**PROGRAMMATIC AGREEMENT**

**AMONG**

**THE ARIZONA BUREAU OF LAND MANAGEMENT (ARIZONA BLM),**

**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,**

**THE ARIZONA STATE HISTORIC PRESERVATION OFFICER, AND**

**THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

**REGARDING**

**ARIZONA BLM TRAVEL MANAGEMENT PLANS**

**IN ARIZONA AND PORTIONS OF CALIFORNIA**

**WHEREAS**, Arizona BLM manages up to 12.2 million acres of the public lands in accordance with the Federal Land Policy and Management Act (FLPMA) [43 CFR 1701 *et seq.*]. This includes approximately 12,115,246 acres in Arizona, 84,754 acres in California, under the Yuma and Lake Havasu Field Offices, respectively, and a small amount of land in New Mexico; and

**WHEREAS,** Arizona BLM manages the New Mexico lands for grazing allotment only and for all other purposes these lands are managed by the New Mexico BLM office and as such are not considered part of this Programmatic Agreement (Agreement); and

**WHEREAS**, these public lands include networks of transportation-related linear features (routes) which support multiple uses. This includes approximately 17,700 miles of inventoried routes in Arizona and 342.34 miles in California; and

**WHEREAS**, the Arizona BLM is required to undertake comprehensive Travel and Transportation Management (TTM) planning to provide a sustainable travel network and transportation system that addresses the need for access to and across BLM-managed lands and manage travel and transportation on the public lands in compliance with applicable laws and regulations; and

**WHEREAS**, as part of comprehensive TTM planning, BLM is required to designate routes as “open”, “limited”, or “closed” to Off-Highway Vehicles (OHV) pursuant to 43 CFR 8340 and 8342; and

**WHEREAS**, Arizona BLM route designations are documented in Travel Management Plans (TMPs) and constitute Undertakings subject to compliance with Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C.300101 *et seq*.) and as defined in 36 CFR 800.16(y); and

**WHEREAS,** this Agreement was developed by the Arizona BLM to establish procedures for phased identification and evaluation of historic properties, pursuant to 36 CFR 800.4(b)(2), because the effects on historic properties resulting from the Undertaking(s) are likely to be similar, repetitive, cross multiple regions, and cannot be fully determined prior to the approval of the Undertaking(s) as outlined 36 CFR 800.14(b)(1)(i-ii); and

**WHEREAS,** the Section 106 process for Undertakings under this Agreement is initiated by Arizona BLM when it begins developing each TMP as part of *Resource Management Planning,* 43 CFR 1610, and/or *Procedures for the Implementation of the National Environmental Policy Act* regulations at 36 CFR 805; and

**WHEREAS**, the Arizona BLM recognizes that Arizona and California have executed Protocols with their respective BLM state offices for streamlining Section 106 review and compliance; however, with regard to TMP development, this Agreement will supersede these State Protocols; and

**WHEREAS**, Arizona BLM has the Section 106 responsibility for these Undertakings and is a Signatory to this Agreement; and

**WHEREAS**, the Arizona BLM notified the Advisory Council on Historic Preservation (ACHP) of its intent to develop this Agreement, in accordance with the National Protocol and 36 CFR 800.6(a)(1)(i)(C). The ACHP responded, on November 28, 2016, with their decision to participate in consultation and is a Signatory to this Agreement; and

**WHEREAS,** the Arizona BLM consulted with the Arizona State Historic Preservation Officer (AZ-SHPO) and California State Historic Preservation Officer (CA-SHPO) pursuant to 36 CFR 800.6 of the regulations as revised in 2004; and

**WHEREAS,** the AZ-SHPO is authorized to enter this Agreement in order to fulfill its role of advising and assisting Federal agencies in carrying out Section 106 responsibilities under the following federal statutes: Sections 101 and 106 of the NHPA, 36 CFR 800.2(c)(i) and 800.6(b) and is a Signatory to this Agreement; and

**WHEREAS**, the CA-SHPO has historic property management responsibilities under Section 106, 36 CFR 800 and 36 CFR 61 to advise and assist the BLM in complying with its Section 106 responsibilities for proposed undertakings on public lands in California and is a Signatory to this Agreement; and

**WHEREAS**, the Arizona BLM is responsible for government-to-government consultation with Indian Tribes pursuant to Section 101(d)(6)(B) of the NHPA, 36 CFR 800.2(c)(2)(ii), the American Indian Religious Freedom Act (AIRFA) [42 USC 1996], Executive Order 13175, and section 3(c) of the Native American Graves Protection and Repatriation Act [25 USC 3001-13] (NAGPRA); and

**WHEREAS**, the Arizona BLM has invited the following Indian Tribes to participate and consult in the development of this Agreement: Ak-Chin Indian Community, Chemehuevi Indian Tribe of the Chemehuevi Reservation-California, Cocopah Tribe of Arizona, Colorado River Indian Tribes of the Colorado River Indian Reservation, Fort McDowell Yavapai Nation-Arizona, Fort Mojave Tribe of Arizona, Fort Sill Apache Tribe (Chiricahua Warm Springs Apache), Gila River Indian Community of the Gila River Indian Reservation-Arizona, Havasupai Tribe of the Havasupai Reservation-Arizona, The Hopi Tribe of Arizona, Hualapai Indian Tribe of the Hualapai Indian Reservation-Arizona, Kaibab Band of Paiute Indians of the Kaibab Indian Reservation-Arizona, Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony-Nevada, Mescalero Apache Tribe, Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Navajo Nation, Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes), Pascua Yaqui Tribe of Arizona, Pueblo of Jemez, Quechan Tribe of the Fort Yuma Indian Reservation-California and Arizona, Salt River Pima-Maricopa Indian Community of the Salt River Reservation-Arizona, San Carlos Apache Tribe of the San Carlos Reservation, San Juan Southern Paiute Tribe of Arizona, Tohono O'odham Nation of Arizona, Tonto Apache Tribe of Arizona, Ute Mountain Ute Tribe, White Mountain Apache of the Fort Apache Reservation-Arizona, Yavapai-Apache Nation of Camp Verde Indian Reservation, Yavapai Apache Nation of the Camp Verde Indian Reservation, Yavapai-Prescott Indian Tribe, and Zuni Tribe of the Zuni Reservation; and

**WHEREAS**, the [list of Tribal participants] have participated in consultations for this Undertaking and are Concurring Parties; and

**WHEREAS**, pursuant to 36 CFR 800.2(c)(2), the BLM will continue to consult with Tribes throughout this Agreement regarding phased identification, evaluation efforts, and resolution of adverse effects to historic properties to which Tribes may attach religious and cultural significance; and

**WHEREAS**, the Arizona BLM has notified the following federal and state government agencies of its intent to develop this Agreement and invited them to participate: U.S. Forest Service (Southwest Region, Tonto National Forest, Apache-Sitgreaves National Forest, Prescott National Forest, Coronado National Forest, Kaibab National Forest), U.S. Bureau of Reclamation, U.S. Air Force (Southern Command, Davis Monthan Air Force Base, Range Management Office-Luke Air Force Base), U.S. Army (Fort Huachuca), U.S. Marine Corps (Marine Corps Air Station Yuma), Juan Bautista de Anza National Trail, Organ Pipe Cactus National Monument, Saguaro National Park, Tumacacori National Historic Park, Lake Mead National Recreation Area, Montezuma Castle National Monument, Pipe Springs National Monument, NPS National Trails Intermountain Region, Arizona State Committee on Trails, Arizona State Off-Highway Vehicle Advisory Group, Arizona State Land Department, Arizona Department of Transportation, Arizona Game and Fish Department, and Arizona State Parks and Trails; and

**WHEREAS**, the following federal and state government agencies participated in the development of this Agreement and were invited to be Concurring Parties to this Agreement; [insert list of federal and state CPs]; and

**WHEREAS**, the Arizona BLM notified the local governments and Sheriff’s Offices in the following counties of its intent to develop this Agreement and invited them to participate: Apache County, Cochise County, Coconino County, Gila County, Graham County, Greenlee County, Imperial County, La Paz County, Maricopa County, Mohave County, Navajo County, Pima County, Pinal County, San Bernardino County, Riverside County, Santa Cruz County, Yavapai County, and Yuma County; and

**WHEREAS,** the following local governments and sheriff’s offices participated in the development of this Agreement and were invited to be Concurring Parties to this Agreement; [insert list of local gov’t CPs]; and

**WHEREAS**, the Arizona BLM notified the following individuals and organizations of its intent to develop this Agreement and invited them to participate: American Conservation Experience, American Lands Access Association, American Rock Art Research Association, Anza Trail Association, Anza Trail Coalition of Arizona, Anza Trail Foundation, Archaeology Southwest, Arizona Archaeological and Historical Society, Arizona Archaeological Council, Arizona Archaeological Society, Arizona Conservation Corps, Arizona Mountaineering Club, Arizona Off-Highway Vehicle Coalition, Arizona Preservation Foundation, Arizona State Association of 4 Wheel Drive Clubs, Arizona Sun Riders, Arizona Trail Association, Arizona Trail Riders, Back Country Horsemen of Arizona, Bouse Ghost Riders, Bullhead 4 Wheelers, Cerbat Ridge Runners, Coalition of Arizona Bicyclists, Defenders of Wildlife, Desert Tortoise Council, Friend of the Arizona Joshua Tree Forest, Havasu 4 Wheelers, Mesa 4 Wheelers, National Trust for Historic Preservation, The Nature Conservancy, Nomads Motocross & ATV Club, Old Pueblo Archeology Center, Old Spanish Trail Association, Pima Trails Associations, Rincon Institute, Sierra Club-Grand Canyon Chapter, Society for American Archaeology, Sonoran Desert Mountain Cyclists, Sonoran Institute, Tucson Rough Riders, Verde Valley Archaeological Center, and Volunteers for Outdoor Arizona, and The Wilderness Society; and

**WHEREAS**, the following organizations and individuals participated in the development of this Agreement and were invited to be Concurring Parties to this Agreement; [insert list of individual and organizational CPs]; and

**WHEREAS**, Concurring Parties have agreed to participate in the consultation process as outlined in the Agreement; it is understood that their participation does not necessarily imply an endorsement of the project in part or as a whole. Concurring Parties may decline to sign this document; however, the decision to sign shall not preclude their continued or future participation as Consulting Parties to this Undertaking; and

**WHEREAS**, the Arizona BLM has provided the public with opportunities to comment on the development of this Agreement and will provide further opportunities for the public to participate in the National Environmental Policy Act (NEPA) [42 USC 4321 *et seq*.] process through a Notice of Intent to Prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA) published in the Federal Register for individual TMPs and subject to the stipulations provided within; and

**NOW THEREFORE**, the Signatories to this Agreement agree that the proposed Undertakings shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertakings on historic properties, resolve adverse effects through the process set forth in this Agreement, and further agree the following Stipulations shall govern the Undertakings until this Agreement is modified, expires, or is terminated.

DEFINITIONS

Terms used in this Agreement are defined in Appendix A and are consistent with the definitions found in 36 CFR 60.3; 36 CFR 800.16; BLM 8100 Manual Identifying and Evaluating Cultural Resources, and the BLM 1626 Manual.

**STIPULATIONS**

**I. Undertaking**

A. The Undertaking includes:

1. Designation of open, limited and closed OHV routes in Travel Management Plans.

a. Under this Undertaking, route designation also includes the following activities:

1) Numbering and signing of routes for travel and closure

2) Identifying routes on publicly-available travel maps.

3) Rehabilitating and barricading closed routes.

B. The following activities are not included under this Agreement and are subject to separate review under the NHPA and NEPA:

1. Creation of new routes;

2. Route modifications/alterations;

3. Route maintenance activities.

**II. Area of Potential Effects (APE)**

A. Defining the APE

The Arizona BLM, in consultation with the SHPOs and other Consulting Parties, will define and document the APE based on the potential of the Undertaking(s) to alter directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historic Places (National Register) in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling or association. The APE is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. It may be influenced by the scale and nature of an Undertaking and may be different for different kinds of effects caused by the undertaking [36 CFR 800.16(d)]. Potential adverse effects may include reasonably foreseeable effects caused by the Undertaking(s) that may occur later in time, be farther removed in distance or be cumulative. The following will be used as guidance for determining the APE:

1. Direct Effects

The direct APE is the area within which historic properties may sustain physical alteration or destruction as a result of the Undertaking(s). The APE for direct effects may be influenced by the area of potential ground disturbance by activities related to the Undertaking(s), and will be determined as follows: areas that are 100 feet on either side of the centerline a route open to motorized travel in accordance with Arizona BLM policy.

2. Indirect Effects

The indirect APE will vary based on the presence of cultural resources identified during project review, inventory, or through consultation. In defining the indirect APE, BLM will consider visual, audible, and atmospheric elements introduced as a result of the Undertaking that could diminish the integrity of historic properties for which setting, feeling, and/or association are aspects of such integrity.

a. The baseline indirect APE for the Undertaking extends to the visual horizon, not to exceed 1 mile on either side of the direct APE, unless otherwise identified by a Consulting Party in consultation or as identified through additional analysis.

b. When the indirect APE includes traditional cultural properties (TCPs), rural historic landscapes (RHLs), properties of traditional religious and cultural significance, National Historic Landmarks (NHL), National Historic Trails (NHT), or other classes of historic properties for which setting, feeling, and/or association contribute to eligibility, additional analysis may be required and the indirect APE may be modified accordingly following the procedures outline at Stipulation II.B below. These areas will require analysis on a case-by-case basis in consultation with the Consulting Parties.

3 Cumulative Effects

Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative. [36 CFR 800.5(a)(1)]. Motorized use of a route can provide easier access to highly visible historic properties resulting in an increase in the frequency of vandalism. The cumulative effect APE for the Undertaking extends 1/4 mile either side of the road centerline for highly visible historic properties that are more likely to experience the effects of vandalism. Highly visible historic properties would include, but are not limited to, above ground standing structures/archaeological features or remains of structures or archaeological features, large habitation sites, rock art, rock shelters or caves.

B. Modifying the APE

The APE may be modified when additional field/literature/historic research, consultation with consulting parties, or changes to the Undertaking(s) indicate the qualities and values of historic properties outside of boundaries of an APE, as defined following standards outlined in Stipulation IIA, are being or may be affected directly, indirectly, or cumulatively by the Undertaking. The Arizona BLM may modify the APE, in consultation with the Consulting Parties, using the following procedure:

1. Any Consulting Party may propose modifications to the APE by providing Arizona BLM with written notification, including justification for and illustration of, the proposed APE modification(s).

3. Arizona BLM shall communicate the modification proposal(s) to the Consulting Parties and consult for no more than 30 calendar days in an effort to reach a consensus on the proposal.

4. Arizona BLM will render a final decision on the proposed modification within seven (7) days of the expiration of the time for consulting parties to provide comments.

5. If the modification adds new/additional geographic area to the APE, the BLM will identify historic properties in the new APE area, assess the effects of the Undertaking(s) on any historic properties in the new APE area, and onsult to seek resolution of adverse effects to such properties in accordance with the processes outlined in Stipulations IV, V,VI, and VII below.

6. Modification the APE as laid out in this Stipulation will not require an amendment to this Agreement.

**III. Applicability**

A. Arizona BLM is planning to initiate and complete the following TMPs in 2018 and 2019: AZ Strip Field Office, Lake Havasu South (East Side/Wenden-Alamo), Yuma East, Hassayampa West, Lower Sonoran West, Middle Gila South, Tucson South, San Pedro Riparian National Conservation Area (SPRNCA), and Safford Southwest. These TMPs will be subject to this Agreement.

B. Arizona BLM has already initiated and is planning to complete in 2018, the following TMPs: Kingman, Lake Havasu South (West Side/Bouse-Cactus Plain), Lower Colorado River, Littlefield, Buckeye Hills, and Gila-San Simon. These TMPs are being reviewed as separate undertakings subject to review under Section 106 (36 CFR 800.3-7). Arizona BLM is coordinating the Section 106 review of these TMPs with this Agreement with the intent to utilize the terms of the present Agreement for any of these TMPs which remain uncompleted at the time this Agreement is executed.

**IV. Identification of Historic Properties**

The BLM shall make reasonable and good faith efforts [36 CFR 800.4(b)(1)] to identify cultural resources prior to completion of TMPs. The level of effort for identification of historic properties will vary dependent upon the specific geographic area, type and magnitude of decision, quality of existing information, and the potential for the designation to affect historic properties [36 CFR 800.4(b)(1)]. These identification efforts will carried out in phases which can be completed or performed concurrently [36 CFR 800.4(b)(2)]. The phases will include the following:

A. Class I Comprehensive Inventory of Existing Data and Literature (Class I Inventory). Prior to designating routes, each Arizona BLM Field Office developing a TMP will complete, or update an existing, Class I Inventory. For the purposes of this Agreement, a Class I Inventory is a professionally prepared study covering the APE buffered by ¼ miles on either side of the route proposed for designation; it includes a compilation and analysis of all reasonably available cultural resource data and literature, a management-focused, interpretive narrative overview, and synthesis of the data.

1.  The Class I Inventories will include a review of the quality of the existing archaeological inventory data, discuss the adequacy of the data, and determine if it meets modern standards.

2. The Class I Inventory will include a management-oriented synthesis of the information, an interpretation of the potential cultural resources content and densities, anassessment of the integrity of previously recorded sites, and an evaluation of the existing and future impacts to identified site from travel and transportation management.

B. Cultural Resources/Cultural Sensitivity Map (Sensitivity Map). Prior to designating routes, each Arizona BLM Field Office developing a TMP will develop a GIS based Sensitivity Map(s) of the TMP planning area. The map will be a visual depiction of the potential for areas within a TMP planning area to contain sensitive cultural resources. The maps will be at a large scale and depict low, medium, and high cultural resources sensitivity areas. The sensitivity level assigned will be derived from the density of known existing cultural resources (derived from the Comprehensive Inventory), data from subject matter experts and Consulting Parties, and statistically valid and verifiable predictive models.

1. Cultural Resource Sensitivity Maps and their associated GIS data will be developed incorporating one or more of the following datasets: (1) the locations of known cultural resources based on existing, available literature; (2) subject matter expert data provided by consulting parties and other sources; (3) a statistically-based predictive model.

2. Arizona BLM Field Offices will invite and seek information from consulting parties in the development of Cultural Sensitivity Maps. Consulting parties may provide information such as, the location of unrecorded or partially recorded cultural resource sites, traditional cultural properties, and places of religious significance.

C. Reconnaissance Survey/Field Inspection: Prior to route designation and following development of the Sensitivity Map, each Arizona BLM Field Office developing a TMP will assess the need to conduct reconnaissance survey and field inspection to obtain further information necessary to identify historic properties in the APE. The Reconnaissance Survey/Field Inspection is designed to identify the potential effects of proposed travel and transportation management undertakings to specific historic properties, previously unevaluated cultural resources, or known traditional cultural properties.

1. Reconnaissance Surveys/Field Inspections will be undertaken for any of the following purposes:

a. Check the adequacy of previous surveys.

b. Develop recommendations about inventory needs in previously unsurveyed areas.

c. Verify assumed conditions that would warrant a waiver of more intensive survey.

d. Locate architectural or other high-profile properties.

e. Address other site specific information needs, e.g. checking the effects of authorized use on cultural resources or additional data collection to address questions regard National Register eligibility.

f. To fulfill a special information needs, such as identifying the potential effects of the undertaking to a specific historic property or unevaluated cultural resource site or traditional cultural property.

2. Documentation of Reconnaissance Surveys/Field Inspections will be incorporated as a chapter in the report described in Stipulation IV.D below.

D. Following completion of the Comprehensive Inventory, Cultural Resources/Cultural Sensitivity Map, and Reconnaissance Survey/Field Inspection the Arizona BLM will provide a professional report documenting the results of these identification efforts.

1. LANGUAGE REFERENCING APPROPRIATE SHPO REPORT STANDARDS

2. Consulting Parties will be provided with 30 calendar days to review and comment on the report.

3. Sharing of any information will conform to 36 CFR 800.11(c) and the provisions outlined in Stipulation \_\_\_ of this Agreement.

E. Following submission of the report to SHPO, Arizona BLM will consult with the SHPO on the adequacy of the identification efforts, and, in consultation, determine what additional sample or intensive inventories are required and, if so, on what portions of the APE.

1. Additional probabilistic or intensive surveys strategies will be developed subject to the following standards:

a. Undertaking includes area(s)/routes likely to be designated as “open” for OHV use

b. Undertaking must include area(s)/routes likely to experience new adverse effects resulting from the designated use of the route or concentration of traffic diverted by closure of other routes.

c. Undertaking must be located within area identified on Cultural Resources/Cultural Sensitivity Map(s) as having high potential for containing cultural resources.

d. Undertaking area has not been previously surveyed to a Class III level with records documenting that work accessible and meeting current standards of the appropriate SHPO.

e. Undertaking is located in an area where previous natural ground disturbance has not modified the surface so extensively that the likelihood of finding evidence of cultural properties is negligible.

f. Undertaking is located in an areas/route where human activity in the last 50 years has not changed the natural topography enough to eradicate cultural properties.

F. Class II Probabilistic Surveys. Prior to designating routes, Arizona BLM Field Offices developing TMPs, will invite and seek SHPO input regarding whether Class II survey will be an effective survey tool for the proposed APE. Class II survey is a probabilistic field survey designed to aid in characterizing the probable density, diversity, and distribution of cultural properties in an area, develop and test predictive models, and to answer certain kinds of research questions by examining a sample (less than 100 percent) of a target area. After considering input from Consulting Parties, and in consultation with the appropriate SHPO, the Arizona BLM will make a final determination as to whether Class II survey will be a useful and effective tool for the undertaking.

G. Class III. Intensive Field Survey. Following consultation with SHPO and prior to completing route designations, Field Offices will complete Class III survey of all routes or portions of routes that meet the specifications in Stipulation\_\_\_ and have been agreed upon with SHPO. A Class III Survey is a professionally conducted, pedestrian survey of an entire target area intended to locate and record all historic properties with surface indications.

**V. Evaluation of Historic Properties**

A. Arizona BLM will ensure all historic properties identified within the APE, and that have not been previously evaluated for National Register eligibility or for which updated evaluations are deemed necessary, are evaluated using the National Register Criteria for Evaluation [36 CFR Part 60.4], BLM Manual 8110, *Identifying and Evaluating Cultural Resources*, BLM Manual 8140, *Protecting Cultural Resources*, the *Secretary of Interior’s Standards and Guidelines for Archaeology and Historic Preservation* [48 Fed. Reg. 447816], and National Register Bulletin 15.

B. Arizona BLM shall distribute determinations of NRHP eligibility to the Consulting Parties, subject to the provisions of Stipulation \_\_\_, for review and comment. The review and comment period will be 30 calendar days.

C. Following completion of the review and comment period, the eligibility determinations will be revised as necessary and forwarded, along with all comments received by Arizona BLM, to the appropriate SHPO with a request for review and concurrence on the final determination.

1. If the appropriate SHPO and Arizona BLM agree the cultural resource is not eligible for listing, no further review or consideration under this Agreement is required.

2. If Arizona BLM determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for the purposes of this Agreement.

3. If Arizona BLM and the SHPO/THPO do not agree on the eligibility determination, or it the ACHP requests, Arizona BLM will request a determination of eligibility for the Keeper of the National Register pursuant to 36 CFR 800.4(c)(2) and 36 CFR 63.

**VI. Assessment of Effects**

Arizona BLM will, in consultation with the Consulting Parties, make findings of effect consistent with the standards and language in 36 CFR 800.4d and will identify any adverse effects to historic properties within the APE in accordance with the criteria established at 36 CFR 800.5(a)(1) and (2)(i-vii)

A. No Historic Properties Affected [36 CFR 800.4(d)(1)] If identification efforts outlined by this agreement lead to the agency official’s finding that there are either: (1) no historic properties within the APE for the respective undertaking, or (2) historic properties are present within the APE, but the undertaking will have no effect on them in accordance with the criteria at 36 CFR 800.4(d)(1), notification of this will be made to consulting parties in accordance with Stipulation \_\_\_.

B. No Adverse Effect. If identification efforts outlined by this Agreement lead to the Arizona BLM finding that the undertaking will have no adverse effect to historic properties in accordance with 36 CFR 800.5(b), the Arizona BLM will notify consulting parties and consult with them for 30 calendar days in order to facilitate input on the finding of effect. If no comments are received within this time period, the Arizona will contact the consulting party by telephone or email to confirm they do not have input regarding the finding of effect. After considering all consulting party input, the agency official will make the final determination on the findings of effect in consultation with the SHPO.

C. Adverse Effects [36 CFR 800.5] If identification efforts outlined by this agreement lead to the Arizona BLM’s finding that the undertaking may cause adverse effects to historic properties in accordance with 36 CFR 800.5(a)(1), the Arizona BLM will seek consulting parties’ input regarding the findings of effect. Consulting parties will be provided with 30 calendar days to review the findings in accordance with 36 CFR 800.11(c) to provide input on the findings of effect. If no comments are received within this time period, the agency official will assume the consulting parties do not have input regarding the finding of effect. After considering all consulting party input, the agency official will make the final determination on the findings of effect in consultation with the SHPO.

**VII. Resolution of Adverse Effects**

A. If the Arizona BLM determined an Undertaking will have adverse effects on historic properties, the agency official will coordinate consultation with the appropriate SHPOs, Tribes, and other Consulting Parties to develop and evaluate alternative or modifications to the Undertaking(s) that could avoid, minimize, or mitigate adverse effects to those properties.

B. Historic Properties Treatment Plans (HPTPs)

BLM will resolve adverse effects on historic properties by ensuring that a HPTP is developed and implemented consistent with the standards of the appropriate SHPO. The HPTP will provide specific avoidance, minimization, or mitigation measures, commensurate with the adverse effect of the Undertaking.

Each HPTP will be prepared in consultation with the appropriate SHPO(s), Tribes and other Consulting Parties and will be consisted with the Secretary of Interior’s Standards for Archeology and Historic Preservation (48 Fed. Reg. 44716, September 29, 1983)

C. Monitoring and Discovery Plans (MDPs)

For undertakings that involve land disturbance in areas suspected of containing subsurface deposits, Arison BLM will prepare a Monitoring and Discovery Plan

TO BE DEVELOPED

**VIII. Professional Qualifications, Reporting Standards, Permits**

A. The Arizona BLM will ensure that all work undertaken to satisfy the terms of this Agreement shall conform with Secretary of Interior’s Standards for Archeology and Historic Preservation [48 Fed. Reg. 44716, September 29, 1983], the ACHP guidance on archaeology, BLM Manual 8110 guidance, any standards outlined in relevant BLM/State Protocol Agreements, and all applicable National Park Service (NPS) guidance for evaluating National Register properties (e.g. Guidelines for Evaluating and Documenting Traditional Cultural Properties, Guidelines for Evaluating and Documenting Rural Historic Landscapes).

B. The Arizona BLM will ensure that all identification and inventory undertaken as part of this Agreement is carried out by or under the direct supervision of a person or persons meeting, at a minimum, the applicable professional qualification standards set forth in the Secretary’s Standards [48 Fed. Reg. 44739, September 29, 1983 and 36 CFR 61], the Office of Personnel Management professional qualifications for archaeological and historic preservation, and the permitting requirements of the States of Arizona and California.

C. Identification and evaluation activities will be conducted only after qualified cultural resource professionals have obtained appropriate permits for fieldwork.

**IX. Consultation**

Throughout the duration of the Agreement, the BLM will seek, discuss, and consider the views of the Consulting Parties and will, where feasible and, pursuant to 36 CFR 800.16 (f), seek agreement with them when making decisions under the stipulations of this Agreement. The Arizona BLM will submit all documentation related to Undertakings under this Agreement to Consulting Parties for review and comment. Unless otherwise agreed, Consulting Parties shall have 30 calendar days to respond to a review of documents and deliverables associated with this Agreement, from receipt of a formal request for review. If the Consulting Party does not respond or comment on the submittal within 30 calendar days of receipt, the Arizona BLM will follow-up with the consulting party, via electronic mail and/or telephone contact, to verify the consulting party has no comment. If, after a reasonable and good faith effort to reach an unresponsive consulting party, there has still been no response or the consulting party cannot be reached, the Arizona BLM will assume the consulting party has no comment and will proceed to the next step in this Agreement. The final Agreement, any amendments, and all annual reports associated with this Agreement will be posted on the BLM web page created for this Agreement.

A. Communications amongst Consulting Parties. Unless otherwise agreed, electronic mail will serve was the official correspondence method for all communications regarding this Agreement.

B. Confidentiality

1. The BLM and all consulting parties will maintain confidentiality of sensitive information regarding historic properties to which a Tribe attaches religious or cultural significance to the maximum extent allowed by federal and applicable State laws.

2. To the extent consistent with NHPA Section 304 [54 USC 300310], Section 106 regulations [36 CFR 800.11(c)] and the Archaeological Resources Protection Act (ARPA) [16 USC 470, cultural resources data from this Undertaking will be treated as confidential by all Consulting Parties and is not be released to any person, organization or agency not a Party to this Agreement. Confidentiality concerns for properties that have traditional religious and cultural significance to Tribes will be respected and will remain confidential to the fullest extent permitted by law. BLM may require data sharing agreements with any Consulting Party to this Agreement who is interested in obtaining specific, confidential information.

3. However, any document or records the BLM has in its possession are subject to the Freedom of Information Act (FOIA) [5 USC. 552 *et seq.*] and its exemptions, as applicable. In the event that a FOIA request is received for records or documents that relate to a historic property to which an Indian Tribe attaches religious of cultural significance and that contain information that the BLM is authorized to withhold from disclosure by other statutes including the NHPA and the Archaeological Resources Protection Act, then, BLM will consult with such Tribe prior to making a determination in response to such an FOIA request the is after for BLM to north withhold particular records and/or documents from disclosure.

C. Public Participation

Arizona BLM will continue to seek to engage Tribes, Consulting Parties, and the Public in its Section 106 and NEPA processes for developing individual TMPs, the Undertakings identified in this Agreement. Such efforts will include but will not be limited to:

1. Providing information about opportunities to participate as consulting parties in the Section 106 process through new releases, social media posts, and other efforts to solicit public participation in individual Undertakings’ NEPA process.

2. Posting up-dates and documentation relevant to the Section 106 process associated with the Undertakings covered by the Agreement to the Arizona BLM Travel Management Planning webpage.

TO BE FURTHER DEVELOPED

**X. Tribal Consultation**

The Arizona BLM is the federal agency responsible for notification, coordination and consultation Tribes under this Agreement. The Arizona BLM shall coordinate and consult on a government-to-government basis with designated Tribal representatives in the identification, evaluation, and treatment of resources to which the Tribes and Tribal Organizations may attach traditional religious and cultural significance [36 CFR 800.16(l)] and to determine whether they are historic properties.

A. Tribes may identify specific resources that meet the definitions of historic properties [36 CFR 800.16(l) and 36 CFR 60.3] defined as districts, sites, buildings structures, and objects through on-going consultation.

B. The Arizona BLM requests that any resources of traditional, religious, and/or cultural significance known to Tribes and located with the APE defined for each TMP be identified by Tribes during consolations as initiated for each TMP.

C. The Arizona BLM will continue government-to-government coordination and consultation with Tribes throughout the implementation of this Agreement.

D. The Arizona BLM will seek and invite further Tribal participation in association with Section 106 identification, evaluation, and treatment efforts associated with the development of each TMP.

D. Points of Contact

1. The BLM Point of Contact for official correspondence relating to this Agreement will be the State Director Bureau of Land Management or a designated line officer (Arizona BLM District Managers and Field Office Managers).

2. The elected tribal officials of federally recognized Tribes shall be the official point of contact for government-to-government communication. A representative(s) in additional to the elected tribal official may be designated by the Tribal government to represent the Tribe for purposes of coordination.

E. Communication between the BLM and Tribes and Tribal Organizations will follow Stipulation Consultation Stipulation

TO BE FURTHER DEVELOPED

**XI. Emergencies** IS THIS STIPULATION NECESSARY?

**XII. Curation**

The Arizona BLM will avoid historic properties to the extent possible. Any archaeological materials that result from activities undertaken as part of this Agreement or associated Undertaking(s) shall be curated in accordance with federal laws and regulations, including 36 CFR 79, in repositories that meet federal standards and have no policies or conditions that violate federal laws or regulations.

**XIII. Agreement Review**

A. Each year following the execution of this agreement until it expires or is terminated, the Arizona BLM shall prepare a summary annual report of work undertaken pursuant to this PA. Annual reports shall summarize accomplishments, specifically those items that were completed during the year. The annual reports also shall discuss any problems encountered, identify any disputes and objections, and outline a schedule of planned activities for the coming year. Arizona BLM will prepare this report within one (1) month of the anniversary of the effective date of this MOA, and will distribute the annual reports to the consulting parties for review pursuant to Stipulation \_\_.

B. The implementation and operation of this Agreement shall be evaluated on an annual basis by the consulting parties. There shall be an annual meeting among the consulting parties on or near the anniversary of the date of the execution of this agreement, to review the effectiveness and application of this Agreement. The annual report should be provided to the participants prior to the annual meeting, so that any concerns noted in the annual report can be addressed by the consulting parties at the meeting. The Arizona BLM is responsible for setting up this meeting in coordination with the consulting parties.

C. The Arizona BLM will post all annual reports associated with this Agreement to the Arizona BLM Travel Management webpage.

**XIV Post-Review Discoveries**

A post-review discovery under this Agreement would be defined as the identification of previously unknown historic property(ies) or an unanticipated adverse effect to a historic property during the course of the implementation of the approved undertaking. The agency official, in consultation with the consulting parties, will develop a comprehensive plan to manage post-review discoveries and unanticipated effects. In the event that post-review discoveries or unanticipated effects occur prior to development of a strategy, the agency official shall ensure the following measures are implemented:

A. The comprehensive plan to manage post-review discoveries will include measures:

1. The Arizona BLM will halt all surface disturbing activities within 100 feet of any post-review discovery, put in places measure to protect any exposed resources, and notify the appropriate BLM field manager and/or archaeologist within 24 hours.

2. The Arizona BLM will inspect the site of the post-review discovery within \_\_ hours and will apply the National Register criteria to determine if the discovery is eligible for the National Register as per Stipulation: \_\_\_ of this Agreement.

3. The Arizona BLM will notify the Consulting Parties, as appropriate, within \_\_\_ hours of the discovery and provide formal notification of the BLM’s assessment of the National Register eligibility of the discovery and proposed actions to resolve any adverse effects within \_\_\_ hours of the discovery.

4. The Consulting Parties shall respond within \_\_\_ hours of the notification. The Arizona BLM shall take into account their recommendations regarding National Register eligibility and the proposed actions to resolve adverse effects, and then implement the agreed upon proposed actions. The Arizona BLM will notify Consulting Parties when the proposed actions have been completed.

**XV. Treatment of Human Remains and/or Related Cultural Items**

A. In the event of discovery of human remains, the agency official must be notified immediately by telephone and with writing confirmation [43 CFR 10.4(a)]. No additional disturbance will take place and all work will cease immediately within a 300-foot radius of the discovery. The 300-foot radius must be secured and all personnel and equipment will be excluded from the area to the extent practicable and permitted by law until a determination is made regarding the next action. All human remains, burial sites, funerary objects, and objects of cultural patrimony will be treated with dignity and respect.

B. The Arizona BLM will notify the County Coroners’ Office of the county where the remains are located, request, if possible, the remains be examined in place. The Coroner has two working days to examine the remains after notification. The Coroner must determine if the remains are related to a crime scene or recent burial. For human remains determined by the Coroner to be related to a crime scene or recent burial, the Arizona BLM will follow the protocols determined by the appropriate law enforcement agents for resolving such finding.

C. Discoveries of human remains determined by the Coroner to not be related to a crime scene or recent burial, the Arizona BLM will be immediately notified of this determination. The Arizona BLM will be responsible for determining if the human remains are Native American. Discoveries of human remains on federal lands determined to be Native American and any associated funerary objects shall be treated in accordance with the provisions of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and its implementing regulations at 43 CFR 10.

1. Pursuant to 43 CFR 10.4(d), no later than 3 working days after receipt f writing confirmation of notification of a discovery of human remains, the Arizona BLM, will:

a. Certify receipt of the notification [43 CFR 10.4(d)(1)(i)];

b. Take immediate steps to further secure and protect the human remains and associated objects [43 CFR 10.4(d)(1)(ii)];

c. Notify any lineal descendants or culturally affiliated Tribes by telephone with written confirmation [43 CFR 10.4(d)(1)(iii)];

d. Initiate consultation on the inadvertent discovery pursuant to 43 CFR 10.5 [43 CFR 10.4(d)(1)(iv)];

e. If any part of the discovery must be excavated or removed, follow the requirements and procedures outlined in 43 CFR 10.3(b) [43 CFR 10.4(d)(1)(v)]; and

f. Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following 43 CFR 10.5 [43 CFR 10.4(d)(1)(vi)].

D. Once it has been determined the remains are not recent and subject to the authority of the County Coroner and are Native American, and if the identified human remains could be adversely affected by the proposed work, the BLM will re-design the proposed activity to the extent practicable and permitted by law to avoid any further adverse effect on the discovery.

E. Pursuant to 43 CFR 10.4(d)(2), the activity that resulted in the inadvertent discovery may resume 30 days after the BLM certifies receipt of the written confirmation of notification of inadvertent discovery, if the resumption of the activity is otherwise lawful. The activity may also resume, if otherwise lawful, at any time that a written, binding agreement is executed between the Federal agency and the affiliated Indian tribe(s) that adopt a plan for the treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony following 43 CFR10.3 (b)(1).

F. The BLM will ensure that any archaeological excavation that is allowable under this Agreement through a specific Historic Property Management Plan will be consistent with the regulations pertaining to intentional archaeological excavations pursuant to 43 CFR 10.3.

**XVI. Dispute Resolution**

* 1. If at any time during implementation of this Agreement, any Consulting Party objects to any action or failure to act pursuant to this Agreement, they may object in writing to Arizona BLM. The Arizona BLM will notify Consulting Parties and consult with the other Signatories to resolve the objection.
  2. If the objection cannot be resolved within thirty (30) days, the Arizona BLM will:
     1. Forward all documentation relevant to the dispute, including Arizona BLM’s proposed resolution, to the ACHP and request comment, with copies to the Consulting Parties. The ACHP shall provide the BLM with comments on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the Consulting Parties, and provide them with a copy of this written response. The Arizona BLM will then proceed according to its final decision.
     2. If the ACHP does not provide its comments regarding the dispute within the 30 day period, the Arizona BLM may make a final decision on the dispute based on timely comments it has received from the Consulting Parties, notify those Parties, and proceed accordingly.
  3. The Arizona BLM’s responsibilities to carry out actions under this Agreement which are not subject to specific dispute will remain unaffected by the during the dispute resolution process outlined in this Stipulation.

**XVII. Amendment**

This Agreement can be amended when such an amendment is submitted to Arizona BLM in writing. Any Consulting Party to this Agreement can propose an amendment in writing. Arizona BLM will consult with the Signatories for no longer than 30 calendar days to consider the proposed amendment. If the Signatories agree to entertain an amendment to this Agreement, all Tribes and Consulting Parties who signed this Agreement will be provided with a 30-day review and comment period. Any resultant amendment to this Agreement will be effective on the date a copy is signed by all Signatories.

**XVIII. Termination**

Any Signatory to this Agreement who determines that the terms are not being, or cannot be, carried, will immediately consult with the other Signatories and attempt to develop an Amendment per Stipulation \_\_\_ above. If the Signatories cannot find resolution within the Amendment Stipulation within ninety (90) days any signatory may terminate this Agreement upon written notification to the other signatories. During the 90-day notice period, the Arizona BLM will seek comments on the proposed termination from the Consulting Parties.

**XIX. Duration of Agreement**

Following its execution, unless terminated pursuant to Stipulation \_\_\_\_ of this Agreement, this Agreement will terminate and have no further force or effect after the earlier of \_\_\_ years or the date on which all Signatories concur in writing that the stipulations in this Agreement have been fulfilled.

**XX. Anti-Deficiency Act**

Arizona BLM’s obligations under this Agreement are subject to the availability of appropriated funds, and the stipulations of this Agreement are subject to the provision of the Anti-Deficiency Act (ADA), 31 USC 1341. The Arizona BLM shall make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the Arizona BLM’s ability to implement the stipulations of this Agreement, the Arizona BLM will consult in accordance with the amendment and termination procedures found at Stipulations \_\_\_ and \_\_\_ of this Agreement.

**XXI. Effective Date**

This Agreement will take effect on the date it has been executed by the Signatories. The Agreement and any amendments thereto shall be executed in the following order: (1) BLM, (2) AZSHPO, (3) CA-SHPO, and (4) ACHP.

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

Appendix A: Definitions

Appendix \_\_\_\_: List of Travel Management Plans

See attached map for location of each Travel Management Plan