

**AMENDMENT
TO THE
PROGRAMMATIC AGREEMENT
AMONG
THE SACRAMENTO DISTRICT OF THE U.S. ARMY CORPS OF ENGINEERS,
THE SIERRA FRONT FIELD OFFICE OF THE BUREAU OF LAND MANAGEMENT,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
AND
THE STOREY COUNTY PUBLIC WORKS DEPARTMENT
REGARDING
NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE
FOR
THE REPLACEMENT OF EXISTING WATER AND SEWER LINES
AND
WASTEWATER TREATMENT PLANT EXPANSION IN VIRGINIA CITY AND GOLD HILL
BOTH LOCATED WITHIN
THE VIRGINIA CITY HISTORIC DISTRICT AND NATIONAL HISTORIC LANDMARK**

WHEREAS, U.S. Army Corps of Engineers (Corps), the Bureau of Land Management (BLM) and the Nevada State Historic Preservation Officer (SHPO) executed a Programmatic Agreement (PA) titled, *Programmatic Agreement Among the Sacramento District of the U.S. Army Corps of Engineers, the Sierra Front Field Office of the Bureau of Land Management, the Nevada State Historic Preservation Officer and the Storey County Public Works Department Regarding National Historic Preservation Act Compliance for the Replacement of Existing Water and Sewer Lines and Wastewater Treatment plant Expansion in Virginia City and Gold Hill both Located Within the Virginia City Historic District and National Historic Landmark*, on March 12, 2012 for replacement of water and sewer lines and expansion of an existing wastewater treatment plant by Storey County in Virginia City and Gold Hill (Undertaking), Nevada; and

WHEREAS, the Corps will not be providing financial assistance to Storey County for construction of the Undertaking; and

WHEREAS, Storey County Public Works Department (County) is proposing to phase the construction of the Undertaking by sequentially replacing segments of the system; and

WHEREAS, the Rural Utilities Service (RUS), one of three agencies comprising Rural Development, is authorized to provide financial assistance to rural communities for infrastructure development and improvement under the Water and Waste Loan and Grant Program in accordance with 7 CFR Part 1780; and

WHEREAS, RUS proposes to provide federal financing for construction of Phase I of the Undertaking which consists of replacement of the wastewater treatment plant; and

WHEREAS, the County may apply to RUS for funding to construct other phases of the Undertaking; and

WHEREAS, RUS has determined that funding of Phase I of the Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and

WHEREAS, RUS proposes to adopt the terms of the 2012 PA in order to meet its requirements under 36 CFR Part 800; and

WHEREAS, the Corps, BLM, the Nevada SHPO and the County agree to amend the 2012 PA in accordance with Stipulation XVI to establish the role and responsibilities of RUS; and

WHEREAS, in accordance with 36 CFR § 800.6(c)(1), RUS is a signatory to the amendment; and

WHEREAS, the Corps and BLM agree to designate RUS as the lead agency who shall act on their behalf, fulfilling their collective responsibilities under Section 106 for construction of Phase I of the Undertaking in accordance with 36 CFR § 800.2(a)(2);

NOW, THEREFORE, the Corps, BLM, SHPO and RUS agree to amend the 2012 PA in the following manner so that RUS might meet the collective federal Section 106 responsibilities for the Undertaking.

AMENDMENTS

The Corps, BLM, SHPO and RUS agree to amend the 2012 PA as follows:

STIPULATIONS

Amend to read as follows: *The lead federal agency will ensure that the following measures are carried out.*

Stipulation II.B

Delete the fifth sentence in the first paragraph and replace it with the following: *A letter report with the results of the inventory will be provided to BLM and RUS.*

Delete the second paragraph and replace it with the following new paragraphs: *Pursuant to 36 CFR § 800.4(b)(1), in consultation with BLM and SHPO, RUS will review the Class III Inventory to determine if additional study is needed to identify historic properties for Phase I of the*

Undertaking. RUS will implement the additional study it determines meets the reasonable and good faith effort regulatory standard. In consultation with the SHPO and BLM, RUS will apply 36 CFR § 800.4(c) to determine if historic properties are present in the APE for Phase I of the undertaking.

In accordance with 36 CFR §§ 800.4 and 800.5(a) RUS will determine the effect of Phase I of the Undertaking on the VCHD and NHL, including potential visual impacts and any newly discovered historic properties within the VCHD and NHL. RUS will provide a finding of effect on Phase I of the Undertaking to the BLM, and following consultation with BLM, will submit the finding of effect to the SHPO for review.

Stipulation II.C

Delete the fifth through the ninth sentences of the opening paragraph and replace them with the following: RUS will complete testing plans and data recovery to resolve adverse effects to the VCHD and NHL in advance of construction of Phase I. The Sensitivity Document will need to be completed in its entirety in advance of any construction of ground-disturbing activities within the APE for Phase I of the Undertaking. For each of the activities in this stipulation, the results, information gathered, and eligibility determinations that the Corps has made will be forwarded to the BLM and RUS. Following consultation with the BLM and RUS, determinations will be sent to the SHPO for review. The BLM and SHPO will have thirty (30) calendar days from their receipt to provide their comments on the Sensitivity Document and support documents such as an effects evaluation, proposed testing plans, and proposed data recovery plans to the Corps or RUS as appropriate.

Stipulation II.C.2

Delete the second sentence and replace it with the following: The SHPO, RUS and BLM will have thirty (30) calendar days from their receipt to provide their comments on the sensitivity map and testing plan. All comments will be considered prior to the implementation of the testing plan.

Stipulation II.C.3

Replace "the Corps" with RUS.

Stipulation II.D

Delete the opening paragraph and replace it with the following: RUS will determine effects to historic properties identified using the steps described in Stipulations II.A, II.B, and II.C. RUS will apply the Criteria of Adverse Effect pursuant to Stipulation VI to identified historic properties that will be affected by construction of Phase I of the Undertaking. For those historic properties that RUS has determined that will be adversely affected by construction of Phase I of the Undertaking, a Historic Property Treatment Plan (HPTP) will be developed by the County in accordance with Appendix 3.

Stipulation II.D.1

Replace "the Corps" with *RUS*. In addition, delete the third and fourth sentences and replace them with the following: *The SHPO, BLM National Park Service (NPS), Washoe Tribe, Yerington Paiute Tribe, and the Comstock Historic District Commission (CHDC) will have thirty (30) calendar days from their receipt to provide their comments on the effect determinations and the data recovery plan in the HPTP. RUS will consider all comments in preparation of the final HPTP. RUS will submit the final HPTP to BLM and the SHPO which will have fifteen (15) days from receipt to provide their views. RUS will consider any additional comments prior to implementation of the final HPTP.*

Stipulation II.D.2

Replace "the Corps" with *RUS*.

Stipulation II.D.3

Delete the second sentence and replace it with the following: *RUS will implement the identified data recovery and other resolutions based on the recommendations of the HPTP and comments from the SHPO, BLM, NPS, Washoe Tribe, Yerington Paiute Tribe, and the CHDC.*

Stipulation III

In Stipulation III.A, replace "the Corps" with *RUS*.

Delete the language in Stipulation III.B in its entirety and replace it with the following: *RUS will ensure that the Washoe Tribe and Yerington Paiute Tribe are provided an opportunity to comment on deliverables under Stipulation II, as appropriate. All reviewers will have thirty (30) calendar days after receipt to provide comments to RUS. RUS will ensure that any comments received during the time period are considered and incorporated into final deliverables, as appropriate. RUS will consult with the Washoe Tribe and Yerington Paiute Tribe to identify properties of religious and cultural importance.*

Stipulation IV

Delete the language in Stipulation IV in its entirety and replace it with the following: *The County may issue a Notice to proceed (NTP) for Phase I construction of the Project after RUS signs the construction contract. For that portion of the Undertaking occurring on land the BLM manages, the County must consult with RUS and BLM in order to issue any NTP. RUS will sign the construction contract for Phase I of the Undertaking only after the following conditions have been met:*

- A. RUS, in consultation with BLM and the SHPO, has determined that there are no historic properties that may represent contributing elements to the Virginia City Historic District*

- (VCHD) and National Historic Landmark (NHL) within the area of potential effects (APE) for Phase I construction of the Undertaking; and*
- B. RUS, in consultation with BLM and the SHPO, has determined, after implementation of the Sensitivity Document and testing plan, that there will be no effect to historic properties that may represent contributing elements to the VCHD and NHL within the APE for Phase I construction of the Undertaking; or*
- C. RUS, after consultation with the SHPO, BLM, NPS, Washoe Tribe, Yerington Paiute Tribe, and the CHDC, has implemented an adequate HPTP for Phase I of the Undertaking; and*
- 1. The fieldwork phase of the data recovery or other resolution of effect option has been completed; and*
 - 2. RUS has accepted a summary of the fieldwork performed and a reporting schedule for that work; and*
 - 3. RUS has submitted the summary of the fieldwork to the SHPO. If the SHPO does not respond within two (2) working days from receipt of the summary of the fieldwork, the County can assume concurrence and issue the NTP.*
- D. The County will ensure that its qualified historical archeologist, with assistance by an architectural historian or historic architect, as appropriate, provide RUS, BLM, the SHPO and the CHDC with a report detailing the nature and treatment of any historic resources encountered during County activities for each phase of the Undertaking within fifteen (15) days of the completion of work on that phase, unless otherwise negotiated.*

Stipulation V

Replace "the Corps" with *RUS*.

Stipulation VI

Delete the language in Stipulation VI in its entirety and replace it with the following: *RUS will apply the Criteria of Adverse Effect pursuant to 36 CFR § 800.5(a)(1) to all historic properties within the APE that will be affected by the proposed Undertaking. Determinations of effect will be made by RUS in consultation with the BLM, SHPO, NPS, Washoe Tribe, Yerington Paiute Tribe, and the CHDC for their review.*

Stipulation VII

Replace "the Corps" with *RUS*.

Add the following new language to the end of the first paragraph in Stipulation VII: *In addition to consulting with BLM and the SHPO, RUS will consult with the Washoe Tribe, Yerington Paiute Tribe, and the CHDC.*

Stipulation VIII

In the first and second sentences, replace "the Corps" with *RUS*, and replace "appropriate Native American groups" with *the Washoe Tribe and the Yerington Paiute Tribe*. Replace "individuals" with *the CHDC*.

Delete the 3rd sentence and replace it with the following new language: *RUS will ensure that any comments received during this time period are taken into account and incorporated into the final HPTP or STP, as appropriate.*

Delete the 5th sentence and replace it with the following new language: *RUS will submit the final HPTP to BLM and the SHPO which will have fifteen (15) days from receipt to provide their views. RUS will consider any additional comments prior to implementation of the final HPTP.*

Stipulation IX

Delete the language in Stipulation IX in its entirety and replace it with the following new language: *All work, including reviews of any documentation described in this PA completed by RUS, Corps, BLM or the County, will be performed by or under the direct supervision of a person appropriately permitted by BLM and/or meeting the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61, Appendix A).*

Stipulation X.A

Delete the language in Stipulation X.A in its entirety and replace it with the following new language: *The BLM, RUS and SHPO shall review and comment on the results of any cultural resources inventory, evaluation, testing, or data recovery plans submitted by the County within the time frames indicated in this PA.*

Stipulation X.B

Delete the language in Stipulation X.B in its entirety and replace it with the following new language: *Unless previously noted with different timeframes, the Corps will submit the results of identification and evaluation efforts to the SHPO, BLM, NPS, Washoe Tribe, Yerington Paiute Tribe, and the CHDC, as appropriate, for a thirty (30) day review and comment period. Unless previously noted with different timeframes, RUS will submit the results of unanticipated discoveries identification and evaluation efforts, data recovery, testing plans, and treatment plans to the SHPO, BLM, NPS, Washoe Tribe, Yerington Paiute Tribe, and the CHDC, as appropriate, for a thirty (30) day review and comment period.*

If the SHPO, BLM, NPS, Washoe Tribe, Yerington Paiute Tribe, and the CHDC do not respond to the Corps or RUS, as appropriate, within thirty (30) days of receipt of a submittal, the Corps or RUS, as appropriate shall presume concurrence with the determinations, findings and recommendations as detailed in the submittal.

Stipulation X.C

Delete the language in Stipulation X.C in its entirety and replace it with the following new language: *A draft final report of all identification, evaluation, testing, data recovery, treatment, or other mitigating activities prepared by qualified personnel will be submitted by the County to the BLM, RUS, NPS, the Washoe Tribe, the Yerington Paiute Tribe, the CHDC and the SHPO within three (3) months after the completion of the fieldwork associated with Undertaking, unless otherwise negotiated. Comments on any draft reports by these parties will be due to RUS within thirty (30) calendar days from receipt. RUS will incorporate comments into the final draft report(s), as appropriate, and submit to these parties within thirty (30) calendar days.*

Stipulations XI and XII

Replace "the Corps" with *RUS*.

Stipulation XIII.B

Replace "*the Corps*" with *RUS*.

Stipulation XIII.C

Delete the language in Stipulation XIII.C in its entirety and replace it with the following new language: *The County, with the assistance of RUS, will bear the expense of identification, evaluation, and treatment of the VCHD and NHL historic properties or contributing properties directly or indirectly affected by activities related to the Undertaking.*

Stipulations XIV and XV

Replace "the Corps" with *RUS*.

Stipulation XVII.A

Delete the language in Stipulation XVII.A in its entirety and replace it with the following new language: *This Agreement will terminate either when the Corps, the BLM, RUS and SHPO determine that the Undertaking has been completed or five (5) years from the date of its execution, whichever comes first. Prior to the five year termination date, the BLM, RUS, the Corps or all, may consult with the other parties to reconsider the terms of the Agreement and extend or amend it as appropriate.*

Stipulation XVII.C

Delete the language in Stipulation XVII.C in its entirety and replace it with the following new language: *Should this Agreement be terminated, the Corps, BLM and RUS will either execute a new agreement pursuant to 36 C.F.R. § 800.14(b) or § 800.6, or request the comments of the ACHP under 36 C.F.R. § 800.7(a).*

Appendix #3 (Historic Property Treatment Plan Guidelines)

Replace "*the Corps*" with *lead federal agency for Section 106 review*.

Appendix #4 (Unanticipated Discoveries Plan)

Replace "the Corps" with *lead federal agency for Section 106 review*.

EXECUTION of this Amendment by the Corps, BLM, RUS and the SHPO, and subsequent implementation of its terms, evidence that RUS has satisfied the collective federal responsibilities under Section 106 of NHPA and its implementing regulations for the Undertaking.

SIGNATORY

RURAL UTILITIES SERVICE



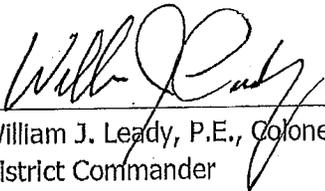
3/29/13

Date

Mark Plank, Director
Engineering and Environmental Staff

SIGNATORY

U.S. ARMY CORPS OF ENGINEERS

 12 APRIL 2013 Date
William J. Leady, P.E., Colonel
District Commander

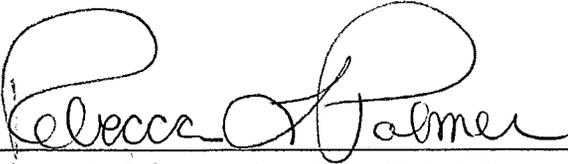
SIGNATORY

BUREAU OF LAND MANAGEMENT


_____ 4-9-13 Date
Leon Thomas, Field Manager, Sierra Front Field Office
Carson City District

SIGNATORY

NEVADA STATE HISTORIC PRESERVATION OFFICE

A handwritten signature in cursive script that reads "Rebecca L. Palmer". The signature is written in black ink and is positioned above a horizontal line.

Rebecca L. Palmer, Acting State Historic Preservation Officer

Date 4/2/13

INVITED SIGNATORY

STOREY COUNTY



Pat Whitten, County Manager

Date 10 APR 2013