

**MEMORANDUM OF AGREEMENT
AMONG
THE CITY OF ELKO
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE ELKO REGIONAL ATHLETIC COMPLEX PROJECT,
ELKO COUNTY, NEVADA**

WHEREAS, the United States Army Corps of Engineers, Sacramento District (hereafter the "USACE") proposes to issue a permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) (hereafter the "Permit") to the City of Elko (hereafter the "Applicant"), for the Elko Regional Athletic Complex Project (hereafter the "Undertaking") located in Elko County, Nevada; and the USACE has determined that this will be an Undertaking under the National Historic Preservation Act of 1966, as amended (54 U.S.C. § 30010); and

WHEREAS, the Undertaking would include placement of up to 5,162 cubic yards of fill material in 3.20-acres of constructed mitigation wetlands to construct a 51-acre municipal regional athletic complex and 30-acres of open space within an 81-acre site; and

WHEREAS, the USACE, in consultation with the Nevada State Historic Preservation Officer (hereafter the "SHPO") and in accordance with 36 CFR § 800.4(a)(1), has determined that the Undertaking's Area of Potential Effects (APE) includes all areas to be developed as part of the Undertaking, including all temporary and permanent easements areas, staging areas, and construction areas as depicted on the map, titled *Figure 1. Location of the Elko Sports Complex Project Area*, included as Attachment 1 to this Memorandum of Agreement (hereafter the "MOA"); and

WHEREAS, the USACE, in consultation with the SHPO and in accordance with 36 CFR § 800.4(b) and § 800.4(c), has inventoried the APE for historic and has determined that 26EK1713 is eligible for listing in the National Register of Historic Places under Secretary's Significance Criterion A; and

WHEREAS, the USACE, in consultation with the SHPO, has applied the criteria of adverse effect (36 CFR § 800.5(a)), and determined that the Undertaking will have an adverse effect on 26EK1713; and

WHEREAS, the USACE, after careful consideration of alternatives to the Undertaking, has chosen to proceed with the Undertaking, and has determined to resolve potential adverse effects of the Undertaking on 26EK1713 through the execution and implementation of this MOA; and

WHEREAS, in accordance with 36 CFR § 800.2, the USACE has attempted to consult with the Te-Moak Tribe of Western Shoshone Indians (hereafter the “Tribe”) regarding the Undertaking by letter dated May 29, 2015 and received no response; and

WHEREAS, the Applicant has participated in the development of this MOA, and the USACE has invited the Applicant to participate in this MOA as an Invited Signatory, pursuant to 36 CFR § 800.6(c)(2); and

WHEREAS, the Signatories and Invited Signatory shall be referred to collectively as Parties or individually as Party; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the USACE notified the Advisory Council on Historic Preservation (hereafter the “ACHP”) of the USACE’s adverse effect determination and provided the ACHP with supporting documentation on December 21, 2016 and provided additional information on April 10, 2017, but receiving no response from the Council expressing interest in participating in the consultation process as of April 25, 2017, the USACE intends to proceed with direct consultations with the SHPO to seek ways to avoid, minimize, or mitigate any adverse effects of the Undertaking, pursuant to 36 CFR Section 800.6(a)(1)(iv); and

NOW, THEREFORE, the Parties, agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effects 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

I. DEFINITIONS

The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this MOA.

II. TREATMENT OF ADVERSE EFFECTS

- A. The USACE shall make this MOA a condition of the Permit for the Undertaking and shall ensure that the following measures are carried out by the Applicant to the satisfaction of the USACE.
- B. Prior to the start of construction activities, the Applicant shall implement the fieldwork portion of the mitigation measures included in the *Historic Properties Treatment Plan for Site 26EK1713 and Additional Cultural Resource Documentation for the Elko Sports Complex Project, Elko County, Nevada* (January 2017) (hereafter the “HPTP”) to mitigate for the Undertaking’s adverse effects to 26EK1713.

- C. The HPTP may be amended through consultation as prescribed in Stipulation V.C. without amending the MOA proper.

III. DISCOVERY OF CULTURAL REMAINS DURING GROUND-DISTURBING ACTIVITIES

- A. Should any human remains or cultural material not previously identified be discovered during the Undertaking's implementation, the Applicant shall ensure work immediately ceases (allowing for necessary safety precautions to be completed) within 100 feet of the discovery and the discovery location secured from additional impacts from construction. The Applicant, or its representative, shall immediately notify the USACE of the discovery. The USACE shall immediately notify the SHPO and appropriate Tribe(s) regarding the discovery, pursuant to 36 CFR § 800.13. In the event that human remains are discovered, procedures under Section 383.170 of the Nevada Revised Statutes (NRS) shall be employed. Once the USACE is notified of the discovery, a report shall be prepared pursuant to Stipulation IV.D. of this MOA.
- B. After appropriate treatment of the discovery is completed in the area secured from construction and written authorization is received from the USACE, the Undertaking may resume in that area.

IV. 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 (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 FR 44716-44740) as well as standards and guidelines for historic preservation activities established by the SHPO and National Park Service.

C. Curation and Curation Standards.

The USACE shall ensure that the materials and records resulting from the historic preservation work stipulated in this MOA are curated at the Nevada State Museum in accordance with 36 CFR Part 79.

D. Documentation Standards.

The USACE shall ensure that all written documentation prescribed by Stipulation II of this 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.

V. ADMINISTRATIVE STIPULATIONS

A. CONFIDENTIALITY.

The parties to this MOA acknowledge that Historic Properties covered by this MOA are subject to the provisions of Section 304 of the NHPA (54 U.S.C. § 307103) and 36 CFR §800.11(c), relating to the disclosure of sensitive archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are consistent with Section 304 of the NHPA, 36 CFR § 800.11(c), and 5 U.S.C. § 552, as amended (Freedom of Information Act).

B. RESOLVING OBJECTIONS.

1. Should any Party to this MOA object in writing to the manner in which the terms of this MOA are implemented or to any documentation prepared in accordance with and subject to the terms of this MOA, the objecting Party shall immediately notify the other Parties of the nature of its objection. Responsive comments shall be provided by the non-objecting Parties within fifteen (15) calendar days following receipt of the expression of objection. As soon as practicable after notice of an objection the Parties hereto shall begin cooperative discussions for the purpose of resolving the dispute.
2. The Parties agree to work cooperatively and diligently toward a mutually acceptable resolution of the objection during a consultation period not to exceed thirty (30) calendar days, beginning on the date responsive comments are submitted by the non-objecting Parties to the objecting Party. If a resolution to the objection is reached, its terms shall be incorporated into a written amendment to the MOA in accordance with Stipulation V.C, below. Thereafter, the USACE may proceed in accordance with the terms of the resolution.
- 3 If, however, no resolution is reached during the consultation period, the USACE shall:
 - a. forward all documentation relevant to the objection, including the USACE's proposed response to the objection, to the ACHP. The ACHP shall provide USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the Parties, and provide them with a copy of this written response. USACE will then proceed according to its final decision.

- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the Parties to the MOA, and provide them and the ACHP with a copy of such written response.
 - c. The USACE's responsibility to ensure all actions are carried out under this MOA, that are not the subject of the objection, shall remain unchanged.
4. 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 USACE shall immediately notify the other Parties to this MOA in writing of the objection and take the objection into consideration. The USACE shall consult with the objecting individual or organization and, as appropriate, with the other Parties to this MOA, in an effort to reach a mutually acceptable resolution. The period of consultation shall not exceed fifteen (15) calendar days. Within ten (10) calendar days following closure of this consultation period, the USACE shall reach a decision regarding resolution of the objection and shall notify the objecting individual or organization as well as the Parties to this MOA of its decision in writing. In reaching its decision, the USACE shall take into account any comments from the other Parties to this MOA and any additional comments from the objecting individual or organization. The USACE's decision regarding the resolution will be final.

C. AMENDMENTS

Any Party to this MOA may propose that this MOA be amended, whereupon all Parties will consult for no more than thirty (30) days to consider such amendment. The USACE may extend this consultation period, if indicated. The amendment process shall comply with 36 CFR § 800.6(c)(7). This MOA may be amended only upon the written agreement of the Parties. The amendment will be effective on the date the USACE files a copy of the amended MOA with the ACHP.

D. TERMINATION

1. Only a Party may terminate this MOA. If a Party proposes termination that Party shall, in writing, notify the other Parties, explain the reasons for proposing termination, and shall consult with the other Parties for no more than thirty (30) calendar days to seek alternatives to termination. Should such consultation result in an agreement, the Parties shall proceed in accordance with of that agreement and shall prepare any amendment to the MOA, if needed, in accordance with the terms of Stipulation VI.D, above. Consultation shall not be required if the USACE proposes termination

because the Undertaking no longer meets the definition set forth at 36 CFR § 800.16(y).

2. If, after thirty (30) calendar days, consultation has not led to a resolution of the objection, the Party proposing termination may terminate this MOA by promptly notifying the other Parties in writing. Termination shall render this MOA without further force or effect.
3. If this MOA is terminated hereunder, and if the USACE determines that the Undertaking will nonetheless proceed, then the USACE shall advise the ACHP and request its comments in accordance with the requirements of 36 CFR 800.6(c)(8) and 36 CFR 800.7(a) and (c).

E. DURATION

1. Unless terminated pursuant to Stipulation V.D, this MOA will remain in effect following execution by the Parties until the USACE, in consultation with the other Parties hereto, determines that all the terms of this MOA have been satisfactorily fulfilled, or within five (5) years of its date of execution, whichever comes first. Upon a determination by the USACE that all of the requirements of this MOA have been satisfactorily fulfilled, the USACE shall notify the other Parties to this MOA in writing that the MOA has been fully performed and is therefore concluded.
2. If the requirements of this MOA appear unlikely to be fully performed within five (5) years following its date of execution, the USACE shall consult with the other Parties hereto to reconsider its terms at least sixty (60) calendar days prior to the date on which five (5) years will have elapsed. Reconsideration may include an agreement by the Parties to extend the MOA on its original terms for a mutually agreed-upon additional period, or an agreement to amend the MOA in accordance with Stipulation V.C above, or termination. In the event of termination, the USACE will comply with Stipulation V.D.3, if it determines that the Undertaking will proceed notwithstanding termination of this MOA.

F. EFFECTIVE DATE.

This MOA will take effect immediately upon its execution by the USACE and the SHPO.

EXECUTION of this MOA by the USACE and the SHPO and subsequent implementation of its terms, shall evidence that the USACE has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE ELKO REGIONAL ATHLETIC COMPLEX PROJECT,
ELKO COUNTY, NEVADA**

SIGNATORY PARTIES:

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

Name:  Date: 31 May 2017
For Michael S. Jewell
Title: Chief, Regulatory Division

NEVADA STATE HISTORIC PRESERVATION OFFICER

Name:  Date: 06/02/17
Rebecca L. Palmer
Title: State Historic Preservation Officer

INVITED SIGNATORY PARTY:

APPLICANT

Name:  Date: 5/23/17
Curtis Calder
Title: Elko City Manager, Applicant

ATTACHMENT 1
Area of Potential Effects/Permit Area

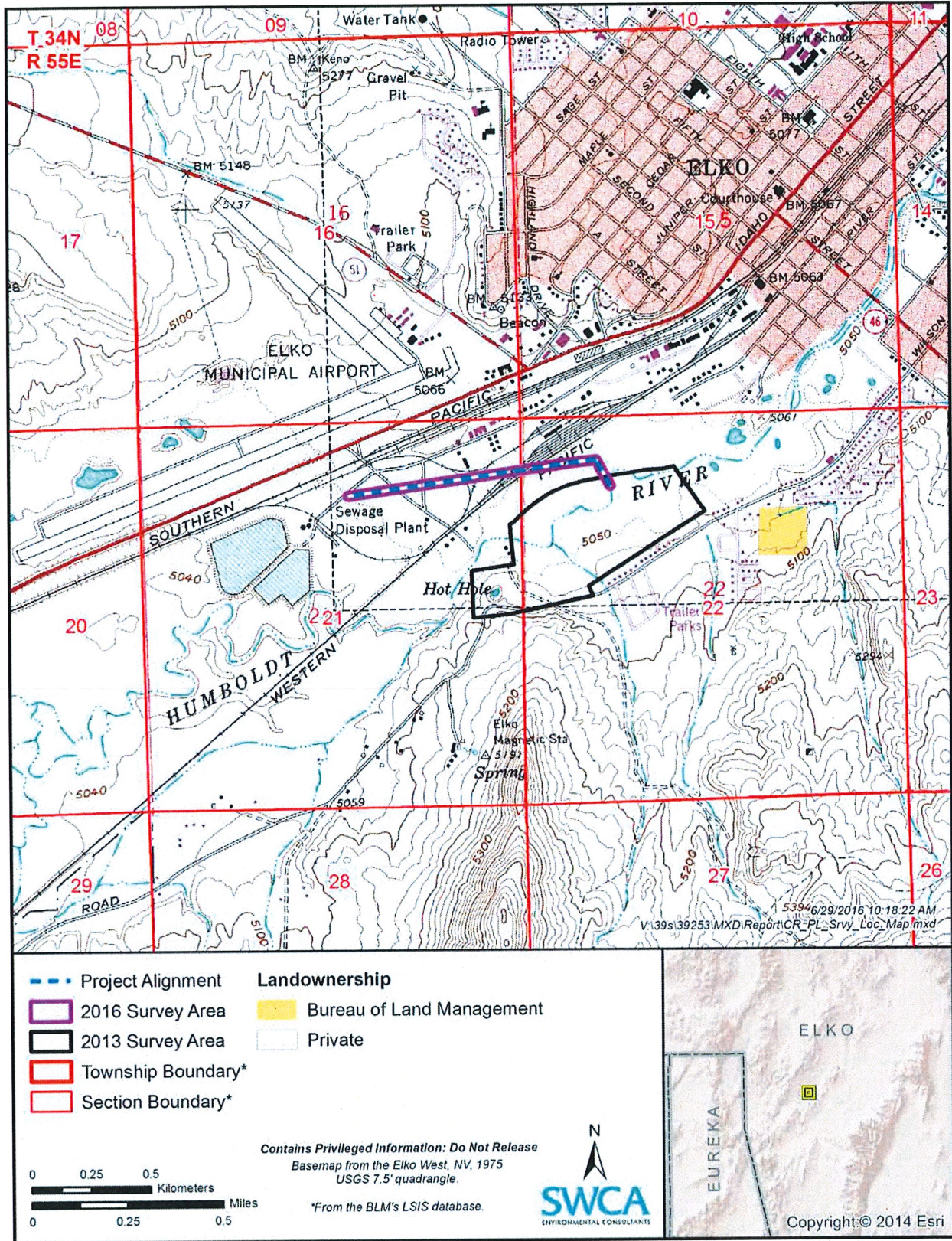


Figure 1. Project and survey location map.

ATTACHMENT 2
Historic Properties Treatment Plan

This attachment contains information that may be exempt from Freedom of Information Act Requests.

Please consult the appropriate federal agency to obtain this information.