

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES AIR FORCE/
TONOPAH TEST RANGE OPERATIONS OFFICE AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,
A FIBER OPTIC LINE FROM THE TOLICHA PEAK FACILITY
TO THE NORTH END OF RANGE 74B ON THE NEVADA TEST
AND TRAINING RANGE IN NYE COUNTY, NEVADA**

FROM ARCHAEOLOGICAL SITE(S): 26NY1333, 26NY2210, 26NY2218, 26NY2324, 26NY9773, 26NY15204, 26NY15206, 26NY15214, 26NY15216, 26NY15217, 26NY15222 as depicted on the map and in the legal description table in Attachment 1 to this MOA.

UNDERTAKING: A Fiber Optic Line from the Tolicha Peak Facility (TPECR) to the North End of Range 74B on the Nevada Test and Training Range (NTTR), Nye County, Nevada

STATE: Nevada

AGENCY: Department of the Air Force/Tonopah Test Range Operations Office (DAF/TTRO)

WHEREAS, the DAF/TTRO plans to install an underground fiber optic line (hereafter the Undertaking) on the Nevada Test and Training Range (NTTR); and

WHEREAS, the DAF/TTRO is fully funding this undertaking and therefore subject to review under Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, the DAF/TTRO has established the area of potential effects (APE) as the right-of-way (ROW) as depicted on the map and in the legal description table in Attachment 1 to this MOA; and

WHEREAS, the DAF/TTRO, in consultation with the Nevada State Historic Preservation Officer (SHPO) and in accordance with 36 CFR § 800.4(b) and § 800.4(c), has inventoried historic properties within the Undertaking's APE and has determined that archaeological sites 26NY1333, 26NY2210, 26NY2218, 26NY2324, 26NY9773, 26NY15204, 26NY15206, 26NY15214, 26NY15216, 26NY15217, 26NY15222 are eligible for the National Register of Historic Places (NRHP); and

WHEREAS, in accordance with 36 CFR Part 800, the DAF/TTRO acknowledges and accepts the advice and conditions outlined in Advisory Council on Historic Preservation's (ACHP) "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites" in effect as of June 17, 1999; and

WHEREAS, the consulting parties agree that recovery of significant information from the archaeological sites listed above may be done in accordance with the published guidance; and

WHEREAS, the consulting parties agree that it is in the public interest to expend funds to implement this project through the recovery of significant information from archaeological sites to mitigate the adverse effects of the project; and

WHEREAS, the consulting parties agree that the Consolidated Group of Tribes and Organizations (CGTO) that may attach religious or cultural importance to the affected properties have been

consulted and have raised no objection to the work proposed [as addressed in Section 4.0 of the Historic Properties Treatment Plan (HPTP) which is provided as Attachment 2 to this MOA]; and

WHEREAS, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work;

NOW, THEREFORE, the DAF/TTRO and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The DAF/TTRO shall make this MOA a condition of the Undertaking the project and shall ensure that the following measures are carried out.

I. TREATMENT OF ADVERSE EFFECTS OF HISTORIC PROPERTIES

- A. The DAF/TTRO shall implement all elements of the attached July 2014 *Historic Properties Treatment Plan (HPTP) for the Fiber Optic Line from the Tolicha Peak Facility (TPECR) to the North End of Range 74B on the Nevada Test and Training Range (NTTR), Nye County, Nevada* (Attachment 2), prepared by the DAF/TTRO's cultural resources contractor the Desert Research Institute, prior to the start of project construction.
- B. The DAF/TTRO, in consultation with the SHPO, shall ensure that the fieldwork portions of the treatment plan are completed prior to initiating any activities that may affect historic properties located within the area covered by the HPTP. All fieldwork, including monitoring, shall be summarized in a fieldwork summary, as outlined below in Stipulation II A.
- C. Any party to this MOA may propose an amendment to the HPTP, and shall submit the proposed amendment to all parties of this MOA for consideration, whereupon all parties shall consult for no more than 30 days to consider such amendment. The DAF/TTRO may extend this consultation period. Such amendment will not require amendment of this MOA.
- D. Disputes regarding amendments proposed hereunder shall be resolved through consultation between the MOA parties. The time frames for such consultation shall be consistent with those established under Stipulation IV.C below. If the dispute is resolved within this time frame, the MOA parties shall proceed in accordance with the terms of that resolution. If the dispute is not resolved within this time frame, no amendment to the HPTP will occur.

II. REPORTING REQUIREMENTS AND FIELDWORK SUMMARY REVIEW

- A. Within ten 10 days of completion of all fieldwork required under Stipulation I, the DAF/TTRO shall notify the SHPO that the fieldwork component is complete.
- B. DAF/TTRO and SHPO shall each be afforded an opportunity to perform a fieldwork summary review, as follows:

1. The cultural resources consultants will provide DAF/TTRO with a summary of fieldwork after a site has been mitigated according to the Treatment Plan;
 2. The DAF/TTRO shall review the summary within two working days of receipt;
 3. The DAF/TTRO shall provide a copy of the fieldwork to SHPO;
 4. SHPO shall review the summary within two working days of receipt. If SHPO does not respond within two working days, the DAF/TTRO can assume concurrence and issue a notice to proceed.
- C. Within 12 months of completion of all fieldwork required under Stipulation I, a draft technical report documenting the results of the archaeological fieldwork will be prepared. The DAF/TTRO will distribute the draft technical report to the SHPO for review and comment. The SHPO shall review and provide any comments to the DAF/TTRO, and copy the other MOA parties regarding their comments, within thirty 30 days of receipt of the draft technical report. If no comments are received within the thirty 30 day comment period, the DAF/TTRO may assume the SHPO has no comment. The DAF/TTRO shall respond to any comments, and copy the other MOA parties, within thirty 30 days or implement the Resolving Objections Stipulation of the MOA (Stipulation IV.C). After all comments are addressed, the DAF/TTRO shall provide a final technical report in accordance with Stipulation IV.B.

III. PROFESSIONAL QUALIFICATIONS AND STANDARDS

A. Professional Qualifications

All historic preservation activities implemented pursuant to this MOA shall be conducted by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of Interior's Professional Qualifications Standards (PQS) for Archeology, History, or Architectural History, as appropriate (48 FR 44738-39).

B. Historic Preservation Standards

All historic preservation activities carried out pursuant to the MOA shall meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR44716-44740) as well as standards and guidelines for historic preservation activities established by the SHPO and National Park Service.

C. Curation and Curation Standards

The DAF/TTRO shall ensure that the materials and records resulting from the historic preservation work stipulated in this MOA are curated in accordance with 36 CFR Part 79. Short term storage of the artifacts will be at DRI's Southern Nevada Science Center in Las Vegas for the duration of the project. Permanent collection for long-term curation must be approved by the DAF/TTRO. The DAF has identified the Nevada State Museum in Carson City as the primary repository for long term curation in Nevada, via an agreement document between the Nevada State Museum and Nellis AFB.

D. Documentation Standards

The DAF/TTRO shall ensure that all written documentation prescribed by Stipulation I and II of the MOA shall conform to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-44740), as well as to applicable standards and guidelines established by the SHPO.

IV. ADMINISTRATIVE STIPULATIONS

A. Confidentiality

The parties to this MOA acknowledge that historic properties covered by this MOA are subject to the provisions of § 304 of the NHPA relating to the disclosure of archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are consistent with § 304 of the NHPA.

B. Report Distribution

The DAF/TTRO shall ensure that copies of all technical reports and studies prepared to satisfy the terms of this MOA are provided upon completion by the cultural resources consultant to all parties to this MOA, consistent with requirements of Stipulation IV.A., above.

C. Resolving Objections

1. Should either party to this MOA object at any time in writing to the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect to the implementation of the MOA, or to any documentation prepared in accordance with and subject to the terms of this MOA, the party shall immediately notify the other party to this MOA of the objection, and shall provide their comments within 15 days, and proceed to consult for no more than 30 days to resolve the objection.

2. If the objection is resolved during the 30-day consultation period, the DAF/TTRO may proceed with the disputed action in accordance with the terms of that resolution.

3. If after initiating such consultation, the DAF/TTRO determines that the objection cannot be resolved through consultation, the DAF/TTRO shall forward all documentation relevant to the objection, including the DAF/TTRO's proposed response to the objection, to the ACHP, with the expectation that the ACHP will, within 30 days after receipt of such documentation, do one of the following:

a. advise the DAF/TTRO that the ACHP concurs in the DAF/TTRO'S proposed response to the objection, whereupon the DAF/TTRO will respond to the objection accordingly. The objection shall thereby be resolved; or

b. provide the DAF/TTRO with recommendations, which the DAF/TTRO will take into account in reaching a final decision regarding its response to the objection. The objection shall thereby be resolved; or

c. notify the DAF/TTRO that the objection will be referred for comment, pursuant to 36 CFR § 800.7(c), and proceed to refer the objection and comment. The DAF/TTRO shall take the

resulting comment into account in accordance with 36 CFR § 800.7(c)(4) and § 110(1) of the NHPA. The objection shall thereby be resolved.

4. Should the ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, the DAF/TTRO may assume the ACHP's concurrence in its proposed response to the objection and proceed with implementation of that response. The objection shall thereby be resolved.

5. The DAF/TTRO shall take into account any ACHP recommendation or comment provided in accordance with Section IV.C.1 of this stipulation, with reference only to the subject of the objection. The DAF/TTRO'S responsibilities to ensure all actions are carried out under this MOA that are not the subject of the objection shall remain unchanged.

6. At any time during the implementation of the terms of this MOA, should an objection pertaining to such implementation be raised by a member of the public, the DAF/TTRO shall immediately notify the SHPO in writing of the objection and take the objection into consideration. The DAF/TTRO shall consult with the objecting party and, if the objecting party so requests, with the SHPO, for no more than 15 days. Within 10 days following closure of this consultation period, the DAF/TTRO will render a decision regarding the objection and notify the SHPO of its decision in writing. In reaching its decision, the DAF/TTRO will take into account any comments from the consulting parties regarding the objection, including the objecting party. The DAF/TTRO'S decision regarding the resolution will be final. The objection will thereby be resolved.

7. The DAF/TTRO may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

8. The DAF/TTRO shall provide all parties to this MOA and the ACHP, when the ACHP has issued comments hereunder, and any parties that have objected pursuant to Section C.6 of this stipulation, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.

D. Amendments

1. Any party to this MOA may propose that this MOA be amended, whereupon all parties to this MOA will consult for no more than 30 days to consider such amendment. The DAF/TTRO may extend this consultation period. The amendment process shall comply with 36 CFR § 800.6(c)(1) and § 800.6(c)(7). This MOA may be amended only upon the written agreement of the signatory parties. If it is not amended, this MOA may be terminated by the DAF/TTRO or the SHPO.

2. Provisions for amending the HPTP that accompanies this MOA as Attachment 2 were discussed above in Stipulation I.C.

E. Termination

1. Only the DAF/TTRO or the SHPO may terminate this MOA. If this MOA is not amended as provided for in Section D of this stipulation, or if the DAF/TTRO or the SHPO proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other parties to this MOA, explain the reasons for proposing termination, and consult with the other parties to this MOA for at least 30 days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, then the parties shall proceed in accordance with the terms of that agreement. Such consultation shall not be

required if the DAF/TTRO proposes termination because the Undertaking no longer meets the definition set forth at 36 CFR § 800.16(y).

2. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other parties to this MOA in writing. Termination hereunder shall render this MOA without further force or effect.

3. If this MOA is terminated hereunder, and if the DAF/TTRO determines that the undertaking will nonetheless proceed, then the DAF/TTRO shall either consult in accordance with 36 CFR § 800.6 to develop a new MOA, or request the comments of the ACHP, pursuant to 36 CFR Part 800.

F. Duration of the MOA

1. Unless terminated pursuant to Section E of this stipulation, or unless it is superseded by an amended MOA, this MOA will be in effect following execution by the signatory parties until the DAF/TTRO, in consultation with SHPO determines that all the terms of this MOA have been satisfactorily fulfilled. Upon a determination by the DAF/TTRO that all of the terms of this MOA have been satisfactorily fulfilled, the DAF/TTRO will immediately notify the SHPO in writing of its determination that all terms of this MOA have been satisfactorily fulfilled and of the termination of the MOA. Following provision of such notice, this MOA will have no further force or effect.

2. If the Undertaking has not been implemented within 5 years following execution of this MOA by the signatory parties, this MOA shall automatically terminate and have no further force or effect. In such event, the DAF/TTRO shall notify the other MOA parties in writing and, if it chooses to continue with the Undertaking, shall reinitiate review of the Undertaking in accordance with applicable regulations.


G. Effective Date

This MOA will take effect immediately upon full execution by the DAF/TTRO and the SHPO.

EXECUTION of this MOA by the DAF/TTRO and the SHPO, pursuant to 36 CFR § 800.6, including its transmittal by the DAF/TTRO to the ACHP in accordance with 36 CFR § 800.6 (b)(1)(iv), and subsequent implementation of its terms, shall evidence that the DAF/TTRO has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that the DAF/TTRO has taken into account the effects of the Undertaking on historic properties.

SIGNATORY PARTIES:

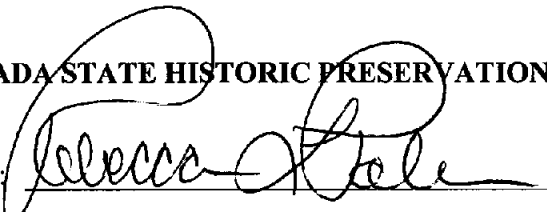
UNITED STATES AIR FORCE/TONOPAH TEST RANGE OPERATIONS OFFICE

Name: 
Matthew W. Birch

Date 27 Aug 14

Title: Director, Environmental Management

NEVADA STATE HISTORIC PRESERVATION OFFICER

Name: 
Rebecca L. Palmer

Date 9/9/14

Title: Nevada State Historic Preservation Officer

**ATTACHMENT 1
PROJECT LOCATION MAP
AND LEGAL DESCRIPTIONS**

**Information in this attachment contains archaeological site location data
and may be exempt from Freedom of Information Act requests.**

**ATTACHMENT 2
HISTORIC PROPERTIES TREATMENT PLAN (HPTP)**

**Information in this attachment contains archaeological site location data
and may be exempt from Freedom of Information Act requests.**