

1 **DRAFT PROGRAMMATIC AGREEMENT**
2 **AMONG**
3 **THE FEDERAL RAILROAD ADMINISTRATION,**
4 **THE FEDERAL HIGHWAY ADMINISTRATION,**
5 **THE SURFACE TRANSPORTATION BOARD,**
6 **THE U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT, THE U.S.**
7 **ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT, THE CALIFORNIA STATE**
8 **HISTORIC PRESERVATION OFFICER,**
9 **THE NEVADA STATE HISTORIC PRESERVATION OFFICER,**
10 **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,**
11 **AND DESERTXPRESS ENTERPRISES, LLC**
12 **REGARDING**
13 **THE**
14 **BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT IN**
15 **BAKER, YERMO, AND BARSTOW, IN**
16 **SAN BERNARDINO COUNTY, CALIFORNIA AND IN LAS VEGAS AND PRIMM, IN CLARK**
17 **COUNTY, NEVADA**
18

19 **WHEREAS**, the DesertXpress Enterprises, LLC (Project Sponsor) is proposing to construct and operate
20 the Brightline West – Las Vegas to Victor Valley Project (Project), a high-speed passenger train line
21 along an approximately 175-mile corridor connecting Victorville, California to Las Vegas, Nevada; and
22

23 **WHEREAS**, the Project consists of a fully grade-separated passenger-only railroad largely constructed
24 within the Interstate 15 (I-15) highway corridor, with construction of two passenger stations, one in
25 Victorville and the other in Las Vegas located immediately adjacent to the I-15 corridor and ancillary
26 operates and maintenance facilities, as well as utility corridors to link proposed electrical substations to
27 external sources of power (Attachment 1: Area of Potential Effects [APE] and Project Description); and
28

29 **WHEREAS**, the Project was initially proposed by DesertXpress Enterprises, LLC (Desert Express),
30 which also did business as XpressWest and is doing business as Brightline West, and was subsequently
31 acquired by the Project Sponsor; and
32

33 **WHEREAS**, the Federal Railroad Administration (FRA) anticipates providing future financial assistance
34 to the Project Sponsor for construction of the Project; and
35

36 **WHEREAS**, FRA’s actions for the Project would be considered an Undertaking under Section 106 of the
37 National Historic Preservation Act of 1966 (54 U.S.C. § 306108) (NHPA), as amended, and its
38 implementing regulations at 36 Code of Federal Regulations [C.F.R.] § 800 (hereinafter collectively
39 referred to as Section 106); and
40

41 **WHEREAS**, the Federal Highway Administration (FHWA) provides concurrence for Highway Right-of-
42 Way (ROW) Occupancy and/or Disposal, Access Justification Report or Access Modification Report,
43 and/or concurrence on project design elements related to highway operations; and the Project will require
44 use of I-15, which will require approval from FHWA, in accordance with 23 U.S.C. § 111, whose
45 approval area is wholly contained within the APE for the Project and the issuance of such concurrence
46 and approval(s) by the FHWA constitutes an Undertaking as defined in Section 106, requiring Section
47 106 compliance. FHWA is a Consulting Party and designated FRA as the lead Federal agency for
48 purposes of Section 106 in an email dated February 27, 2019 (FHWA-Nevada Division) and in an email
49 dated March 29, 2019 (FHWA-California Division); and

1
2 **WHEREAS**, the Surface Transportation Board (STB) is an economic regulatory agency with jurisdiction
3 over freight railroad activities including, new rail line construction and operation, and an STB decision is
4 required for the Project Sponsor to construct and operate the Project and the decision by the STB
5 constitutes an Undertaking as defined in Section 106, requiring Section 106 compliance. STB is a
6 Consulting Party and designated FRA as the lead Federal agency for purposes of Section 106 in a letter
7 dated April 3, 2019; and
8

9 **WHEREAS**, the Bureau of Land Management (BLM) is responsible for managing a portion of the ROW;
10 and the Project will require the temporary and permanent use of public land managed by BLM, which is
11 wholly contained within the APE for the Project, and will require an amended right-of-way grant and the
12 issuance of such grant(s) or permissions by the BLM constitutes an Undertaking as defined in Section
13 106, requiring Section 106 compliance. The BLM is a Consulting Party and designated FRA as the lead
14 Federal agency for purposes of Section 106 in a letter/email dated [PENDING] (BLM-Barstow Field
15 Office), in a letter/email dated [PENDING] (BLM-Needles Field Office), and in a letter/email dated
16 [PENDING] (BLM-Las Vegas Field Office); and
17

18 **WHEREAS**, the U.S. Army Corps of Engineers Los Angeles District (USACE) under the authority of
19 Section 404 of the Clean Water Act (33 U.S.C. § 1344), may issue permit(s) or permission to the Project
20 Sponsor for the construction of the Project and the issuance of such permit(s) or permissions by the
21 USACE constitutes an Undertaking as defined in Section 106, requiring Section 106 compliance. The
22 USACE is a Consulting Party and designated FRA as the lead Federal agency for purposes of Section 106
23 in an email dated September 9, 2019; and
24

25 **WHEREAS**, these actions by FHWA, STB, BLM, and USACE (each a Federal Agency and together the
26 Federal Agencies) are each an Undertaking (collectively, the Undertaking) subject to Section 106 of the
27 National Historic Preservation Act (NHPA) (Section 106), 54 U.S.C. § 306108, and its implementing
28 regulations, 36 C.F.R. § 800; and
29

30 **WHEREAS**, pursuant to 36 C.F.R. § 800.2(c)(4), FRA authorized the Project Sponsor to initiate
31 consultation and prepare any necessary analyses, documentation, and recommendations on its behalf, but
32 FRA remains legally responsible for all findings and determinations, including determinations of
33 eligibility and effects of the Project; and
34

35 **WHEREAS**, the California Department of Transportation (Caltrans) and the Nevada Department of
36 Transportation (NDOT) have participated in the Section 106 process for the Undertaking and are
37 recognized as Consulting Parties; and
38

39 **WHEREAS**, FRA, in cooperation with STB, FHWA, BLM, and National Park Service (NPS), issued a
40 Final Environmental Impact Statement (EIS) in March 2011 for the Project; FRA also issued a Record of
41 Decision (ROD) on July 8, 2011; BLM issued a ROD on October 31, 2011, and subsequently issued a
42 right-of-way for the Project across BLM managed lands to DesertXpress on December 15, 2011; FHWA
43 issued a ROD on November 18, 2011; and STB issued a decision authorizing construction and operation
44 of the Project on October 25, 2011; and
45

46 **WHEREAS**, a Programmatic Agreement (Agreement) developed in consultation with Federally-
47 recognized Indian tribes and other Consulting Parties was executed on February 15, 2011, among FRA,

1 FHWA, STB, BLM, NPS, California State Historic Preservation Officer (CA SHPO), Nevada State
2 Historic Preservation Officer (NV SHPO), and DesertXpress regarding the Project; and

3
4 **WHEREAS**, the 2011 Agreement lapsed in January 2018 pursuant to its terms before construction of the
5 Project was initiated; and

6
7 **WHEREAS**, since the Federal Agency RODs and other Project approvals were issued, the Project
8 Sponsor has proposed to modify the design of the previously approved Project; and

9
10 **WHEREAS**, in January 2019, XpressWest submitted Project modifications to FRA, including a refined
11 alignment between Apple Valley and Las Vegas (with a greater proportion within the I-15 freeway
12 median), modified station sites in Apple Valley and the Las Vegas area, and other changes to ancillary
13 facilities; FRA reevaluated the DesertXpress FEIS and DesertXpress ROD in light of the Project
14 modifications; and in September 2020 the FRA determined the Project modifications would not result in
15 substantial changes in the evaluation of impacts described in the DesertXpress EIS, and therefore a
16 supplemental EIS would not be required for the Project modifications; and

17
18 **WHEREAS**, pursuant to 36 C.F.R. § 800.3(c), FRA re-initiated consultation with the CA SHPO and
19 NV SHPO in a letter dated August 19, 2019 (Attachment 2: Section 106 Consultation Documentation);
20 and

21
22 **WHEREAS**, since the APE consists of a 175-mile corridor covering two states and additional
23 identification, evaluation, and/or assessment of effects are anticipated as the Project design is refined, a
24 phased approach for compliance with Section 106 of the NHPA, as described in 36 C.F.R. §§ 800.4(b)(2)
25 and 800.5(a)(3), is necessary for the Undertaking; and

26
27 **WHEREAS**, since the Project is a complex Undertaking that requires establishing a process for avoiding,
28 minimizing, and/or mitigating adverse effects pursuant to 36 C.F.R. § 800.6; and

29
30 **WHEREAS**, the Federal Agencies determined that an Agreement for the Undertaking pursuant to
31 36 C.F.R. § 800.14(b) is appropriate and necessary to govern the implementation of the Project; and

32
33 **WHEREAS**, pursuant to 36 C.F.R. § 800.6(a)(1), on October 10, 2019, FRA invited the Advisory
34 Council on Historic Preservation (ACHP) to participate in consultation and the ACHP agreed to
35 participate in a letter dated November 25, 2019; and

36
37 **WHEREAS**, pursuant to 36 C.F.R. § 800.3(f), in letters dated August 15, 2019, January 29, 2020, March
38 9, 2020, and September 25, 2020, FRA invited other organizations with a demonstrated interest in the
39 Project, including non-Federally recognized Indian tribes, to participate in the Section 106 process and be
40 Consulting Parties, and the following subsequently accepted FRA's invitation to consult: Clark County
41 Department of Aviation (CCDOA) (September 25, 2020), Federal Aviation Administration (FAA)
42 (earliest available date is September 25, 2020), NPS – Mojave National Preserve (January 29, 2020,
43 accepted March 4), and NPS – National Trails (March 9, 2020); and

44
45 **WHEREAS**, the CCDOA and FAA have an interest in the Project because the Project is in close
46 proximity to the proposed Southern Nevada Supplemental Airport, Jean Sport Aviation Center, the
47 Proposed Southern Nevada Regional Heliport, and McCarran International Airport, all in Clark County,
48 Nevada; and the NPS has an interest in the Project due to its proximity to the Old Spanish National
49 Historic Trail and the Mojave National Preserve; and

1
2 **WHEREAS**, pursuant to 36 C.F.R. § 800(3)(f)(2), in letters dated March 25, 2019, FRA invited the
3 following Federally-recognized Indian tribes (herein individually referred to as a Tribe or Consulting
4 Tribe and collectively referred to as Tribes or Consulting Tribes) to participate in the Section 106 process
5 and be Consulting Parties: Chemehuevi Indian Tribe of the Chemehuevi Reservation; Colorado River
6 Indian Tribes of the Colorado River Indian Reservation; Fort Mojave Indian Tribe of Arizona, California
7 and Nevada; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony; Moapa Band of Paiute
8 Indians of the Moapa River Indian Reservation; Morongo Band of Mission Indians; San Manuel Band of
9 Mission Indians (now Yuhaaviatam of San Manuel Nation); Soboba Band of Luiseño Indians; Timbisha
10 Shoshone Tribe; and Twenty-Nine Palms Band of Mission Indians of California. All of these Tribes
11 accepted and thus are recognized as Consulting Parties and as Consulting Tribes; and
12

13 **WHEREAS**, pursuant to 36 C.F.R. § 800(3)(f)(2), in letters dated August 15, 2019, FRA invited the
14 following non-federally recognized Indian tribes and other groups to participate in the Section 106
15 process and be Consulting Parties: Baker Community Services District, City of Barstow Community
16 Development, California Historical District, California State Railroad Museum, California Route 66
17 Preservation Foundation, Chinese American Museum, Clark County Commission, the Center for Land
18 Use Interpretation, California Preservation Foundation, Friends of Nevada Wilderness, City of Las Vegas
19 Community Development, Las Vegas Railroad Society, Mojave River Valley Museum, National Historic
20 Route 66 Federation, Nevada Archaeological Association, Nevada Historical Society, Nevada State
21 Museum & Historical Society, Nevada State Railroad Museum, Old Spanish Trail Association, Pacific
22 Railroad Society, Preservation Association of Clark County, Preserve Nevada, San Bernardino Railroad
23 Historical Society, Sierra Club San Gorgonio Chapter, Sierra Club Toiyabe Chapter, Southern Pacific
24 Historical & Technical Society, City of Victorville Development Department, Kern Valley Indian
25 Community, Pahrump Paiute Tribe, San Fernando Band of Mission Indians, Serrano Nation of Mission
26 Indians, Tubatulabals of Kern County, and these non-federally recognized tribes or potentially interested
27 parties either declined to participate in the Section 106 process for this Undertaking or did not respond;
28 and
29

30 **WHEREAS**, pursuant to 36 C.F.R. § 800(3)(f)(2), in correspondence dated July 22 and 23, 2020, FRA
31 invited the Agua Caliente Band of Cahuilla Indians, a Federally-recognized Indian tribe, to participate in
32 the Section 106 process and be a Consulting Party, and they declined to participate in the Section 106
33 process for this Undertaking; and
34

35 **WHEREAS**, FRA has consulted with the Consulting Parties and Consulting Tribes on this Undertaking
36 as summarized in Attachment 2 to this Agreement; and
37

38 **WHEREAS**, pursuant to 36 C.F.R. §§ 800.4(a)(1) and 800.16(d) and in consultation with the CA SHPO,
39 NV SHPO, Consulting Tribes and Consulting Parties (Attachment 2), FRA defined the APE (Attachment
40 1) to include consideration of direct, indirect, and cumulative effects from the Undertaking and proposed the
41 Project APE in letters dated September 18, 2019. Due to comments received, FRA continued to revise
42 the APE in consultation via the Cultural Resource Working Group (CRWG) teleconference workshop on
43 February 20, 2020, and subsequent emails and letters dated February 24, 2020, August 21, 2020,
44 September 4, 2020, and June 15, 2021. Between July 21, 2020 and October 1, 2021, FRA and Consulting
45 Parties corresponded about the APE a minimum of 79 times via emails, hard copy distributions, and
46 phone calls. FRA considered all comments received between November 22, 2019, and July 15, 2021 and
47 finalized the APE in a letter to Consulting Parties dated October 21, 2021; and
48

1 **WHEREAS**, in consultation with the CA SHPO, NV SHPO, Consulting Tribes, and other Consulting
2 Parties, in letters dated September 18, 2019, FRA developed an Archaeology Survey Methodology Memo
3 (ASMM) to govern the methodology for the initial Section 106 identification and evaluation efforts for
4 archaeological resources within the APE and to aid in the development of the Archaeology Technical
5 Report. Due to comments received, FRA continued to revise the ASMM in consultation via letter dated
6 November 22, 2019. In consideration of all comments received, a Revised Final ASMM was distributed
7 by FRA in an email dated July 22, 2020; and
8

9 **WHEREAS**, pursuant to 36 C.F.R. § 800.4 and in consultation with the CA SHPO, NV SHPO,
10 Consulting Tribes, and other Consulting Parties, FRA conducted efforts to identify historic properties
11 within the APE, the methods for which included archival records searches, pedestrian survey, subsurface
12 archaeological survey, and consultation with Consulting Parties and Consulting Tribes to identify,
13 evaluate, and determine effects to historic properties from the Project. To address concerns from
14 Consulting Parties and Consulting Tribes regarding the sensitivity for subsurface cultural resources within
15 the APE, in letters dated August 20, 2021, and follow up consultation via a CRWG meeting on August
16 26, 2021, FRA developed a Subsurface Archaeological Survey and Work Plan to assess presence and
17 absence of cultural materials outside of the known boundaries of cultural resources sites. In consideration
18 of all comments received, a Final Work Plan and Subsurface Archaeological Survey was distributed by
19 FRA in a letter dated October 2, 2021. Further identification efforts included the development of an
20 Archaeological Inventory reports and Historic Built Environment Technical reports for California and
21 Nevada were transmitted to CA SHPO, NV SHPO, Consulting Tribes, and other Consulting Parties on
22 November 5, 2021. As a result of a follow up consultation via CRWG meetings on November 16 and 18,
23 2021, and in consideration of all comments received, revised Archaeological Inventory Reports and
24 Historic Built Environmental Technical reports for California and Nevada were distributed by FRA in a
25 letter dated March 18, 2022; and
26

27 **WHEREAS**, pursuant to 36 C.F.R. § 800.4, FRA identified a total of 196 historic properties that are
28 listed in, eligible for listing in, or for the purposes of the Undertaking only assumed eligible for listing the
29 National Register of Historic Places (NRHP) in the APE (Attachment 3: Historic Properties in the APE).
30 Cultural resources assumed eligible for the purposes of the Undertaking only remain formally
31 unevaluated. The CA SHPO concurred with the formal NRHP eligibility determinations for the built
32 environment historic properties in California in a letter dated February 3, 2022, and the NV SHPO
33 concurred with the formal NRHP eligibility determinations for the built environment historic properties in
34 Nevada in a letter dated December 6, 2021 (Attachment 2). The CA SHPO concurred with the formal
35 NRHP eligibility determinations for the archaeological historic properties in California in a letter dated
36 [PENDING], and the NV SHPO concurred and did not object with the formal NRHP eligibility
37 determinations for the archaeological historic properties in Nevada in letters dated August 22, 2022 and
38 November 21, 2022 (Attachment 2); and
39

40 **WHEREAS**, pursuant to 36 C.F.R. § 800.5 and in consultation with CA SHPO, NV SHPO, Consulting
41 Tribes, and other Consulting Parties, FRA determined that the Project will have no adverse effect on any
42 built environment historic properties and an adverse effect on four archaeological districts (Sidewinder
43 Quarry, Mojave River Lithic Landscape, Soapmine Road, Cronese Lake), 14 archaeological sites within
44 those districts (P-36-000562, P-36-002283, P-36-008321, P-36-006950, P-36-003485, P-36-002129, P-
45 36-000223, P-36-003694, ICF-XW1-010, ICF-XW2-017, ICF-BV-001, ICF-XW1-004, P-36-008923, P-
46 36-4198), and five individually eligible archaeological sites (P-36-000541, P-36-000885, P-36-006023,
47 XPW21-SW-015, ICF-XW2-007) in California, and to three of the archaeological sites (26CK7189,
48 26CK11252, 26CK5760) in Nevada within the APE, and that the Project would have no effect or no
49 adverse effect on the remaining archaeological district and individually eligible archaeological historic

1 properties in the APE in California and individually eligible archaeological historic properties in the APE
2 in Nevada (Attachment 3). The Historic Built Environment Finding of Effect reports and Archaeological
3 Resources Finding of Eligibility and Effect reports for California and Nevada were transmitted to CA SHPO,
4 NV SHPO, Consulting Tribes, and other Consulting Parties on May 27, 2022. As a result of a follow up
5 consultation via CRWG meetings on June 15, 2022, meetings with Consulting Tribes, and in
6 consideration of all comments received, revised Historic Built Environment Finding of Effect reports and
7 Archaeological Resources Finding of Eligibility and Effect reports for California and Nevada were
8 distributed by FRA in a letter dated October 26, 2022. The CA SHPO concurred with the determinations
9 of eligibility for archaeological historic properties and finding of adverse effect for the Project in
10 California in a letter dated [PENDING] and the NV SHPO did not object with the determinations of eligibility
11 for archaeological historic properties and concurred with the finding of adverse effect for the Project in
12 Nevada in a letter dated November 21, 2022 (Attachment 2); and
13

14 **WHEREAS**, pursuant to 36 C.F.R. § 800.6(a) and in consultation with the CA SHPO, NV SHPO,
15 Consulting Tribes and Consulting Parties, FRA considered the following avoidance and minimization
16 measures: redesign of project elements to minimize ground disturbance within previously undisturbed areas,
17 below ground trenching within existing disturbed areas to minimize viewshed impacts and reduce impacts to
18 previously disturbed areas, and adoption of a muted color scheme for infrastructure and the train to blend
19 into natural desert landscape in order to avoid and/or minimize effects to historic. These measures
20 minimize but do not fully avoid the adverse effects of the Project; and
21

22 **WHEREAS**, FRA and the CA SHPO and NV SHPO, have determined that since the Project requires a
23 phased approach for compliance with Section 106 of the NHPA as the Project design is refined and for
24 the resolution of adverse effects from a complex Undertaking that it is appropriate to enter into this
25 Agreement pursuant to 36 C.F.R. § 800.14(b), which will govern the implementation of the Project and
26 satisfy FRA's obligation to comply with Section 106; and
27

28 **WHEREAS**, pursuant to 36 C.F.R. § 800.6(a)(1)(i)(C), FRA notified the Advisory Council on Historic
29 Preservation (ACHP) of its reinitiating of the Project determination and intention to enter into an
30 Agreement in a letter dated October 10, 2019, and the ACHP, in a letter dated November 25, 2019,
31 elected to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii) (Attachment 2); and
32

33 **WHEREAS**, pursuant to 36 C.F.R. § 800.14(b)(3), development of an Agreement for complex
34 Undertakings shall follow 36 C.F.R. § 800.6; and
35

36 **WHEREAS**, pursuant to 36 C.F.R. § 800.6(c)(1), FRA, CA SHPO, NV SHPO, and the ACHP are
37 Signatories to the Agreement; and
38

39 **WHEREAS**, pursuant to 36 C.F.R. § 800.6(c)(2)(iii) and due to its role in the implementation of the
40 terms of this Agreement, the Project Sponsor has participated in consultation and been invited to sign this
41 Agreement as an Invited Signatory; and
42

43 **WHEREAS**, pursuant to 36 C.F.R. § 800.6(c)(2)(iii), STB, FHWA, BLM, and USACE have participated
44 in consultation and assume a responsibility under Section 106 as the Federal Agencies and been invited to
45 sign this Agreement as Invited Signatories; and
46

47 **WHEREAS**, pursuant to 36 C.F.R. § 800.6(c)(3), Caltrans and NDOT have participated in consultation
48 and been invited to concur in this Agreement; and
49

1 **WHEREAS**, pursuant to 36 C.F.R. § 800.6(c), FRA has consulted with the Consulting Tribes concerning
2 properties of traditional religious and cultural significance and has invited these Consulting Tribes to
3 concur in this Agreement; and
4

5 **WHEREAS**, pursuant to 36 C.F.R. § 800.6(c)(3), the other Consulting Parties have participated in
6 consultation and been invited to concur in this Agreement;
7

8 **WHEREAS**, FRA sought and considered the views of the public regarding Section 106 compliance for
9 this Project by making the Draft Agreement available to the public for review and comment by posting it
10 on www.regulations.gov for thirty (30) days between [date] and [date]. FRA also made the Draft
11 Agreement available on their website and issued a press release to notify the public of the comment
12 period. FRA [did/did not] receive any comments during the comment period [and how were they
13 considered if received]; and
14

15 **WHEREAS**, the definitions set forth in 36 C.F.R. § 800.16 are incorporated herein by reference and
16 apply throughout this Agreement; and
17

18 **WHEREAS**, FRA will ensure the stipulations included herein applicable to the Undertaking are
19 implemented; and
20

21 **NOW, THEREFORE**, FRA, the CA SHPO, the NV SHPO, and ACHP (collectively referred to as the
22 Signatories) agree that the Undertaking shall be implemented in accordance with the following
23 stipulations in order to consider the effects of the Undertaking on historic properties to satisfy the
24 Signatories' Section 106 of the NHPA responsibilities for all aspects of the Undertaking, including taking
25 into account the effect of the Undertaking on historic properties, until this Agreement expires or is
26 terminated.

27 **STIPULATIONS**

28
29 FRA, in coordination with the Project Sponsor, will ensure the following measures are carried out:
30

31 **I. APPLICABILITY**

32
33 This Agreement applies to the FRA undertaking and only binds FRA if FRA provides funding for the
34 Project.
35

36 **II. TIMEFRAMES AND COMMUNICATIONS**

37 The timeframes and communication protocols described in this Stipulation apply to all Stipulations in
38 this Agreement unless otherwise specified.
39

- 40 A. Unless otherwise specified in this Agreement, this Stipulation applies to all documents
41 required of this Agreement that are submitted to the Signatories, Invited Signatories,
42 Consulting Tribes, and other Consulting Parties for review and comment.
43
44 B. All time designations are in calendar days unless otherwise stipulated. If a review period ends
45 on a Saturday, Sunday, or Federal holiday, the review period will be extended until the next
46 business day.

- 1 C. Unless otherwise specified in this Agreement, all review periods are concurrent and fifteen
2 (15) days, starting on the day the documents are provided by FRA and/or the Project Sponsor
3 to the reviewing parties electronically, which constitutes notification.
4
- 5 D. The Project Sponsor will provide draft documentation to FRA for review and approval. FRA
6 shall review the draft documentation within fifteen (15) days. Following receipt of FRA
7 approval, the Project Sponsor will submit documentation to the Signatories, Consulting Tribes,
8 and other Consulting Parties for review and comment for fifteen (15) days.
9
- 10 E. All notifications required by this Agreement will be sent by e-mail and/or other electronic
11 means, with larger documents uploaded to a SharePoint website for access. Hard copies will
12 be sent following notification only to those self-identified Consulting Parties in Attachment
13 4: List of Invited Section 106 Consulting Parties or upon request after notification.
14
- 15 F. The Project Sponsor will forward a written summary of all comments received from
16 Signatories, Consulting Tribes, and other Consulting Parties to FRA immediately at the end of
17 the fifteen (15) day review period. The Project Sponsor, in consultation with FRA, will ensure
18 that any written comments received within the review timeframe are considered and
19 incorporated, as appropriate, into the documentation. At FRA's discretion, FRA may
20 consider comments received after the close of a comment period.
21
- 22 G. If Signatories, Consulting Tribes, or other Consulting Parties do not provide written
23 comments within the fifteen (15) day concurrent review period or otherwise specified review
24 period, the Project Sponsor, in coordination with FRA, may proceed to the next step of the
25 process without taking additional steps to seek comments from any party. In the absence of
26 comment from the CA SHPO or NV SHPO, the Project Sponsor, in coordination with FRA,
27 will adhere to 36 C.F.R. § 800.3(c)(4) and proceed to the next step in the process.
28
- 29 H. The Project Sponsor, in coordination with FRA, will work expeditiously to consider and
30 resolve comments, as appropriate. The Project Sponsor and FRA may consult with
31 Signatories, Consulting Tribes, and/or other Consulting Parties to resolve such comments.
32 The Project Sponsor, in coordination with FRA, will inform the Signatories, Consulting
33 Tribes, and/or other Consulting Parties of the resolution in writing.
34
- 35 I. The Project Sponsor will provide final documentation to FRA for review and approval. FRA
36 shall review the final documentation within fifteen (15) days. Following receipt of FRA
37 approval, the Project Sponsor will submit final documentation to the Signatories, Consulting
38 Tribes, and other Consulting Parties.
39
- 40 J. Final documentation may include a request for review of a finding or determination by the
41 CA SHPO or NV SHPO. If the CA SHPO or NV SHPO do not provide written comments
42 within the fifteen (15) day concurrent review period or otherwise specified review period, the
43 Project Sponsor, in coordination with FRA, will adhere to 36 C.F.R. § 800.3(c)(4) and may
44 proceed to the next step in the process without taking additional steps to seek comments from
45 the CA SHPO or NV SHPO. In the absence of comment from the CA SHPO or NV SHPO,
46 FRA may consider that the CA SHPO or NV SHPO does or do not object to a finding or
47 determination and that the final document is complete.
48

- 1 K. If comments cannot be resolved through further consultation, FRA will resolve disputes
2 through the process outlined in Stipulation XVIII except for disputes regarding eligibility.
3 For eligibility disputes, FRA will seek formal Determination of Eligibility from the Keeper of
4 the NRHP (Keeper), pursuant to 36 C.F.R. Part 63. The Keeper’s determination will be
5 considered final.
6
- 7 L. In exigent circumstances (e.g., in Post-review discovery situations, or concerns over
8 construction suspensions or delays), all Signatories, the CA SHPO, the NV SHPO,
9 Consulting Tribes, and Consulting Parties agree to expedite their respective document review
10 within seven (7) days.
11
- 12 M. All official notices, comments, requests for further information, documentation, and other
13 communications will be sent in writing by e-mail or other electronic means.
14

15 **III. ROLES AND RESPONSIBILITIES**

- 16
- 17 A. Signatories: Signatories have the authority to execute, amend, and/or terminate this
18 Agreement.
19
- 20 1. FRA
21
- 22 a. Pursuant to 36 C.F.R. § 800.2(a)(2), and subject to Stipulation I, FRA has the
23 primary responsibility to ensure the provisions of this Agreement are carried out.
24 b. FRA remains legally responsible for all findings and determinations, including
25 determinations of NRHP eligibility, assessment of effects of the Project on historic
26 properties, and resolution of adverse effects, as well as resolution of objections or
27 disputes.
28 c. FRA is responsible for all government-to-government consultation with Federally
29 recognized Native American tribes.
30 d. FRA is responsible for consulting with appropriate consulting parties as required by
31 36 C.F.R. § 800, and with Consulting Tribes and Consulting Parties.
32 e. FRA has authority to execute, amend, and/or terminate this Agreement.
33
- 34 2. CA SHPO and NV SHPO
35
- 36 a. The CA SHPO and the NV SHPO will allow FRA and the Project Sponsor access to
37 background data regarding historic properties listed and eligible for listing in the
38 NRHP.
39 b. The CA SHPO and NV SHPO are each responsible for review of project submittals
40 and will participate in consultation according to the timeframes defined in Stipulation
41 II and otherwise stipulated within this Agreement.
42 c. The CA SHPO and the NV SHPO have authority to execute, amend, and/or terminate
43 this Agreement.
44
- 45 3. ACHP
46
- 47 a. The ACHP is responsible for review of project submittals and will participate in
48 consultation according to the timeframes defined in Stipulation II and otherwise
49 stipulated within this Agreement.

- 1 b. The ACHP will be responsible for providing technical guidance and participating in
- 2 dispute resolution upon request pursuant to Stipulation XVIII.
- 3 c. The ACHP has authority to execute, amend, and/or terminate this Agreement.

4
5 B. Invited Signatories: Invited Signatories have the authority to execute, amend, and/or

6 terminate this Agreement.

7
8 1. Project Sponsor

- 9
- 10 a. Pursuant to the FRA authorization granted under 36 C.F.R. § 800.2(c)(4), the Project
- 11 Sponsor, in coordination with FRA, will conduct investigations and produce
- 12 analyses, documentation and recommendations in a timely manner to address effects
- 13 to historic properties within the APE according to the Historic Properties Treatment
- 14 Plan (Stipulation VIII). After consultation with and approval from FRA, the Project
- 15 Sponsor will submit documents, as required by the Agreement, on behalf of FRA.
- 16 b. The Project Sponsor is responsible for continued compliance with all commitments
- 17 outlined in this Agreement and will comply, either directly or through consultants,
- 18 with applicable conditions of the Agreement until such time as the terms of this
- 19 Agreement are complete or this Agreement is terminated or expires.
- 20 c. The Project Sponsor is responsible for the funding and completion of measures to
- 21 resolve adverse effects agreed upon in writing among the Signatories during Section
- 22 106 consultation following the processes described in this Agreement. The Project
- 23 Sponsor will consider these measures to be successfully completed upon review,
- 24 concurrence and/or acceptance in writing by the SHPO and by the relevant Federal
- 25 Agency within whose jurisdiction the measure lies.
- 26 d. The Project Sponsor is responsible for notifying FRA of any comments or concerns
- 27 regarding the Undertaking expressed by Consulting Tribes or Consulting Parties.
- 28 e. The Project Sponsor is responsible for obtaining Archaeological Resources
- 29 Protection Act of 1979 (ARPA)(16 U.S.C. § 470aa et seq.) permits for any
- 30 archaeological investigations on federally owned or administered lands and for
- 31 obtaining any other relevant permits necessary to adhere to the terms of this
- 32 Agreement.
- 33 f. The Project Sponsor is responsible for developing a Native American Graves
- 34 Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001 et seq; 43 C.F.R. §
- 35 10) Plan of Action (POA) as detailed in Stipulation XI.B.1.
- 36 g. The Project Sponsor has authority to execute, amend, and/or terminate this
- 37 Agreement

38
39 2. STB

- 40
- 41 a. STB is responsible for review of project submittals and will participate in
- 42 consultation according to the timeframes defined in Stipulation II and otherwise
- 43 stipulated within this Agreement.
- 44 b. STB is responsible for notifying FRA of any comments or concerns regarding the
- 45 Undertaking expressed by Consulting Tribes or Consulting Parties.
- 46 c. STB is responsible for maintaining an administrative record of actions related to the
- 47 Agreement and Section 106 compliance for the Undertaking specific to their agency.
- 48 d. STB is responsible for a decision for the Project Sponsor to be able to proceed to
- 49 construct and operate the Project for the STB Undertaking.

1 e. STB has authority to execute, amend, and/or terminate this Agreement.
2

3 3. FHWA
4

- 5 a. FHWA is responsible for review of project submittals and will participate in
6 consultation according to the timeframes defined in Stipulation II and otherwise
7 stipulated within this Agreement.
8 b. FHWA is responsible for notifying FRA of any comments or concerns regarding the
9 Undertaking expressed by Consulting Tribes or Consulting Parties.
10 c. FHWA is responsible for maintaining an administrative record of actions related to
11 the Agreement and Section 106 compliance for the Undertaking specific to their
12 agency.
13 d. FHWA is responsible for providing concurrence and approval(s) for the Project for
14 their Undertaking.
15 e. FHWA has authority to execute, amend, and/or terminate this Agreement.
16

17 4. BLM
18

- 19 a. BLM is responsible for review of project submittals and will participate in
20 consultation according to the timeframes defined in Stipulation II and otherwise
21 stipulated within this Agreement.
22 b. BLM is responsible for notifying FRA of any comments or concerns regarding the
23 Undertaking expressed by Consulting Tribes or Consulting Parties.
24 c. BLM is responsible for maintaining an administrative record of actions related to the
25 Agreement and Section 106 compliance for the Undertaking specific to their agency.
26 d. BLM is responsible for an amended right-of-way grant and issuing grant(s) or
27 permissions for the Project for their Undertaking.
28 e. BLM is responsible for processing ARPA permits, as well as permits for
29 archaeological investigations under the authority of ARPA and the Antiquities Act of
30 1906, as identified for each phase of the Project, or for site(s) identified as requiring
31 an ARPA permit on land managed by BLM.
32 f. BLM is responsible for enforcing the applicable provisions of ARPA, including but
33 not limited to the timely issuance of permits for archaeological investigations and
34 investigation of any damages resulting from prohibited activities within their
35 jurisdictional areas even if they have designated FRA as the lead Federal Agency for
36 Section 106.
37 g. BLM is responsible for reviewing and commenting on the NAGPRA POA developed
38 by the Project Sponsor as detailed in Stipulation XI.B.1. to ensure the NAGPRA
39 POA will meet their requirements.
40 h. BLM is responsible for coordinating BLM's compliance with NAGRA.
41 i. BLM is responsible for ensuring any non-NAGPRA related Project collections and
42 associated records under BLM ownership and control are maintained in accordance
43 with 36 C.F.R. § 79.
44 j. BLM has authority to execute, amend, and/or terminate this Agreement.
45

46 5. USACE
47

- 1 a. USACE is responsible for review of project submittals and will participate in
- 2 consultation according to the timeframes defined in Stipulation II and otherwise
- 3 stipulated within this Agreement.
- 4 b. USACE is responsible for notifying FRA of any comments or concerns regarding the
- 5 Undertaking expressed by Consulting Tribes or Consulting Parties.
- 6 c. USACE is responsible for maintaining an administrative record of actions related to
- 7 the Agreement and Section 106 compliance for the Undertaking specific to their
- 8 agency.
- 9 d. USACE is responsible for issuing permit(s) or permissions to the Project Sponsor for
- 10 the construction of the Project for their Undertaking.
- 11 e. USACE has authority to execute, amend, and/or terminate this Agreement.
- 12

13 C. Other Federal Agencies

- 14
- 15 1. Federal agencies that have some involvement in the Project which requires compliance
- 16 with Section 106 and that do not designate FRA as the lead Federal agency remain
- 17 individually responsible for their compliance with Section 106.
- 18

19 D. Consulting Parties and Consulting Tribes

- 20
- 21 1. Consulting Parties and Consulting Tribes include those individuals or entities identified
- 22 in Attachment 4 that have a demonstrated interest in the Project due to the nature of their
- 23 legal or economic relation to the Project or affected properties, or their concern with the
- 24 Project's effects on historic properties.
- 25
- 26 2. Consulting Parties and Consulting Tribes in Attachment 4 have been provided the
- 27 opportunity to actively participate in the development of this Agreement and will assist in
- 28 the resolution of adverse effects pursuant to this Agreement.
- 29
- 30 3. If a Consulting Party or Consulting Tribe does not provide written comments within the
- 31 timeframes defined in Stipulation II and otherwise stipulated within this Agreement, FRA
- 32 and the Project Sponsor will proceed to the next step in the review process without taking
- 33 additional steps to seek comments from such party.
- 34
- 35 4. Pursuant to 36 C.F.R. § 800.6(c)(3), Consulting Parties and Consulting Tribes are invited
- 36 to sign this Agreement as Concurring Parties. However, the refusal of any Consulting
- 37 Party or Consulting Tribe to concur does not invalidate or affect the effective date of this
- 38 Agreement. Consulting Parties or Consulting Tribes who choose not to sign this
- 39 Agreement as a Concurring Party will continue to receive and have an opportunity to
- 40 review and comment upon documents pursuant to the Agreement once executed.
- 41

42 IV. PROFESSIONAL QUALIFICATIONS STANDARDS

43
44 FRA and the Project Sponsor will ensure that all actions prescribed by this Agreement are carried out
45 by, or under the direct supervision of, qualified professional(s) who meet the appropriate standards in
46 the applicable disciplines as outlined in the *Secretary of the Interior's Professional Qualifications*
47 *Standards* (SOI PQS)(48 Fed. Reg. 44716, 44738 (Sept. 29, 1983)). However, this stipulation may not
48 be interpreted to preclude FRA, the Project Sponsor, or any agent or contractor thereof from using

1 properly supervised personnel, including Tribal monitors designated by the Consulting Tribes, who
2 do not meet the SOI PQS.
3

4 **V. DOCUMENTATION STANDARDS** 5

6 Unless an alternate documentation standard is specified, all studies, reports, plans, and other
7 documentation prepared pursuant to this Agreement will be consistent with pertinent standards and
8 guidelines outlined in *Secretary of the Interior's Standards and Guidelines for Archaeology and*
9 *Historic Preservation* (48 Fed. Reg. 44716-44742, Sept. 29, 1983), 36 C.F.R. §§ 800.4 and 800.5, and
10 36 C.F.R. Part 63. In addition, documentation will also follow applicable guidance issued by the
11 ACHP; guidelines and instructions for documenting cultural resources sites and cultural resources
12 reporting in California (found at https://ohp.parks.ca.gov/?page_id=1069 at the time of execution of
13 this Agreement); and forms and instructions for documenting cultural resources in Nevada (found at
14 <https://shpo.nv.gov/welcome-to-review-and-compliance/compliance-forms> at the time of execution of
15 this Agreement), or subsequent revisions or replacements to these documents. All documentation
16 prepared under this Agreement will be kept on file by FRA and made available to the public
17 consistent with applicable confidentiality requirements referenced under Stipulation XIV.
18

19 **VI. PROJECT MODIFICATION AND DESIGN CHANGES** 20

21 The Project Sponsor will notify the Signatories, Consulting Tribes, and Consulting Parties of any
22 proposed modifications to the Undertaking or changes to Project design that may result in additional
23 or new effects on historic properties within 15 days of the identification of the proposed modifications to
24 the Undertaking or change to Project design. Before the Project Sponsor takes any action that may
25 result in additional or new effects on historic properties, the Project Sponsor, in coordination with
26 FRA, will consult with SHPO, Consulting Tribes, and Consulting Parties to determine the appropriate
27 course of action. This may include revision to the APE, identification of historic properties,
28 assessment of effects to historic properties, and treatment measures to resolve adverse effects.
29 Modifications to the Undertaking or changes to Project design may be considered pursuant to the terms
30 of this Agreement without amending the Agreement. If FRA determines that an amendment to the
31 Agreement is required, it will proceed in accordance with Stipulation XVII.
32

33 **VII. AREA OF POTENTIAL EFFECTS** 34

35 The Project APE and Project Description are included in Attachment 1. Since there may be
36 refinement to the Project design as it is further developed, it may be necessary to further define the
37 APE and Project Description as design refinements are proposed. The APE as shown and described
38 in Attachment 1 may be modified pursuant to the terms of this Agreement without amending the
39 Agreement.
40

41 **A. Process for Amending the APE** 42

- 43 1. The Project Sponsor, in coordination with FRA, will submit the proposed APE
44 modification in writing to the CA SHPO and/or NV SHPO with concurrent notification to
45 the Signatories, Consulting Tribes, and other Consulting Parties. Notification to the CA
46 SHPO and NV SHPO may be combined or to one SHPO and not the other depending on
47 if the proposed APE modification is within California or Nevada or is in both states.
48

- 1 2. The CA SHPO and NV SHPO will have fifteen (15) days to review the proposed APE
2 modification. If the CA SHPO or NV SHPO does not agree with the proposed APE
3 modification as defined, the Project Sponsor, in coordination with FRA, will consider
4 further modification to the APE based upon SHPO comments, and any comments
5 received from the Signatories, Consulting Tribes, or other Consulting Parties, and
6 resubmit the proposed APE modification for review to the Signatories, Consulting Tribes,
7 and other Consulting Parties. The CA SHPO and NV SHPO will have another seven (7)
8 days to review the proposed APE modification.
9
- 10 3. If the CA SHPO or NV SHPO does not agree to the proposed APE modification, FRA
11 will resolve the dispute in accordance with Stipulation XVIII.
12
- 13 4. If the CA SHPO or NV SHPO have concurred, do not object, or have not responded to
14 the proposed APE modification after the timeframes specified in Stipulation VII.A.2.,
15 FRA will finalize the proposed APE modification.
16
- 17 5. In coordination with FRA, the Project Sponsor will notify the Signatories, Consulting
18 Tribes, and other Consulting Parties of the finalization of the APE modification within
19 seven (7) days of finalization.
20
- 21 6. Following finalization of the APE modification the Project Sponsor, in coordination with
22 FRA, will notify the Signatories, Consulting Tribes, and other Consulting Parties if the
23 APE is:
24 a. Reduced and no change in the assessment of effects to historic properties is
25 warranted; or
26 b. Expanded and identification, evaluation, and assessment of effects to historic
27 properties is already complete, sufficient, and unchanged in the expanded area(s); or
28 c. Expanded and additional identification, evaluation, and/or assessment of effects to
29 historic properties is necessary; or
30 d. Expanded and a change in the assessment of effects to historic properties is
31 warranted.
32 33
- 34 7. If the Project Sponsor and FRA determine either Stipulation VII.A.6.a. or VII.A.6.b. are
35 applicable, no further identification, evaluation, or assessment of effects is required. If
36 the Project Sponsor and FRA determine either Stipulation VII.A.6.c or VII.A.6.d. are
37 applicable, the Project Sponsor, in coordination with FRA, will identify, evaluate, and
38 assess effects of the Undertaking on historic properties in the modified APE as described
39 in Stipulation VIII.
40
41
42
43

- 1 8. Identification, evaluation, and/or assessment of effects conducted under Stipulation
2 VII.A.7 will be completed pursuant to 36 C.F.R. §§ 800.4 and 800.5, and according to
3 Stipulations IX. Document review will be conducted pursuant to Stipulation II.
4

5 **VIII. HISTORIC PROPERTIES TREATMENT PLAN**
6

7 The Project Sponsor, in coordination with FRA, has prepared a Historic Property Treatment Plan
8 (HPTP) that provides detailed procedures for implementing actions prescribed by the Agreement and
9 to resolve adverse effects to historic properties (Attachment 5: Historic Properties Treatment Plan).
10 The HPTP may be amended, including the addition of new historic properties or newly identified
11 adverse effects, without amending this Agreement. The HPTP includes a research context and
12 research design that informs methods for the identification of historic properties and therefore, the
13 interpretation of significance, determination of effect, and methods for resolution of adverse effects
14 for newly identified historic properties, or newly identified Project effects to known historic
15 properties. The HPTP also includes stipulations for archaeological and Tribal monitoring, personnel
16 qualifications, permitting, curation, cultural sensitivity training, and management procedures.
17

18 A. Implementation of the Historic Property Treatment Plan
19

- 20 1. During consultation on the Finding of Effect (FOE) described under Stipulation IX.C if it
21 is determined that historic properties within the APE will be adversely affected by Project
22 activities, the Project Sponsor, in coordination with FRA, will prepare and implement
23 standard treatment measures as defined in the HPTP or develop resource-specific HPTPs
24 to address and resolve such effects as required. All HPTPs will set forth detailed
25 avoidance, protection, and/or treatment measures to reduce or mitigate the particular
26 adverse effect(s) (e.g., data recovery, documentation, oral histories, public education,
27 community outreach, etc.) for the specific historic property or property type. Information
28 related to environmental and cultural setting, historic context, research design, etc. that
29 was developed for and provided in the identification, evaluation, and assessment of
30 effects has been incorporated by reference into the HPTP, and may be incorporated into
31 individual HPTPs as appropriate, with additional information as necessary.
32
- 33 2. As specified in Stipulation V, the HPTP conforms to the principles of the *Secretary of the*
34 *Interior's Standards and Guidelines for Archeology and Historic Preservation*. At the
35 discretion of the Project Sponsor, in coordination with FRA, a single HPTP may be
36 developed to resolve effects on an individual historic property or property type for
37 multiple historic properties and property types, depending on the property type or types,
38 the nature of the effects(s), and the timing of Project construction. Mitigation measures
39 outlined in HPTPs may be conducted prior to construction, during construction, or after
40 construction is complete based on property type, mitigation requirements, and
41 construction timetable.
42
- 43 a. The Project Sponsor, in coordination with FRA, will ensure that any draft and final
44 HPTP(s) produced under this Agreement are subject to the timeframes defined in
45 Stipulation II, the HPTPs, and otherwise stipulated within this Agreement.
46
- 47 b. The Project Sponsor, in coordination with FRA, will ensure that each HPTP is
48 finalized prior to the commencement of the construction activity or activities posing
49 the identified adverse effect. The HPTP will require a schedule for completion of the

1 prescribed treatment(s), which, depending on the historic property type and nature of
2 the treatment, may occur before, during, or after construction takes place.
3

- 4 3. Unless otherwise described in the HPTP, documentation and reports produced as a result
5 of the HPTP are subject to the timeframes defined in Stipulation II and otherwise
6 stipulated within the HPTP and this Agreement.
7
- 8 4. After the Project Sponsor completes the measures described in the HPTP to mitigate
9 adverse effects from the Project, the Project Sponsor will complete a final report that
10 details mitigation efforts resulting from the Project. Documentation review will occur
11 pursuant to Stipulation II. In California, the Project Sponsor will provide all reports to
12 the California Historical Resources Information System. In Nevada, the Project Sponsor
13 will provide all reports to the Nevada Cultural Resource Information System.
14
- 15 5. Any disputes that may arise between the Signatories, Consulting Tribes, and other
16 Consulting Parties over the content of the HPTP will be resolved in accordance with
17 Stipulation XVIII.
18

19 **IX. PHASED IDENTIFICATION, EVALUATION, AND ASSESSMENT OF EFFECTS** 20 **TO HISTORIC PROPERTIES** 21

22 Once the APE has been amended pursuant to Stipulation VII, the Project Sponsor, in coordination
23 with FRA, will identify and evaluate historic properties that may be affected by the Undertaking
24 within the amended APE. The Project Sponsor, in coordination with FRA, will document these
25 efforts for the amended APE in an addendum to the already finalized Archaeological Inventory
26 Reports and Historic Built Environmental Technical reports for California and Nevada. Methods for
27 identifying historic properties in an amended APE will be consistent with the procedures outlined in
28 the HPTP described in Section VIII of this PA.
29

30 Pursuant to 36 C.F.R. § 800.3(g), the CA SHPO and NV SHPO agree to combine the identification
31 and evaluation of historic properties (36 C.F.R. § 800.4) and assessment of adverse effects (36 C.F.R.
32 § 800.5) within the amended and existing APE.
33

34 **A. Identification of Historic Properties within Amended APE** 35

- 36 1. An inventory of historic properties within the APE, consistent with the *Secretary of the*
37 *Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 Fed.
38 Reg. 44716-44742, Sept. 29, 1983) and 36 C.F.R. § 800.4 will be initiated for the
39 amended APE.
40
- 41 2. The Project Sponsor, in coordination with FRA, will identify and evaluate historic
42 properties consistent with the templates in Attachment 5, to govern the methodology for
43 the identification and evaluation efforts for historic properties within the amended APE
44 and to aid in the development of the Addendum Technical Report(s) for the amended
45 APE.
46
- 47 3. Survey documentation shall include features, isolates, and re-recording of previously
48 recorded sites, as necessary. The survey will ensure that potential historic properties such
49 as historical structures and buildings, historical engineering features, landscapes,

1 viewsheds, and traditional cultural properties (TCPs) with significance to Tribes, are
2 recorded in addition to archeological sites. Recordation of historic structures, buildings,
3 objects, and sites will be in conformance with the applicable state standards as described
4 in Stipulation V. Attachment 3 may be updated with additional historic properties after
5 they are identified within the amended APE and the appropriate SHPO has concurred
6 with their NRHP eligibility. Updates to Attachment 3 would not require amendment of
7 this Agreement.
8

- 9
4. The Project Sponsor will not commence ground disturbing and/or construction activities
10 within any portion of the amended APE prior to completion of Stipulation X, or, if no
11 adverse effects are identified, this Stipulation IX. Other ongoing ground disturbing
12 and/or construction activities for which Section 106 compliance is complete, consistent
13 with this Agreement, may continue.
14

15 B. Identification and Evaluation of Historic Properties within Existing APE

- 16
17 1. Although identification and evaluation of historic properties has occurred within the
18 APE, FRA acknowledges that previously unidentified historic properties, or historic
19 properties (including TCLs) with previously unknown eligibility under the NRHP
20 criteria, or cultural resources that have recently reached the age threshold for
21 consideration for eligibility for listing in the NRHP may be identified within the APE.
22
- 23 2. For those cultural resources or historic properties identified in a location during
24 construction at that location, Stipulation XI.A will be followed. For those cultural
25 resources or historic properties identified in a location prior to the start of construction at
26 that location, FRA will identify and evaluate historic properties that may be affected by
27 the Undertaking through the process identified in this Stipulation IX.
28
- 29 3. For potential historic properties identified under Stipulation XI.A, the Project Sponsor, in
30 coordination with FRA, will conduct an inventory of the potential historic properties
31 within the APE, consistent with the *Secretary of the Interior's Standards and Guidelines*
32 *for Archaeology and Historic Preservation* (48 Fed. Reg. 44716-44742, Sept. 29, 1983)
33 and 36 C.F.R. § 800.4.
34
 - 35 a. To the extent practicable, eligibility determinations will be based on information
36 gathered during previous inventory and identification efforts. If the information
37 gathering during previous inventory and identification efforts is determined by FRA
38 to be adequate to determine site boundaries and NRHP eligibility, the Project
39 Sponsor, in coordination with FRA, will determine NRHP eligibility consistent with
40 Attachment 5.
41
 - 42 b. If the information gathering during previous inventory and identification efforts is
43 determined by FRA to be inadequate to determine site boundaries or NRHP
44 eligibility, the Project Sponsor, in coordination with FRA, will conduct additional
45 identification and evaluation efforts for historic properties within the APE consistent
46 with Attachment 5.
47
- 48 4. For potential historic properties identified under subpart B of this Stipulation, FRA, based
49 on information provided by the Project Sponsor, will make determinations of eligibility

1 in accordance with the NRHP criteria set forth in 36 C.F.R. § 60.4. Attachment 3 may be
2 updated with additional historic properties after they are identified within the existing
3 APE and the appropriate SHPO has concurred with their NRHP eligibility. Updates to
4 Attachment 3 would not require amendment of this Agreement.
5

6 5. The documentation of NRHP eligibility determinations for historic properties identified
7 under subpart B of this stipulation may vary depending on the scale, scope, and nature of
8 the potential historic property identified and evaluated and will be consistent with
9 Stipulation V.
10

11 6. Documentation of NRHP eligibility that is considered confidential will be treated in
12 accordance with Stipulation XIV.
13

14 C. Phased Assessment of Effects

15
16 1. For any historic properties identified under subpart A or B of this stipulation that require
17 an assessment of effects, the Project Sponsor, in coordination with FRA, will assess the
18 effects, including any cumulative effects of the Project on all historic properties identified
19 within the APE by applying the Criteria of Adverse Effect pursuant to 36 C.F.R. § 800.5.
20 This assessment will be provided in one or more FOE reports, which may be incorporated
21 into inventory and/or evaluation reports if enough information is available to make this
22 assessment. FOE reports may vary in content and length and may rely on information
23 from other FOE reports depending on the needs of the assessment for the historic
24 properties identified under subpart A or B of this stipulation. The FOE will assess
25 potential adverse effects to historic properties resulting from the Undertaking and identify
26 mitigation measures that would eliminate or minimize such effects.
27

28 2. The Project Sponsor, in coordination with FRA, will ensure that the draft and final FOE
29 documentation and report(s) produced under this Agreement are subject to the
30 timeframes defined in Stipulation II and otherwise stipulated within this Agreement.
31

32 **X. RESOLUTION OF ADVERSE EFFECTS**

33 Pursuant to 36 C.F.R. § 800.6(a), the Project Sponsor, in coordination with FRA, will continue
34 consultation with the Signatories, Consulting Tribes, and other Consulting Parties for the Undertaking
35 to develop and evaluate alternatives or modifications to the Undertaking that could avoid, minimize,
36 or mitigate adverse effects on historic properties in the APE, if possible. The Project Sponsor, in
37 coordination with FRA, may elect to invite other individuals or organizations with special interests in
38 particular historic properties to become consulting parties for the resolution of adverse effects. The
39 Project Sponsor, in coordination with FRA, will ensure that the views of the public are considered
40 and included when assessing adverse effects to historic properties resulting from the Undertaking.
41 Methods and procedures for resolving adverse effects will follow those identified in Attachment 5
42 described under Stipulation VIII.
43
44

45 **XI. POST-REVIEW DISCOVERIES**

46 A. Unanticipated Discovery or Effect to Cultural Resources
47
48

1 In accordance with 36 C.F.R. § 800.13(a)(2) and Stipulation IX.B.3, if a previously
2 undiscovered archeological or cultural resource that is or could reasonably be a historic
3 property is encountered or a previously known historic property will be affected in an
4 unanticipated manner during construction, as determined by staff who meet the qualifications
5 set forth in Stipulation IV, the Project Sponsor will implement the following procedures.
6 Each step within these procedures will be completed within seven (7) days unless otherwise
7 specified:
8

- 9 1. The Project Sponsor will require the contractor to immediately cease all ground
10 disturbing and/or construction activities within a 50-foot radius buffer zone of the
11 discovery. For any discovered archeological resources, the Project Sponsor will also halt
12 work in surrounding areas where additional subsurface remains are reasonably expected
13 to be present. The Project Sponsor, in coordination with FRA, may seek written SHPO
14 concurrence during notification that a smaller buffer is allowable based on facts in the
15 field specific to the unanticipated discovery. Upon concurrence from the applicable
16 SHPO, the Project Sponsor may reduce the size of the buffer around the discovery and
17 proceed with ground disturbing and/or construction activities outside the buffer.
18
- 19 2. The Project Sponsor will ensure that no excavation, operation of heavy machinery, or
20 stockpiling occurs within the buffer zone. The Project Sponsor will secure the buffer zone
21 through the installation of protective fencing. The Project Sponsor will not resume
22 ground disturbing and/or construction activities within the buffer zone until the specified
23 Section 106 process required by this Agreement is complete. Work in all other Project
24 areas not in the location of the unanticipated discovery or effect to cultural resources may
25 continue.
26
- 27 3. The Project Sponsor will notify FRA within twenty-four (24) hours of any unanticipated
28 discovery or unanticipated effect. FRA will notify the SHPO of the state where the
29 unanticipated discovery occurred, the Signatories, and Consulting Tribes, as well as the
30 BLM, Caltrans, or NDOT if the unanticipated discovery is located on land under either
31 agency's jurisdiction, within twenty-four (24) hours after receiving the notification of any
32 unanticipated discovery or unanticipated effect from the Project Sponsor. The Project
33 Sponsor, in coordination with FRA, will also consider if new Federally-recognized Indian
34 tribes and/or Consulting Parties should be identified and invited to consult regarding
35 unanticipated discoveries or unanticipated effects.
36
- 37 4. Following notification of an unanticipated discovery or effect, the Project Sponsor will
38 investigate the discovery site and evaluate the resource(s) in accordance with Stipulation
39 IX.B.3. The Project Sponsor, in coordination with FRA, will prepare and submit a
40 written document containing a proposed determination of NRHP eligibility for the
41 resource and/or, if relevant, an assessment of the Undertaking's effects on historic
42 properties as well as consideration of measures to avoid adverse effects to historic
43 properties and/or proposed resolution of adverse effects in accordance with the HPTP and

1 Stipulation X. In coordination with FRA, the Project Sponsor will provide that document
2 for review to the applicable SHPO, seeking SHPO concurrence on these determinations,
3 and to Signatories, Consulting Tribes, and Consulting Parties to concurrently review and
4 provide written comments within seven (7) days to FRA and the Project Sponsor. If the
5 unanticipated discovery is located on land under the jurisdiction of the BLM or FHWA,
6 FRA, in coordination with the Project Sponsor, will seek comment from the applicable
7 agency regarding the eligibility and/or effects determination. In the event that the BLM,
8 Caltrans, or NDOT do not respond within the concurrent review period of seven (7) days,
9 FRA may consider nonresponse as nonobjection to the eligibility and/or effects
10 determination and proceed. If the applicable SHPO does not concur with the eligibility
11 and/or effects determination, FRA may elect to assume eligibility and/or adverse effects
12 for expediency.
13

- 14 5. If the unanticipated discovery or effect is determined to be eligible for listing in the
15 NRHP and/or adverse effects cannot be avoided, the Project Sponsor, in coordination
16 with FRA, will implement treatment measures in the HPTP. The Project Sponsor, in
17 consultation with FRA, will ensure construction-related activities within the buffer zone
18 do not proceed until consultation with the Signatories, consulting Tribes, and Consulting
19 Parties, concludes with SHPO concurrence that: 1) the resource is not NRHP-eligible; or
20 2) the agreed upon treatment measures have been implemented; or 3) it has been agreed
21 that the treatment measures provided in the HPTP can be completed within a specified
22 time period after construction-related activities have resumed.
23

24 B. Unanticipated Discovery of Human Remains 25

26 The HPTP will include the Inadvertent Discovery Plan which addresses treatment and
27 disposition of human remains that are inadvertently discovered during Project planning,
28 construction, or operation. The HPTP will also include the Burial Treatment Plan, which
29 outlines the notification and consultation processes required for determining the steps to be
30 taken should Native American human remains be encountered during the Project. The
31 Inadvertent Discovery Plan and Burial Treatment Plan within the HPTP (Attachment 5) may
32 be amended without amending this Agreement. All human remains and potential human
33 remains will be treated with respect and dignity at all times.
34

- 35 1. For Native American human remains, associated funerary objects, and unassociated
36 funerary objects, sacred objects, and/or objects of cultural patrimony inadvertently
37 discovered or intentionally excavated on Federal lands, the Project Sponsor, in
38 coordination with FRA, will follow the procedures outlined in the Native American
39 Graves Protection and Repatriation Act (NAGPRA) 25 U.S.C. 3001-3013 and as
40 specified in the implementing regulations at 43 C.F.R. § 10. A NAGPRA Plan of Action
41 (POA) is a part of the Inadvertent Discovery Plan and Burial Treatment Plan included in
42 the HPTP and will apply to discoveries that occur on Federal lands (Attachment 5).
43 Federal land managing agencies may also elect to follow their respective agency
44 procedures for discoveries occurring on land where they have jurisdiction.

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2. For Native American burials, skeletal remains, and associated grave goods discovered and intentionally excavated on non-Federal land during any activity associated with the Project, the Project Sponsor, in coordination with FRA, will ensure the treatment and disposition of the remains follows the requirements of either Section 1050.5 of the California State Health and Human Safety Code and Section 5097.98 of the California Public Resources Code and will coordinate with the Native American Heritage Commission, as required; or Nevada Revised Statutes (Section 383.160 and Section 383.170), depending on the relevant state where the discovery occurred. The Burial Treatment Plan within the HPTP further outlines this process (Attachment 5).
3. The Project Sponsor, in coordination with FRA, will also ensure ground disturbing and construction-related activities within the location of the unanticipated discovery do not proceed until the Project Sponsor has complied with Section 1050.5 of the California State Health and Human Safety Code and Section 5097.98 of the California Public Resources Code or Nevada Revised Statutes (Section 383.160 and Section 383.170).

XII. CURATION OF ARCHAEOLOGICAL COLLECTIONS

A. Collections from Federal Lands

For Federal lands, through the established permit process, an authorized curation facility or facilities will be named by the land-managing federal agency where the materials and records generated as a result of the Project shall be curated in accordance with 36 C.F.R. § 79. Historic and/or archaeological materials (and associated records) collected on BLM lands shall be curated in a facility approved by the BLM and maintained in accordance with 36 C.F.R. § 79.

B. Collections from State Lands

The Project Sponsor, in coordination with FRA, will ensure that in the event of any non-burial-related materials and associated records resulting from the identification, evaluation, and treatment of historic properties on lands owned or under the jurisdiction of the State of California conducted under this PA are to be curated and they shall be properly maintained in accordance with 36 C.F.R. § 79 and the State of California’s *Guidelines for the Curation of Archaeological Collections* (State Historical Resources Commission, Department of Parks and Recreation 1993). Any resource specific HPTPs developed under Attachment 5 will detail the materials, if any, proposed for curation as part of this project. If items are curated, the Project Sponsor will ensure that documentation of the curation of these materials is prepared and provided to parties named in the HPTP specific to the resolution of effects for that historic property within thirty (30) days.

C. Collections from Private Lands

The Project Sponsor, in coordination with FRA, will ensure that any archaeological materials excavated or otherwise recovered from private lands during implementation of the Project will be handled and maintained in accordance with 36 C.F.R. § 79 until necessary analyses of

1 such materials have been completed as outlined in the HPTP. The Project Sponsor, in
2 coordination with FRA, will encourage private landowners to consent to the curation of
3 archaeological materials recovered from their lands upon the completion of all necessary
4 analyses in a museum or repository that meets the requirements of 36 C.F.R. § 79. If a
5 private landowner does not consent to the curation of archaeological materials as stipulated,
6 the Project Sponsor will return the materials to the landowner(s), document the return, and
7 submit copies of this documentation to the Signatories of this Agreement within thirty (30)
8 days of such return. Landowners who retain archaeological materials will be encouraged to
9 consult with appropriate Native American representatives regarding the treatment of such
10 collections, and the rebury the returned items close to their original location, if possible.

11 12 **XIII. ARCHAEOLOGICAL AND TRIBAL MONITORING AND TRAINING**

13 14 **A. Monitoring**

15
16 The Project Sponsor will ensure archaeological and Tribal monitoring of construction
17 excavations by personnel who meet the requirements in Stipulation IV. Monitoring will
18 conform to the methods described in the HPTP and will take place under the following
19 conditions:

- 20
21 1. At sites identified in the HPTP as moderately to highly sensitive for prehistoric and
22 historical archaeological deposits.
- 23
24 2. When a known historic property has the potential to be affected in an anticipated manner.
- 25
26 3. Following an unanticipated or post-review discoveries (under Stipulation XI)
27 subsequently identified that would warrant monitoring.
- 28
29 4. Unanticipated discoveries resulting from archaeological monitoring will follow the
30 processes outlined in Stipulation XI.

31 32 **B. Training**

33
34 The Project Sponsor shall require that all persons meeting the SOI PQS who are supervising
35 activities conducted as prescribed in this Agreement and all contracted field personnel,
36 including construction workers, attend a standardized training that includes meeting with one
37 or more Consulting Tribes for a briefing on traditional customs and culturally sensitive
38 protocols and procedures before beginning field work. Safety training by the Project
39 Sponsor's contractors in cooperation with the BLM and Caltrans and NDOT shall also be
40 required for all persons conducting work on public land or within the I-15 ROW.

41 42 **XIV. CONFIDENTIALITY**

43
44 All Consulting Parties to this Agreement will ensure that shared data, including data concerning the
45 precise location and nature of archaeological historic properties and properties of religious and
46 cultural significance, are protected from public disclosure to the greatest extent permitted by law,
47 including conformance to Section 304 of the NHPA, as amended (54 U.S.C. § 307103) and
48 implementing regulations under 36 C.F.R. § 800.6(a)(5) and 36 C.F.R. § 800.11(c); Section 9 of
49 ARPA (10 U.S.C. § 470aa-470mm); the Freedom of Information Act; Executive Order No. 13007 on

1 Indian Sacred Sites (FR 61-104), dated May 24, 1996; California Government Code Section 6250-
2 6270, and Nevada State Laws: Preservation and Protection of Historic Sites (NRS 381.195-.227),
3 Protection of Indian Burial Sites (NRS 383.180), Protection of Historic and Prehistoric Sites (NRS
4 383.435), as applicable.

5 6 **XV. ADOPTIBILITY**

7
8 In the event that a Federal agency, not initially a party to or subject to this Agreement, receives an
9 application for financial assistance, permits, licenses, or approvals for the Project as described in this
10 Agreement, such Federal agency may become a signatory to this Agreement as a means of complying
11 with its Section 106 responsibilities for its undertaking. To become a signatory to this Agreement,
12 the agency official must provide written notice to the Signatories that the agency agrees to the terms
13 of the Agreement, specifying the extent of the agency's intent to participate in the Agreement, and
14 identifying the lead Federal agency for the undertaking. The participation of the agency is subject to
15 approval by the Signatories. Upon approval, the agency must execute a signature page to this
16 Agreement, file the signature with the ACHP, and implement the terms of this Agreement, as
17 applicable. Any necessary amendments to the Agreement will be considered in accordance with
18 Stipulation XVII.

19 20 **XVI. ANNUAL REPORTING**

21
22 Once yearly, beginning after the first reporting period from the date of execution of this Agreement
23 until it expires or is terminated, the Project Sponsor will provide all Signatories, Consulting Tribes,
24 and Consulting Parties to this Agreement an Annual Reporting detailing work undertaken pursuant to
25 its terms. The reporting period for the Annual Reporting will be January 1 through December 31 each
26 year, with the first Annual Report to include the partial year from the Agreement execution date to
27 December 31. The Project Sponsor, in coordination with FRA, will submit a draft Annual Report no
28 later than thirty (30) calendar days after the end of the reporting period. Following a thirty (30)
29 calendar day period for review and comment, the Project Sponsor will produce a final Annual Report,
30 considering any comments received, within thirty (30) calendar days. If no comments are received on
31 the draft Annual Report within the thirty (30) calendar day review period, the Project Sponsor, in
32 coordination with FRA, may notify all Consulting Parties to the Agreement, via email or letter, that
33 the Draft Annual Report has become the Final Annual Report. Such report will include any progress
34 on implementation, proposed scheduling changes, any problems encountered, and any disputes or
35 objections received as a result of FRA and the Project Sponsor's efforts to carry out the terms of this
36 Agreement.

37 38 **XVII. AMENDMENTS**

39
40 If any amendment is required or any Signatory to this Agreement requests that it be amended, FRA
41 will notify the Signatories, Consulting Tribes, and Consulting Parties, and consult for no more than
42 thirty (30) calendar days (or another time period agreed upon by all Signatories) to consider such
43 amendment. The amendment will become effective immediately upon execution by all Signatories.

44 45 **XVIII. DISPUTE RESOLUTION**

- 46
47 A. Any Signatory to this Agreement, Consulting Tribe or Consulting Party may object to any
48 proposed action(s) or the manner in which the terms of this Agreement are implemented by
49 submitting its objection to FRA in writing, after which FRA will consult with all Signatories

1 to resolve the objection. If FRA determines such objection cannot be resolved, FRA will,
2 within thirty (30) days of such objection:
3

- 4 1. Forward all documentation relevant to the dispute, including FRA’s proposed resolution,
5 to the ACHP (with a copy to the Signatories). ACHP may provide FRA with its
6 comments on the resolution of the objection within thirty (30) days of receiving
7 documentation.
8
- 9 2. If the ACHP does not provide comment regarding the dispute within thirty (30) days,
10 FRA will make a final decision on the dispute and proceed accordingly.
11
- 12 3. FRA will document this decision in a written response that takes into account any timely
13 comments received regarding the dispute from ACHP and the Signatories and provide the
14 Signatories, Consulting Tribes and Consulting Parties with a copy of the response.
15
- 16 4. FRA will then proceed according to its final decision.
17
- 18 5. The Signatories remain responsible for carrying out all other actions subject to the terms
19 of this Agreement that are not the subject of the dispute.
20

- 21 B. A member of the public may object to the manner in which the terms of this Agreement are
22 being implemented by submitting its objection to FRA in writing. FRA will notify the other
23 Signatories of the objection in writing and take the objection into consideration. FRA will
24 consult with the objecting party, and if FRA determines it appropriate, the other Signatories
25 for not more than thirty (30) days. Within fifteen (15) days after closure of this consultation
26 period, FRA will provide the Signatories, Consulting Tribes, Consulting Parties, and the
27 objecting party with its final decision in writing.
28

29 **XIX. TERMINATION**

- 30
- 31 1. If any Signatory to this Agreement determines that its terms will not or cannot be carried out,
32 that Signatory will immediately consult with the other Signatories to attempt to develop an
33 amendment per Stipulation XVII. If within thirty (30) days an amendment cannot be
34 reached, any Signatory may terminate the Agreement upon written notification to the other
35 Signatories.
36
- 37 2. Once the Agreement is terminated, and prior to work initiating or continuing on the
38 Undertaking, FRA must either: 1) execute a new Agreement pursuant to 36 C.F.R. § 800.6, or
39 2) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. §
40 800.7. FRA will notify the Signatories as to the course of action it will pursue.
41

42 **XX. EFFECTIVE DATE**

- 43
- 44 A. This Agreement will become effective immediately upon execution by all Signatories. In the
45 event another federal agency elects to use this Agreement; the Agreement will be effective on
46 the date that other federal agency completes the process identified in Stipulation XIV of this
47 Agreement.
48

- 1 B. Counterparts. This Agreement may be executed in counterparts, each of which constitutes an
2 original and all of which constitute one and the same Agreement.
3
- 4 C. Electronic Copies. Within one (1) week of the last signature on this Agreement, the Project
5 Sponsor shall provide each Signatory with one high quality, legible, full color, electronic
6 copy of the fully-executed Agreement and all of its attachments fully integrated into one,
7 single document. If the electronic copy is too large to send by e-mail, the Project Sponsor
8 shall provide each Signatory with an electronic copy of the fully executed Agreement as
9 described above via other suitable, electronic means.
10
- 11 D. Principal Contacts. The principal contacts for this Agreement are contained in Attachment 6:
12 Principal Contacts. It is the responsibility of each Signatory, Consulting Tribe, and
13 Consulting Party to immediately inform the other parties in writing of any changes. Contact
14 information may be updated, as needed, without an amendment to this Agreement.
15

16 **XXI. DURATION**

17
18 This Agreement will expire when all treatments measures identified in Stipulation X [and any
19 treatment measures identified pursuant to Stipulation XI] have been completed and the Project
20 Sponsor has completed a final yearly summary report, or in ten (10) years from the effective date,
21 whichever comes first, unless the Signatories extend the duration through an amendment in
22 accordance with Stipulation XVII. The Signatories to this Agreement will consult six (6) months
23 prior to expiration to determine if there is a need to extend or amend this Agreement. Upon
24 completion of the Stipulations set forth above, the Project Sponsor, in coordination with FRA, will
25 provide a letter (with attached documentation) of completion to SHPO, with a copy to the Signatories.
26 If SHPO concurs the Stipulations are complete within thirty (30) days, the Project Sponsor will notify
27 the Signatories, Consulting Tribes, and Consulting Parties in writing and this Agreement will expire,
28 at which time the Signatories will have no further obligations hereunder. If SHPO objects, FRA and
29 the Project Sponsor will consult further with SHPO to resolve the objection. If the objections cannot
30 be resolved through further consultation, FRA will resolve the dispute pursuant to Stipulation XVIII.
31 The Project Sponsor will provide written notification to the Signatories, Consulting Tribes, and
32 Consulting Parties on the final resolution.
33

34 **XXII. EXECUTION AND IMPLEMENTATION**

35
36 Execution of this Agreement by the Signatories demonstrates that FRA has taken into account the
37 effect of the Undertaking on historic properties, has afforded the ACHP an opportunity to comment,
38 and FRA has satisfied its responsibilities under Section 106 of the NHPA and its implementing
39 regulations.
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**DRAFT PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE FEDERAL HIGHWAY ADMINISTRATION,
THE SURFACE TRANSPORTATION BOARD,
THE U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT, THE U.S.
ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT, THE CALIFORNIA STATE
HISTORIC PRESERVATION OFFICER,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND DESERTXPRESS ENTERPRISES, LLC
REGARDING
THE
BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT IN BAKER, YERMO,
AND BARSTOW IN
SAN BERNARDINO COUNTY, CALIFORNIA AND LAS VEGAS AND PRIMM IN CLARK
COUNTY, NEVADA**

SIGNATORY:

FEDERAL RAILROAD ADMINISTRATION

By: _____ Date: _____
[Name
Federal Preservation Officer

Or
Marlys Osterhues
Division Chief]

1 **DRAFT PROGRAMMATIC AGREEMENT**
2 **AMONG**
3 **THE FEDERAL RAILROAD ADMINISTRATION,**
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6 **THE U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT, THE U.S.**
7 **ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT, THE CALIFORNIA STATE**
8 **HISTORIC PRESERVATION OFFICER,**
9 **THE NEVADA STATE HISTORIC PRESERVATION OFFICER,**
10 **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,**
11 **AND DESERTXPRESS ENTERPRISES, LLC**
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13 **THE**
14 **BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT IN BAKER, YERMO,**
15 **AND BARSTOW IN**
16 **SAN BERNARDINO COUNTY, CALIFORNIA AND LAS VEGAS AND PRIMM IN CLARK**
17 **COUNTY, NEVADA**

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20 SIGNATORY:

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22 CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

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24
25 By: _____ Date: _____
26 Julianne Polanco
27 State Historic Preservation Officer

1 **DRAFT PROGRAMMATIC AGREEMENT**
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4 **THE FEDERAL HIGHWAY ADMINISTRATION,**
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7 **ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT, THE CALIFORNIA STATE**
8 **HISTORIC PRESERVATION OFFICER,**
9 **THE NEVADA STATE HISTORIC PRESERVATION OFFICER,**
10 **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,**
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16 **SAN BERNARDINO COUNTY, CALIFORNIA AND LAS VEGAS AND PRIMM IN CLARK**
17 **COUNTY, NEVADA**
18

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20 SIGNATORY:

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22 NEVADA STATE HISTORIC PRESERVATION OFFICER

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25 By: _____ Date: _____
26 Rebecca Lynn Palmer
27 State Historic Preservation Officer

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16 **SAN BERNARDINO COUNTY, CALIFORNIA AND LAS VEGAS AND PRIMM IN CLARK**
17 **COUNTY, NEVADA**

19
20 SIGNATORY:

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22 ADVISORY COUNCIL ON HISTORIC PRESERVATION

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25 By: _____ Date: _____
26 **[Name, Title]**

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COUNTY, NEVADA**

INVITED SIGNATORY:

DESERTXPRESS ENTERPRISES, LLC

By: _____ Date: _____
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COUNTY, NEVADA**

INVITED SIGNATORY:

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____
[Name/Title]

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SAN BERNARDINO COUNTY, CALIFORNIA AND LAS VEGAS AND PRIMM IN CLARK
COUNTY, NEVADA**

INVITED SIGNATORY:

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____
[Name/Title]

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INVITED SIGNATORY:

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

By: _____ Date: _____
[Name/Title]

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COUNTY, NEVADA**

INVITED SIGNATORY:

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: _____ Date: _____
[Name/Title]

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COUNTY, NEVADA**

CONCURRING:

NAME/ORGANIZATION

By: _____ Date: _____
[Name, Title]

1 **ATTACHMENT 1 – AREA OF POTENTIAL EFFECTS & PROJECT DESCRIPTION**
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ATTACHMENT 2 – SECTION 106 CONSULTATION DOCUMENTATION

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1 **ATTACHMENT 3 – HISTORIC PROPERTIES IN THE APE**

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1 **ATTACHMENT 4 – LIST OF INVITED SECTION 106 CONSULTING PARTIES**
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2 **ATTACHMENT 5 – HISTORIC PROPERTIES TREATMENT PLAN**

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1 **ATTACHMENT 6 – PRINCIPAL CONTACTS**

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