

MEMORANDUM OF AGREEMENT BETWEEN  
THE NEVADA GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT  
THE CITY OF ELY  
AND  
THE NEVADA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE  
CITY OF ELY MURRY STREET SEWER MAIN UPGRADE  
WHITE PINE COUNTY

**WHEREAS**, the City of Ely (the City), White Pine County, Nevada has applied for and been awarded a Community Development Block Grant (CDBG) grant, allocated by the U.S. Department of Housing and Urban Development (HUD) to the State of Nevada's Governor's Office of Economic Development (GOED) Rural Community and Economic Development Division which administers the State and Small Cities CDBG program, as authorized by Title I of the Housing and Community Development Act of 1974, according to Section 104(g) (42 U.S.C. 5304(g) hereby making the award an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq., hereinafter, NHPA) and its implementing regulations 36 CFR Part 800; and

**WHEREAS**, the City has defined the direct Area of Potential Effects (APE) for the undertaking as the rights-of-way along Murry Street and the adjacent streets where work, staging, and traffic diversions will occur, along with the structures located along the rights-of-way such as sewer mains, manholes and sewer service lines (Exhibit A); and

**WHEREAS**, the City, in consultation with the Nevada State Historic Preservation Officer (SHPO), has determined that the undertaking may have an adverse effect on the existing sewer infrastructure which was installed in Murry Street in 1910. This infrastructure is potentially eligible for listing in the National Register of Historic Places (NRHP) under all of Secretary's Significance criteria; and

**WHEREAS**, the City has consulted with the following Tribal Organizations: Ely Shoshone Tribe of Nevada and has not received a response; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), the City has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.5(a)(1)(iii); and

**WHEREAS**, the Signatories agree that this MOA may be signed in counterparts and the executed MOA, and each signature, will be effective and binding as if all Signatories had signed the same document; and

**NOW, THEREFORE, GOED, the City and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of said Undertaking on historic properties.**

### **STIPULATIONS**

The City shall ensure that the following measures are carried out:

#### **I. MITIGATION FOR ADVERSE EFFECTS TO HISTORIC PROPERTIES**

##### **A. Photo Documentation of the Murry Street Sewer System.**

Monitoring of undertaking activities. The City shall ensure that a City employee experienced in digital photography will conduct periodic monitoring of trenches and other excavations during upgrade activities to examine, record, and photograph historic sewer and utility components of the Murry Street system before they are upgraded or replaced.

1. The City will take detailed digital photographs of a representative sample of historic sewer utility components using the following requirements:
  - a) six megapixel or greater digital camera; and
  - b) TIFF or RAW format images; and
  - c) image file names that correspond to a photo log and photo points map; and
  - d) and an archival CD or DVD containing all files
  
2. The City shall prepare and submit a map-based key for all photos. Photos will include, but not be limited to:
  - a) Photos of the pipeline during trenching/construction; and
  - b) Photos of all manholes to be removed; and
  - c) Representative sample of pipe joints and connection points.
  
3. The City shall submit draft digital copies of the photographs to the SHPO.

4. The SHPO will review the photographs for quality, variety, and representativeness within five (5) working days of receipt. The SHPO will send its comments to the City for action, if needed.
5. The City shall review and address any comments made by the SHPO and provide the SHPO with a revised copy within thirty (30) days of receipt of SHPO comments.

**B. Archival and Narrative Documentation of the Murry Street Sewer System.**

1. The City shall provide the following mitigation materials to the SHPO in hard copy:
  - a) A copy of any archival maps of the historic pipeline routes, including laterals; and
  - b) A current map of the historic pipeline routes, including laterals; and
  - c) A narrative of what the pipe is made of, materials used, and why it is failing; and
  - d) A narrative of any physical inspection conducted during all construction activities.
2. The City shall submit the draft documents described in Stipulation to the SHPO no later than ninety (90) days after the completion of the ground-disturbing portion of the undertaking.

**C. Public Interpretation**

***Is there a public interpretation effort in the City that could be used to provide a public interpretive component to this mitigation?***

***Plaque for the Murry St. Sewer Line and the unevaluated historic age properties along the Murry Street corridor.***

1. *Agency will construct an interpretative plaque/marker at the project area. It will include a brief history of the municipal sewer lines, the properties it has served within the context of the neighborhood.*
2. *The history will be prepared by or under the direct supervision of an individual who meets the Secretary of the Interior's Professional Qualification Standards set out at 48 FR 44716, Sept. 29, 1983, for History, Architectural History, or Historic Architecture.*
3. *Agency will consult with the Signatories, Invited Signatory and Concurring Parties for input on the content and design of an Interpretive Marker. The Marker will be fabricated of a material that is resistant to deterioration and*

*corrosion and will be at least 3ft x 3ft. Agency will forward information regarding the proposed design including the content, the size and the materials to the Signatories, Invited Signatory, and Concurring Parties, if any, for a thirty day review and comment period. Agency will consider comments from Signatories, Invited Signatory, and Concurring Parties when it finalizes the design. Agency will be responsible for the fabrication of the Marker and will deliver the completed Marker to the project. Agency will install the Marker within six (6) months following the completion of the funded undertaking.* (30) the

*4. Agency will notify the SHPO when the Marker has been installed. Agency shall submit photos of the installed sign to:*

- i) the SHPO*
- ii) White Pine Public Museum*
- iii) White Pine County Library*

## II. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the City the SHPO, and GOED may consult to reconsider the terms of the MOA and amend it in accordance with Stipulation V below.

## III. POST-REVIEW DISCOVERIES

If a cultural resource not associated with the Murry Street sewer main are discovered that may be historically significant or unanticipated effects on historic properties are found, the City shall adhere to the requirements of 36 CFR § 800.13.

## IV. DISPUTE RESOLUTION

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

- A. Forward all documentation relevant to the dispute, including the City's proposed resolution, to the ACHP. The ACHP shall provide the City 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, the City shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP or Signatories and provide them with a copy of this written response. The City 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, the City may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the City shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to the MOA, and provide them and the ACHP with a copy of such written response.
- C. The City'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.

## V. 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.

## VI. 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 Signatory or Invited Signatory to attempt to develop an amendment per Stipulation V, above. If within thirty (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory or Invited Signatory may terminate the MOA upon written notification to the other Signatories. Once the MOA is terminated, and prior to work continuing on the undertaking, the City must either (a) execute an 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. The City shall notify the Signatories as to the course of action it will pursue.

## VII. MUTUAL REPRESENTATIONS AND WARRANTIES

- A. The City and the SHPO and each person executing this Memorandum of Agreement (MOA) on behalf of the parties represents and warrants to each other that:
  - 1. All parties have requisite power and authority to enter into and perform their obligations under this MOA; and
  - 2. The person signing this MOA on each party's behalf have been duly authorized to execute and deliver this MOA and to legally bind that party to the terms and conditions of this MOA; and
  - 3. The execution and performance of this MOA by the parties does not violate any provision of any other agreement in which the City or the SHPO is a party.

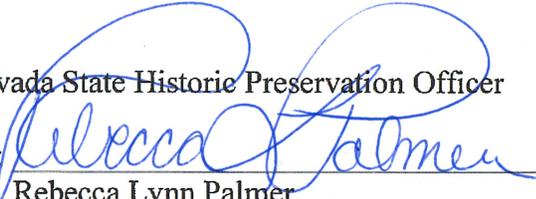
EXECUTION of this MOA by GOED, the City and SHPO and implementation of its terms evidence that City has taken into account the effects of this undertaking on historic properties, and has afforded both SHPO and the ACHP an opportunity to comment.

**SIGNATORIES**

Nevada Governor's Office of Economic Development

By:  Date: 6/23/20  
Patricia Herzog

Nevada State Historic Preservation Officer

By:  Date: 07/01/20  
Rebecca Lynn Palmer  
Nevada State Historic Preservation Officer

**INVITED SIGNATORY:**

City of Ely  
By:  Date: 5/12/2020  
Mayor

**ATTEST:**

By:  Date: 5-12-20  
City Clerk

**APPROVED AS TO FORM:**

By:  Date: 5/12/20  
City Attorney