings that occur on or affect Tribal lands as they are defined in Section 301(14) of the NHPA 36 CFR 800.16(x). Tribal lands are all lands within the exterior boundaries of any Indian reservation, and all dependent Indian communities. For such undertakings, FHWA shall follow the procedures in 36 CFR Part 800.

II. RESPONSIBILITIES OF THE FHWA AND NDOT

A. In compliance with its responsibilities under the NHPA, and as a condition of its award of any assistance for undertakings under the Federal Aid Highway Program, FHWA shall require NDOT to carry out the requirements of this Agreement and applicable ACHP policies and guidelines for all NDOT undertakings for which FHWA is the lead agency pursuant to 36 CFR 800.2(a) (2) and 800.2(a) (4). Through this Agreement, FHWA authorizes NDOT to initiate and, in most cases, conclude consultation with SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.

1. This authorization does not preclude FHWA's right to intervene and take the lead in consultation among NDOT, SHPO, and other consulting parties; or to consult with Tribes on a government-to-

government basis consistent with the provisions of Stipulation III. When FHWA intervenes, it may either carry out consultation in accordance with the procedures in this Agreement or follow the procedures in 36 CFR Part 800.3-800.6.

2. Because FHWA is legally responsible for all findings and determinations made under this Agreement, no assistance or approval will be made by FHWA until it has approved the outcome of consultation with SHPO and other consulting parties. If the FHWA does not approve the outcome of consultation for a specific undertaking, FHWA may require NDOT to provide additional information or to perform additional consultation, or FHWA may consult directly with SHPO and other consulting parties, if any, to complete the Section 106 review process to its satisfaction.

B. Cooperating federal agencies who recognize FHWA as the lead federal agency for an undertaking may fulfill their obligations under Section 106 of the NHPA according to 36 CFR 800.2(a) (2), provided that FHWA and NDOT follow the requirements of this Agreement and the cooperating Federal agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and NDOT.

C. All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of cultural resources, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards for Archaeology or History (published in 48 FR 44738-44739) and who has been permitted (for archaeology only) by the state of Nevada, and who meets permit requirements of other cooperating federal agencies as appropriate. However, nothing in this stipulation may be interpreted to preclude FHWA or NDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the direct supervision of a person who does meet the standards.

D. NDOT shall employ personnel trained, experienced and qualified in the fields of archaeology, history, and architectural history (as defined in 36 CFR 61, Appendix A) in the Environmental Services Division or its successor designated by NDOT administration. Except on such occasions when FHWA elects to consult directly with SHPO or ACHP, all consultation with SHPO and other consulting parties under this Agreement and decisions made under Stipulation V may be performed by NDOT

Environmental Division. NDOT is authorized to consult with SHPO and other consulting parties in accordance with the terms of this Agreement.

E. To facilitate historic and archaeological preservation planning and actions, NDOT will establish and promote progressive programs and activities of mutual interest to, and in consultation with, FHWA, SHPO, or other consulting parties. In its annual meeting pursuant to Stipulation X, NDOT will identify if special needs exist that should be addressed through such programs and activities and prepare a plan and cost estimate to address those needs.

F. NDOT shall curate archaeological materials recovered from private and State lands under this Agreement at a facility meeting the standards of 36 CFR 79 or NRS Chapter 381 preferably in the State. Archaeological collections from Federal lands will be curated at a facility meeting standards of 36 CFR 79 and will be removed subject to terms of an Archaeological Resources Protection Act (ARPA) permit issued by the appropriate Federal land management agency.

G. As the responsible federal agency, FHWA shall conduct all formal consultation with the ACHP. Consultation with the ACHP shall follow procedures in 36 CFR 800 for consulting with the ACHP.

H. For activities on BLM and/or USFS managed lands, NDOT will apply for and receive appropriate permits for archaeological inventory as well as for any excavation or removal prior to initiating any investigations, as will any contractors or consultants engaged to work on FHWA's/NDOT's behalf. NDOT and its contractors or consultants will submit a fieldwork authorization request and obtain an approved BLM and/or USFS fieldwork authorization prior to initiating any work and will obtain and incorporate the required BLM and/or USFS site and report numbers prior to any submittals of site records or reports to SHPO. NDOT and any contractors or consultants will not initiate any excavation (including shovel testing or probing) or removal without the required prior authorization from BLM and/or USFS, which may include a separate process of permit application and Tribal notification/consultation conducted by the BLM and/or USFS. NDOT and any contractors or consultants will be subject to terms of BLM and/or USFS permits as they may be modified to reflect Tribal notification/consultation. Resulting work products (e.g., reports, site records) for investigation on BLM and/or USFS Nevada lands will conform to current BLM and/or USFS inventory guidelines.

III. GOVERNMENT-TO-GOVERNMENT CONSULTATION WITH TRIBES

A. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes pursuant to the NHPA. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement. Consultation with Tribes will be initiated with a letter from FHWA to the tribe(s).

B. In accordance with 36 CFR 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the Area of Potential Effects (APE) shall be identified by NDOT according to NDOT's Public Involvement/Public Hearing Procedures and invited by FHWA to be consulting parties.

C. FHWA may ask NDOT to assist in consultation if the individual Tribes reach written agreement prior to having NDOT proceed with Tribal consultation. If the Tribe does not agree, FHWA is responsible for consultation.

D. FHWA and NDOT shall ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.

E. FHWA and NDOT shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.

F. FHWA and NDOT will notify BLM and USFS when initiating consultation with Tribes regarding undertakings on agency lands.

G. The BLM and/or USFS retain their separate responsibility to conduct government-to-government Tribal consultation when provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) or ARPA are involved.

IV. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Consulting Parties

1. Consulting parties shall be identified pursuant to, and their participation in undertakings covered under this Agreement shall be governed by, 36 CFR 800.2(c)(5) and 800.3(f). Other individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties. Other parties

entitled to be consulting parties shall be invited by NDOT to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by NDOT to participate in the Section 106 process.

2. NDOT shall invite any local governments (including Certified Local Governments, or CLGs) or applicants that are entitled to be consulting parties under 36 CFR 800.2(c). NDOT shall consider all written requests of individuals and organizations to participate as consulting parties and determine which should be consulting parties for the undertaking, and will consult with FHWA and SHPO prior to denying consulting party status to any party requesting such status.

3. Cooperating federal agencies involved who have Section 106 compliance responsibilities may be consulting parties, concurring parties or signatories.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and NDOT's environmental compliance procedures (NDOT's Public Involvement/Public Hearing Procedures). FHWA's Technical Advisory (T6640.8A, October 30, 1987) and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d)(1-2), 800.3(e), and 800.11(c)(1 and 3).

2. NDOT shall continue, through opportunities afforded by the current NDOT Public Involvement Procedures, to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.

3. For those actions that do not routinely require public review and comment (e.g., certain activities classified as Categorical Exclusions – NDOT Public Involvement Procedures), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential impacts on them.

4. NDOT shall provide notice to FHWA and SHPO within one week of all documented public comments concerning cultural resources potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

V. THE SECTION 106 PROCESS

For all undertakings reviewed pursuant to this Agreement, NDOT shall use the following process:

A. Initiation of the Section 106 Process

1. NDOT will establish the undertaking, determine if the undertaking is a type of activity that does not have the potential to cause effects on historic properties and determine if the undertaking will occur on Tribal lands.

2. If NDOT determines that the undertaking is one with "no potential to cause effects" according to the July 21, 2011 FHWA Directive (Nevada Department of Transportation, Cultural Resources Handbook, 2012.1 (Handbook Chapter 4), NDOT will document this decision in the project record. This determination does not require SHPO or other Federal agency review prior to implementation.

3. NDOT will prepare and provide a Screening Sheet for each undertaking and provide this document to SHPO and the cooperating federal agencies with jurisdiction (Handbook Chapter 1). SHPO shall have 2 working days from receipt to review an electronic submission or 5 working days from receipt to review a copy received by mail and cooperating federal agencies with jurisdiction shall have 10 working days from receipt to review. If no response is received within the time period, NDOT may assume no comment and proceed.

B. Minor Projects

1. The undertakings listed in Handbook Chapter 2 do not require case-by-case consultation with SHPO. NDOT, at its discretion, may consult with SHPO either formally or informally for any undertaking identified as a minor project. Minor projects, as defined in this Agreement, by their nature and experience by NDOT staff, have little to no potential to cause effect to historic properties. Some actions may be considered to be undertakings with "no potential to affect historic properties" but because of the

undertaking's setting or context cannot be processed according to FHWA's July 21, 2011 delegation. These undertakings must result in a finding of "no historic properties affected." NDOT will maintain the following documentation:

a. A cover sheet or other document that identifies the activity from the list in Handbook Chapter 2 and include a reference to this stipulation that qualifies the undertaking as a minor project and the name of individual who prepared the documentation.

b. A NDOT Cultural Resources Short Form (Handbook Chapter 3 and Chapter 6) along with the most current additional documentation to assure the project is not within or adjacent to a National Register eligible or listed property or district.

c. The record will also include one or more of the following as appropriate:

1. construction plans,
2. project area photos and descriptions,
3. soil survey data,
4. architectural history,
5. archaeological documentation.

2. The undertakings listed in Handbook Chapter 2 may be revised or amended from time to time. Any changes to Handbook must be agreed upon in writing by the signatories and, upon approval, published on NDOT's Cultural Resources webpage. Such changes shall not be considered to be an amendment subject to Stipulation XII.

3. If a cultural resource inventory is conducted for a minor project, the report shall be included in the annual report to SHPO. If SHPO specifically requests a copy of the documentation for a particular minor project, NDOT will provide SHPO with the requested documentation within thirty (30) days of the request. The SHPO will have 30 calendar days from receipt for review and comment, if after 30 calendar days NDOT receives no response, NDOT may assume the SHPO has no comment and concurs with the determination.

4. If a cultural resources survey is conducted for a Minor Project where cultural resources are identified on Federal lands, the draft

report will be provided to the Federal land manager for review prior to implementation. The Federal land manager will have a 30 calendar day period for review and comment, if after 30 calendar days from receipt of the document, NDOT receives no response, NDOT may assume the Federal Land manager has no comment and proceed.

5. At NDOT's request, inventories for minor projects containing cultural resources can be submitted during the annual report, or sooner if necessary, for SHPO review of FHWA determinations of eligibility for the National Register of Historic Places. The SHPO will have 30 calendar days from receipt for review and comment, if after 30 calendar days NDOT receives no response, NDOT may assume the SHPO has no comment and concurs with the determination.

C. Identification of Historic Properties

1. NDOT shall determine the scope of identification efforts, including determining and documenting the undertaking's APE, as defined at 36 CFR 800.16(d) and Handbook Chapter 5.

2. NDOT shall identify historic properties that may be affected by an undertaking and shall gather information sufficient to evaluate the eligibility and integrity of these cultural resources for listing in the NRHP. Information may be obtained through cultural resource surveys or other appropriate methods.

3. The identification of historic properties shall follow the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23), and should be consistent with SHPO historic contexts describe in Handbook Chapter 6, FHWA guidance, NDOT Guidance, Stipulation II.H of this Agreement, any other guidance, methodologies, agreements, or protocols that FHWA, NDOT, and SHPO agree should be used to identify properties, including those of cooperating federal land-managing agencies.

D. National Register Evaluation

1. NDOT shall evaluate the historic significance of identified cultural resources in accordance with National Register Bulletin 15 as well as the guidance in Handbook Chapters 7 and 8. Where historic property boundaries have not previously been established, NDOT will identify recommended boundaries, following standards set forth in National Register Bulletin 21, Defining Boundaries for

National Register Properties. FHWA, NDOT and any Federal land manager (for properties under their jurisdiction), and SHPO may jointly determine a class or classes of properties to be not eligible for listing on the National Register and modify Handbook Chapter 8.

2. If a cultural resources survey is conducted where cultural resources are identified on Federal lands, the draft report will be provided to the Federal land manager prior to implementation for review. The cooperating federal land manager will have a 30 calendar day period for review and comment, if after 30 calendar days from receipt of the document, NDOT receives no response, NDOT may assume the Federal Land manager has no comment on the determination of eligibility.

3. Agreements regarding the NRHP eligibility of cultural resources evaluated shall be governed by 36 CFR 800.4(c)(2). In the event of a disagreement, NDOT shall first consult with the disagreeing party to resolve the disagreement.

    a. If the disagreement cannot be resolved through informal consultation, NDOT shall notify FHWA, whereupon NDOT, FHWA, SHPO, and any consulting party (including cooperating federal agencies) shall consult to resolve the disagreement in accordance with a time frame specified by FHWA.

    b. If the disagreement is not resolved, or the ACHP requests, FHWA shall refer the issue to the Keeper of the National Register to obtain a determination of eligibility. The Keeper's determination will be considered final.

E. Finding Of Effect

1. No Historic Properties Affected

    a. If NDOT finds that either there are no historic properties present or there are historic properties present within the APE, and the undertaking will have no effect on them as defined in 36 CFR 800.16(i), NDOT shall make a finding of "no historic properties affected" (36 CFR 800.4(d)(1)). NDOT shall submit its finding of effect and supporting documentation (Handbook Chapter 6 for Architectural) to SHPO, the cooperating federal agencies and the consulting parties for a 30 calendar day review period. If

NDOT receives no response within 30 calendar days of receipt, NDOT may assume concurrence and proceed.

b. NDOT shall notify all consulting parties, and make the documentation available for public inspection prior to approving the undertaking. As per 36 CFR 800.2(d) (1) the agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. Any public involvement will be in accordance with Stipulation IV.B of this document.

2. No Adverse Effect

a. NDOT shall make a finding of "no adverse effect" if none of the undertaking's anticipated effects meet the Criteria of Adverse Effect under 36 CFR 800.5(a)(1), or if NDOT imposes conditions that will avoid adverse effects to historic properties (Handbook Chapter 9).

b. If NDOT finds that undertaking effects can be treated by meeting the Secretary of the Interior's Standards on Treatment of Historic Properties, then the undertaking will be treated as a "no adverse effect" and documented per Handbook Chapter 6 (Treated No Adverse Effect). Individuals performing this work will be qualified consistent with Stipulation II.C.

c. NDOT shall submit its finding of no adverse effect and supporting documentation to SHPO, the cooperating federal agencies, Tribes as appropriate, and all other consulting parties for review.

d. If SHPO, a cooperating federal agency, or another consulting party, objects within 30 calendar days of receipt of a NDOT finding of no adverse effect, NDOT will notify FHWA. FHWA will either consult to resolve the objection or request the ACHP to review the finding pursuant to 36 CFR 800. 5(c)(2).

e. NDOT shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of Stipulation XIV.

f. NDOT may simultaneously request SHPO review of identification, evaluation, and findings of effect (not including adverse effect) covered by 36 CFR 800.3 through 800.5. Provided other consulting parties and the public are afforded an adequate opportunity to express their views pursuant to 36 CFR 800.2(d) and 36 CFR 800.5(c).

g. If SHPO or other consulting party, including an affected federal agency, fails to comment on the submission within 30 calendar days of receipt, NDOT may assume their concurrence and proceed.

3. Adverse Effect

a. Where adverse effects, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), cannot be avoided, NDOT shall make a finding of "adverse effect".

b. As part of its process in assessing whether adverse effects exist, FHWA and NDOT shall consult with Tribes that ascribe traditional cultural and religious significance to affected historic properties, and may consult either formally or informally with SHPO regarding application of the criteria of adverse effect.

c. NDOT shall inform consulting parties including the cooperating federal agencies of the finding of adverse effect.

F. Resolution Of Adverse Effect

1. When a finding of adverse effect has been made by NDOT, NDOT shall, in consultation with FHWA, SHPO, the cooperating federal agencies and other consulting parties, evaluate alternatives or modifications to the undertaking that would avoid, minimize, or mitigate adverse effects on historic properties. NDOT shall propose measures to resolve adverse effects, to be documented:

a. As a Standard Treatment (Stipulation V.G); or

b. In a Memorandum of Agreement (MOA).

2. NDOT shall make the finding available to the public, in accord with Stipulation IV.B. NDOT shall provide an opportunity for members of the public to express their views on resolving adverse effects of

the undertaking through NDOT's Public Involvement Process (Stipulation IV).

3. When a Standard Treatment is not used to resolve adverse effects, FHWA will notify the ACHP of the finding, pursuant to 36 CFR 800.6(a) (1) and that NDOT will be preparing a MOA to resolve adverse effects. NDOT will provide supporting documentation in accordance with 36 CFR 800.11(e).

    a. The ACHP shall advise FHWA and the consulting parties whether it will participate within 15 days of receipt of notice.

    b. If the ACHP fails to respond within 15 days of receipt of notice, FHWA may assume the ACHP will not participate.

4. After consideration of the views of all consulting parties and the public, if NDOT, FHWA, SHPO, and ACHP (if it has chosen to participate [pursuant to 36 CFR 800 Appendix A]) agree on how the adverse effects will be resolved, they shall execute a MOA, pursuant to 36 CFR 800.6(c).

5. FHWA will file a copy of the signed MOA with the ACHP, and shall provide a copy to each signatory, invited signatory and concurring signatory.

6. Once finalized, the measures to resolve adverse effects shall be incorporated into the undertaking, and the undertaking may be implemented. Such measures will be incorporated as part of the NEPA documentation and the agreement attached to the decision record.

7. If NDOT determines that an undertaking may have a direct adverse effect on a National Historic Landmark, NDOT will notify FHWA, who shall request SHPO, ACHP, and the Secretary of the Interior, as well as any other consulting parties, to participate in consultation to resolve any adverse effects, pursuant to 36 CFR 800.10.

G. Developing Standard Treatments

1. In consultation with the signatories of this Agreement, NDOT may develop standard treatments for resolving adverse effects to certain types of properties or that are caused by specific classes of undertakings. Once the signatories have agreed, in writing, to a standard treatment, NDOT shall incorporate it into a new chapter

of the Handbook and may implement it, as appropriate, to resolve adverse effects (V.H). If a standard treatment is the sole measure to resolve adverse effects, no MOA is needed.

2. When a proposed standard treatment would apply to properties of traditional cultural and religious significance to the Tribes, NDOT and FHWA shall consult with any land management agency with jurisdiction and Tribes that ascribe value to such properties in developing the standard treatment.

3. NDOT shall consult with SHPO, FHWA, the cooperating federal agencies, the Tribes, and other consulting parties as appropriate, on standard treatments developed under 1 and 2 above.

H. Applying Standard Treatments

1. NDOT may propose the use of approved standard treatments for individual undertakings when it determines that the adverse effects of specific classes of undertakings are limited and can be avoided or mitigated by applying the standard treatment. NDOT shall document a finding of no adverse effects (V.E.2) or adverse effects (V.E.3) and provide such documentation the SHPO, the cooperating federal or state land managing agencies with jurisdiction, participating Tribes, and consulting parties for a 30 calendar day review. If SHPO agrees in writing, and no other consulting party objects, NDOT may proceed with the undertaking in accordance with the standard treatment. Application of Standard Treatments in this case will be reported on in the reporting and consultation process of Stipulations V.E.2 and V.E.3 and V.F.

2. Any standard treatment may include minor undertaking-specific changes by mutual agreement in writing by NDOT, FHWA, federal cooperating land managing agencies with jurisdiction, and SHPO, and if no other consulting parties object.

3. If a consulting party objects to use of a standard treatment for a particular undertaking, NDOT and FHWA will conclude consultation in accordance with Stipulation V.F. and/or V.I.

I. Resolving Objections For Adverse Effects

1. If FHWA, SHPO, NDOT, the cooperating federal agencies, or other consulting parties are unable to agree on measures to resolve the adverse effects of an undertaking pursuant to this stipulation, then

FHWA shall invite the ACHP to participate in the resolution pursuant to 36 CFR 800.6(b)(2).

2. If the parties fail to agree to measures to resolve the adverse effects, FHWA, SHPO, or ACHP may terminate consultation pursuant to 36 CFR 800.7(a). Upon termination, the signatories shall comply with the remaining requirements of 36 CFR 800.7.

VI. EMERGENCY SITUATIONS

A. For the purposes of this Agreement, emergencies are defined as occurrences that require emergency highway system/facility repairs that are necessary to:

   1. Protect the life, safety, or health of the public; or

   2. Minimize the extent of damage to the highway system/facilities; or

   3. Protect remaining highway facilities; or

   4. Restore essential traffic.

B. These repairs can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.

C. If NDOT determines that an emergency repair undertaking could affect historic properties, NDOT shall notify SHPO, FHWA, Tribes, and cooperating federal agencies as appropriate, within 24 hours. SHPO, cooperating federal agency and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have 72 hours to respond.

D. For undertakings where the repair must be made within the first 30 days of the occurrence of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of Section 106 documentation will happen concurrently or after the fact. In these cases, NDOT will comply with the procedures in Stipulation V of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.

E. For undertakings taking longer than 30 days for repair, NDOT shall comply with the procedures in Stipulation V.

F. NDOT will provide written notification of an emergency action to SHPO (per Stipulation VI.C) in seven days. The notice shall be clearly and

prominently marked as an emergency notification, and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notice shall also include a brief description of the eligibility and/or significance of the resource(s) involved and the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

VII. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries:

When NDOT's identification efforts in accordance with Stipulation V indicate that historic properties are likely to be discovered during implementation of an undertaking, NDOT shall include a plan for discovery of such properties in any environmental document. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6. FHWA and appropriate cooperating federal land management agencies shall review the draft discovery plan. FHWA/NDOT shall determine whether a planned activity may result in intentional excavation of human remains, funerary objects, etc. subject to NAGPRA and follow Stipulation VIII.A.

B. Discoveries Without Prior Planning:

1. If previously unidentified archaeological or architectural properties, or unanticipated effects, are discovered after NDOT has completed its review under this Agreement, activities within that area of the undertaking will stop immediately, in accordance with NDOT Standard Specification 01355, Part 1.10 (Handbook Chapter 10).

2. No further construction in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.

3. NDOT will consult with FHWA, SHPO, the affected cooperating federal agencies and Tribes, as appropriate, to record, document, and evaluate the NRHP eligibility of the property and the undertaking's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.

4. If FHWA, SHPO, affected federal agency or a Tribe fails to file an objection within 72 hours of receipt to NDOT's plan for addressing the discovery, NDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the ACHP does not need to be notified.

5. Discoveries of Native American human remains without prior planning will be handled per Stipulation VIII.B or VIII.C.

VIII. TREATMENT OF HUMAN REMAINS

A. For planned excavation and/or removal activities on federal land, FHWA/NDOT shall apply for a permit under the Archaeological Resource Protection Act of 1979 (ARPA) (16 U.S.C. 470cc) from the appropriate federal land management agency. Consistent with 43 CFR 10.3 et seq., and as part of its application for an ARPA permit, FHWA/NDOT will provide the federal land management agency with information necessary to make a reasonable determination whether the planned activity may result in the excavation of Native American human remains, funerary objects, sacred objects or objects of cultural patrimony (collectively cultural items) from federal lands. Based on the information provided, the federal land management agency may determine that the ARPA permit will include for the excavation and removal of Native American cultural items and under Section 3(c) of the NAGPRA (25 U.S.C. 3002). If requested, the FHWA/NDOT shall assist the Federal land manager in consultation with Tribes and in developing a NAGPRA Plan of Action (POA), as determined by the federal land management agency. The NAGPRA POA shall be developed in consultation with appropriate Tribes for the treatment and disposition of any cultural items that may be anticipated. The federal land management agency must approve the ARPA permit and any required NAGPRA POA prior to authorizing excavation and/or removal of archaeological resources under ARPA, including cultural items subject to NAGPRA.

B. In the event of an inadvertent discovery of human remains on federal land, FHWA/NDOT shall notify the appropriate federal land managing agency immediately by phone, and follow up immediately with a written confirmation of discovery, sent by certified mail. FHWA/NDOT shall be responsible for ensuring security and protection of the inadvertent discovery and shall halt activities within 100 meters of the discovery. FHWA/NDOT shall also contact the county sheriff. The FHWA/NDOT and the appropriate federal land management agency may assist the

county sheriff or other responsible local official, as requested, to examine the discovery and to determine if the remains are Native American and subject to NAGPRA. If the remains are not of forensic interest, the federal land management agency shall be responsible to determine the disposition and treatment of the human remains. If the federal land management agency determines the remains are subject to NAGPRA, and consistent with 43 CFR 10.4, FHWA/NDOT staff shall, as requested, assist the federal land management agency in taking reasonable steps to protect the remains and to consult with Tribes per 43 CFR 10.4. The federal land management agency may halt activity for up to 30 days. Activity may be resumed after 30 days if otherwise lawful and the federal land manager's responsibilities are met.

C. Upon discovery of human remains on non-Federal lands, they will be treated by NDOT in accordance with NRS (Nevada Revised Statutes) 383.16.

IX. REPORTING AND MONITORING

A. Documentation:

1. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR 800.11, and any applicable guidelines and procedures of federal cooperating land-managing agencies that may be affected by the undertaking.

2. Documentation prepared by local agencies, or their consultants, in support of such findings shall be submitted to NDOT for review and approval. NDOT shall not transmit to FHWA, SHPO, or other consulting parties, any documentation that it has not reviewed and approved.

3. All documentation prepared under this Agreement shall be kept on file at NDOT and made available to consulting parties and the public at their request, consistent with applicable confidentiality requirements per Stipulation XIV.

B. Quarterly Reporting:

1. On a quarterly basis, NDOT shall compile and submit a list of Minor Projects to FHWA and SHPO by the end of the quarter (December 31, March 31, June 30, and September 30). This list shall include the following for each undertaking:

a. the county,

b. undertaking name and number,

c. type of undertaking,

d. level of effort,

e. consultation measures,

f. and a 1:24,000 map showing the location of each undertaking.

X. ANNUAL REPORTING

A. NDOT shall compile an annual report for submission to FHWA, SHPO, and ACHP. Information in the report shall include, but is not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, estimated time and cost savings, public objections, and inadvertent effects or foreclosures. The range and type of information included by NDOT in the report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which the Agreement, and its manner of implementation, constitutes an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.

B. NDOT shall prepare the report of these findings annually following execution of the Agreement. The initial report shall be prepared following completion of the first full Federal fiscal year under this Agreement. NDOT shall submit the annual reports to FHWA, SHPO, and ACHP no later than December 30. NDOT shall notify other affected cooperating federal agencies of the posting and location of this website notice.

C. NDOT, FHWA, and SHPO will meet annually to evaluate the Agreement, to suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection activities carried out under the Agreement. Prior to any such meetings, the ACHP and consulting parties will be notified and may participate at their discretion.

D. NDOT shall post the annual report on their website so that it is available for public inspection at the time it is submitted to the signatories. The web posting shall include a provision that allows the public to comment on the report. NDOT will consider public comments along with comments from signatories. At the request of any other signatory FHWA shall ensure that a meeting is held to facilitate review of, and comment on, the report to address questions and issues, or to resolve adverse comments.

XI. DISPUTE RESOLUTION

A. Should any signatory object to FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatories of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory to participate in the consultation and will take any comments provided by such parties into account. FHWA shall establish a reasonable time frame for such consultations.

B. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.

C. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA, with the cooperation of NDOT, shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including FHWA's proposed response to the objection. Within 30 calendar days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:

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

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

3. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(c)(4).

D. Should ACHP not exercise one of the foregoing options within 30 calendar days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.

E. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties in reaching a final decision regarding the objection.

F. FHWA shall provide all other signatory parties with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.

G. FHWA may then authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.

H. FHWA's responsibility to carry out all actions under this Agreement that are not the subject of the objection shall remain unchanged.

XII. AMENDMENT

A. Any signatory may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties. The amendment will be effective on the date a copy is signed by all of the original signatories.

B. Any changes to Handbook must be agreed upon in writing by the signatories and, upon approval, published on NDOT's Cultural Resources webpage.

XIII. TERMINATION

A. Any signatory may terminate this Agreement. If any signatory proposes termination of this Agreement the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, provide suggestions for resolution that would end the signatory's desire for termination, and consult with the other parties for no more than 30 calendar days to seek alternatives to termination.

B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.

C. Should such consultation fail, the signatory proposing termination may terminate this Agreement by promptly notifying the other parties in writing.

D. Should this Agreement be terminated, FHWA would carry out the requirements of 36 CFR Part 800 for individual undertakings.

XIV. CONFIDENTIALITY

All signatories acknowledge that information about historic properties is subject to the provisions of Section 304 of NHPA. Section 304 allows NDOT to withhold from disclosure to the public, information about the location, character, or ownership of a historic property if NDOT determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic property; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all signatories will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

XV. DURATION

This Agreement shall remain in effect for a period of three (3) years after the date of execution of the Agreement by the ACHP, unless it is terminated or amended in accordance with Stipulation XII. Ninety days prior to the conclusion of the three-year period, NDOT will notify all parties in writing of the upcoming anniversary. Before the end of the three-year term, FHWA will consult with NDOT, SHPO, and ACHP to determine interest in renewing this Agreement. The Agreement may be extended for an additional term upon the written agreement of the signatories. This Agreement will terminate after twenty one (21) years unless it is terminated prior to this date in accordance with Stipulation XII.

EXECUTION and implementation of this Agreement evidence that FHWA has delegated certain Section 106 responsibilities to NDOT and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Nevada; that FHWA and other cooperating federal agencies have taken into account the effects of the program and its individual undertakings on historic properties, and that FHWA and other cooperating federal agencies have complied with Section 106 of the NHPA and 36 CFR 800 for the Program and its individual undertakings.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: 9/18/14
Susan Klekar, Nevada Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: 10/21/14
John M. Fowler, Executive Director

NEVADA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Rebecca L. Palmer, Nevada State Historic Preservation Officer

INVITED SIGNATORIES

NEVADA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Rodolfo Malfabon, Director

BUREAU OF LAND MANAGEMENT

By: _____ Date: _____
Amy Lueders, State Director

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____
Susan Klekar, Nevada Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 10/21/14
John M. Fowler, Executive Director

NEVADA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Rebecca L. Palmer, Nevada State Historic Preservation Officer

INVITED SIGNATORIES

NEVADA DEPARTMENT OF TRANSPORTATION

By: Rodolfo Malfabon Date: 9-10-14
Rodolfo Malfabon, Director

BUREAU OF LAND MANAGEMENT

By: _____ Date: _____
Amy Lueders, State Director

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: 9/18/14
Susan Klekar, Nevada Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: 10/21/14
John M. Fowler, Executive Director

NEVADA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: 09/25/14
Rebecca L. Palmer, Nevada State Historic Preservation Officer

INVITED SIGNATORIES

NEVADA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Rodolfo Malfabon, Director

BUREAU OF LAND MANAGEMENT

By: _____ Date: _____
Amy Lueders, State Director

RECEIVED 4-8-14

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____
Susan Klekar, Nevada Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 10/21/14
John M. Fowler, Executive Director

NEVADA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Rebecca L. Palmer, Nevada State Historic Preservation Officer

INVITED SIGNATORIES

NEVADA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Rodolfo Malfabon, Director

BUREAU OF LAND MANAGEMENT

By: _____ Date: 9/11/14
Amy Lueders, State Director

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: 16 September 2014
Michael Jewell, Chief, Regulatory Division

U.S. FOREST SERVICE

By: _____ Date: _____
William Dunkelberger, Forest Supervisor, Humboldt-Toiyabe Forest

NV Division of State Parks

By: _____ Date: _____
Eric Johnson, Director

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____
Michael Jewell, Chief, Regulatory Division

U.S. FOREST SERVICE

By: _____ Date: 2/8/2014
William Dunkelberger, Forest Supervisor, Humboldt-Toiyabe Forest

NV Division of State Parks

By: _____ Date: _____
Eric Johnson, Director

U.S. ARMY CORPS OF ENGINEERS

By: _____ Date: _____
Michael Jewell, Chief, Regulatory Division

U.S. FOREST SERVICE

By: _____ Date: _____
William Dunkelberger, Forest Supervisor, Humboldt-Toiyabe Forest

NV Division of State Parks

By: _____ Date: 3/31/14
Eric Johnson, Director