

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING THE  
BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

**WHEREAS**, the DesertXpress Enterprises, LLC (Project Sponsor) is proposing to construct and operate the Brightline West – Las Vegas to Victor Valley Project (Project), a high-speed passenger train line along an approximately 170-mile corridor connecting Victorville, California, to Las Vegas, Nevada; and

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

**WHEREAS**, the Project was initially proposed by DesertXpress Enterprises, LLC as the DesertXpress High-Speed Passenger Train Project and later as the XpressWest Project. DesertXpress Enterprises, LCC, which is the Project Sponsor, also previously did business as XpressWest and Brightline West; and

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

**WHEREAS**, FRA's actions for the Project would be considered an Undertaking under Section 106 of the National Historic Preservation Act of 1966 (54 United States Code (U.S.C.) § 306108) (NHPA), as amended, and its implementing regulations at 36 Code of Federal Regulations (CFR) § 800 (hereinafter collectively referred to as Section 106); and

**WHEREAS**, under the Federal-aid Highway Program (23 U.S.C. Chapter 1) the Federal Highway Administration (FHWA) provides concurrence for Highway Right-of-Way (ROW) Occupancy and/or Disposals, Access Justification Reports or Access Modification Reports, and/or concurrence on project design elements related to highway operations; and the Project will require the non-highway use of I-15, which will require approval from FHWA, in accordance with 23 U.S.C. § 111, 23 CFR § 710, Subpart D, and 23 CFR § 1.23, whose approval area is wholly contained within the APE for the Project and the issuance of such concurrence and approval(s) by the FHWA constitutes an Undertaking as defined in Section 106, requiring Section 106 compliance. FHWA is a Consulting Party for the Project and designated FRA as the lead Federal agency for purposes of Section 106 in an email dated February 27, 2019 (FHWA-Nevada Division) and in an email dated March 29, 2019 (FHWA-California Division); and

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

**WHEREAS**, the Bureau of Land Management (BLM) is responsible for managing a portion of the ROW; and the Project will require the temporary and permanent use of public land managed by BLM, which is wholly contained within the APE for the Project, and will require an amended right-of-way grant and the issuance of such grant(s) or permissions by the BLM constitutes an Undertaking as defined in Section 106, requiring Section 106 compliance. The BLM is a Consulting Party for the Project and designated FRA as the lead Federal agency for purposes of Section 106 in letters dated May 2, 2023 (BLM-Barstow Field Office, BLM-Needles Field Office, and BLM-Las Vegas Field Office); and

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

**WHEREAS**, these actions by FHWA, STB, BLM, and USACE (each a Federal Agency and together the Federal Agencies) are each an Undertaking (collectively, the Undertaking) subject to Section 106 of the NHPA (Section 106), 54 U.S.C. § 306108, and its implementing regulations, 36 CFR § 800; and

**WHEREAS**, pursuant to 36 CFR § 800.2(c)(4), FRA coordinated with the Project Sponsor to initiate consultation and prepare any necessary analyses, documentation, and recommendations on its behalf, but FRA remains legally responsible for all findings and determinations, including determinations of NRHP eligibility and findings of effects of the Project; and

**WHEREAS**, the Project Sponsor is responsible for constructing and operating the Project and has participated in the Section 106 process for the Undertaking and is recognized as a Consulting Party for the Project; and

**WHEREAS**, the California Department of Transportation (Caltrans) and the Nevada Department of Transportation (NDOT) manage land on which the Project will be constructed and operate and have participated in the Section 106 process for the Undertaking and are recognized as Consulting Parties for the Project; and

**WHEREAS**, the National Park Service (NPS), as a bureau of the Department of the Interior, is responsible for managing national parks, most national monuments, and other natural, historical, and recreational properties within the Project area, including the Mojave National Preserve and

the Old Spanish Trail, and has participated in the Section 106 process for the Undertaking and is recognized as a Consulting Party for the Project; and

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

**WHEREAS**, a Programmatic Agreement developed in consultation with Federally recognized Indian tribes and other Consulting Parties was executed on February 15, 2011 (2011 Agreement), among FRA, FHWA, STB, BLM, NPS, the California State Historic Preservation Officer (CA SHPO), the Nevada State Historic Preservation Officer (NV SHPO), and DesertXpress Enterprises, LLC regarding the Project; and

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

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

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

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

**WHEREAS**, since the APE consists of a 170-mile corridor covering two states and additional identification, evaluation, and assessment of effects are anticipated as the Project design is refined, FRA, in consultation with the CA SHPO and the NV SHPO, has determined an approach for compliance with Section 106 of the NHPA, as described in 36 CFR §§ 800.4(b)(2) and 800.5(a)(3), is necessary for the Undertaking; and

**WHEREAS**, since the Project is a complex Undertaking that requires establishing a process for avoiding, minimizing, and/or mitigating adverse effects pursuant to 36 CFR § 800.6; and

**WHEREAS**, a Programmatic Agreement (Agreement) for the Undertaking pursuant to 36 CFR § 800.14(b)(3) was determined appropriate and necessary by FRA, in consultation with

the CA SHPO and the NV SHPO and Consulting Parties, to govern the implementation of the Project; and

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

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

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

**WHEREAS**, the United States government has a unique legal relationship with Federally recognized Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. The Federal government recognizes the right of self-determination for Indian tribal governments, the Federal trust responsibility, and the obligation to work with Indian tribal governments in a government-to-government relationship. FRA has a responsibility and is committed to working with Indian tribal governments in this unique relationship, respecting tribal sovereignty, the trust relationship, and self-determination; and

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

**WHEREAS**, pursuant to 36 CFR § 800(3)(f)(2), in letters dated August 15, 2019, FRA invited the following non-Federally recognized Indian tribes and other groups to participate in the Section 106 process and be Consulting Parties: Baker Community Services District, City of Barstow Community Development, California Historical District, California State Railroad

Museum, California Route 66 Preservation Foundation, Chinese American Museum, Clark County Commission, the Center for Land Use Interpretation, California Preservation Foundation, Friends of Nevada Wilderness, City of Las Vegas Community Development, Las Vegas Railroad Society, Mojave River Valley Museum, National Historic Route 66 Federation, Nevada Archaeological Association, Nevada Historical Society, Nevada State Museum & Historical Society, Nevada State Railroad Museum, Old Spanish Trail Association, Pacific Railroad Society, Preservation Association of Clark County, Preserve Nevada, San Bernardino Railroad Historical Society, Sierra Club San Geronimo Chapter, Sierra Club Toiyabe Chapter, Southern Pacific Historical & Technical Society, City of Victorville Development Department, Kern Valley Indian Community, Pahrump Paiute Tribe, San Fernando Band of Mission Indians, Serrano Nation of Mission Indians, Tubatulabals of Kern County, and these non-Federally recognized tribes or potentially interested parties either declined to participate in the Section 106 process for this Undertaking or did not respond; and

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

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

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

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

**WHEREAS**, pursuant to 36 CFR § 800.4 and in consultation with the CA SHPO, the NV SHPO, Consulting Tribes, and other Consulting Parties, FRA conducted efforts to identify historic properties within the APE, the methods for which included archival records searches,

pedestrian survey, subsurface archaeological survey, and consultation with Consulting Parties and Consulting Tribes to identify and evaluate effects to historic properties from the Project. To address concerns from Consulting Parties and Consulting Tribes regarding the sensitivity for subsurface cultural resources within the APE, in letters dated August 20, 2021, and follow up consultation via a CRWG meeting on August 26, 2021, FRA developed a Subsurface Archaeological Survey and Work Plan to assess presence and absence of cultural materials outside of the known boundaries of cultural resources sites. In consideration of all comments received, a Final Work Plan and Subsurface Archaeological Survey was distributed by FRA in a letter dated October 2, 2021. Further identification efforts included the development of Archaeological Inventory reports and Historic Built Environment Technical reports for California and Nevada transmitted to CA SHPO, NV SHPO, Consulting Tribes, and other Consulting Parties on November 5, 2021. As a result of a follow up consultation via CRWG meetings on November 16 and 18, 2021, and in consideration of all comments received, revised Archaeological Inventory reports and Historic Built Environmental Technical reports for California and Nevada were distributed by FRA in a letter dated March 18, 2022; and

**WHEREAS**, pursuant to 36 CFR § 800.4, FRA identified a total of 197 historic properties that are listed in, eligible for listing in, or for the purposes of the Undertaking only assumed eligible for listing in the National Register of Historic Places (NRHP) in the APE (Attachment 3: Historic Properties in the APE). Cultural resources assumed eligible for the purposes of the Undertaking only remain formally unevaluated. The CA SHPO concurred with the formal NRHP eligibility determinations for the built environment historic properties in California in a letter dated February 3, 2022, and the NV SHPO concurred with the formal NRHP eligibility determinations for the built environment historic properties in Nevada in a letter dated December 6, 2021 (Attachment 2). The CA SHPO concurred with the formal NRHP eligibility determinations for some of the archaeological historic properties in California in a letter dated December 20, 2022 and did not object to the formal NRHP eligibility determinations for the remaining archaeological properties in California in a letter dated February 14, 2023, and the NV SHPO concurred with and did not object to the formal NRHP eligibility determinations for the archaeological historic properties in Nevada in letters dated August 22, 2022 and November 21, 2022 (Attachment 2); and

**WHEREAS**, pursuant to 36 CFR § 800.5 and in consultation with the CA SHPO, the NV SHPO, Consulting Tribes, and other Consulting Parties, FRA determined that the Project will have no adverse effects on any built environment historic properties and adverse effects on four archaeological districts (Sidewinder Quarry, Mojave River Lithic Landscape, Soapmine Road, Cronese Lake), 14 archaeological sites within those districts (P-36-000562, P-36-002283, P-36-008321, P-36-006950, P-36-003485, P-36-002129, P-36-000223, P-36-003694, ICF-XW1-010, ICF-XW2-017, ICF-BV-001, ICF-XW1-004, P-36-008923, P-36-4198), and five individually eligible archaeological sites (P-36-000541, P-36-000885, P-36-006023, XPW21-SW-015, ICF-XW2-007) in California, and to three of the archaeological sites (26CK7189, 26CK11252, 26CK5760) in Nevada within the APE, and that the Project would have no effects or no adverse effects on the remaining archaeological district and individually eligible archaeological historic properties in the APE in California and individually eligible archaeological historic properties in the APE in Nevada (Attachment 3). The Historic Built Environment Finding of Effect reports and Archaeological Resources Finding of Eligibility and Effect

reports for California and Nevada were transmitted to CA SHPO, NV SHPO, Consulting Tribes, and other Consulting Parties on May 27, 2022. As a result of a follow up consultation via CRWG meetings on June 15, 2022, meetings with Consulting Tribes, and in consideration of all comments received, revised Historic Built Environment Finding of Effect reports and Archaeological Resources Finding of Eligibility and Effect reports for California and Nevada were distributed by FRA in a letter dated October 26, 2022. The CA SHPO did not object to the finding of adverse effect for the Project in California in a letter dated February 14, 2023, and the NV SHPO concurred with the finding of adverse effect for the Project in Nevada in a letter dated November 21, 2022 (Attachment 2); and

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

**WHEREAS**, pursuant to 36 CFR § 800.6(c)(1), FRA, CA SHPO, NV SHPO, and the ACHP are Signatories to the Agreement; and

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

**WHEREAS**, pursuant to 36 CFR § 800.6(c)(2)(iii), STB, FHWA, BLM, and USACE have participated in consultation and as Federal Agencies with their own undertakings associated with this Project are responsible for fulfilling their responsibilities under Section 106, intend to use this Agreement to fulfill their Section 106 compliance responsibilities, and been invited to sign this Agreement as Invited Signatories; and

**WHEREAS**, pursuant to 36 CFR § 800.6(c)(2)(iii), Caltrans and NDOT have participated in consultation and due to their respective roles managing land where the Project will be constructed and operate, been invited to sign this Agreement as Invited Signatories; and

**WHEREAS**, pursuant to 36 CFR § 800.6(c), FRA has consulted with the Consulting Tribes concerning properties of traditional, religious, and cultural significance and has invited these Consulting Tribes to sign this Agreement as Concurring Parties; and

**WHEREAS**, pursuant to 36 CFR § 800.6(c)(3), the other Consulting Parties have participated in consultation and been invited to sign this Agreement as Concurring Parties; and

**WHEREAS**, FRA sought and considered the views of the Signatories, Invited Signatories, Consulting Tribes and Consulting Parties regarding the Draft Agreement by transmitting the Draft Agreement to the Signatories, Invited Signatories, Consulting Tribes and Consulting Parties for review for more than thirty (30) calendar days between December 15, 2022, and

January 20, 2023. FRA also held two meetings of the CRWG on January 4, 2023, and January 11, 2023, to provide an overview of the Draft Agreement and to answer questions from Signatories, Invited Signatories, Consulting Tribes and Consulting Parties. FRA received comments from Signatories, Invited Signatories, Consulting Tribes and Consulting Parties during the comment period, considered and responded to all comments received, and revised the Draft Agreement. A revised Draft Agreement and documentation of comments and responses was transmitted to the Signatories, Invited Signatories, Consulting Tribes and Consulting Parties for twenty (20) calendar days between May 5, 2023 and May 25, 2023. FRA received comments from Signatories, Invited Signatories, and a Consulting Tribe on the revised Draft Agreement during and after the comment period, considered and responded to all comments received, and further revised the Draft Agreement. A revised Draft Agreement and documentation of comments and responses was transmitted to the Signatories, Invited Signatories, Consulting Tribes and Consulting Parties for fifteen (15) calendar days between July 10, 2023, and July 24, 2023. FRA received comments from Signatories, Invited Signatories, and a Consulting Tribe on the revised Draft Agreement, considered and responded to all comments received and revised the Draft Agreement to the Final Agreement; and

**WHEREAS**, in addition to earlier public outreach efforts, FRA sought and considered the views of the public regarding Section 106 compliance for this Project by making the Draft Agreement available to the public for review and comment by posting it on [www.regulations.gov](http://www.regulations.gov) for more than thirty (30) calendar days between December 16, 2022, and January 20, 2023. FRA also made the Draft Agreement available on their website and issued notices of the public comment period in the *Las Vegas Review-Journal* and *Victorville Daily Press* on December 16, 2022. FRA did not receive any comments during the comment period from these public outreach efforts; and

**WHEREAS**, the definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this Agreement; and

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

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

### **STIPULATIONS**

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

## **I. TIMEFRAMES AND COMMUNICATIONS**

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

- A. This Stipulation applies to all documents required of this Agreement that are submitted to the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties for review and comment.
- B. All time designations are in calendar days unless otherwise stipulated as business days. If a review period ends on a Saturday, Sunday, or Federal holiday, the review period will be extended until the next business day.
- C. All review periods are concurrent and thirty (30) calendar days, starting on the day the documents are provided by FRA and/or the Project Sponsor to the reviewing parties electronically, or the day the documents are received by hard copy, if previously requested, which constitutes notification.
- D. Pursuant to 36 CFR § 800.3(g) and where FRA and the CA SHPO and/or NV SHPO (depending on if the document for review is within California or Nevada or is in both states) agree it is appropriate, FRA may address multiple steps in §§ 800.4 through 800.6 through the submission of documentation to Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties. A combined submission will be identified as combined and subject to the timeframes and communications within this stipulation.
- E. All notifications, comments, requests for further information, documentation, and other communications required by this Agreement will be sent in writing by e-mail or other electronic means, with larger documents uploaded to a SharePoint website for access or in hard copy if previously requested.
- F. Initial Review
  - 1. The Project Sponsor will provide initial draft documentation to FRA for review and approval. FRA will review the initial draft documentation within fifteen (15) calendar days and submit initial documentation to the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties for a thirty (30) calendar days initial review period.
  - 2. At the end of the initial review period FRA will provide notification that the initial review period has closed.
  - 3. The Project Sponsor will forward a written summary of all comments received from Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties to FRA immediately at the end of the thirty (30) day initial review period. Upon receipt, FRA will provide the written summary of all comments received to the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties.

4. FRA, in consultation with the Project Sponsor, will ensure that any written comments received within the review timeframe are considered and incorporated as appropriate, as determined by FRA, into the documentation. Comments will be considered, and documentation will be prepared by personnel meeting the requirements of Stipulation III. At FRA's discretion, FRA may consider comments received after the close of the comment period.
5. The Project Sponsor, in coordination with FRA, will work expeditiously to consider and resolve comments. The Project Sponsor and FRA may consult with Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties to resolve such comments. FRA, based on information provided by the Project Sponsor, will inform the Signatories, Consulting Tribes, and other Consulting Parties of the resolution of comments in writing. If the documentation is revised in response to comments, FRA will follow the process in Stipulation I.G.
6. If no Signatories, Invited Signatories, Consulting Tribes, or other Consulting Parties provide written comments within the initial review period, FRA may proceed to the next step of the process under Stipulation I.G. without taking additional steps to seek comments from any party. In the absence of comments from the CA SHPO or the NV SHPO, FRA will proceed to the next step in the process, consistent with 36 CFR § 800.3(c)(4).

#### G. Revised Review

1. The Project Sponsor will provide revised documentation to FRA for review and approval. FRA will review the revised documentation within fifteen (15) calendar days and submit the revised documentation to the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties for a revised review period of a total of thirty (30) calendar days, following the Initial Review period of thirty (30) calendar days specified under Stipulation I.F. Revised documentation will include documentation of the resolution of comments in the form of comment matrixes indicating comments received and how they were considered, as well as track changes and clean version Microsoft Word formatted versions as well as an Adobe PDF version of the revised documentation.
2. The Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties will provide any comments on the revised documentation within the first fifteen (15) calendar days from FRA's submission of revised documentation for the revised review period.
3. If no comments are received after the first fifteen (15) calendar days of the revised review period have lapsed, FRA will notify the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties that the revised documentation is considered final.
4. If comments are received within the first fifteen (15) calendar days of the revised review period, FRA will notify the Signatories, Invited Signatories, Consulting Tribes,

and Consulting Parties. FRA will then consider the comments and determine if further revision to documentation is required.

- a. If FRA determines further revision is required, the revised documentation will be provided following the process in Stipulation I.G.
  - b. If FRA determines further revision is not required, FRA will document this determination and notify the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties that the documentation is considered final.
5. Signatories and Invited Signatories will have the remaining fifteen (15) calendar days of the thirty (30) calendar day revised review period, after notification that documentation is final, to review and provide a response to a request for review of a finding or determination (e.g., concurrence/non-concurrence or objection/non-objection).
- H. If the CA SHPO or the NV SHPO do not provide written comments within the thirty (30) day concurrent review period or otherwise specified review period agreed to by the Signatories, FRA may proceed to the next step in the process, consistent with 36 CFR § 800.3(c)(4) without taking additional steps to seek comments from the CA SHPO or the NV SHPO and will provide notification when proceeding to the next step in the process. In the absence of comments from the CA SHPO or the NV SHPO, FRA may consider that the final document is complete and the FRA's responsibilities under Section 106 are fulfilled for that finding or determination.
- I. If comments cannot be resolved through further consultation, FRA will resolve disputes through the process outlined in Stipulation XVII. For NRHP eligibility disputes, if they cannot be resolved through the process outlined in Stipulation XVII, FRA will seek formal Determination of Eligibility from the Keeper of the NRHP (Keeper), pursuant to 36 CFR part 63. The Keeper's determination will be considered final.
- J. Signatories, Invited Signatories Consulting Tribes, and other Consulting Parties may request a meeting at any time to discuss comments on the documentation.

## **II. ROLES AND RESPONSIBILITIES**

- A. Signatories: Signatories have the authority to execute, amend, and/or terminate this Agreement.
1. FRA
    - a. Pursuant to 36 CFR § 800.2(a)(2), FRA has the primary responsibility to ensure the provisions of this Agreement are carried out.
    - b. FRA remains legally responsible for all findings and determinations, including determinations of NRHP eligibility, assessment of effects of the Project on historic properties, and resolution of adverse effects, as well as resolution of objections or disputes.

- c. FRA is responsible for all government-to-government consultation with Federally recognized Native American tribes.
  - d. FRA is responsible for consulting with appropriate Consulting Tribes and Consulting Parties as required by 36 CFR § 800.
  - e. Subject to requirements referenced under Stipulation XIII, FRA is responsible for communicating comments or concerns regarding the Undertaking expressed by Consulting Tribes or Consulting Parties to the Signatories, Invited Signatories, Consulting Tribes and Consulting Parties.
  - f. FRA has authority to execute, request to amend, and/or terminate this Agreement.
2. CA SHPO and NV SHPO
- a. The CA SHPO and the NV SHPO have consultive roles in the Section 106 process for reviewing project submittals and will participate in consultation according to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement to fulfill their Section 106 role to advise and assist Federal agencies in carrying out their Section 106 responsibilities.
  - b. The CA SHPO and the NV SHPO have authority to execute, request to amend, and/or terminate this Agreement.
3. ACHP
- a. The ACHP is responsible for reviewing project submittals and will participate in consultation according to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement.
  - b. The ACHP consults with and comments to agency officials on individual undertakings and programs that affect historic properties.
  - c. The ACHP will be responsible for providing technical guidance and participating in dispute resolution upon request pursuant to Stipulation XVII.
  - d. The ACHP has authority to execute, request to amend, and/or terminate this Agreement.
- B. Invited Signatories: Pursuant to 36 CFR § 800.6(c)(2), Invited Signatories are invited to sign this Agreement. However, the refusal of any Invited Signatory to sign does not invalidate or affect the effective date of this Agreement. Invited Signatories who choose not to sign this Agreement as an Invited Signatory will be regarded as a Consulting Party and will continue to receive and have an opportunity to review and comment upon documents like Consulting Parties, pursuant to the Agreement once executed. Invited Signatories have the authority to amend and/or terminate this Agreement.
1. Project Sponsor
- a. Pursuant to the FRA authorization granted under 36 CFR § 800.2(c)(4), the Project Sponsor, in coordination with FRA, will conduct investigations, mitigation, and produce analyses, documentation and recommendations in a

timely manner to address effects to historic properties within the APE according to the Historic Properties Treatment Plan (Stipulation VII).

- b. The Project Sponsor is responsible for continued compliance with all commitments outlined in this Agreement and will comply, either directly or through consultants, with applicable conditions of the Agreement until such time as the terms of this Agreement are complete or this Agreement is terminated or expires.
  - c. The Project Sponsor is responsible for the funding and completion of measures to resolve adverse effects agreed upon in writing among the Signatories during Section 106 consultation following the processes described in this Agreement.
  - d. The Project Sponsor is responsible for notifying FRA of any comments or concerns regarding the Undertaking expressed by Consulting Tribes or Consulting Parties. The Project Sponsor is not responsible for government-to-government consultation with Federally recognized Native American tribes.
  - e. The Project Sponsor is responsible for requiring their consultants who meet the standards under Stipulation III, to obtain Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. § 470aa et seq.) permits for any archaeological investigations on federally owned or administered lands and for obtaining any other relevant permits necessary to adhere to the terms of this Agreement.
  - f. In the event of an activity subject to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001 et seq; 43 CFR § 10), the Project Sponsor is responsible for coordinating with any federal land managing agency as detailed in Stipulation X.B.2.
  - g. The Project Sponsor has authority to request to amend and/or terminate this Agreement.
2. STB
- a. STB is responsible for reviewing project submittals and will participate in consultation according to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement.
  - b. STB is responsible for notifying FRA of any comments or concerns regarding the Undertaking expressed by Consulting Tribes or Consulting Parties.
  - c. STB is responsible for maintaining an administrative record of actions related to the Agreement and Section 106 compliance for the Undertaking specific to their agency.
  - d. STB is responsible for a decision for the Project Sponsor to be able to proceed to construct and operate the Project for the STB Undertaking.

- e. STB has authority to request to amend and/or terminate this Agreement.
3. FHWA
- a. FHWA is responsible for reviewing project submittals and will participate in consultation according to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement.
  - b. FHWA is responsible for notifying FRA of any comments or concerns regarding the Undertaking expressed by Consulting Tribes or Consulting Parties.
  - c. FHWA is responsible for maintaining an administrative record of actions related to the Agreement and Section 106 compliance for the Undertaking specific to their agency.
  - d. FHWA is responsible for providing concurrence and approval(s) for the Project for their Undertaking.
  - e. FHWA has authority to request to amend and/or terminate this Agreement.
4. BLM
- a. BLM is responsible for reviewing project submittals and will participate in consultation according to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement.
  - b. BLM is responsible for notifying FRA of any comments or concerns regarding the Undertaking expressed by Consulting Tribes or Consulting Parties.
  - c. BLM is responsible for maintaining an administrative record of actions related to the Agreement and Section 106 compliance for the Undertaking specific to their agency.
  - d. BLM is responsible for an amended right-of-way grant and issuing grant(s) or permissions for the Project for their Undertaking.
  - e. As a land manager, BLM is responsible for processing ARPA permits, as well as permits for archaeological investigations under the authority of ARPA and the Antiquities Act of 1906, as identified for each stage of the Project, or for site(s) identified as requiring an ARPA permit on BLM managed land.
  - f. BLM is responsible for enforcing the applicable provisions of ARPA, including but not limited to the timely issuance of permits for archaeological investigations and investigation of any damages resulting from prohibited activities within their jurisdictional areas even if they have designated FRA as the lead Federal Agency for Section 106.
  - g. BLM is responsible for coordinating BLM's compliance with NAGPRA.

- h. BLM is responsible for ensuring any non-NAGPRA related Project collections and associated records under BLM ownership and control are maintained in accordance with 36 CFR § 79.
  - i. BLM has authority to request to amend and/or terminate this Agreement.
- 5. USACE
  - a. USACE is responsible for reviewing project submittals and will participate in consultation according to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement.
  - b. USACE is responsible for notifying FRA of any comments or concerns regarding the Undertaking expressed by Consulting Tribes or Consulting Parties.
  - c. USACE is responsible for maintaining an administrative record of actions related to the Agreement and Section 106 compliance for the Undertaking specific to their agency.
  - d. USACE is responsible for issuing permit(s) or permissions to the Project Sponsor for the construction of the Project for their Undertaking.
  - e. USACE has authority to request to amend and/or terminate this Agreement.
- 6. Caltrans
  - a. Caltrans is responsible for reviewing project submittals and will participate in consultation according to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement.
  - b. Caltrans is responsible for notifying FRA of any comments or concerns regarding the Undertaking expressed by Consulting Tribes or Consulting Parties.
  - c. Caltrans is responsible for maintaining an administrative record of actions related to the Agreement and Section 106 compliance for the Undertaking specific to their agency.
  - d. Caltrans is responsible for issuing permit(s) or permissions to the Project Sponsor for the construction and operation of the Project for their Undertaking within Caltrans ROW and may use the Section 106 submittals as the basis for Caltrans' compliance purposes.
  - e. Caltrans has authority to request to amend, and/or terminate this Agreement.
- 7. NDOT

- a. NDOT is responsible for reviewing project submittals and will participate in consultation according to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement.
- b. NDOT is responsible for notifying FRA of any comments or concerns regarding the Undertaking expressed by Consulting Tribes or Consulting Parties.
- c. NDOT is responsible for maintaining an administrative record of actions related to the Agreement and Section 106 compliance for the Undertaking specific to their agency.
- d. NDOT is responsible for issuing permit(s) or permissions to the Project Sponsor for the construction and operation of the Project for their Undertaking.
- e. NDOT has authority to request to amend, and/or terminate this Agreement.

#### C. Other Federal Agencies

1. Federal agencies that have some involvement in the Project which requires compliance with Section 106 and that do not designate FRA as the lead Federal agency remain individually responsible for their compliance with Section 106.
2. If other Federal agencies are identified during the implementation of this Agreement and wish to adopt the terms herein, they can follow the steps outlined in Stipulation XIV.

#### D. Consulting Tribes

1. Consulting Tribes include those individuals or entities identified in Attachment 4 (List of Invited Section 106 Consulting Parties) that have a demonstrated interest in the Project due to the nature of their legal or economic relation to the Project or affected properties, or their concern with the Project's effects on historic properties or within their ancestral territory; or have been identified as a result of Federal trust obligations to Federally recognized Indian tribes.
2. Consulting Tribes, as previously described and in Attachment 4, have been provided the opportunity to actively participate in the development of this Agreement and will assist in the resolution of adverse effects pursuant to this Agreement.
3. If a Consulting Tribe does not provide written comments within the timeframes defined in Stipulation I and otherwise stipulated within this Agreement, FRA will inform Consulting Tribes that the comment period has closed and any comments received are being considered and that FRA is proceeding to the next step in the review process without taking additional steps to seek comments from such party.
4. Pursuant to 36 CFR § 800.6(c)(3), Consulting Tribes are invited to sign this Agreement as Concurring parties. However, the refusal of any Consulting Tribe to concur does not invalidate or affect the effective date of this Agreement. Consulting

Tribes who choose not to sign this Agreement as a Concurring party will continue to receive and have an opportunity to review and comment upon documents pursuant to the Agreement once executed.

5. If other Consulting Tribes are identified during the implementation of this Agreement and wish to adopt the terms herein, they can follow the steps outlined in Stipulation XIV.

#### E. Consulting Parties

1. Consulting Parties include those individuals or entities identified in Attachment 4 that have a demonstrated interest in the Project due to the nature of their legal or economic relation to the Project or affected properties, or their concern with the Project's effects on historic properties.
2. Consulting Parties, as previously described and listed in Attachment 4, have been provided the opportunity to actively participate in the development of this Agreement and will assist in the resolution of adverse effects pursuant to this Agreement.
3. If a Consulting Party does not provide written comments within the timeframes defined in Stipulation I and otherwise stipulated within this Agreement, FRA will inform Consulting Parties that the comment period has closed, and any comments received are being considered and that FRA is proceeding to the next step in the review process without taking additional steps to seek comments from such party.
4. Pursuant to 36 CFR § 800.6(c)(3), Consulting Parties are invited to sign this Agreement as Concurring Parties. However, the refusal of any Consulting Party to concur does not invalidate or affect the effective date of this Agreement. Consulting Parties who choose not to sign this Agreement as a Concurring Party will continue to receive and have an opportunity to review and comment upon documents pursuant to the Agreement once executed.
5. If other Consulting Parties are identified during the implementation of this Agreement and wish to adopt the terms herein, they can follow the steps outlined in Stipulation XIV.

### III. PROFESSIONAL QUALIFICATIONS STANDARDS

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

#### **IV. DOCUMENTATION STANDARDS**

Unless an alternate documentation standard is specified, FRA will ensure that all studies, reports, plans, and other documentation prepared pursuant to this Agreement will be consistent with pertinent standards and guidelines outlined in *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 Fed. Reg. 44716-44742, Sept. 29, 1983), 36 CFR §§§ 800.4, 800.5 and 800.11, and 36 CFR Part 63. In addition, documentation will follow applicable guidance issued by the ACHP; guidelines and instructions for documenting cultural resources sites and cultural resources reporting in California (found at [https://ohp.parks.ca.gov/?page\\_id=1069](https://ohp.parks.ca.gov/?page_id=1069) at the time of execution of this Agreement); and forms and instructions for documenting cultural resources in Nevada (found at <https://shpo.nv.gov/welcome-to-review-and-compliance/compliance-forms> at the time of execution of this Agreement), or subsequent revisions or replacements to these documents. All documentation prepared under this Agreement will be kept on file by FRA and made available to the public consistent with applicable confidentiality requirements referenced under Stipulation XIII.

#### **V. PROJECT MODIFICATION AND DESIGN CHANGES**

- A. FRA will notify the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties of any proposed modifications to the Undertaking or changes to Project design that may result in additional or new effects on historic properties within fifteen (15) calendar days of the identification of the proposed modifications to the Undertaking or change to Project design. Before the Project Sponsor takes any action that may result in additional or new effects on historic properties, FRA, based on information provided by the Project Sponsor, will consult with the appropriate SHPO, other Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties to determine the appropriate course of action. Notification will include a description of the change in Project design and FRA's recommended course of action. This may include revision to the APE, identification of historic properties, assessment of effects to historic properties, and treatment measures to resolve adverse effects. Modifications to the description of the Undertaking or changes to Project design as described in Attachment 1 will be considered pursuant to Stipulation XVI. If FRA, Signatories, or Invited Signatories determine that an amendment to the Agreement is required, it will proceed in accordance with Stipulation XVI.
- B. FRA may request expedited review of an APE amendment for Project modifications or design changes identified during construction that require an APE amendment and where the Project Sponsor demonstrates through written justification there is a suspension or delay to Project elements that are critical to the completion of construction. All Signatories and Invited Signatories agree to expedite their respective document review of the APE amendment and written justification to within seven (7) calendar days and FRA invites all Consulting Tribes and Consulting Parties to comment, if they wish, within seven (7) calendar days, when all of the following conditions are met and described in the request for expedited review of an APE amendment provided to the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties:

1. The resulting additional identification, evaluation, and assessment of effects demonstrates there are no historic properties present or no change in effects; and
2. Project modifications or design changes include those items affecting site access, worker safety, emergency response, utilities not previously discovered, changes to geotechnical conditions, and finding of unidentified obstructions.

## **VI. AREA OF POTENTIAL EFFECTS**

The Project APE and Project Description are included in Attachment 1. Since there may be refinement to the Project design as it is further developed, it may be necessary to further define the APE and Project Description as design refinements are proposed. The APE as shown and described in Attachment 1 may be modified pursuant to the terms of this Agreement by amending the APE under the process described below:

- A. FRA, based on information provided by the Project Sponsor, will submit the proposed APE modification and amendment in writing to the CA SHPO and the NV SHPO with concurrent notification to the ACHP, Invited Signatories, Consulting Tribes, and other Consulting Parties pursuant to Stipulation XVI. Notification to the CA SHPO and the NV SHPO may be combined or to one SHPO and not the other depending on if the proposed APE modification is within California or Nevada or is in both states.
- B. If the CA SHPO or the NV SHPO provide comment that the proposed APE modification as defined does not appear adequate, FRA, in consideration of information provided by the Project Sponsor, will consider further modification to the APE based upon SHPO comments, and any comments received from the other Signatories, Invited Signatories, Consulting Tribes, or other Consulting Parties, and resubmit the proposed APE modification for review to the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties. The CA SHPO and the NV SHPO will have another seven (7) calendar days from the date provided electronically, or from receipt of the hard copy, if requested, to review and comment on the proposed APE modification.
- C. If FRA does not agree with the SHPO comments on any proposed APE modification, FRA will resolve the dispute in accordance with Stipulation XVII.
- D. If the CA SHPO and NV SHPO agree the APE modification appears adequate, do not object, or do not respond to the proposed APE modification after the timeframes specified in Stipulation VI.B., FRA will finalize the proposed APE modification.
- E. FRA, based on information provided by the Project Sponsor, will notify the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties of the finalization of the APE modification within seven (7) calendar days of finalization. FRA will include in the notification if the APE is:
  1. Reduced and no change in the assessment of effects to historic properties is warranted; or

2. Expanded and identification, evaluation, and assessment of effects to historic properties is already complete, sufficient, and unchanged in the expanded area(s); or
  3. Expanded and additional identification, evaluation, and assessment of effects to historic properties is necessary; or
  4. Expanded and a change in the assessment of effects to historic properties is warranted.
- F. If FRA, based on information provided by the Project Sponsor, determines either Stipulation VI.E.1. or VI.E.2 are applicable, no further identification, evaluation, or assessment of effects is required. If FRA, based on information provided by the Project Sponsor, determines either Stipulation VI.E.3. or VI.E.4. are applicable, FRA, in coordination with the Project Sponsor, will identify, evaluate, and assess effects of the Undertaking on historic properties in the modified APE as described in Stipulation VIII.
- G. Identification, evaluation, and assessment of effects conducted under Stipulation VI.F. will be completed pursuant to 36 CFR §§ 800.4 and 800.5, and according to Stipulations VIII. Document review will be conducted pursuant to Stipulation I.
- H. Requests for expedited review of an APE amendment must meet and will follow Stipulation V.B.

## **VII. HISTORIC PROPERTIES TREATMENT PLAN**

FRA has assessed adverse effects to known historic properties within the Project APE. FRA, based on information provided by the Project Sponsor has prepared a Historic Properties Treatment Plan (HPTP) that provides detailed methodology for implementing mitigation prescribed by the Agreement and to resolve adverse effects to all known historic properties (Attachment 5: Historic Properties Treatment Plan). Specific resolution of adverse effects to known historic properties are further described under Stipulation IX. Previously unknown historic properties or new or different types of adverse effects may be identified during implementation of the Project and under Stipulation VIII. If historic properties or adverse effects are newly identified the HPTP will be amended pursuant to Stipulation XVI. The HPTP includes a research context and research design that informs methods for resolution of adverse effects for newly identified historic properties, or newly identified Project effects to known historic properties. Implementation of the HPTP will be guided by the following procedures:

- A. During consultation on a Finding of Effect (FOE) described under Stipulation VIII.C for newly identified historic properties or adverse effects, if it is determined that historic properties within the APE will be adversely affected by Project activities, FRA, based on information provided by the Project Sponsor, will prepare and implement standard treatment measures as defined in the HPTP or develop a resource-specific HPTP or HPTPs to address and resolve such effects as required. All resource-specific HPTPs will set forth detailed avoidance, protection, and/or treatment measures to reduce or mitigate the particular adverse effect(s) (e.g., data recovery, documentation, oral histories, public

education, community outreach, etc.) for the specific historic property or property type. Information related to environmental and cultural setting, historic context, research design, etc. that was developed for and provided in the identification, evaluation, and assessment of effects has been incorporated by reference into the HPTP, and may be incorporated into resource-specific HPTPs as appropriate, with additional information as necessary.

- B. As specified in Stipulation IV, the HPTP conforms to, and any resource-specific HPTPs developed for the Project will conform to, the principles of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*. FRA may, at its discretion, and based on information provided by the Project Sponsor, develop a single HPTP to resolve adverse effects on an individual historic property or property type for multiple historic properties and property types. This will be determined by FRA depending on the property type or types, the nature of the effects(s), and the timing of Project construction. Mitigation measures outlined in HPTPs may be conducted prior to construction, during construction, or after construction is complete based on property type, mitigation requirements, and construction timetable.
  - 1. FRA, in coordination with the Project Sponsor, will ensure that any draft and final resource-specific HPTP(s) produced under this Agreement are subject to the timeframes and communications defined in Stipulation I, the HPTP specific timeframe if one is indicated in the HPTP, and as otherwise stipulated within this Agreement.
  - 2. FRA, in coordination with the Project Sponsor, will ensure that each HPTP is finalized prior to the commencement of the construction activity or activities posing the identified adverse effect. Each HPTP will require development of a schedule for completion of any prescribed treatment(s), which, depending on the historic property type and nature of the treatment, may occur before, during, or after construction takes place.
- C. Unless otherwise described in the HPTP and this Agreement, documentation and reports produced as a result of the HPTP are subject to the timeframes and communications defined in Stipulation I, including review by Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties.
- D. After the Project Sponsor completes the measures described in the HPTP to mitigate adverse effects from the Project, the Project Sponsor will complete a report that details mitigation efforts resulting from the Project. Documentation review will occur pursuant to Stipulation I. In California, the Project Sponsor will provide all reports to the California Historical Resources Information System. In Nevada, the Project Sponsor will provide all reports to the Nevada Cultural Resource Information System.
- E. Any disputes that may arise between the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties over the content of the HPTP or HPTPs will be resolved in accordance with Stipulation XVII.

## VIII. IDENTIFICATION, EVALUATION, AND ASSESSMENT OF EFFECTS TO HISTORIC PROPERTIES

Identification, evaluation, and assessment of effects to known historic properties has been completed within the Project APE. Should the APE be amended pursuant to Stipulation VI, FRA, based on information provided by the Project Sponsor, will identify and evaluate historic properties that may be affected by the Undertaking within the amended APE. Should previously unidentified historic properties, or historic properties (including properties of traditional, religious, and cultural significance to Tribes) with previously unknown eligibility under the NRHP criteria, or cultural resources that have since execution of this Agreement reached the age threshold for consideration for eligibility for listing in the NRHP be identified within the existing APE, prior to construction, FRA, based on information provided by the Project Sponsor, will identify and evaluate historic properties that may be affected by the Undertaking within the existing APE. FRA, based on information provided by the Project Sponsor, will document these efforts for the amended APE or existing APE in an addendum to the already finalized Archaeological Inventory reports and Historic Built Environmental Technical reports for California and Nevada. Methods for identifying historic properties in an amended or existing APE will be consistent with the procedures described in Stipulation VII of this PA. Documentation produced under this stipulation will be prepared and submitted to FRA within ninety (90) calendar days of the completion of fieldwork and is subject to the timeframes and communications defined in Stipulation I or otherwise stipulated within this Agreement.

FRA, in consultation with the CA SHPO and the NV SHPO and pursuant to 36 CFR § 800.3(g), and where FRA and the CA SHPO and/or NV SHPO (depending on if the document for review is within California or Nevada or is in both states) agree it is appropriate, may combine the submission of identification and evaluation of historic properties (36 CFR § 800.4) and assessment of adverse effects (36 CFR § 800.5) documentation within the amended and existing APE into a single submission. The submission will be sent to the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties which would be subject to the timeframes and communications defined in Stipulation I or otherwise stipulated within this Agreement.

### A. Identification and Evaluation of Historic Properties within Amended APE

1. FRA, based on information provided by the Project Sponsor, will initiate an inventory of historic properties for the amended APE, consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 Fed. Reg. 44716-44742, Sept. 29, 1983) and 36 CFR § 800.4.
2. FRA, based on information provided by the Project Sponsor, will identify and evaluate historic properties consistent with the templates in Attachment 5. The templates in Attachment 5 will govern the methodology for the identification and evaluation efforts for historic properties within the amended APE and aid in the development of the Addendum Technical report(s) for the amended APE.

3. Inventory documentation will include features, isolates, and re-recording of previously recorded sites, as necessary and pursuant to Stipulation IV. The inventory will ensure that potential historic properties such as historic structures and buildings, historic engineering features, landscapes, viewsheds, and properties of traditional, religious, and cultural significance to Tribes, are recorded in addition to archeological sites. Recordation of historic structures, buildings, objects, and sites will be in conformance with the applicable state standards as described in Stipulation IV. Attachment 3 may be amended in accordance with Stipulation XVI with additional historic properties after they are identified within the amended APE and the appropriate SHPO has concurred with their NRHP eligibility.
4. FRA will not authorize the Project Sponsor to commence ground disturbing and/or construction activities that may have the potential to cause effects within any portion of the amended APE prior to completion of Stipulation IX, or, if no adverse effects are identified, Stipulation VIII. Other ongoing ground disturbing and/or construction activities for which Section 106 compliance is complete, consistent with this Agreement, may continue.

B. Identification and Evaluation of Historic Properties within Existing APE

1. Although identification and evaluation of historic properties has occurred within the APE, FRA acknowledges that previously unidentified historic properties, or historic properties (including properties of traditional, religious, and cultural significance to Tribes) with previously unknown eligibility under the NRHP criteria, or cultural resources that have since execution of this Agreement reached the age threshold for consideration for eligibility for listing in the NRHP may be identified within the APE.
2. For those cultural resources or historic properties identified in the existing APE during construction at that location, Stipulation X.A will be followed. For those cultural resources or historic properties identified in a location prior to the start of construction at that location, FRA will identify and evaluate historic properties that may be affected by the Undertaking through the process identified in Stipulation VIII.
3. For potential historic properties identified under Stipulation X.A, the Project Sponsor, in coordination with FRA, will conduct an inventory of the potential historic properties within the APE, consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 Fed. Reg. 44716-44742, Sept. 29, 1983) and 36 CFR § 800.4.
  - a. To the extent practicable, NRHP eligibility determinations will be based on information gathered during previous inventory and identification efforts. If the information gathered during previous inventory and identification efforts is determined by FRA to be adequate to determine site boundaries and NRHP eligibility, FRA, based on information provided by the Project Sponsor, will determine NRHP eligibility consistent with Attachment 5.

- b. If the information gathered during previous inventory and identification efforts is determined by FRA to be inadequate to determine site boundaries or NRHP eligibility, the Project Sponsor, in coordination with FRA, will conduct additional identification and evaluation efforts for historic properties within the APE consistent with Attachment 5.
4. For potential historic properties identified under subpart B of this Stipulation, FRA, based on information provided by the Project Sponsor, will make determinations of eligibility in accordance with the NRHP criteria set forth in 36 CFR § 60.4. Attachment 3 may be updated with additional historic properties after they are identified within the existing APE and the appropriate SHPO has concurred with their NRHP eligibility. Amendments to Attachment 3 would follow the process set forth in Stipulation XVI.
5. The documentation of NRHP eligibility determinations for historic properties identified under subpart B of this stipulation may vary depending on the scale, scope, and nature of the potential historic property identified and evaluated and will be consistent with Stipulation IV.
6. Documentation of NRHP eligibility that is considered confidential will be treated in accordance with Stipulation XIII.

#### C. Assessment of Effects

1. For any historic properties identified under subpart A or B of this stipulation that require an assessment of effects, FRA, based on information provided by the Project Sponsor, will assess the effects, including any cumulative effects of the Project on all historic properties identified within the APE by applying the Criteria of Adverse Effect pursuant to 36 CFR § 800.5. This assessment will be provided in one or more FOE reports, which may be incorporated into inventory and/or evaluation reports if enough information is available to make this assessment. FOE reports may vary in content and length and may rely on information from other FOE reports depending on the needs of the assessment for the historic properties identified under subpart A or B of this stipulation. The FOE will assess potential adverse effects to historic properties resulting from the Undertaking and identify measures that would eliminate, minimize, or mitigate such effects under Stipulation IX.
2. The draft and final FOE documentation and report(s) produced under this Agreement are subject to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement.

### **IX. RESOLUTION OF ADVERSE EFFECTS**

#### A. Procedures for Resolving Adverse Effects to Historic Properties

Implementation of the resolution of adverse effects will follow the methods identified in the HPTP (Attachment 5) for known historic properties, as well as specified below under

Stipulation IX.B. Implementation of the resolution of adverse effects to newly-identified historic properties will follow Stipulation IX.C. The procedures for resolving adverse effects, whether known or newly identified, are as follows:

1. For those identified historic properties that FRA has determined will be adversely affected by Project implementation, and for which mitigation measures have been identified, the Project Sponsor shall ensure that no Project construction with the possibility of causing the adverse effect to the historic property will occur within a reasonable buffer of the historic property, but not less than 150 feet from the known historic property boundary until FRA provides approval.
2. FRA may require the Project Sponsor to take protective measures around the buffer of the historic property, such as installing exclusionary fencing or avoidance signage.
3. For archaeological historic properties, the Project Sponsor will ensure that Tribal monitors are present during fieldwork in accordance with the Monitoring Plan in the HPTP (Attachment 5).
4. The Project Sponsor, in coordination with FRA, will direct that construction-related activities within the historic property buffer will not occur until FRA concludes consultation on the resolution of adverse effects with the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties.
5. The Project Sponsor will provide for secure storage of recovered cultural material, including human remains and items of cultural patrimony. The Project Sponsor may transport recovered cultural material to secure off-site storage locations or laboratories for additional analysis. Secure storage may include, but not be limited to, one or more secure storage containers located at temporary or permanent construction staging or management locations along the alignment, rental of commercial storage facilities along the alignment, or other such means with secure facilities.
6. The Project Sponsor will provide for payment and permanent curation of archaeological materials and documentation at the Nevada State Museum for materials recovered from archaeological sites in Nevada, and at the San Bernardino County Museum for materials recovered from archaeological sites in California. Since no curation of built environment materials is expected as no adverse effects to built environment historic properties is anticipated, storage or curation of materials produced from treatment of built environment historic properties will be determined in consultation with the appropriate SHPO and Consulting Tribes and Consulting Parties and in conformance with guidance for any resource specific HPTP produced for that built environment historic property.
7. The Project Sponsor will submit final documentation of the treatment of adverse effects, including documentation of procedures followed within this stipulation, to affected historic properties and all cultural resource monitoring activities to FRA within 180 days of the completion of all treatment and monitoring activities for that historic property.

8. These procedures will also apply to historic properties if violations of buffer areas result in inadvertent damage to archaeological deposits.

## B. Resolution of Adverse Effects to Known Historic Properties

FRA has assessed adverse effects to known historic properties within the Project APE and has developed treatment of and resolution of adverse effects as documented in the HPTP. Reports and documentation produced for the resolution of adverse effects in the HPTP are subject to the timeframes and communications defined in Stipulation I and otherwise stipulated within this Agreement and the HPTP. FRA, in coordination with the Project Sponsor, may elect to invite other individuals or organizations with special interests in particular historic properties to become Consulting Parties for the resolution of adverse effects. FRA, in coordination with the Project Sponsor, will ensure that the views of the public are considered and included when resolving adverse effects to historic properties resulting from the Undertaking. The public will have the opportunity to provide comments on the resolution of adverse effects through a publicly accessible website established by the Project Sponsor where documentation associated with the resolution of adverse effects, subject to protection under Stipulation XIII, will be posted. Contact information for the public to provide comments will be posted on the website. Resolution of adverse effects to known historic properties include the following treatment measures summarized below and with additional detail in the HPTP:

1. Archaeological Investigations (Stage 1) and Data Recovery (Stage 2): Activities to collect more information on the structure of archaeological deposits of archaeological historic properties are ongoing as the Project progresses to construction and may have been conducted prior to or be conducted after the execution of this Agreement. FRA, in coordination with the Project Sponsor, will report and consult with the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties on proposed methods for resolution of adverse effects identified through Stage 1 archaeological investigations after the execution of this Agreement. The archaeological historic properties included in these efforts are the four archaeological districts (Sidewinder Quarry, Mojave River Lithic Landscape, Soapmine Road, Cronese Lake), and 14 archaeological historic properties within those districts (P-36-000562, P-36-002283, P-36-008321, P-36-006950, P-36-003485, P-36-002129, P-36-000223, P-36-003694, ICF-XW1-010, ICF-XW2-017, ICF-BV-001, ICF-XW1-004, P-36-008923, P-36-4198), the five individually eligible archaeological historic properties (P-36-000541, P-36-000885, P-36-006023, XPW21-SW-015, ICF-XW2-007) in California, and the three individually eligible archaeological historic properties (26CK7189, 26CK11252, 26CK5760) in Nevada. These activities and consultation for Stage 1 and Stage 2 will include the following activities and consultation with Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties:
  - a. Archaeological Investigations (Stage 1): On June 22, 2023, FRA notified the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties that Archaeological Investigations (Stage 1) would occur for archaeological historic properties prior to finalization of this PA. The purpose of Stage 1 will be to

collect information from the horizontal and vertical extents of the archaeological deposits within the APE-Area of Direct Impact (ADI) regarding: the volume or structure of the archaeological deposits; which portion of intact deposits relate to the themes for which the deposits have been determined to be significant; which material constituents in the deposits are most germane to the recovery of significant information and what the particular research questions are that this information would address; and the volumes from each deposit that would result in the recovery of a statistically significant sample of each historic property. The Stage 1 efforts may address some or all of the above aspects of each archaeological historic property, depending on the nature and horizontal and vertical extent of each site, which will be further characterized during these efforts. The results of Stage 1 efforts will be documented in one or more Stage 1 archaeological investigation field reports, depending on the field efforts and access to historic properties due to land ownership. The field reports will include a summary of the field efforts and a map of each site with a notation of where Data Recovery (Stage 2) efforts are recommended, based on the standard forms of sampling for data recovery further detailed in the HPTP. FRA, in coordination with the Project Sponsor, will provide the Draft Field Report(s) to Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties for an initial fifteen (15) calendar day review, subject to applicable confidentiality requirements referenced under Stipulation XIII. FRA will schedule a meeting to provide information about the results of the Stage 1 Archaeological Investigations and proposed Stage 2 Data Recovery within the Draft Field Report(s) review period and will invite the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties to attend. At the end of the fifteen (15) calendar day review of the Draft Field Report(s), FRA will notify the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties that the comment review period for the Draft Field Report(s) has closed and will forward a written summary of all comments received immediately at the end of the fifteen (15) calendar day review. FRA will consider any written comments received within the review timeframe and incorporate them as appropriate, as determined by FRA, into the Revised Field Report(s). Subject to applicable confidentiality requirements referenced under Stipulation XIII, FRA will provide Revised Final Field Report(s), documenting the Stage 1 Archaeological Investigations and proposed Stage 2 Data Recovery, as well as resolution of comments on the Draft Field Report(s) in writing, to Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties for fifteen (15) additional calendar days. At the end of the second fifteen (15) calendar days, if no written objections are received, FRA will notify the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties that the Revised Final Field Report(s) is or are considered final, and proceed with implementing Stage 2 Data Recovery. If FRA receives an objection to the Final Field Report, FRA may, at its discretion, consult with the objecting party to resolve the specific objection or proceed with the process outlined in Stipulation XVII. Activities not the subject of the objection may proceed.

2. Data Recovery (Stage 2): To resolve Criteria A and D adverse effects, data recovery efforts (Stage 2), data recovery efforts will be conducted within the APE-ADI in California for the four archaeological districts (Sidewinder Quarry, Mojave River Lithic Landscape, Soapmine Road, Cronese Lake), and 14 archaeological historic properties within those districts (P-36-000562, P-36-002283, P-36-008321, P-36-006950, P-36-003485, P-36-002129, P-36-000223, P-36-003694, ICF-XW1-010, ICF-XW2-017, ICF-BV-001, ICF-XW1-004, P-36-008923, P-36-4198). To resolve Criterion D adverse effects, data recovery will be conducted within the APE-ADI for the five individually eligible archaeological historic properties (P-36-000541, P-36-000885, P-36-006023, XPW21-SW-015, ICF-XW2-007) in California, and three of the archaeological historic properties (26CK7189, 26CK11252, 26CK5760) in Nevada. Data recovery involves standard forms of sampling that combine intensive surface collection and targeted hand excavation, followed by detailed field and laboratory analyses. Research questions, field methods, archival research, laboratory analyses, and catalog processing for data recovery are further described in detail in the HPTP (Attachment 5). After the field analyses are complete, data recovery will be documented in separate Stage 2 Data Recovery reporting: one report for historic properties in California and one report for historic properties in Nevada. The Project Sponsor will complete the data recovery reporting and FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the data recovery reporting no later than ninety (90) calendar days before completion of Project construction subject to the timeframes and communications defined in Stipulation I.
3. Noise and Vibration Minimization: To resolve Criterion A adverse effects to the Cronese Lake Archaeological District and P-36-004198, sound walls will be erected during construction and creative vegetation plantings, or other barriers will be installed near Cronese Lake Archaeological District to minimize effects due to noise and vibration during Project construction. The Project Sponsor will develop the proposed noise and vibration minimization measures as further described in the HPTP (Attachment 5) and FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the noise and vibration minimization measures prior to their implementation and before construction occurs at the Cronese Lake Archaeological District and P-36-004198 that may cause noise and vibration and subject to the timeframes and communications defined in Stipulation I.
4. Pedestrian Sample Survey in the APE-AII: To resolve Criteria A and D adverse effects to archaeological historic properties, additional pedestrian survey of all known prehistoric archaeological districts (Sidewinder Quarry, Mojave River Lithic Landscape, Soapmine Road, Cronese Lake, Halloran Springs) in the APE will be conducted. The Project Sponsor will develop a Supplemental Survey Plan for the pedestrian sample survey in the APE-AII and FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the Supplemental Survey Plan subject to the timeframes defined in Stipulation I. Methodology for the pedestrian sample survey in the APE-AII is further described in detail in the HPTP (Attachment 5). After the field efforts are complete, the pedestrian

sample survey will be documented in one report for sites and districts in California. There are no known prehistoric archaeological districts in Nevada within the APE-AII. Since these surveys will occur in areas that will not be subject to Project ground disturbing activities, completion of the surveys and report will occur no later than ninety (90) calendar days before completion of Project construction. The Project Sponsor will complete the Pedestrian Sample Survey reporting and FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the Pedestrian Sample Survey reporting subject to the timeframes and communications defined in Stipulation I.

5. Ethnohistoric Study: To resolve Criterion A adverse effects to archaeological historic properties a multi-Tribal Ethnohistoric Study based on a combination of interviews with Native American members of Consulting Tribes, as well as a discussion of existing literature on the ethnographic background of the geographic region will be produced. The Project Sponsor will develop the proposed scope of work (SOW) for the ethnohistoric study as further described in detail in the HPTP (Attachment 5) and FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the proposed ethnohistoric study SOW subject to the timeframes and communications defined in Stipulation I and to applicable confidentiality requirements referenced under Stipulation XIII. Since the Ethnographic Study and anticipated products will be separate activities from the archaeological field efforts to resolve adverse effects that will occur before and during construction, completion of the Ethnographic Study and anticipated products will occur no later than ninety (90) calendar days before completion of Project construction. The anticipated products of the ethnographic study that will be included in the SOW are:
  - a. Recorded oral interviews and oral history: After finalizing the SOW, the Project Sponsor will develop anticipated questions for oral interviews and completion of the oral history. FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the proposed questions subject to the timeframes and communications defined in Stipulation I. After finalizing the anticipated questions, the Project Sponsor will complete the oral interviews and oral history, including transcripts and recordings of the oral interviews.
  - b. Ethnohistoric Report: After finalizing the SOW and after completing the oral interviews and oral history, the Project Sponsor will develop an ethnohistoric report. FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the ethnohistoric report subject to the timeframes and communications defined in Stipulation I.
  - c. Interpretative Public Display: After finalizing the SOW and in consideration of information obtained during the oral interviews with Native American members of Consulting Tribes and through the ethnohistoric reporting efforts, the Project Sponsor will develop an interpretative public display which will be installed at the

two high-speed passenger train stations. FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the interpretative public display subject to the timeframes and communications defined in Stipulation I.

- d. Oral/Audio History: After finalizing the SOW and in consideration of information obtained during the oral interviews with Native American members of Consulting Tribes and through the ethnohistoric reporting efforts, the Project Sponsor will develop an edited oral/audio history which will be made available on a publicly accessible website. FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the oral/audio history subject to the timeframes and communications defined in Stipulation I.

#### C. Resolution of Adverse Effects to Newly Identified Historic Properties

Although FRA has assessed adverse effects to known historic properties within the Project APE and has developed treatment of and resolution of adverse effects as documented in the HPTP, historic properties may be newly identified during implementation of the Project. Pursuant to 36 CFR § 800.6(a), FRA, in coordination with the Project Sponsor, will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties for the Undertaking to develop and evaluate alternatives or modifications to the Undertaking that could avoid, minimize, or mitigate adverse effects on historic properties in the APE, if possible. Documentation and implementation of procedures to resolve adverse effects (either under the HPTP or a resource-specific HPTP) to newly identified historic properties will follow Stipulation VII and methods and procedures for resolving adverse effects will follow those described in the HPTP, or in a resource-specific HPTP if one is developed under Stipulation IX.D.

#### D. Development of a Resource-Specific HPTP

FRA may determine that a separate site or resource-specific HPTP is required to properly treat historic properties identified in the APE. Development of a separate HPTP will follow the methods, procedures, and timelines identified in Stipulation I unless occurring during a post-review discovery. Post-review discoveries that require a resource-specific HPTP will follow Stipulation X.A. FRA, in coordination with the Project Sponsor, will ensure that each HPTP is finalized prior to commencing the construction activity or activities posing the identified adverse effect. The site or resource-specific HPTP will include a schedule for completing the prescribed treatment(s), which, depending on the historic property type and nature of the treatment, may occur before, during or after construction takes place.

#### E. Completion of Resolution of Adverse Effects

For historic properties, once the treatment of historic properties has been completed, the Project Sponsor, in coordination with FRA, will provide an End of Field (EOF) memorandum documenting completion of treatment, including sufficient data, imagery, maps, and a summary of findings for the historic property or historic properties, if

combined into one or several batched EOF memorandum or memoranda. Consistent with applicable confidentiality requirements referenced under Stipulation XIII, FRA will consult and provide the EOF memorandum or memoranda subject to the timeframes and communications defined in Stipulation I, including review by Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties. If FRA receives no objections to the findings, or objections are resolved under Stipulation XVII, construction may resume or commence in the area consistent with applicable resource-specific requirements, such as archaeological and Tribal monitoring.

## **X. POST-REVIEW DISCOVERIES**

### **A. Unanticipated Discovery or Effect to Historic Properties**

FRA, in coordination with the Project Sponsor, will implement the following procedures in accordance with Stipulation VIII.B.3, if a previously undiscovered archeological or cultural resource that is or could reasonably be a historic property is encountered or a previously known historic property will be affected in an unanticipated manner during construction, as determined by staff who meet the qualifications set forth in Stipulation III. All steps within these procedures, up to the review of documentation under Stipulation X.A.4., will be completed within seven (7) calendar days unless otherwise specified:

1. The Project Sponsor will require the contractor to immediately cease all ground disturbing and/or construction activities within a 50-foot radius buffer zone of the discovery. For any discovered archeological resources or potential human remains, the Project Sponsor will also halt work in surrounding areas where additional subsurface remains are reasonably expected to be present. FRA, based on information provided by the Project Sponsor, will seek comment from Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties during notification regarding a smaller or larger buffer based on facts in the field specific to the unanticipated discovery if a buffer smaller or larger than a 50-foot radius is proposed. In consideration of any comments received, FRA may decrease or increase the size of the buffer around the discovery and proceed with ground disturbing and/or construction activities outside the buffer.
2. The Project Sponsor will ensure that no excavation, operation of heavy machinery, stockpiling, or entry by unauthorized personnel occurs within the buffer zone. Authorized personnel will include staff who meet the qualifications set forth in Stipulation III, Tribal monitors, and limited contractor personnel required to ensure safe access and security of the buffer zone. The Project Sponsor will secure the buffer zone through the installation of protective fencing. The Project Sponsor will not resume ground disturbing and/or construction activities within the buffer zone until the specified review requirements of Stipulation X.A.4 and X.A.5 are complete. Work in all other Project areas not in the location of the unanticipated discovery or effect on an historic property may continue.

3. The Project Sponsor will notify FRA within twenty-four (24) hours or one (1) business day of any unanticipated discovery or unanticipated effect. FRA will notify the appropriate SHPO for where the unanticipated discovery occurred, the other Signatories and Invited Signatories, Consulting Tribes, and Consulting Parties within twenty-four (24) hours or one (1) business day after receiving the notification of any unanticipated discovery or unanticipated effect from the Project Sponsor. FRA, in coordination with the Project Sponsor, will also consider if additional Federally recognized Indian tribes and Consulting Parties should be identified and invited to consult regarding unanticipated discoveries or unanticipated effects.
4. Following notification of an unanticipated discovery or effect, the Project Sponsor will investigate the discovery site and evaluate the resource(s) in accordance with Stipulation VIII.B.3. The Project Sponsor, in coordination with FRA, will prepare and submit a written document containing a proposed determination of NRHP eligibility for the resource and, if relevant, an assessment of the Undertaking's effects on historic properties as well as consideration of measures to avoid adverse effects to historic properties and/or proposed resolution of adverse effects in accordance with Stipulation IX.C. FRA, based on information provided by the Project Sponsor, will provide that document for review to the appropriate SHPO, seeking SHPO concurrence on these determinations, and to the other Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties to concurrently review and provide written comments within seven (7) calendar days to FRA and the Project Sponsor. If the unanticipated discovery is located on land under the jurisdiction of the BLM, Caltrans, or NDOT, and if the BLM, Caltrans, or NDOT do not respond within the concurrent review period of seven (7) calendar days, FRA may consider nonresponse as nonobjection to the NRHP eligibility and/or effects determination/finding from the agency with jurisdiction on the land where the unanticipated discovery is located and proceed. If the appropriate SHPO does not concur with the NRHP eligibility and/or effects determination, in consultation with the appropriate SHPO, FRA may elect to treat the property as eligible for the NRHP and/or assume adverse effects for expediency. If FRA elects to treat the newly discovered property as eligible for the NRHP then FRA will specify the NRHP criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects. At the end of the seven (7) calendar day comment review period, FRA will notify the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties that the review period has closed, and that FRA is proceeding to the next step in the process and provide a summary of any comments received.
5. If the unanticipated discovery is determined to be eligible for listing in the NRHP and/or the unanticipated or new adverse effects cannot be avoided, FRA, in coordination with the Project Sponsor, will consult to implement treatment measures in the HPTP or develop a resource-specific HPTP. The Project Sponsor, in consultation with FRA, will ensure construction-related activities within the buffer zone do not proceed until consultation with the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties, concludes with SHPO concurrence that:
  - 1) the resource is not NRHP-eligible; or
  - 2) the agreed upon treatment measures have

been implemented; 3) that the treatment measures provided in the HPTP can be completed within a specified time period after construction-related activities have resumed; or 4) that a resource-specific HPTP is required to address effects to the unanticipated discovery of a historic property, of which the timelines for submission and review of the resource-specific HPTP will follow Stipulation X.A.4.

## B. Unanticipated Discovery of Human Remains

The HPTP will include the Inadvertent Discovery Plan and Post Review Effects Treatment Plan which addresses treatment and disposition of human remains that are inadvertently discovered during Project planning, construction, or operation. The HPTP will also include the Burial Treatment Plan, which outlines the notification and consultation processes required for determining the steps to be taken should Native American human remains be encountered during the Project. The Inadvertent Discovery Plan and Post Review Effects Treatment Plan and Burial Treatment Plan within the HPTP (Attachment 5) may be amended pursuant to Stipulation XVI. All human remains and potential human remains will be treated with respect and dignity at all times. No photography of human remains will be permitted. FRA and the Project Sponsor will follow the guidelines outlined in the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* (2023) (found at [https://www.achp.gov/sites/default/files/policies/2023-03/PolicyStatementonBurialSitesHumanRemainsandFuneraryObjects20230301\\_1.pdf](https://www.achp.gov/sites/default/files/policies/2023-03/PolicyStatementonBurialSitesHumanRemainsandFuneraryObjects20230301_1.pdf) at the time of the execution of this Agreement).

1. For Native American human remains (definitely identified or possible) or evidence of cremated remains, associated funerary objects, and unassociated funerary objects, sacred objects, and/or objects of cultural patrimony inadvertently discovered or intentionally excavated on Federal lands, the Project Sponsor, in coordination with FRA, will coordinate with the Federal land manager that has jurisdiction and follow the procedures outlined in the Native American Graves Protection and Repatriation Act (NAGPRA) 25 U.S.C. § 3001-3013 and as specified in the implementing regulations at 43 CFR § 10 as well as ARPA (16 U.S.C. § 470 & 43 CFR § 7), NAGPRA (60 F.R. 62158; 16 U.S.C. § 470dd; 25 U.S.C. § 9, 3001 et seq.; 43 CFR § 10, Subparts A, B and D; Public Lands, Interior 43 CFR § 8365.1-7), and, specifically, California Health & Safety Code 7050.5 (which does not include P.R.C. 5097.98) in California. For such discoveries at any time within land under BLM's jurisdiction within the APE in California, such discovery will be addressed in strict accordance with BLM, California discovery procedures (found at <https://www.blm.gov/policy/ib-ca-2016-012> at the time of execution of this Agreement).
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 7050.5(c) of the California State Health and Human Safety Code

and Section 5097.98(a) – (h) of the California PRC 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 NAGPRA as specified in the implementing regulations at 46 CFR part 10, Section 1050.5 of the California State Health and Human Safety Code and Section 5097.98 of the California PRC, or Nevada Revised Statutes (Section 383.160 and Section 383.170), depending on the status of the land as Federal or non-Federal.

## **XI. 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 archaeological materials (and associated records) generated as a result of the Project will be curated and maintained in accordance with 36 CFR part 79 and in a facility that meets the standards of 36 CFR § 79.9. Whenever possible the archaeological materials and associated records will be curated at a facility with available capacity to take collections within the county where they were discovered. The Project Sponsor is responsible for funding the costs of curation of collections from Federal lands. The BLM will be encouraged to consult with appropriate Native American representatives regarding the treatment of such collections pursuant to the requirements of ARPA (43 CFR §§ 7.7-7.9 and 7.13) and the BLM Handbook 1780 – Tribal Relations (found at <https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf> at the time of execution of this Agreement). Native American remains, funerary objects, sacred objects, and objects of cultural patrimony as defined by 43 CFR § 10.2 are exceptions to this Stipulation XI.A. Disposition of these items will be determined in accordance with NAGPRA under Stipulation X.B.1.

### **B. Collections from State Lands**

FRA, in coordination with the Project Sponsor, will ensure that identification, evaluation, and treatment of historic properties for Project activities conducted under this Agreement on lands owned or under the jurisdiction of the State of California resulting in any non-burial-related materials and associated records will be curated and they will be properly maintained in accordance with 36 CFR § 79 and the State of California's *Guidelines for the Curation of Archaeological Collections* (State Historical Resources Commission, Department of Parks and Recreation 1993). Whenever possible, the archaeological materials and associated records will be curated at a facility with available capacity to take collections within the county where they were discovered. The Project Sponsor is

responsible for funding the costs of curation of collections from State of California lands. The State of California will be encouraged to consult with appropriate Native American representatives regarding the treatment of such collections. 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, FRA, based on information provided by 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) calendar days.

### C. Collections from Private Lands

FRA, in coordination with the Project Sponsor, 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 CFR part 79 until necessary analyses of such materials have been completed as outlined in the HPTP. Whenever possible, the archaeological materials and associated records will be curated at a facility with available capacity to take collections within the county where they were discovered. The Project Sponsor is responsible for funding the costs of curation of collections from private lands. FRA, in coordination with the Project Sponsor, will encourage private landowners to consent to the curation of archaeological materials recovered from their lands upon the completion of all necessary analyses in a museum or repository that meets the requirements of 36 CFR § 79. If a private landowner does not consent to the curation of archaeological materials as stipulated, the Project Sponsor, in coordination with FRA, will return the materials to the landowner(s), document the return, and FRA will submit copies of this documentation to the Signatories of this Agreement within thirty (30) calendar days of such return. Landowners who retain archaeological materials will be encouraged to consult with appropriate Native American representatives regarding the treatment of such collections.

## **XII. ARCHAEOLOGICAL AND TRIBAL MONITORING AND TRAINING**

### A. Monitoring

The Project Sponsor will ensure archaeological and Tribal monitoring of construction excavations by personnel who meet the requirements in Stipulation III. Archaeological and Tribal monitoring will be described in the Archaeological Monitoring Exhibit (AME) that is further detailed in the HPTP. The Project Sponsor will complete the AME and FRA will consult with the Signatories, Invited Signatories, Consulting Tribes, and other Consulting Parties regarding the AME subject to the timeframes and communications defined in Stipulation I prior to the start of construction. Monitoring will conform to the methods described in the HPTP and will take place under the following conditions:

1. At sites identified as moderately to highly sensitive for prehistoric and historic archaeological deposits.
2. When a known historic property has the potential to be affected in an anticipated manner.

3. Following unanticipated or post-review discovery (under Stipulation X) subsequently identified as an historic property that would warrant monitoring.
4. Unanticipated discoveries resulting from archaeological monitoring will follow the processes outlined in Stipulation X.

#### B. Training

The Project Sponsor will require that all persons meeting the SOI PQS who are supervising activities conducted as prescribed in this Agreement and all contracted field personnel, including construction workers, attend standardized trainings that include a cultural resources overview of cultural resource preservation laws to include the need for confidentiality, monitoring procedures and procedures to follow in the event of a post-review discovery or unanticipated effect as well as meeting with one or more Consulting Tribes for a briefing on traditional customs and culturally sensitive protocols and procedures before beginning work on the Project. The Project Sponsor will require that all archaeological and tribal monitors will adhere to site safety requirements, attend daily safety briefings, and abide by all Occupational Safety and Health Administration requirements. Safety training by the Project Sponsor's contractors in cooperation with the BLM and Caltrans and NDOT will also be required for all persons conducting work on public land or within the I-15 ROW.

### **XIII. CONFIDENTIALITY**

All Signatories, Invited Signatories, Consulting Tribes and Consulting Parties to this Agreement will ensure that shared data, including data concerning the precise location and nature of archaeological historic properties and properties of religious and cultural significance, are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the NHPA, as amended (54 U.S.C. § 307103) and implementing regulations under 36 CFR § 800.6(a)(5) and 36 CFR § 800.11(c); Section 9 of ARPA (10 U.S.C. § 470aa-470mm); the Freedom of Information Act; Executive Order No. 13007 on Indian Sacred Sites (FR 61-104), dated May 24, 1996; California Government Code Section 6250-6270, and Nevada State Laws: Preservation and Protection of Historic Sites (NRS 381.195-.227), Protection of Indian Burial Sites (NRS 383.180), Protection of Historic and Prehistoric Sites (NRS 383.435), as applicable.

### **XIV. ADOPTABILITY**

In the event that a Federal agency, not initially a party to or subject to this Agreement, receives an application for financial assistance, permits, licenses, or approvals for the Project as described in this Agreement, such Federal agency may become a Signatory to this Agreement as a means of complying with its Section 106 responsibilities for its Undertaking. To become a Signatory to this Agreement, the agency official must provide written notice to the Signatories that the agency agrees to the terms of the Agreement, specifying the extent of the agency's intent to participate in the Agreement, and identifying the lead Federal agency for the Undertaking. The participation of the agency is subject to approval by the

Signatories. Upon approval, the agency must execute a signature page to this Agreement, file the signature with the ACHP, and implement the terms of this Agreement, as applicable. Any necessary amendments to the Agreement will be considered in accordance with Stipulation XVI.

If during the implementation of this Agreement, FRA identifies other Indian tribes, individuals, non-federal agencies, and organizations with a demonstrated interest in the Undertaking due to the nature of their legal or economic relation to the Project or affected properties, or due to their concern with the Project's effects on historic properties, FRA may offer such entities Consulting Party status pursuant to 36 CFR § 800.2(c) and/or invite them to become party to this Agreement, with notification to the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties to this Agreement.

If FRA invites an entity to become an Invited Signatory, the party may accept this status by agreeing in writing to the terms of this PA and so notifying FRA. If the entity agrees to become an Invited Signatory and Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties to this Agreement have no objections, FRA shall follow Stipulation XVI to amend this Agreement.

If FRA invites an entity to become a Concurring Party, the entity may accept this status by agreeing in writing to the terms of this Agreement and so notifying FRA. Because Concurring Parties have no responsibility for implementation of this Agreement, FRA may add such parties to the consultation process without formal amendment of this Agreement, unless an amendment to Attachment 6: Principal Contacts is required. If a Concurring Party signs the Agreement, FRA will notify the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties and provide an updated signature page.

## **XV. ANNUAL REPORT**

Once yearly, beginning one (1) year from the date of execution of this Agreement until it expires or is terminated, FRA, based on information provided by the Project Sponsor, will provide all Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties to this Agreement an Annual Report detailing work undertaken pursuant to its terms. Such report will include any progress on implementation, proposed scheduling changes, any problems encountered, and any disputes or objections received as a result of FRA and the Project Sponsor's efforts to carry out the terms of this Agreement. FRA, based on information provided by the Project Sponsor, will submit a draft Annual Report no later than thirty (30) calendar days after the end of the reporting period. Following a thirty (30) calendar day period for review and comment, the Project Sponsor will produce a final Annual Report, considering any comments received, within thirty (30) calendar days. FRA, based on information provided by the Project Sponsor, will submit a summary of comments received and how they were addressed and a final Annual Report to the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties. If no comments are received on the draft Annual Report within the thirty (30) calendar day review period, FRA, in coordination with the Project Sponsor, will notify all Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties to the Agreement, via email or letter, that the Draft Annual Report has become the Final Annual Report. An annual meeting will be scheduled to discuss the Annual

Report. The annual meeting may be cancelled if the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties determine it unnecessary.

## **XVI. AMENDMENTS**

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

## **XVII. DISPUTE RESOLUTION**

- A. Any Signatory or Invited Signatory to this Agreement, Consulting Tribe or Consulting Party may object to any proposed action(s) or the manner in which the terms of this Agreement are implemented by submitting its objection to FRA in writing, after which FRA will consult with all Signatories to resolve the objection. If FRA determines such objection cannot be resolved, FRA will, within thirty (30) calendar days of such objection:
1. Forward all documentation relevant to the dispute, including FRA's proposed resolution, to the ACHP (with a copy to the Signatories). ACHP may provide FRA with its comments on the resolution of the objection within thirty (30) calendar days of receiving documentation.
  2. If the ACHP does not provide comment regarding the dispute within thirty (30) calendar days, FRA will make a final decision on the dispute and proceed accordingly.
  3. FRA will document this decision in a written response that takes into account any timely comments received regarding the dispute from ACHP and the Signatories and provide the Signatories, Invited Signatories, Consulting Tribes and Consulting Parties with a copy of the response.
  4. FRA will then proceed according to its final decision.
  5. The Signatories remain responsible for carrying out all other actions subject to the terms of this Agreement that are not the subject of the dispute.
- B. A member of the public may object to the manner in which the terms of this Agreement are being implemented by submitting the objection to FRA in writing. FRA will notify the other Signatories of the objection in writing and take the objection into consideration. FRA will consult with the objecting party, and if FRA determines it appropriate, the other Signatories, for not more than thirty (30) calendar days. Within fifteen (15) calendar days after closure of this consultation period, FRA will provide the Signatories, Invited Signatories, Consulting Tribes, Consulting Parties, and the objecting party with its final decision in writing.

## **XVIII. TERMINATION**

- A. If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that Signatory or Invited Signatory will immediately consult with the other Signatories and Invited Signatories to attempt to develop an amendment per Stipulation XVI. If within thirty (30) calendar days (or another time period agreed upon by the Signatories and Invited Signatories) an amendment cannot be reached, any Signatory or Invited Signatory may terminate the Agreement upon written notification to the other Signatories and Invited Signatories.
- B. Once the Agreement is terminated, and prior to work initiating or continuing on the Undertaking, FRA must either: 1) execute a new Agreement pursuant to 36 CFR § 800.6, or 2) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FRA will notify the Signatories as to the course of action it will pursue.

## **XIX. EFFECTIVE DATE**

- A. This Agreement will become effective immediately upon execution by all Signatories. In the event another federal agency elects to use this Agreement; the Agreement will be effective for/with their Undertaking on the date that the other federal agency completes the process identified in Stipulation XIV of this Agreement.
- B. Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
- C. Electronic Copies. Within seven (7) calendar days of the last signature on this Agreement, FRA, in coordination with the Project Sponsor, will provide each Signatory, Invited Signatory, Consulting Tribe, and Consulting Party with one high quality, legible, full color, electronic copy of the fully executed Agreement and all of its attachments fully integrated into one, single document. If the electronic copy is too large to send by e-mail, FRA, in coordination with the Project Sponsor, will provide each Signatory with an electronic copy of the fully executed Agreement as described in Stipulation I.E. via other suitable, electronic means.
- D. Principal Contacts. The principal contacts for this Agreement are contained in Attachment 6: Principal Contacts. It is the responsibility of each Signatory, Invited Signatory, Consulting Tribe, and Consulting Party to immediately inform the other parties in writing of any changes. Contact information may be amended, as needed, in accordance with Stipulation XVI.

## **XX. DURATION**

- A. This Agreement will expire ten (10) years from the effective date unless the Signatories extend the duration through an amendment in accordance with Stipulation XVI. FRA, in coordination with the Project Sponsor, will notify and initiate consultation with the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties twelve (12) months prior to the expiration of the Agreement to determine if there is a need to

extend or amend this Agreement. Any extension or amendment to this agreement will be prepared in accordance with Stipulation XVI.

- B. Upon completion of the Stipulations set forth above, FRA, in coordination with the Project Sponsor, will provide a letter (with attached documentation) of completion to both the CA SHPO and the NV SHPO, with a copy to the other Signatories. After the CA SHPO and NV SHPO are provided with the opportunity to comment on the completion of the Agreement's stipulations for thirty (30) calendar days, FRA, based on information provided by the Project Sponsor, will notify the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties in writing that this Agreement will expire, at which time the Signatories will have no further obligations hereunder. If the CA SHPO or the NV SHPO object, FRA, in coordination with the Project Sponsor, will consult further with SHPO to resolve the objection. If the objections cannot be resolved through further consultation, FRA will resolve the dispute pursuant to Stipulation XVII. FRA, in coordination with the Project Sponsor will provide written notification to the Signatories, Invited Signatories, Consulting Tribes, and Consulting Parties on the final resolution.

## **XXI. EXECUTION AND IMPLEMENTATION**

Execution of this Agreement by the Signatories demonstrates that FRA has taken into account the effect of the Undertaking on historic properties, has afforded the ACHP an opportunity to comment, and FRA has satisfied its responsibilities under Section 106 of the NHPA and its implementing regulations.

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING THE  
BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

SIGNATORY:

FEDERAL RAILROAD ADMINISTRATION

By: Marlys A Osterhues  
Marlys Osterhues  
Director, Office of Environmental Program Management

Date: 7/28/2023

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

SIGNATORY:

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_

Julianne Polanco  
State Historic Preservation Officer

Date: July 28, 2023

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

SIGNATORY:

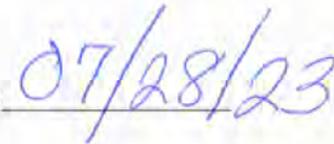
NEVADA STATE HISTORIC PRESERVATION OFFICER

By:

  
Rebecca Lynn Palmer

State Historic Preservation Officer

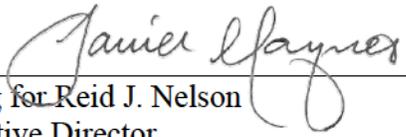
Date:



**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

SIGNATORY:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 8/15/2023  
Acting for Reid J. Nelson  
Executive Director

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

DESERTXPRESS ENTERPRISES, LLC

DocuSigned by:  
watterson  
By:  Date: 7/28/2023  
1e71e288b9c5418...  
Sarah Watterson  
President

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

FEDERAL HIGHWAY ADMINISTRATION: NEVADA DIVISION

By: RODNEY D WHITFIELD Digitally signed by RODNEY D  
WHITFIELD  
Date: 2023.08.03 10:39:06 -07'00' Date: 08/03/23  
Rodney Whitfield  
Acting Division Administrator

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

FEDERAL HIGHWAY ADMINISTRATION: CALIFORNIA DIVISION

By: **Elissa K. Konove** Digitally signed by Elissa K. Konove  
Date: 2023.08.04 14:00:28 -07'00' Date: **08/04/2023**

Elissa K. Konove  
Acting Division Administrator  
Federal Highway Administration

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

SURFACE TRANSPORTATION BOARD

**DANIELLE GOSSELIN** Digitally signed by DANIELLE  
GOSSELIN  
Date: 2023.07.31 10:20:36 -04'00'      Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Danielle Gosselin  
Director, Office of Environmental Analysis

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT:  
SOUTHERN NEVADA DISTRICT

By:   
Angelita S. Bullets  
District Manager

Date: 08/08/2023

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT:  
BARSTOW FIELD OFFICE

**MARC**  
By: **STAMER**  
Marc Stamer  
Field Manager

Digitally signed by MARC  
STAMER  
Date: 2023.08.09  
10:15:09 -0700'

Date: \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
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BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT: NEEDLES  
FIELD OFFICE

**MICHAEL**  
By: **AHRENS**  
Michael Ahrens  
Field Manager

Digitally signed by  
MICHAEL AHRENS  
Date: 2023.08.01  
14:01:29 -07'00'

Date: 01 August, 2023

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
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BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

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

By:  2023.08.04 17:37:08  
-07'00' Date: \_\_\_\_\_  
David J. Castanon  
Chief, Regulatory Division

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

CALTRANS

By:  \_\_\_\_\_ Date: 8/3/2023  
Catalino A. Pining III  
Caltrans District 8 Director

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

INVITED SIGNATORY:

NEVADA DEPARTMENT OF TRANSPORTATION

By: DocuSigned by: Tracy Larkin Thomason Date: 08/02/2023  
852931E930B041F...  
Tracy Larkin Thomason  
Director

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

CHEMEHUEVI INDIAN TRIBE OF THE CHEMEHUEVI RESERVATION, CALIFORNIA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

CLARK COUNTY DEPARTMENT OF AVIATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Rosemary Vassiliadis  
Director of Aviation

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
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BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

COLORADO RIVER INDIAN TRIBES OF THE COLORADO RIVER INDIAN  
RESERVATION, ARIZONA AND CALIFORNIA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
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BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

FEDERAL AVIATION ADMINISTRATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
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BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

FORT MOJAVE INDIAN TRIBE OF ARIZONA, CALIFORNIA AND NEVADA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING THE  
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IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

LAS VEGAS TRIBE OF PAIUTE INDIANS OF THE LAS VEGAS INDIAN COLONY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

MORONGO BAND OF MISSION INDIANS

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING THE  
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IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

NATIONAL PARK SERVICE: MOJAVE NATIONAL PRESERVE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
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CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

NATIONAL PARK SERVICE: OLD SPANISH TRAIL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
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IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

YUHAAVIATAM OF SAN MANUEL NATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING THE  
BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

SOBOBA BAND OF LUISENO INDIANS

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING THE  
BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

TIMBISHA SHOSHONE TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING THE  
BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

TWENTY-NINE PALMS BAND OF MISSION INDIANS

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL RAILROAD ADMINISTRATION,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING THE  
BRIGHTLINE WEST – LAS VEGAS TO VICTOR VALLEY PROJECT  
IN BAKER, YERMO, AND BARSTOW, IN SAN BERNARDINO COUNTY,  
CALIFORNIA, AND IN LAS VEGAS AND PRIMM, IN CLARK COUNTY, NEVADA**

CONCURRING:

OLD SPANISH TRAIL ASSOCIATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Name, Title]