

**MEMORANDUM OF AGREEMENT
BETWEEN THE
FEDERAL HIGHWAY ADMINISTRATION,
NEVADA HISTORIC STATE PRESERVATION OFFICER AND
THE NEVADA DEPARTMENT OF TRANSPORTATION
REGARDING THE PYRAMID HIGHWAY/US 395 CONNECTION PROJECT
WASHOE COUNTY, NEVADA
FEDERAL PROJECT #: DE-0191(065) AND NDOT #: 73390 & 73391**

WHEREAS, the Federal Highway Administration (FHWA) and the Nevada Department of Transportation (NDOT) propose to construct NDOT Project E.A. 73390 & 73391/NDOT WA11-009, which involves improving Pyramid Highway between Calle de la Plata and Queen Way and building a connection from the Pyramid Highway to US 395 in Washoe County, Nevada (Project); and

WHEREAS, FHWA has determined that the Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 USC § 306108, and its implementing regulations, 36 CFR Part 800 and shall be responsible for ensuring all requirements of this Memorandum of Agreement (MOA) are fulfilled; and

WHEREAS, in accordance with 36 CFR § 800.5(c)(3)(ii)(B), and the *Programmatic Agreement Among the Federal Highway Administration, the Nevada Department of Transportation, the Nevada State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Implementation of Federal-Aid Transportation Projects in the State of Nevada* (2014 PA, amended 2017), FHWA authorizes NDOT to carry out FHWA's responsibilities and to act as an Invited signatory on this MOA; and

WHEREAS, FHWA and NDOT, in consultation with the Nevada State Historic Preservation Officer (SHPO), has defined the Area of Potential Effects (APE) for the Project (Attachment A), as the term is defined in 36 CFR Part 800.16(d), to be the area illustrated on the attached map and aerial image (Attachment A); and

WHEREAS, FHWA, in consultation with the SHPO and NDOT and consulting parties, has determined that the Project may have an adverse effect on 26WA9841 which has been determined eligible for inclusion in the National Register of Historic Places under the Secretary of Interior's Significance Criterion D; and

WHEREAS, in accordance with the PA (Stipulation V.F.3), the FHWA has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect and invited the ACHP to participate in the consultation, pursuant to 36 CFR § 800.6(a)(1), in an email dated February 7, 2018; and

WHEREAS, the ACHP declined to participate in the consultation in an email dated February 27, 2018; and

WHEREAS, FHWA, has consulted with and will continue to consult with the Pyramid Lake Paiute Tribe, the Reno-Sparks Indian Colony, and the Washoe Tribe of Nevada and California regarding the conduct of archaeological data recovery on the aforementioned historic property and has invited these tribes to be Concurring Parties to this MOA; and

WHEREAS, the Reno-Sparks Indian Colony declined to participate in a letter dated August 15, 2018; and

WHEREAS, FHWA and NDOT have consulted with interested parties regarding the Project, including members of the public, agencies, municipalities, and area organizations; and

NOW, THEREFORE, FHWA, the SHPO, and NDOT agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties in compliance with Section 106 of the NHPA.

STIPULATIONS

The FHWA shall ensure that the following stipulations are implemented:

I. MITIGATION

NDOT will undertake the following measures for site 26WA9841 that will serve to address known adverse effects from the Project.

A. HISTORIC PROPERTIES TREATMENT PLAN (HPTP) DEVELOPMENT AND IMPLEMENTATION

1. NDOT or the construction contractor shall contract a cultural resource management (CRM) firm (Department Designee) that meets the Secretary of the Interior's Professional Qualifications standards for Archaeology. The Department Designee will adhere to the requirements of NRS 381, as necessary.
2. The Department Designee will draft an HPTP for the historic property 26WA9841. The HPTP will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 CFR § 44716-37) and follow the guidance provided in the ACHP's Section 106 Archaeology Guidance (www.achp.gov/archguide) (2009). The Department Designee shall submit the draft HPTP to FHWA and NDOT for review within sixty (60) calendar days of contract initiation.

3. FHWA and NDOT will review the draft HPTP and provide comments within thirty (30) calendar days of receipt. The Department Designee will make any modifications requested by FHWA and NDOT and return the draft within thirty (30) calendar days.
4. FHWA and NDOT shall submit the approved draft HPTP to the SHPO, Pyramid Lake Paiute Tribe and the Washoe Tribe of Nevada and California for review by no later than fifteen (15) months from contract initiation.
5. The SHPO, and consulting parties, will review and comment on the draft HPTP within thirty (30) calendar days from receipt. If the SHPO, or consulting parties, do not respond within thirty (30) calendar days, NDOT will finalize the HPTP.
6. FHWA and NDOT shall provide the SHPO with all comments received from the consulting parties on the draft HPTP within ten (10) calendar days of their receipt.
7. SHPO will review the consulting parties' comments and respond within thirty (30) calendar days of receipt.
8. FHWA and NDOT will ensure that the Department Designee revises the draft HPTP to address the comments provided by the SHPO and the consulting parties and returns the draft final HPTP within thirty (30) calendar days to FHWA and NDOT.
9. FHWA and NDOT shall submit the updated draft final HPTP to the SHPO, and consulting parties as appropriate, for review. The SHPO, and consulting parties, will review and comment on the draft final HPTP within thirty (30) calendar days from receipt. If the SHPO, or consulting parties, do not respond within thirty (30) calendar days, NDOT will finalize the HPTP.
10. The final HPTP shall become Attachment B to this MOA.
11. The Department Designee will execute the provisions of the final HPTP.
12. NDOT shall ensure that the draft report of mitigation results for 26WA9841 is submitted to the SHPO by no later than two (2) years from finalization of the HPTP.
13. If the SHPO concurs or does not respond to NDOT within forty-five (45) calendar days from receipt of the draft report of mitigation results, NDOT shall finalize the document.
14. NDOT will ensure that the Department Designee revises the draft report of mitigation results to address the comments provided by the SHPO.
15. NDOT shall submit the final report of mitigation results to the SHPO no later than nine (9) months after receiving SHPO comments.

II. NOTICE TO PROCEED FOR GROUND-DISTURBING ACTIVITIES OUTSIDE OF THE AVOIDANCE AREA

- A. Upon execution of this MOA, FHWA and NDOT shall not proceed with ground disturbing activities (construction) in the APE for the Project until the Department Designee, in consultation with NDOT, has established an Avoidance Area (AA) to protect the historic property 26WA9841. The AA for 26WA9841 will be defined within the HPTP developed for the historic property.
1. NDOT, in consultation with FHWA and the construction contractor, shall ensure that the construction contractor (through the Department Designee) has adequately marked the AA on construction plans and that the AA is protected by orange fencing, or by the means stipulated in the HPTP. The construction contractor will erect orange fencing in a workman-like manner.
 2. FHWA and NDOT, in consultation with the SHPO, shall approve the AA. Once the AA is approved, NDOT may issue a Notice to Proceed (NTP) for Project activities outside of the AA.
 3. The Department Designee shall inspect the AA at least once per week during any construction activities for the Project or at least once per month when no construction activity is planned for the Project. The Department Designee will provide an electronic report to FHWA and NDOT weekly during any construction activities for the Project or at least once per month when no construction activity is planned for the Project. The Department Designee will invite the THPOs for the field inspections. FHWA and NDOT shall provide electronic reports of these inspections to the SHPO within five (5) working days of the inspection.

III. NOTICE TO PROCEED FOR GROUND-DISTURBING ACTIVITIES INSIDE THE AVOIDANCE AREA

NDOT authorizes the construction contractor to start construction within the AA when a Notice to Proceed (NTP) is issued. A NTP may be issued for the AA after the Signatories have reviewed the summary of fieldwork prepared by the Department Designee to ensure that sufficient work has been completed and complies with the requirements outlined in the HPTP. To ensure compliance with this stipulation, the following will be carried out:

- A. The Department Designee will provide NDOT with the summary of fieldwork within thirty (30) calendar days after the work at historic property 26WA9841 as stipulated in the HPTP has been completed.

- B. FHWA and NDOT shall review the summary of fieldwork within two (2) working days of receipt and NDOT shall notify the construction contractor that FHWA and NDOT either accept or reject the summary.
- C. If FHWA and NDOT both approve of the summary of fieldwork, NDOT will provide a copy of the summary to the SHPO and THPOs for review.
- D. If FHWA and NDOT reject the summary, FHWA and NDOT will provide comments to the Department Designee. The Department Designee will have fifteen (15) calendar days from receiving the comments to amend the summary.
- E. The SHPO will review the summary of fieldwork and provide any comments within two (2) working days of receipt. If the SHPO does not respond within two (2) working days of receipt, NDOT will issue the NTP to the construction contractor for work within the AA for 26WA9841.
- F. FHWA and NDOT will ensure that the Department Designee addresses the comments provided by the SHPO on the summary of fieldwork before NDOT issues the NTP to the construction contractor for work within the AA for 26WA9841.
- G. Upon receipt of the NTP, the construction contractor will remove the AA.

IV. DURATION

This MOA will expire if its stipulations are not carried out within five (5) years from the date of its execution. At such time, and prior to continuing work on the undertaking, FHWA shall either (a) execute a MOA pursuant to 36 CFR § 800.6, or (b) request, consider, and respond to the comments of the ACHP under 36 CFR § 800.7. Prior to such time, FHWA may consult with the SHPO and NDOT to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below. FHWA shall notify the SHPO and NDOT as to the course of action it will pursue.

V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties occur during construction, NDOT and the construction contractor shall halt all work in the immediate vicinity of the discovery and implement the procedures in Stipulation VII.B of the 2014 PA, as amended (Post Review Discoveries).

In the event that Native American human remains, human burials, associated funerary objects, or burial cairns are inadvertently discovered on the construction site, the Department Designee shall follow applicable state statutes (NRS 383.121) and immediately notify the SHPO.

VI. DISPUTE RESOLUTION

Should any Signatory or Invited Signatory to this MOA, or other consulting party, object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

- A. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, SHPO, and NDOT, and provide them with a copy of this written response. FHWA 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, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that considers any timely comments regarding the dispute from the SHPO and NDOT and provide them and the ACHP with a copy of such written response.
- C. FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VII. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

VIII. TERMINATION

If any Signatory or Invited Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII, above. If within ten (10) calendar days (or another time period agreed to by all Signatories and the Invited Signatory) an amendment cannot be reached, any Signatory or the Invited Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated, and prior to work continuing, FHWA must either (a) execute a MOA pursuant to 36 CFR § 800.6, or (b) request, take into account,

and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the Signatories and Invited Signatories as to the course of action it will pursue.

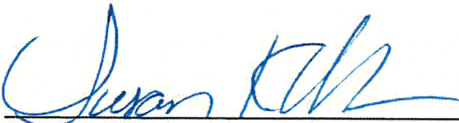
The execution of this MOA by the FHWA, the SHPO, and NDOT, together with implementation of its terms, is evidence that FHWA has considered the effects of this Undertaking on historic properties and fully satisfied its obligations under Section 106 of the NHPA and its implementing regulations.

This MOA may be signed by the Signatories and the Invited Signatory using photocopy, facsimile, or counterpart signature pages. FHWA shall distribute copies of the complete MOA to the SHPO and NDOT once the MOA is fully executed.

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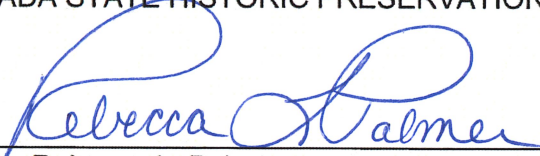
SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

By: 
Susan Klekar
Nevada Division Administrator

Date: 9/28/18

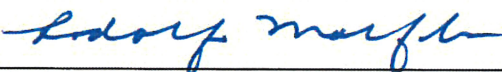
NEVADA STATE HISTORIC PRESERVATION OFFICE

By: 
Rebecca L. Palmer
Nevada State Historic Preservation Officer

Date: 09/28/18

INVITED SIGNATORY:

NEVADA DEPARTMENT OF TRANSPORTATION

By: 
Rodolfo Malfabon
NDOT Director

Date: 9-17-18

CONCURRING PARTIES:

PYRAMID LAKE PAIUTE TRIBE

By: _____
Vinton Hawley
Chairman

Date: _____

WASHOE TRIBE OF NEVADA AND CALIFORNIA

By: _____
Neil Mortimer
Chairman

Date: _____

ATTACHMENT A – APE MAP

Figure 2: Direct and Indirect APEs and NRHP-eligible Historic Architecture Resources within the APE

