

**PROGRAMMATIC AGREEMENT  
AMONG  
THE DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT TUSCARORA FIELD OFFICE,  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND  
RODEO CREEK GOLD, INC.  
REGARDING THE HOLLISTER UNDERGROUND MINE PROJECT**

**WHEREAS**, Rodeo Creek Gold, Inc. (“Operator”) currently operates the Hollister Development Block Underground Exploration Project on unpatented mining claims located on public lands in Elko County, Nevada, and has submitted a proposed plan of operations (PoO) titled the Hollister Underground Mine Project, which would consist of (1) developing the currently permitted underground bulk sampling and underground exploration project into a full scale underground mine, and (2) combining certain notice-level surface exploration activities into a single plan of operations (collectively, the “Project”); and

**WHEREAS**, the BLM has determined that the Project is an undertaking as defined in the National Historic Preservation Act (NHPA) because it involves public lands and federal permits; and

**WHEREAS**, the BLM has consulted with the SHPO pursuant to Part 1, Section II.A.3 & 4 and Part 1, Section II.B.2 of the State Protocol Agreement dated February 3, 2012, between the Nevada State Office of the BLM, and the SHPO (Protocol), and the BLM has determined that the mining and mineral exploration activities associated with the Project shall have adverse effects on properties eligible for the National Register of Historic Places (NRHP) including portions of the Tosawihl Quarries Archaeological District (District) and properties of traditional religious and cultural importance to Tribes that are eligible for the NRHP (herein referred to as Traditional Cultural Properties or TCPs); and

**WHEREAS**, the ACHP has been invited to participate in consultation and has chosen to participate pursuant to 36 CFR 800.6(a)(1)(iii) and is a Signatory to this Agreement; and

**WHEREAS**, the BLM, the SHPO, and the ACHP are collectively referred to herein as the “Signatory Parties”; and

**WHEREAS**, the BLM has consulted with the SHPO, the ACHP, and the other Consulting Parties to create this Agreement pursuant to 36 CFR 800.6 and 800.14(b) of the ACHP’s regulations implementing Section 106 of the NHPA, 16 USC 470f; and

**WHEREAS**, the Operator has participated in the development of, and will be an Invited Signatory to this Agreement; and

**WHEREAS**, Section 106 consultation with Tribal Governments and interested Western Shoshone organizations and groups in relation to earlier mining and mineral exploration in the Project area has been ongoing since 1988; and

**WHEREAS**, Section 106 consultation with Tribal Governments and interested Western Shoshone organizations and groups about the Project began on July 30, 2009, with letters to the Te-Moak Tribe of Western Shoshone Indians and its constituent bands, the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, the Ely Shoshone Tribe, the Yomba Shoshone Tribe, the Confederated Tribes of the

Goshute Reservation, the Western Shoshone Committee of Duck Valley, and the Duckwater Shoshone Tribe, informing them about the Project, opening dialogue about issues of traditional religious and cultural significance, and collaborating on management considerations in relation to specific items of significance; and

**WHEREAS**, the governments of the Te-Moak Tribe of Western Shoshone Indians, the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, the Ely Shoshone Tribe, the Yomba Shoshone Tribe, the Confederated Tribes of the Goshute Reservation, the Western Shoshone Committee of Duck Valley, and the Duckwater Shoshone Tribe have been invited to participate in Consultation and each have been invited to be a Concurring Party to this Agreement; and

**WHEREAS**, the BLM, in consultation with SHPO, has designated two Areas of Potential Effect (the APEs) as more fully described in Stipulation B, and depicted in Appendix B; and

**WHEREAS**, Operator's PoO under 43 CFR 3809.11 are to conduct surface mineral exploration and extraction activities within the APEs that are multi-year in scope; and

**WHEREAS**, in accordance with the requirements of Section 106 of the NHPA (Section 106), the Signatory Parties are entering into this Agreement because the effects of the Project on historic properties cannot be fully determined prior to the approval of the undertaking; and

**WHEREAS**, this Agreement is intended to cover all aspects of compliance with Section 106 associated with the Project ; and

**WHEREAS**, the BLM has elected to use and coordinate the National Environmental Policy Act commenting process as part of the public involvement process for Section 106 of the NHPA, as provided for in 36 CFR 800.2(d)(3); and

**WHEREAS**, the public has been informed about the Project through a Federal Register Notice dated April 19, 2010, (75 FR 20379) for the EIS scoping and June 1, 2012 (77 FR13356) for the public comment period on the Draft EIS; and through scoping meetings conducted on May 10, 2010, in Winnemucca; May 11, 2010, in Battle Mountain; May 12, 2010, in Elko; May 13, 2010, in Mountain City; and May 20, 2010, in Owyhee; and meetings on the Draft EIS on June 26, 2012, in Battle Mountain; June 27, 2012 in Elko; and July 11, 2012, in Owyhee;

**WHEREAS**, the BLM, the SHPO and the ACHP are Signatories to that certain Memorandum of Agreement (Ivanhoe MOA) effective October 5, 1988, with Galactic Services, Inc. regarding treatment of Historic Properties for the Ivanhoe Mine Project, a previous open-pit mining operation within the APEs; and

**WHEREAS**, Galactic Services, Inc. is no longer conducting operations within the APEs and Operator is the indirect successor in interest to certain unpatented mining claims and facilities from these previous operations, and the BLM, the SHPO and the ACHP wish to terminate the Ivanhoe MOA and Signatory Parties desire to enter into this Agreement; and

**NOW, THEREFORE**, the BLM, the SHPO, the ACHP, and Operator agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on Historic Properties.

Capitalized terms used herein and not defined herein have the meanings given to them in 36 CFR 800.16, the Protocol, or in the definitions set forth in Appendix A.

## STIPULATIONS

**The BLM shall ensure that the following measures are carried out:**

### **A. PURPOSE AND INTENT**

This PROGRAMMATIC AGREEMENT (Agreement), is by and among the Tuscarora Field Office of the Bureau of Land Management (BLM), the Advisory Council on Historic Preservation (ACHP), the Nevada State Historic Preservation Office (SHPO) and Rodeo Creek Gold, Inc. (Operator). The purpose of this Agreement is to take historic properties into account regarding compliance with Section 106 for the Project proposed and developed by Operator. This Agreement defines general and specific measures that will be undertaken by the BLM, the SHPO, and Operator to ensure that the BLM's objectives and responsibilities under the NHPA will be fulfilled.

### **B. AREAS OF POTENTIAL EFFECTS**

The Areas of Potential Effect (APEs) were established by the BLM, in consultation with the SHPO, to include all lands that may be directly, indirectly, or cumulatively affected by the Project. The two designated APEs for the Project, as more fully described in Appendix B, are for mining activities and facilities (Mining APE) and for surface exploration (Exploration APE). The Mining APE is defined as the lands for which the Project proposes surface disturbance for mining operations and ancillary facilities associated with the transition of the Hollister Development Block Project to the Hollister Underground Mine Project. The Exploration APE includes areas within which Operator may propose surface exploration activities. Within the Exploration APE, the BLM will designate exploration-specific APEs in response to Operator exploration proposals. The BLM, in consultation with the SHPO, the ACHP, Tribal Governments, Consulting Parties and Operator, may amend the APEs as needed through an amendment to this Agreement.

### **C. ROLES AND RESPONSIBILITIES**

1. **The BLM Roles and Responsibilities.**
  - a. The BLM shall ensure that measures within this Agreement are carried out. This includes but is not limited to: ensuring that all Consulting Parties carry out their responsibilities; participating in ongoing Section 106 consultation; overseeing all Section 106 and other Cultural Resources work; assembling all submissions to the SHPO and to other Consulting Parties – including reports, determinations of Eligibility, and treatment or data recovery plans; and for seeking the SHPO concurrence with all agency compliance decisions. Any submissions to the SHPO or Consulting Parties not from the BLM will be considered as informational only and will not trigger any compliance timelines or actions.
  - b. The BLM Manager will be the point of contact for BLM's review of reports, and collating responses to products required to implement this Agreement, including but not limited to: inventory reports, determinations of Eligibility, treatment options and plans, determinations of effects, monitoring reports, treatment or data recovery reports, etc.
  - c. The BLM shall ensure that Cultural Resources work conducted pursuant to this Agreement is carried out by, or under the direct supervision of, Contractors.

2. **The ACHP Roles and Responsibilities.**

The ACHP shall provide their expertise and advice for compliance with and implementation of the Agreement, and participate in dispute resolution about this Agreement and mitigation designed to address adverse effects to Historic Properties (as discussed in Section F).

3. **Operator Roles and Responsibilities.**

- a. Operator will appoint a point of contact for the Project and provide the BLM with any information reasonably necessary for the BLM to implement this Agreement.
- b. Operator, in cooperation with the BLM and the SHPO, shall ensure that all Operator Project personnel and contractors have received specific Cultural Resources training (as specified in D.10.b), which includes direction not to engage in the collection of Cultural Resources or items of archaeological interest. Operator shall cooperate with the BLM to prevent violations of the Archaeological Resources Protection Act (ARPA; 16 U.S.C. 470aa-mm).
- c. Operator shall bear the reasonable expense of Contractors and Tribal Monitors (should they request payment) to perform Section 106 compliance under this Agreement, including inventory, identification, evaluation, monitoring, and mitigation of Project-related adverse effects to Historic Properties within the APE. Such costs may include, as appropriate and shall not be limited to: pre-field planning, fieldwork, post-fieldwork analysis, research, interim and summary report preparation, and artifact and records storage (curation). If Operator withdraws its request for Authorizations to Proceed (ATP), then Operator shall not be required to incur further expense for identification, evaluation or treatment for any Cultural Resources except for completing work (fieldwork and post-fieldwork activities including production of reports covering the description and analysis of all data collected up to that point, and curation of project materials) that is ongoing as of the date of withdrawal or disapproval, or work required in connection with reclamation for the activities subject to the withdrawn ATP.

**D. PROCESS**

1. **Initiation.** The BLM has identified interested persons and Tribal Governments pursuant to the Protocol, the NHPA, and the NEPA scoping process and has involved, and will consult with them throughout the Project.
2. **Identification.** Operator shall provide for a qualified Contractor (as specified in C.1.c and Appendix A) to perform the identification efforts in this Agreement. Areas of proposed surface disturbance in the applicable APEs shall be inventoried at the Class III level. Class III inventories shall be conducted in accordance with the following:
  - a. Record searches will be conducted to identify Historic Properties within the applicable APE which could be directly, indirectly, or cumulatively affected by the Project (The distinction between Cultural Resources and Historic Properties is

clarified in Appendix A). BLM will evaluate whether Historic Properties identified in Class III inventories that are ten years old or older should be revisited to relocate such resources and re-evaluate condition and Eligibility determinations, and obtain relevant information necessary for avoidance, treatment or other mitigation.

- b. All newly identified Cultural Resources or updated site records within the APE will be recorded in accordance with the Protocol. Sites within the District are referred to as Loci.
  - c. Artifacts only will be collected when authorized by the BLM.
  - d. Cultural resources extending outside the survey area will be recorded to the extent necessary for Eligibility determinations.
  - e. Linear Sites will be recorded in accordance with the Protocol. Linear Sites will be recorded outside of the survey area only to the extent necessary to determine Eligibility.
  - f. The BLM shall consult with BLM – identified Tribal Governments, tribal groups, and interested persons within the tribal communities of interest to identify TCPs or properties of traditional religious and cultural significance.
3. **Evaluation.** The BLM, in consultation with the SHPO, Tribal Governments, and other Consulting Parties shall evaluate all Cultural Resources (including TCPs) identified within the applicable APEs for Eligibility to the NRHP (utilizing criteria found in 36 CFR 60.4) as inventories and revisits are completed.
- a. The BLM shall require the Contractor conducting the Class III inventory to make initial recommendations regarding Eligibility, but determinations of Eligibility will be made by the BLM in consultation with the SHPO, taking into consideration the views of the Consulting Parties.
  - b. The BLM shall apply the NRHP criteria to properties proposed as TCPs in consultation with Tribal Governments and other Consulting Parties, and with the SHPO's concurrence determine whether such properties are eligible.
  - c. If proposed surface disturbance is within a previously defined Historic or Archaeological District, all identified Historic Properties (also known as Loci) in the applicable APE that are located within that District will be evaluated and classified as either contributing or noncontributing to the Eligibility of the District.
  - d. The BLM, in consultation with the SHPO and Tribal Governments, may authorize an evaluation plan under an ARPA permit (which may involve minor excavation, archaeological probes or tests). In developing a subsurface evaluation plan, the BLM shall ensure that any testing is limited to defining the nature, density, and distribution of Cultural Resource materials in order to provide the minimum data necessary to make final evaluations of Eligibility and to devise appropriate treatment options.

- e. The BLM shall ensure that Cultural Resources identified within the applicable APE are evaluated for Eligibility prior to initiation of activities that may have an Adverse Effect on such resources.
  - f. The BLM will inform Operator of Eligibility determinations within 20 days of such determination.
4. **Effects and Treatment.** Where Historic Properties have been identified within the APEs, the BLM shall ensure that the following procedures are followed in determining effects on Historic Properties and Traditional Cultural Properties and treatment of direct, indirect, cumulative Adverse Effects, if any.
- a. Determination of Effects
    - 1. The BLM shall determine the precise nature of the anticipated effects of the Project, or a proposed component of the Project, on Historic Properties within the APE.
    - 2. If the BLM finds that the Project, or a proposed component of the Project, will not have any effect on Historic Properties, the BLM may issue an ATP in accordance with Stipulation D.6.
    - 3. If the BLM finds, in consultation with the SHPO, Tribal Governments, and Consulting Parties that the Project, or a proposed component of the Project, may have an effect on Historic Properties, the BLM will then determine whether the effect could be Adverse;
    - 4. If the BLM finds, in consultation with the SHPO, Tribal Governments, and Consulting Parties that the Project, or a proposed component of the Project, may have an Adverse Effect, the BLM will comply with Stipulation D.4.b.
  - b. Avoidance. The BLM, in consultation with the SHPO, Tribal Governments, and Consulting Parties, as appropriate, shall ensure that Operator avoids Adverse Effects to Historic Properties through project design or redesign, relocation of facilities, or by other means in a manner (as specified in Appendix E) consistent with this Agreement or applicable law. If avoidance is not reasonably practicable then treatment will be implemented as specified in Stipulation D.4.c.
  - c. Treatment Plans and Other Mitigation. When avoidance is not reasonably practicable, the BLM, in consultation with the SHPO, Operator, Tribal Governments, and Consulting Parties as appropriate, shall review and approve a treatment plan developed and implemented by Operator's Contractor(s). The treatment plan shall be delivered to BLM within 30 days of Operator's notification to the Contractor. The treatment plan shall be designed to minimize and/or mitigate project-related effects to Historic Properties. For properties eligible to the NRHP under criteria (a) through (c) (36 CFR 60.4), mitigation, other than data recovery through archaeological excavation, shall be considered (e.g., further documentation, oral history, historic markers, exhibits, interpretive materials, etc.). Mitigation of Historic Properties eligible under criterion (d) may involve archaeological excavation utilizing a Treatment Plan that has been reviewed and approved by the BLM and the SHPO in consultation with Tribes and the public where appropriate. BLM shall use the input

from Consulting Parties to inform decisions on mitigation measures. Efforts shall be made to involve the public and/or make interpretive information available to the public.

5. **Monitoring.** Monitoring of Historic Properties and Project activities shall be in accordance with the Monitoring Plan set forth in Appendix D.

6. **Authorizations to Proceed (ATP).** An ATP will be issued by the Tuscarora Field Office BLM Manager to Operator for authorized Project activities that would potentially affect Historic Properties:

- a. For Mining and Exploration Activities. Operator's request for an ATP shall include maps of the areas to be released or authorized (ATP Area) to be provided to the BLM. BLM may issue an ATP within 2 business days once any of the following conditions are met:
- (1) no Historic Properties exist in the ATP Area; or
  - (2) Historic Properties at risk of adverse effect due to Project activities within the ATP Area have undergone treatment and the fieldwork summary report have been approved by the BLM and the SHPO in consultation with consulting parties, and BLM has received Operator's letter guaranteeing the funding to complete the remaining post-fieldwork analysis, report and curation, and/or mitigation; or
  - (3) the untreated Historic Properties can be monitored and avoided in accordance with Appendix D, (See Appendix A for definition of Avoidance). The default avoidance buffer zone will be at least 30 meters, but BLM may, on a case-by-case basis agree to a smaller avoidance zone.

BLM will attach to the ATP a list and map of Historic Properties within the ATP Area and whether they must be avoided, or, if archaeological sites, are no longer of archaeological interest as defined in ARPA.

- b. For Exploration. On or before April 15<sup>th</sup> of each year, Operator will submit to BLM an Annual Exploration Proposal that includes maps of the proposed drill holes and access routes for that year's field season; and will have a Contractor review the map and prepare:
- (1) a list of all existing Class III inventories for the indicated drill holes, if any; and
  - (2) a Fieldwork Authorization request for areas not covered by a Class III inventory and areas for which a Class III inventory is older than 10 years.

Operator shall then submit the map and Cultural Resources review, along with a description of proposed activities (Annual Exploration Proposal), to the BLM for review. Within 10 working days of receipt of the Annual Exploration Proposal, the BLM will review it and notify Operator whether BLM requires more information prior to scheduling site visits. Operator and the BLM will coordinate to schedule site visits in time to begin exploration no later than June 1st. The BLM will supply a file copy of the approved Annual Exploration Proposal to SHPO.

A BLM archaeologist will perform a site visit with an Operator representative, Operator's Contractor, and a designated Tribal Monitor, following the protocols in Appendix D.

BLM will attach to the ATP a list and map of Historic Properties within the ATP Area and whether they must be avoided, or are no longer, if archaeological sites, of archaeological interest as defined in ARPA.

7. **Records and Curation.** The BLM shall ensure that all records and materials authorized for collection and associated documentation developed as part of an approved Treatment Plan are curated in accordance with 36 CFR 79 in a BLM-approved facility in Nevada and that all materials collected by a Contractor will be maintained in accordance with 36 CFR 79 until the final treatment reports are complete and collections are curated. If materials are collected on private lands, BLM shall ensure that all such material to be returned to their owners will be maintained in accordance with 36 CFR 79 until analysis is complete and the materials are returned. The BLM shall ensure that all such reports conform to contemporary professional standards, the Protocol, and the Department of Interior's Formal Standards for Final Reports of Data Recovery Programs (48 FR 44716-44740).
8. **Discovery Situations.** Within 60 days of the Effective Date, Operator shall provide the BLM with a list of authorized persons empowered to halt activities in a discovery situation and who will be responsible for notifying the BLM of any discoveries. Operator shall notify BLM of any changes to the list as such changes occur, and shall at a minimum provide an updated list once each year when submitting the Annual Exploration Proposal. At least one of these authorized persons will be present during all Operator ground disturbing activities. Cultural Resources, not previously identified, which are discovered while conducting Project activities shall be handled as described in Appendix C (Discovery Plan).
9. **Reporting.** The BLM shall ensure that all final reports resulting from actions pursuant to this Agreement will be provided to the SHPO, Tribal Governments, and Consulting Parties. Final reports will be submitted in both hard (printed) and electronic (digital) copies. Sensitive information shall be redacted in reports provided to Tribal Governments and Consulting Parties unless a data sharing agreement has been approved with the BLM.
10. **Project Operations; Training.**
  - a. The requirements under Stipulation D.8 regarding discoveries, and under Stipulation D.6.b regarding exploration drilling protocols, will be included in relevant construction, operations, and exploration plans. Operator will brief all Operator field personnel and any Operator Contractor regarding these requirements.
  - b. All personnel (including contractors; new, added, or replaced personnel, etc.) involved in construction, operation, and maintenance of the Project will be instructed (to a degree appropriate to their involvement in the Project) by Operator and its Consultants, on site Avoidance and protection measures, including information on the statutes protecting Cultural Resources and Traditional Cultural Properties as part of its environmental training program prior to being authorized to work in the Project Area. At a minimum, all employees shall receive written information sheet(s) that discuss the importance of Cultural Resources, Traditional Cultural Properties, and archaeological laws including penalties for violation. Operator will be responsible for

developing its training program and the BLM and/or the SHPO, at their own option, may provide suggestions to Operator on its content and observe the training program.

## 11. Information Sharing and Confidentiality

- a. The BLM shall ensure the security of confidential information provided by Tribes or Consulting Parties.
- b. The BLM will provide Operator a copy of locational information for Historic Properties and Traditional Cultural Properties within the APEs, and updates of this information.
- c. Operator agrees to maintain the confidentiality of any locational or other Cultural Resource and Traditional Cultural Property information received under this Agreement, and to design procedures to ensure that such information is only made available to personnel with a need to know this information in order to design project facilities or conduct operations in a manner to avoid effects to Historic Properties, Traditional Cultural Properties, or known archeological resources. Operator shall keep such information in a secure location with access limited to necessary Operator representatives. The Cultural Resource and Traditional Cultural Property information obtained by Operator under this Agreement will not be used for any purpose other than consultation with the BLM and the SHPO or conduct of Operator operations in compliance with this Agreement and applicable laws.
- d. Precise Historic Property location data will be omitted or redacted from reports and site forms provided to Consulting Parties, with whom the BLM does not have a signed information sharing agreement, pursuant to Section 304 of the NHPA that release of such data could jeopardize Historic Properties.
- e. Should the Project or Agreement be terminated, Operator agrees to gather and securely store all confidential information, including electronic files until closure and reclamation is complete and such information is no longer needed, after which Operator shall destroy through shredding or erasure the confidential files and information, and provide written notification to the BLM upon the completion of this task. Operator agrees not to share any such records beyond what is authorized in this Stipulation (D.11) without the written approval of the BLM.

## 12. Time Frames

- a. Reports and Treatment Plans. The BLM will review and comment on any report submitted by Operator's Contractor(s) within 30 calendar days of receipt. All reports, plans, and other documentation shall be submitted by the Contractor directly to BLM. Once any reports, plans, or other documentation has been approved by the BLM and the SHPO, the final document shall be shared with Operator. Sensitive information shall be shared according to the provisions of Stipulation D.11.
- b. SHPO Consultation. The SHPO shall have 30 calendar days from receipt to review and comment on reports, plans, proposals, or any other documentation forwarded by

the BLM, with the exception of discovery situations which shall be handled in accordance with Appendix C.

- c. Consultation with Consulting Parties. The BLM shall consult with Tribal Governments, concurrently with SHPO consultation, about TCPs, Historic Properties, and other concerns potentially affected by the Project. Consultation with Tribal Governments shall be on-going. Additional consultation will take place during Section 106 evaluation, regarding specific alternatives in the Project EIS, as part of monitoring and discovery situations, and for development and implementation of treatment plans. Tribes shall have 30 calendar days from receipt to review and comment on any documentation.

The BLM shall provide Signatories with copies of any comments received during Tribal Consultation with the exception of sensitive or confidential information obtained from Tribal Consultation. The SHPO shall have 10 working days to review the comments.

- d. Failure to Meet Timelines. If any Consulting Party to this Agreement fails to respond to the BLM within 30 calendar days of receipt of a submission, the BLM shall presume concurrence with the BLM's findings as detailed in the submission and proceed accordingly.
- e. Reports. Operator's Contractor shall submit a draft report of any inventory, evaluation, monitoring, treatment, or other mitigation activities to the BLM within three months after the completion of the fieldwork, unless otherwise agreed. Revised reports will be due 60 calendar days after receiving any BLM comments.
- f. Curation. All records, data files, photographs, negatives, maps, field notes, artifacts, catalogs, samples, and reports and other materials collected or developed for any identification, evaluation or treatment activities will be curated in a facility in Nevada approved by the BLM. Operator or their Contractor shall provide proof of curation to the BLM from the curatorial facilities within two weeks of BLM's acceptance of the final report.

## **E. NATIVE AMERICAN CONSULTATION**

1. BLM will continue to consult about this Project with the Indian Tribes and interested parties that it has identified as attaching religious or cultural significance to areas within or near the APEs .
2. The BLM will continue to formally consult with Tribal Governments in accordance with Executive Order 13175 on consultation and Coordination with Indian Tribal Governments, dated November 6, 2000, (65 FR 67249), Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" 959 FR 22951), and the National Historic Preservation Act (1966, as Amended). Consultation on identification, evaluation, and treatment efforts will be consistent with the BLM Manual 8160 and the BLM Handbook 8160-1, or in accordance with specific agreements with specific Tribes on the conduct of consultation, if any.

3. Information gathered through consultation considered confidential or proprietary by a Tribe or Western Shoshone individuals may be held confidential to the extent allowed by federal law and Stipulation D.11 above.

## **F. DISPUTE RESOLUTION**

1. Should any Signatory or Invited Signatory object, in writing, at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the BLM shall consult for up to 45 days with the objecting party to resolve the concern. If the BLM determines that the concern cannot be resolved, the BLM shall:
  - a. Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide the BLM with its advice on the resolution of the concern within 30 days of receiving adequate documentation. Prior to reaching its final decision on the dispute, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, and Invited and other Signatories; and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
  - b. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to this Agreement, and provide them and the ACHP with a copy of such written response.
  - c. The State Director of the BLM in Nevada will have the authority to make a final determination for any objection that cannot be resolved after taking any comments from the ACHP into account.
  - d. Objections raised by a Tribe or interested person that has not participated in Consultation or in this Agreement as a Consulting Party or interested party shall be handled pursuant to the provisions of 36 CFR 800.4(d)(1)(ii) and 800.5(c)(2)(i).
  - e. The Signatory and Invited Parties shall continue all actions under this Agreement that are not the subject of the dispute.
2. Should the SHPO and BLM disagree regarding eligibility, the BLM shall seek a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR 63.2. The Keeper's determination will be final.
3. Nothing in this Agreement shall waive or otherwise limit any of the Parties' administrative or judicial remedy or right of review available under applicable law or regulations.

## **G. AMENDMENT**

Any Signatory or Invited Signatory to this Agreement may request that this Agreement be amended, whereupon the Signatories and Invited Signatory will consult to consider such amendment. The amendment will be effective on the date a copy signed by all of the Signatories and Invited Signatory is filed with the ACHP.

**H. AGREEMENT REPORTING**

BLM shall invite Consulting Parties, Signatories, and the Invited Signatories to discuss, at least once a year, the accomplishments, effectiveness, monitoring results, and implementation of the Agreement. The consultation shall be documented in an Annual Agreement Report prepared by the BLM and shared with Consulting Parties, and may result in Amendment (under Stipulation G).

**I. TERM AND TERMINATION**

This Agreement shall become effective on the Effective Date, and shall remain in effect for a period of ten years, or until its earlier termination as provided below. If the Project has not been initiated within five years of the Effective Date, this Agreement will automatically terminate.

Any Signatory Party or Invited Signatory to the Agreement may terminate this Agreement by providing 30 calendar days notice to the other Parties, provided that the Parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. If attempts to resolve differences or amend the Agreement fail, the Agreement can be terminated.

In the event that this Agreement is terminated, the BLM will comply with the provisions of the current Protocol and applicable NHPA regulations.

**J. NATURE OF OPERATOR CONTRACTUAL OBLIGATIONS.**

The contractual obligations of Operator created by this Agreement are enforceable only by the BLM against Operator. This Agreement creates no contractual right or obligation between Operator and any other person or entity, including any other Signatory (other than the BLM), or any Concurring or Consulting Parties, Tribe, or member of the public. Nothing herein shall limit any person's or entity's rights, if any, under the NHPA or the Administrative Procedure Act.

**K. TERMINATION OF IVANHOE MOA.**

The BLM, the ACHP and the SHPO hereby terminate the Ivanhoe MOA.

**EXECUTION** and implementation of this Agreement is evidence that the BLM has complied with Section 106 of the NHPA and afforded the ACHP the opportunity to comment on this Project and its effects on Historic Properties, and that the BLM is taking into account the effects of the Project on Historic Properties.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

**SIGNATORY PARTIES:**

**BUREAU OF LAND MANAGEMENT, TUSCARORA FIELD OFFICE MANAGER**

By: Richard E. Adams Date: 5/6/13  
Richard E. Adams, Field Office Manager

**NEVADA STATE HISTORIC PRESERVATION OFFICE**

By: Rebecca Palmer Date: 4/30/13  
Rebecca Palmer, Acting State Historic Preservation Officer

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: John M. Fowler Date: 5/2/13  
John M. Fowler, Executive Director

**INVITED SIGNATORY PARTY:**

**RODEO CREEK GOLD, INC.**

By: James M. Palmer Date: April 19, 2013  
Title: VICE PRESIDENT, NEVADA OPERATIONS

**CONCURRING PARTIES:**

**TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**BATTLE MOUNTAIN BAND**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOUTH FORK BAND**

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

Title: \_\_\_\_\_

**ELKO BAND**

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

Title: \_\_\_\_\_

**WELLS BAND**

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

Title: \_\_\_\_\_

**SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION**

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

Title: \_\_\_\_\_

**ELY SHOSHONE TRIBE**

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

Title: \_\_\_\_\_

**YOMBA SHOSHONE TRIBE**

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

Title: \_\_\_\_\_

**CONFEDERATE TRIBES OF THE GOSHUTE INDIAN RESERVATION**

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

Title: \_\_\_\_\_

**DUCKWATER SHOSHONE TRIBE**

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

Title: \_\_\_\_\_

**YOMBA SHOSHONE TRIBE**

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

Title: \_\_\_\_\_