

**PROGRAMMATIC AGREEMENT
AMONG THE RURAL UTILITIES SERVICE, LINCOLN COUNTY TELEPHONE
SYSTEM INC.,
AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE LINCOLN 501-M PROJECT
IN LINCOLN AND CLARK COUNTIES, NEVADA
(2016-4541)**

WHEREAS, the Rural Utilities Service (RUS), which is one of three agencies comprising the U.S. Department of Agriculture's Rural Development, is authorized under the Rural Electrification Act of 1936 as amended to provide financial assistance in the development of telecommunications infrastructure, including broadband, for eligible rural communities in the United States; and

WHEREAS, a rural telecommunications cooperative borrower may apply to the RUS Telecommunications Program under 7 CFR Part 1737 for federal financial assistance to fund proposed long range development for its existing system within its service territory (loan design); and

WHEREAS, the Lincoln County Telephone System, Inc. (Lincoln) has applied to RUS for financial assistance for the Nevada 501-M Lincoln and Clark Counties Nevada, undertaking # 2016-4541 (Project); and

WHEREAS, the Project consists of the installation of 100.75 miles of fiber facilities in, or near, existing previously disturbed utility corridors/right-of-ways; the replacement of three existing tower (Alamo 50', Caliente Exchange 45', and Panaca 75') with a new 100' to 150' monopole, and the construction of three new approx. 100' towers/monopoles in the White River, Delmar, and Coyote Springs development areas; and

WHEREAS, RUS has determined that the obligation of federal financial assistance, pursuant to 7 CFR § 1737.91, constitutes an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108, and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and

WHEREAS, obligation of the Project makes federal funding available for use by Lincoln in the design and engineering of loan contracts, construction, and in the completion of any studies needed to comply with 36 CFR Part 800 (Section 106 review); and

WHEREAS, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of a Programmatic Agreement (PA) is appropriate for this Project because effects on historic properties cannot be fully determined prior to the obligation of funding for the Project; and

WHEREAS, RUS will not release obligated funds for any Project construction contract until Section 106 review under the terms of this PA has been concluded for that contract, and this PA between the Signatories with all its Stipulations for Section 106 conformity will serve to satisfy Section 106 compliance; and

WHEREAS, RUS has consulted with the Nevada State Historic Preservation Officer (SHPO), pursuant to Section 106 of the NHPA and 36CFR §800.14(1) who is a Signatory to this PA; and

WHEREAS, RUS has invited Lincoln to participate in consultation and sign this PA as an Invited Signatory; and

WHEREAS, as currently proposed, Project construction will not cross tribal lands; and

WHEREAS, the following tribes: the Colorado River Indian Tribe of the Colorado River; Confederated Tribes of the Warm Springs; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation; Fort Mojave Indian Tribe of Arizona, California, and Nevada; Hualapai Indian Tribe of the Hualapai Indian Reservation; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony; Moapa Band of Paiute Indians of the Moapa River Indian Reservation; Paiute Indian Tribe of Utah; Te-Moak Tribe of Western Shoshone Indians of Nevada; and Yomba Shoshone Tribe of the Yomba Reservation were notified of this Project on August 25-26, 2016, and none responded; and

WHEREAS, the following new tribes will be contacted regarding this project and notified of the PA at the recommendation of BLM: Battle Mountain Band Council; Wells Indian Colony; Paiute Tribe of Utah Cedar Band of Paiutes; Elko Band Te-Moak Tribe of Western Shoshone Indians of Nevada; Confederated Tribes of the Goshute Reservation; Duckwater Shoshone Tribe; Ely Shoshone Tribe of Nevada; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation; South Fork Band Council; Bishop Paiute Tribe; Winnemucca Indian Colony of Nevada; Kanosh Band of Paiute Indians; Koosharem Band of Paiute Indians; and

WHEREAS, all of the tribes mentioned in the PA will be notified of the development of this PA and their opportunity to provide comment during the development of the project; and

WHEREAS, as currently proposed, Project construction will cross federal lands managed by the Bureau of Land Management (BLM) Caliente Field Office (CFO) and the Southern Nevada District Office (SNDO); and

WHEREAS, Lincoln will implement the Project over an undetermined timeline with specific Project processes that have not yet been identified, the Signatories have elected to use a phased process to identify and evaluate effects to historic properties and thus, will defer final identification and evaluation of historic properties through the execution of this Programmatic Agreement (PA) pursuant to 36 CFR Part 800. 14(b); and

WHEREAS, RUS has invited BLM to be a Signatory to this PA and BLM declined to participate as a Signatory to this PA; and

WHEREAS, on April 6, 2017, RUS invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation, in accordance with 36 CFR § 800.6(a)(1)(i)(C), providing the specified documentation and the ACHP has declined to participate; and

WHEREAS, definitions of the terms used in this PA can be found at 36 CFR § 800.16; and

NOW, THEREFORE, the Signatories agree that the Project construction contracts will be implemented in accordance with the following stipulations in order to take into account their effect on historic properties.

STIPULATIONS

RUS will ensure that the following measures are carried out by a professional meeting the applicable Secretary of the Interior's (SOI) Professional Qualifications Standards in the appropriate fields:

I. STANDARDS AND CONDITIONS

- A. In accordance with 7 CFR § 1970.5(b)(2) of the regulations, "Environmental Policies and Procedures" (7 CFR Part 1970), RUS has issued a blanket delegation to its borrowers to initiate and proceed through Section 106 review. For the purpose of this Project, this delegation solely applies to Lincoln and its consultant(s).
- B. Lincoln will not initiate construction for the Project until Section 106 review conducted in accordance with the terms of this PA has been satisfied for that contract.

II. ROLES AND RESPONSIBILITIES

RUS is responsible for administering this PA. RUS will ensure that all ethnographic, historic, architectural, and archaeological work conducted pursuant to this PA is carried out by or under the direct supervision of persons meeting the qualifications set forth in the SOI Professional Qualifications Standards in the appropriate fields and that those who perform cultural resource work have the required permits issued by BLM Nevada.

RUS will comply with 36 CFR § 800.9(c) whenever it determines that Section 110(k) of NHPA may be applicable.

RUS is responsible for overseeing cultural resource work; assembling submissions to the SHPO including reports, determinations of eligibility and effect, and treatment plans; and seeking the SHPO's concurrence with agency compliance decisions.

Early in the planning phase of construction, prior to any ground disturbance and only where required by RUS, Lincoln is responsible for engaging a professional and permitted Cultural Resource Management firm to inventory the Areas of Potential Effect (APE) as determined by RUS and detailed below.

Lincoln is responsible for the production and dissemination of any reports and surveys required by RUS, BLM, and/or the SHPO. The production of these reports and surveys shall be conducted by persons meeting the conditions of Stipulation II.

RUS, in consultation with SHPO and the Consulting Parties, will be responsible for reviewing reports and participating in making determinations of eligibility, developing treatment options, and determining effects for the Project.

Tribes are responsible for advising and assisting RUS as the lead federal agency in the Section 106 process. 36 CFR 800.2(c)(2) reminds Federal agencies that historic properties of religious and cultural significance to an Indian tribe may be located on ancestral, aboriginal, or ceded lands of that tribe. Accordingly, agencies must make a reasonable and good faith effort to identify Indian tribes that attach such significance but may now live at great distances from the Project's area of potential effect.

III. COORDINATION AND QUALIFICATIONS

- A. RUS will ensure that the requirements of 36 CFR § 800.3 through, and including, 36 CFR § 800.7 have been met for the Project before obligated funds are released for the construction under that contract.
 - 1. Professional Standards: Studies required by RUS under the terms of this PA will be carried out by or under the direct supervision of a professional who, at a minimum, meets the Secretary of the Interior's *Professional Qualification Standards* (48 FR 44716, September 29, 1983) in the appropriate field.
 - 2. Confidentiality: During implementation of this PA, RUS will protect information about historic properties, including location information to the extent allowable under Section 304 of the National Historic Preservation Act, 54 U.S.C. 306108, 36 CFR § 800.11(c) and other applicable legal requirements.
 - 3. Documentation: Reporting under this PA when applicable will follow the format established by BLM's Protocol. See Appendix 1.
- B. RUS initiated Section 106 review for the Project, and Lincoln will comply with the requirements of this PA in completing Section 106 review for this proposed construction.

IV. AREA OF POTENTIAL EFFECT

The Project consists of the installation of 100.75 miles of fiber facilities in, or near, existing previously disturbed utility corridors/right-of-ways; the replacement of three existing tower (Alamo 50', Caliente Exchange 45', and Panaca 75') with a new 100' to 150' monopole, and the construction of three new approx. 100' towers/monopoles in the White River, Delmar, and Coyote Springs development areas, and development areas in existing ROWs with the potential to alter existing equipment in such a way to have an effect on historic properties.

- A. Direct Effects

The direct APE is the area within which historic properties may sustain physical alteration or destruction because of the Project. The APE for direct physical effects is influenced by the area of potential ground disturbance by activities related to the entire Project. The total number of Project acres is the APE for the entire Project. The direct APE shall include all access routes and Project staging areas.

B. Indirect Effects

RUS has determined that the visual effects are likely to be limited in nature since Lincoln will be installing fiber facilities in the disturbed ground in the ROW. However, the upgrading of tower facilities may create visual or other effects to historic properties. At minimum, a ½ -mile radius around the upgraded tower facilities will be considered for indirect effects. Lincoln will individually examine each tower to establish whether the upgrades have an increased visual effect on their surroundings compared to their predecessors. Early in the planning stage (before the line is staked), Lincoln will coordinate with RUS, in consultation with the SHPO to minimize potential visual effects to historic properties.

C. Cumulative Effects

RUS will determine if there are any cumulative effects or reasonably foreseeable effects that the Project may cause that could occur later in time, be farther removed in distance, or be cumulative which would have an adverse effect to historic properties.

D. Modifying the APE

1. The APE as currently defined encompasses an area sufficient to accommodate all of the Project components under consideration as of the date of the execution of this PA. The APE may be modified when tribal consultation, additional field research or literature review, consultation with the Consulting Parties, or other factors indicate that the qualities and values of historic properties that lie outside the boundaries of the currently defined APE may be affected directly, indirectly, or cumulatively.
 - a. If RUS determines that the Project or changes to the Project may cause direct, indirect, or cumulative effects on historic properties, then RUS shall consult with all Consulting Parties before the determination is made to modify the APE.
 - b. Any Signatory or Invited Signatory to this PA may propose that the APE be modified by providing written justification and illustration of the proposed APE modification. RUS shall send the modification proposal to all Signatories and consult with them for no more than 30 days in an effort to reach consensus on the proposal. If the Signatories agree to modify the APE, RUS will notify the Signatories of the decision. If all Signatories

cannot agree to a proposal for the modification of the APE, then RUS will consider their concerns and will render a final decision.

2. RUS may amend the APE as needed or as requested by the SHPO or other Consulting Party without amending the PA proper. If this occurs, all Consulting Parties will receive formal notification of the amended APE. Within thirty (30) calendar days of their receipt of the proposed amendment, any Consulting Party may request the PA to be amended in accord with the process outlined in Stipulation IX, Amendment.

V. IDENTIFICATION, EVALUATION, AND TREATMENT

Prior to ground disturbance, and early in the planning process, RUS, Lincoln or its contractors shall follow the requirements and provisions found in *Appendix I: The State Protocol Agreement between the Bureau of Land Management, Nevada and the Nevada State Historic Preservation Officer for Implementing the National Historic Preservation Act, Revised December 22, 2014* (Protocol), the BLM manual 8110 – *Identifying and Evaluating Cultural Resources*, and the *Bureau of Land Management Nevada State Office Guidelines and Standards for Archaeological Inventory*. All parties agree that the procedures in the Protocol will be used for all lands. Also, RUS, Lincoln or its contractors shall consult with the Tribes, or identified affected tribal members, to evaluate effects to properties of traditional religious and cultural importance. Based on information shared with RUS, RUS will, in consultation with the SHPO and the Tribes, determine the appropriate methods to avoid all Project effects to the extent practicable.

A. Identification

1. Lincoln and their Consultants

- i. Lincoln will provide RUS and the SHPO with the location and size of the 3 original towers being replaced as well as the location and size of the proposed 3 new towers.
- ii. Lincoln will provide RUS and the SHPO with the Project plans when the line has been staked for review and comment.
- iii. Lincoln shall conduct a records search for potential archaeological and architectural historic properties within a minimum 1-mile radius of the centerline for proposed fiber facilities and towers. The minimum visual APE for towers will include properties within ½ -mile of the proposed tower. After this initial review, RUS in consultation with the other Signatories, may determine that the buffer should be extended to accurately account for other historic properties that may be potentially affected by the Project.
- iv. Lincoln shall produce a map of the Project area including the following:

1. the Project APE, property type, location and eligibility of known historic properties in the area; and
 2. a minimum 1-mile radius of the centerline for proposed fiber facilities and towers. The minimum visual APE for towers will include properties within ½ -mile of the proposed tower. These are included on these maps to provide an accurate context of resource proximity to the Project APE; and
 3. locations of potential bore entrance and exit pits.
- v. Lincoln will identify any historic structures that may be affected (direct utility connection) by the Project.
 - vi. Lincoln will identify the depths of disturbance for installation activities and staging locations.
 - vii. Lincoln will incorporate RUS and SHPO comments in the completion of the construction plans. Final plans should be submitted to RUS and the SHPO for review and approval.

2. RUS

- i. RUS shall ensure that all work undertaken to satisfy the terms of this PA meets the Secretary of the Interior's Standards for Archeology and Historic Preservation (48 FR 44716) (Federal Register, September 29, 1983), hereinafter referred to as Secretary's Standards, and is consistent with the Advisory Council on Historic Preservation's (ACHP) guidance on archaeology.
- ii. RUS, in consultation with the SHPO, and consistent with the Protocol (Appendix I), have determined that some ROWs and areas of anticipated disturbance have undergone surveys in the recent past. These areas will not require additional survey. RUS, in consultation with the SHPO, will determine which areas of disturbance require additional survey.
- iii. Lincoln or RUS, through BLM Nevada permitted contractors, shall acquire Project Authorizations to inventory the direct effects APE in each ROW and disturbance area, as determined necessary by the BLM. These areas include any cross-country access route(s), and all areas associated with construction activities outside of ROWs, according to the Class III standards outlined in the Protocol in Appendix I.
- iv. All previously recorded and newly discovered archaeological resources discovered during Class III inventory will be documented on BLM

Nevada Intermountain Antiquities Computer System (IMACS) forms according to current BLM guidelines and standards.

- v. All previously recorded and newly discovered above ground architectural resources discovered during Class III inventory will be documented on Nevada Architectural Resource Assessment (NARA) forms according to current BLM guidelines and standards.
- vi. In cases where the site boundary extends beyond the APE by more than 100 meters, the entire site need not be documented. If this occurs, the Contractor will note this on the cover page that the site extends beyond the documented boundary and a map should be included to show where the boundary was not fully identified.
- vii. If historic linear features are identified, these will be mapped in the field by walking the centerline and documenting any associated artifacts, features, or sites encountered according to the process identified above. The contractor will document historic linear features 100 meters past the APE of the Project.

B. Evaluation

1. RUS, in consultation with the SHPO, shall evaluate cultural resources located within the APE for eligibility to the NRHP when effects to those specific cultural resources cannot be avoided by the Project. This will occur prior to the initiation of Project activities that may affect historic properties.
 - i. RUS, in consultation with the SHPO, shall consult with the Tribes to evaluate the eligibility of properties of traditional religious or cultural significance (Traditional Cultural Properties) that cannot be avoided.
 - ii. RUS shall base eligibility determinations on inventory information and consultation with the Tribes. As needed for further clarification of eligibility, the contractor in consultation with RUS shall develop testing plans and consolidate all testing plans into one submission to the SHPO for review. A minimum amount of testing will be conducted to preserve as much of a site as possible, and will require obtaining an ARPA permit from the Nevada BLM and consultation with the Tribes.
2. To the extent practicable, RUS shall ensure that adverse effects to historic properties are avoided through Project design, or redesign, relocation of facilities, or by other means in a manner consistent with this PA and the Protocol in Appendix I.

C. Treatment

1. Should an adverse effect be determined, and concurred with by RUS and the SHPO, consultation will occur among RUS, the SHPO, and Lincoln to determine appropriate mitigation to be incorporated into the creation and implementation of a Historic Properties Treatment Plan (HPTP) to resolve the adverse effect associated with the Project. RUS shall ensure that the HPTP is consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 37), the ACHP's guidance available online at <http://www.achp.gov/archguide/> and the Protocol in Appendix 1. RUS will consult with the Consulting Parties on the HPTP and ensure that revisions are made as needed. The SHPO will review and comment on the final plan within 30 days of receipt.
2. Where the Project intersects with buried resources, Lincoln will provide mitigations to direct effects including rerouting alternatives.
3. Lincoln will create a HPTP to mitigate adverse effect to historic properties where such properties cannot be avoided by a line movement or directional drilling. This does not include new discoveries of cultural resources located in previously disturbed soils where the nature of the Project is such that no new disturbance will occur outside of the previously disturbed area.

VI. INADVERTANT DISCOVERIES AND UNANTICIPATED EFFECTS

- A. RUS will ensure that the Project incorporates the procedures outlined in this Stipulation to protect a post-review discovery to comply with the requirements of 36 CFR § 800.13(b)(3) and (c).
- B. When the Project intersects with buried resources, the project manager will immediately establish barriers around the discovery, engage the professional archeologist to quickly assess the nature and scope of the discovery, implement interim measures to protect the discovery from looting and vandalism, and notify RUS, the SHPO, BLM (on federal lands), and Tribes contacted for this Project. The notification will include an assessment of the discovery provided by the consulting archeologist.
- C. When the discovery contains burial sites or human remains, RUS will include provisions for meeting the requirements of applicable state and federal laws, including 36 CFR Part 800.13; 43 CFR Part 10, Subpart B; Nevada Revised Statutes (NRS) 383, and the ACHP's Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007) in consultation with SHPO. During these discoveries, all construction activities will stop within a 100 ft. radius of the discovery. The contractor shall immediately notify RUS, BLM, and the SHPO. RUS may expand this radius based on the professional archaeologist's assessment of the discovery.
- D. RUS, in consultation with the signatories to this PA and interested Tribes, shall develop a plan for the treatment of native human remains.

- E. If cultural materials are encountered during construction, Lincoln and its contractor shall immediately cease work within a 50 ft. radius of the discovery. Work may continue in the Project area where no cultural materials are present. The contractor shall immediately notify RUS, BLM, and the SHPO. RUS may expand this radius based on the professional archaeologist's assessment of the discovery.
- F. RUS shall notify the SHPO and other Consulting Parties as appropriate, within 2 working days of being notified of the discovery or unanticipated effect, and consider their initial comments on the situation.

VII. NOTICES TO PROCEED

- A. RUS, in consultation with the SHPO, may issue a Notice to Proceed (NTP) in the area of discovery after the following conditions are met:
 - 1. RUS, in consultation with the SHPO, has determined that the fieldwork phase of the treatment option has been completed; and
 - 2. RUS has accepted a summary description of the fieldwork performed within the construction segment; and
 - 3. Lincoln has submitted copies of any reports and HPTPs to the SHPO; and
 - 4. The SHPO has reviewed all fieldwork summaries. If the SHPO does not respond within two working days of receipt, RUS shall assume concurrence and issue the NTP.

VIII. DISPUTE RESOLUTION

Should any Consulting Party object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, RUS will consult with such party to resolve the objection. If RUS determines that the objection cannot be resolved, it will forward all documentation relevant to the dispute, including the resolution it proposes, to the ACHP.

- A. The ACHP will provide RUS with its advice pursuant to 36 CFR § 800.2(b)(2) on the resolution of the objection within thirty (30) days of receipt of adequate documentation.
 - 1. Prior to reaching a final decision on the dispute, RUS will prepare a written response that takes into account any timely advice received from the ACHP, the SHPO and other consulting parties regarding the dispute. RUS will provide these parties with a copy of its written response, and then proceed according to its final decision.
 - 2. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, RUS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, RUS will prepare a written response that takes into account any timely advice submitted by the SHPO and other consulting parties

regarding the dispute. RUS will provide these parties with a copy of its written response, and then proceed according to its final decision.

- B. The responsibility of RUS to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.
- C. If, at any time during the implementation of the terms of this PA, an objection should be raised by the public, RUS will notify the Signatories and consult with the objecting party to seek resolution. If RUS determines that the objection cannot be resolved, it will seek the advice or comment of ACHP.

IX. TERM OF AGREEMENT

- A. The term of this PA will expire on January 1, 2020 unless the signatories agree to extend its term. If the terms of the PA have not been carried out, and prior to work continuing on the Project, RUS will either (a) execute another agreement pursuant to 36 CFR Part 800, or (b) request and take into account the comments of the ACHP pursuant to 36 CFR § 800.7.
- B. Six (6) months prior to January 1, 2020, Lincoln will notify the other Signatories of the impending expiration. The Signatories will consult to reconsider the terms of the PA and amend it in accordance with Stipulation X.

X. AMENDMENT

- A. This PA may be amended when such an amendment is agreed to in writing by the Signatories.
- B. The amendment will be effective on the date it is executed by the Signatories and filed with ACHP.

XI. TERMINATION

- A. If any Signatory or Invited Signatory determines that the terms of the PA will not, or cannot be carried out, that party will immediately consult with the others to attempt to develop an amendment in accordance with Stipulation X. If within thirty (30) days an amendment cannot be reached, any Signatory or Invited Signatory may terminate the PA upon written notification to the other Signatories.
- B. Once the PA has been terminated, and prior to work continuing on the Project, RUS must either (a) execute an agreement pursuant to 36 CFR Part 800, or (b) request, take into account, and respond to the comments of ACHP pursuant to 36 CFR § 800.7. RUS will notify the SHPO and Lincoln of the course of action it will pursue.

EXECUTION of this PA by RUS, the SHPO, and Lincoln and implementation of its terms evidence that RUS has taken into account the effects of the Project on historic properties and afforded ACHP a reasonable opportunity to comment.

Signatory pages follow.

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IN LINCOLN AND CLARK COUNTIES, NEVADA
(2016-4541)

SIGNATORY:

U.S. Department of Agriculture Rural Utilities Service

By: 

Date: 6/26/17

Kellie M. Kubena, Director
Engineering and Environmental Staff
Water and Environmental Programs

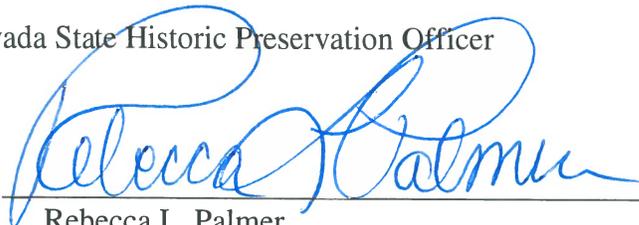
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SIGNATORY:

Nevada State Historic Preservation Officer

By:



Date:

06/26/17

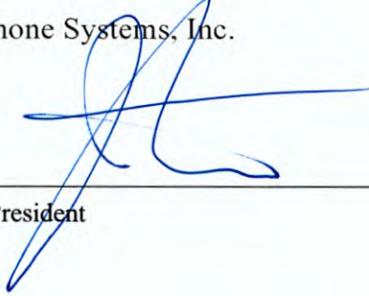
Rebecca L. Palmer
State Historic Preservation Officer

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INVITED SIGNATORY:

Lincoln County Telephone Systems, Inc.

By:  _____ Date: 6/29/2017
John W Christian, President

Appendix I

*State Protocol Agreement between The Bureau of Land Management, Nevada
and The Nevada State Historic Preservation Officer
for Implementing the National Historic Preservation Act
(revised December 22, 2014).*