RECEIVED
JUN 10 2009

RECEIVED
MAY 26 2009
ER & T SECT.

PROGRAMMATIC AGREEMENT AMONG THE LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS, ARIZONA STATE LAND DEPARTMENT, AND ARIZONA STATE HISTORIC PRESERVATION OFFICE, REGARDING THE PARADISE RIDGE AND DESERT RIDGE PLANNING AREAS, CITY OF PHOENIX, ARIZONA

WHEREAS, the Los Angeles District, U.S. Army Corps of Engineers ("COE") under the authority of Section 404 of the Clean Water Act (33 U.S.C. § 1344) has issued Permits 1999-16129-RWF and 984-0030-RWF ("Section 404 Permits") ("Undertaking") to the Arizona State Land Department ("ASLD") for the Paradise Ridge and Desert Ridge Planning Areas, respectively, located in northeast Phoenix, Maricopa County, Arizona (Appendix 1); and

WHEREAS, the COE has determined that the area of potential effects ("APE") includes the entire Paradise Ridge Planning Area (approximately 3.4 square miles) and Superblocks 2, 3, and 9 of the Desert Ridge Planning Area (approximately 1.4 square miles) located on land administered by ASLD (Appendix 2); and

WHEREAS, ASLD has inventoried the APE and tested six out of eight archeological sites located within the APE. The results are documented in the following reports by URS: *Archeological Testing Results and Treatment Plan for Site AZ U:5:93(ASM) and Isolated Occurrence 49 in the Paradise Ridge Planning Area, Phoenix, Arizona; Archeological Testing Results and Treatment Plan for the Last Ditch Site AZ U:5:34(ASM) in the Paradise Ridge and Desert Ridge Planning Areas, Phoenix, Arizona;* and *Archeological Testing Results and Treatment Plan for Site AZ U:5:94(ASM) and AZ U:5:92(ASM) Isolated Occurrence 29 in the Paradise Ridge Planning Area, Phoenix, Arizona;* and

WHEREAS, the COE has determined that the Undertaking may have an adverse effect on archeological sites AZ U:5:33 (ASM), AZ U:5:91 (ASM), AZ U:5:92 (ASM), AZ U:5:93, and AZ U:5:94, AZ U:5:216 (ASM), eligible under criterion D for listing in the National Register of Historic Places ("NRHP"), and archeological sites AZ U:5:227 (ASM) and AZ U:5:233 (ASM) which have not been evaluated for listing in the NRHP, and has consulted with the Arizona State Historic Preservation Office ("SHPO") and the Advisory Council on Historic Preservation ("Council"), pursuant to Title 36, Code of Federal Regulations ("CFR"), Part 800, regulations implementing § 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470f) ("NHPA"); and

WHEREAS, the COE seeks to programmatically fulfill its responsibilities under the NHPA, pursuant to 36 CFR § 800.14(b)(1), through development of this programmatic agreement ("PA" or "Agreement"); and

WHEREAS, SHPO is authorized to enter into this PA in order to fulfill its role of advising and assisting federal agencies in carrying out their § 106 responsibilities pursuant to §§ 101 and 106 of the NHPA and 36 CFR §§ 800.2(c)(1)(i) and 800.6(b); and

WHEREAS, SHPO is authorized to advise and assist federal and state agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under Arizona Revised Statutes ("ARS") § 41-511.04(D)(4); and

WHEREAS, the Council elected not to participate in this PA; and

WHEREAS, the Arizona State Historic Preservation Act (ARS § 41-861 *et seq*) requires the ASLD to consult with the SHPO concerning the effect of planned land sales or leases on archeological and historical resources listed in or eligible for listing in the Arizona Register of Historic Places; and ASLD intends to use provisions of this PA to comply with the applicable requirements of the Arizona State Historic Preservation Act and has been invited to participate as an "Invited Signatory" to this PA; and

WHEREAS, the Arizona Antiquities Act (ARS § 41-841 *et seq*) requires the ASLD to notify the Arizona State Museum ("ASM") about the discovery of archeological and historical sites or objects on state land; and

WHEREAS, ASM has authority and responsibility for implementing the Arizona Antiquities Act on state land (defined as land owned or controlled by state agencies and institutions, counties and municipal corporations), and has been invited to participate as a Concurring Party to this PA; and

WHEREAS, the COE has consulted with the City of Phoenix, the Salt River Pima-Maricopa Indian Community, the Hopi Tribe, the Fort McDowell Yavapai Nation, and the Yavapai-Apache Nation regarding the effects of the Undertaking on historic properties and has invited them to participate in this PA as Concurring Parties; and

WHEREAS the COE has determined that implementation of the Undertaking is of long duration (approximately 10 years, with multiple construction phases), and that not all aspects of the project(s) associated with the Undertaking have been planned in final form, and that such planning as exists may be subject to change at some future date, making it desirable to clearly define COE's NHPA Section 106 responsibilities; and

WHEREAS, the definitions given in 36 CFR § 800.16 are applicable throughout this PA.

NOW, THEREFORE, the COE, SHPO, and ASLD, collectively, referred to as "Signatories" or "Parties", agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the Undertaking's effects on historic properties.

STIPULATIONS

The COE and the ASLD, as appropriate, will ensure that the Undertaking will be carried out in accordance with the following stipulations:

STIPULATION 1
Historic Properties Treatment Plans

A. Historic Properties Treatment Plans ("HPTPs") have already been developed for sites AZ U:5:93(ASM), AZ U:5:34(ASM), AZ U:5:94(ASM) and AZ U:5:92(ASM). The COE will ensure that HPTPs are developed for all other eligible sites within the APE. The HPTPs shall describe the affected historic properties and their historic values, identify the nature of the effects on those historic properties, and describe the strategies proposed to avoid, minimize, or mitigate the effects of the Undertaking on historic properties. The HPTPs shall address the treatment of historic properties within the APE including data recovery and monitoring. The HPTPs will also describe the notification and protection measures in the case of unexpected discoveries. The HPTPs will mention that a burial agreement pursuant to ARS § 41-864 or ARS § 41-865, as appropriate, will be in place for the APE before any ground disturbing activities occur. The HPTPs will also include an eligibility testing plan for sites AZ U:5:227 (ASM) and AZ U:5:233 (ASM). HPTP contents and guidelines are provided in Appendix 4.

B. The COE shall ensure that the HPTPs are prepared in consultation with the Parties for the Undertaking and implemented whenever the Undertaking will affect historic properties. The COE will ensure that the following measures are carried out by incorporating this PA as a special condition of any Section 404 Permits issued by the COE to ASLD or its transferee as successor to such Section 404 Permits. If ASLD fails to carry out the measures necessary to implement the HPTPs, the COE will take steps in good faith to enforce the permit conditions or revoke the permit. To prevent impacts to contributing resources, the COE will ensure ASLD maintains a 100-foot buffer around each archeological site until data recovery is completed at that property in accordance with the HPTPs. If the land remains in state ownership at the time of data recovery, the data recovery shall be conducted in accordance with an Arizona Antiquities Act permit issued by ASM.

STIPULATION 2
ASLD Procedures

The ASLD shall ensure consultation with SHPO and the conditions set forth in the Section 404 permits are carried out in accordance with the following.

A. Prior to ASLD issuing a lease or permit, or disposing of State Trust land at public auction, ASLD shall consult with the COE and SHPO under the State Historic Preservation Act when ground disturbing activities are planned within the boundary of Register eligible sites AZ U:5:33(ASM), AZ U:5:91(ASM), AZ U:5:92(ASM), AZ U:5: 93(ASM), AZ U:5:94(ASM), AZ U:5: 216(ASM), AZ U:5: 227(ASM), and AZ U:5:233(ASM).

B. ASLD will continue to consult with SHPO and COE on mitigation plans resulting from leases or permits. However, ASLD will transfer those consultation procedures to the COE per the conditions set forth in the 404 permits regarding State Trust land that has been sold at public auction.

STIPULATION 3
Archeological Monitoring

An archeologist may need to monitor construction activities after data recovery has occurred. Archeological monitoring shall be carried out in accordance with the following.

A. The COE and ASLD, as applicable, shall ensure ASLD or its successors or assigns to the Section 404 Permits, use cultural resources consultant(s) whose firm and associated personnel meet federal and state standards. If the land remains in state ownership at the time of monitoring, the monitoring shall be conducted in accordance with an Arizona Antiquities Act permit issued by ASM.

B. The COE and ASLD, as appropriate, shall ensure that any cultural deposits identified during monitoring are handled in accordance with Stipulation 4, *Post-Review Discoveries.*

STIPULATION 4
Post-Review Discoveries

The COE will condition its Section 404 Permits to require the ASLD or its successors and assigns to provide immediate notification to the COE if cultural deposits, including but not limited to human remains and funerary objects, are discovered during ground-disturbing activities. ASLD shall notify the ASM of such discoveries if the land remains in state possession at the time of the discovery. In the event of a discovery, the COE will immediately require ASLD or its successors or assigns to temporarily halt those activities and take steps to ensure that the area of the discovery is protected and secured as specified in the HPTPs. The COE shall immediately notify the SHPO and Concurring Parties of the nature of the discovery and the proposed treatment according to the discovery plan developed in the HPTP. The COE and ASLD, as appropriate, shall ensure that any burial encountered is treated according to the burial agreement developed for this PA.

STIPULATION 5
Reporting

A. ASLD shall bear the expense of identification, evaluation, and treatment of all historic properties directly or indirectly affected by the Undertaking within the APE. Such costs shall include, but not be limited to, pre-field planning, field work, post-field analysis, research, and interim, summary, and final report preparation (including draft and final versions) and costs associated with the curation of project documentation and all collections made from the historic properties. ASLD shall provide ten (10) copies of all draft and final reports to COE, SHPO and Concurring Parties.

B. ASLD will submit a Preliminary End-of-Fieldwork Report ("Preliminary Report") to COE, SHPO and Concurring Parties one week after the completion of data recovery fieldwork that will provide a record that the fieldwork was accomplished according to the approved HPTP. The Preliminary Report will also contain a schedule for delivering the draft and final Data Recovery Report to the COE, SHPO and Concurring Parties. After

the SHPO accepts the Preliminary Report, COE may authorize ASLD, as the Permittee of the Section 404 Permits, to proceed with earthmoving activities within the APE. Preliminary Report contents and guidelines are provided in Appendix 5.

C. ASLD shall submit draft plans and reports to the SHPO, COE and Concurring Parties for review and comment within 30 days. Based on the comments received, the COE may require ASLD to revise the plans and/or report(s), and furnish such revised plans and/or reports to the COE. The COE will submit any revised plans and/or reports(s) to SHPO and Concurring Parties for a 20-day concurrent review. Failure to respond within the appropriate review period shall not prohibit the COE from directing ASLD to finalize the plans and/or report(s).

D. The COE shall ensure all plans and/or reports prepared pursuant to this Agreement are consistent with guidelines of the Secretary of the Interior, SHPO, and ASM, as appropriate.

STIPULATION 6
Treatment of Human Remains and Cultural Objects

The COE shall ensure that human remains and associated cultural materials are treated in accordance with the burial agreement developed for this PA.

STIPULATION 7
Curation

The COE shall ensure that all materials and records resulting from the implementation of this Agreement are curated in accordance with 36 CFR Part 79, except where an alternative plan for disposition of human remains and other specified materials is provided in the HPTP.

STIPULATION 8
Confidentiality

The nature and location of archeological sites discussed in this PA shall be maintained as confidential, on a "need to know" basis, limited to staff and agents of the COE, ASLD, and SHPO involved in the planning and reviewing of the Undertaking and qualified researchers consistent with §304 of the NHPA and A.R.S § 39-125.

STIPULATION 9
Professional Qualifications

The COE shall ensure that all historic preservation work carried out pursuant to this Agreement is done by or under the supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualification Standards* (48 FR 44738-44739) and in accordance with Arizona Antiquity Act permit requirements, if the land remains in state ownership at the time of the studies.

STIPULATION 10
Conflict of Interest

SHPO may terminate this Agreement if it finds that an Arizona State Parks employee that was significantly involved in the creation of this Agreement is, at any time the Agreement is in effect by no later than three years after its execution, an employee or consultant of any other party in the Agreement.

STIPULATION 11
Equal Opportunity/Non-Discrimination

The Signatory Parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

STIPULATION 12
Non-Availability of Funds

This Agreement shall be subject to available funding, and nothing in this Agreement shall bind the State to expenditures in excess of funds authorized and appropriated for the purposes outlined in this Agreement.

STIPULATION 13
Dispute Resolution

Should any Signatory or Concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, COE shall consult with such party to resolve the objection. The COE shall notify the SHPO of any objection. If COE determines that the objection cannot be resolved with the SHPO, then COE shall:

A. Forward all documentation relevant to the dispute, including the SHPO's, or COE's proposed resolution, to the ACHP. The ACHP shall provide COE with its advice on the resolution of the objection. The COE will consider any recommendation or comment provided by ACHP pertaining to the subject of the dispute. Prior to reaching a final decision on the dispute, COE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the signatories and Concurring Parties, and provide them with a copy of this written response. The COE will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute in a timely manner, COE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, COE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and Concurring Parties to the PA, and provide them and the ACHP with a copy of such written response.

C. COE's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

STIPULATION 14
Alternative Dispute Resolution

The Signatory Parties agree to engage in any alternative dispute resolution procedures authorized by their statutes, regulations, and court rules, including, but not limited to, 5 U.S.C. 575 and A.R.S. § 12-1518, but only in circumstances where the Federal government consents to litigation in state court.

STIPULATION 15
Record Retention

All books, accounts, reports, files and other records of ASLD, and the Regulatory project files and technical reports of the COE, which are determined releasable under the Freedom of Information Act of 1966 (as amended), relating to this Agreement shall be subject, at all reasonable times, to inspection and audit by the State for five years after the termination of this Agreement.

STIPULATION 16
Amendments

Any Signatory Party may request that this PA be amended pursuant to 36 CFR § 800.6(c)(7). Any amendment will be effective on the date an amended PA is signed by all Signatory Parties. The COE shall ensure that a copy of any executed amended PA is filed with the Council.

STIPULATION 17
Termination

In the event any Signatory Party determines the terms of the PA cannot be or are not being carried out, the Signatory Parties shall consult to seek amendment of the Agreement. If the Agreement is not amended, the COE or the SHPO may terminate it pursuant to 36 CFR § 800.6(c)(8). The COE will either execute a memorandum of agreement under 36 CFR § 800.6(c)(1) or request the comments of the Council pursuant to 36 CFR § 800.7(a). The COE shall notify SHPO as to the course of action it will pursue.

STIPULATION 18
Annual Reporting and Bi-Annual Meeting

The COE will require an annual report for any ASLD actions (e.g., land sales, leases, and permits) that involve parcels containing archeological sites AZ U:5:33 (ASM), AZ U:5:91 (ASM), AZ U:5:92 (ASM), AZ U:5:93, AZ U:5:94, AZ U:5:216 (ASM), AZ U:5:227 (ASM) and AZ U:5:233 (ASM) which are included in the Section 404 Permits. ASLD Cultural Resources Manager will submit an annual report to the COE Regulatory Project Manager for the Section 404 Permits that documents any and all ASLD actions within the APE during the past calendar year for the duration of this Agreement. ASLD will submit the report no later than January 31. ASLD and COE will meet every two years to evaluate compliance with the Agreement.

STIPULATION 19
Duration of the MOA

This Agreement shall be considered null and void if its stipulations are not carried out within ten (10) years from the date of its execution, unless the Signatory Parties agree in writing to an extension for carrying out its terms.

IN WITNESS WHEREOF, execution of this PA by the COE, ASLD, and SHPO, filing of the PA with the Council pursuant to 36 CFR § 800.6(b)(1)(iv), and subsequent implementation of its terms, evidences the COE has taken into account the effects of the Undertaking on historic properties, and that the COE has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations.

SIGNATORIES:

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: Mark Durham for Date: 19 May 2009

Name: David J. Castanon

Title: Chief, Regulatory Division

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By: James W. Garrison Date: 11 JUNE 2009

Name: James M. Garrison

Title: State Historic Preservation Officer

INVITED SIGNATORY:

ARIZONA STATE LAND DEPARTMENT

By: Jamie L. Hogue Date: June 4, 2009

Name: Jamie L. Hogue

Title: Interim Land Commissioner

CONCUR:

ARIZONA STATE MUSEUM

By:_____ Date: _____

Name _____

Title:_____

CITY OF PHOENIX, A MUNICIPAL CORPORATION

By:_____ Date: _____

Name: _____

Title:_____

FORT MCDOWELL YAVAPAI NATION

By:_____ Date: _____

Name: _____

Title:_____

HOPI TRIBE

By:_____ Date: _____

Name _____

Title:_____

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By:_____ Date: _____

Name: _____

Title:_____

YAVAPAI-APACHE NATION

By:_____Date: _____

Name: _____

Title:_____

APPENDIX 1

CLEAN WATER ACT SECTION 404 PERMITS 1999-16129-RWF AND 984-0030-RWF

APPENDIX 2

MAP OF AREA OF POTENTIAL EFFECTS

APPENDIX 3

SUMMARY OF HISTORIC PROPERTIES AND UNEVALUATED ARCHEOLOGICAL SITES WITHIN THE AREA OF POTENTIAL EFFECTS

Site Number	Description	National Register Eligibility Status
AZ U:5:33(ASM)	extensive low-density scatter of Hohokam artifacts and thermally altered rock with buried Archaic and Red Mountain phase components	eligible
AZ U:5:91(ASM)	extensive low-density scatter of Hohokam artifacts and thermally altered rock with buried features	eligible
AZ U:5:92(ASM)	extensive low-density scatter of Hohokam artifacts and thermally altered rock with buried features	eligible
AZ U:5:93(ASM)	extensive low-density scatter of Hohokam artifacts and thermally altered rock with buried features	eligible
AZ U:5:94(ASM)	extensive low-density scatter of Hohokam artifacts and thermally altered rock with buried features	eligible
AZ U:5:216(ASM)	small, probably seasonal Hohokam habitation (Santa Cruz or early Sacaton phase) and resource collection locus	eligible
AZ U:5:227(ASM)	scatter of about 50 Hohokam artifacts and a depression, probably a resource collection and processing locale	unevaluated
AZ U:5:233(ASM)	scatter of fewer than 50 Hohokam artifacts, probably a resource collection and processing locale	unevaluated

NOTE: National Register = National Register of Historic Places

APPENDIX 4
GUIDELINES FOR HPTP CONTENTS

The HPTP shall include, but not be limited to, the following:

1. Methods section describing all pertinent field work, analytical, and data management procedures to be used, with an explanation of their relevance to the research design.

2. Research Design and Cultural Context
   a. Identification of research objectives for archaeological data recovery;
   b. Discussion of cultural context for the region; and
   c. Summary of previous research conducted within and adjacent to the APE.

3. Archaeological NRHP Eligibility Evaluation/Testing Plan. For archaeological sites that have not been evaluated for the NRHP, an archaeological NRHP eligibility evaluation/testing plan will be developed that includes discussion of the following:
   a. Description of the archaeological sites or portions of sites proposed for testing;
   b. Evaluation of sites within specific prehistoric/historic contexts;
   c. Field and analytical methods to be used to evaluate sites;
   d. Data management techniques to be used; and
   e. Dissemination of data, including draft and final report outlines and plans for their distribution.

4. Archaeological Data Recovery Plan. Include a data recovery plan with a research design to guide any data recovery at historic properties significant for their information potential in accordance with 36 CFR 60.4(d) and that cannot be avoided by the effects of the proposed project or otherwise preserved in place:
   a. Description of the historic properties proposed for data recovery, including an explanation of their significance;
   b. A section describing what types of permits are necessary, who will obtain permits, and procedure for obtaining permits; and
   c. A curation agreement ensuring that all materials and records are maintained in accordance with 36 CFR 79 (see Stipulation 7).

5. Archaeological Monitoring and Discovery Plan. Construction in archaeologically sensitive areas will be monitored by a qualified archeologist. Unanticipated discoveries, and their proposed treatment, if necessary, will be coordinated with the Concurring Parties to this Agreement. The Monitoring and Discovery Plan shall include discussion and justification of the following:

   a. How unanticipated historic properties that are not visible from the surface or known from previous survey efforts, shall be identified, evaluated, and treated; and

   b. Procedures to be followed in communicating information and decisions regarding unanticipated discoveries, including time limits for reporting discoveries, and who notifies whom.

6. a plan for the treatment and disposition of human remains, associated grave goods, and items of cultural patrimony developed in consultation with the Signatory and Concurring Parties (see Stipulation 6).

APPENDIX 5
GUIDELINES AND CONTENTS FOR PRELIMINARY END-OF-FIELDWORK REPORTS

1. Dates of fieldwork and personnel;

2. Permits and permit numbers under which fieldwork work was performed;

3. Map of the APE;

4. Field Methods;

5. Map(s) showing location of excavation units (unit blocks and trenches);

6. Summary table of features and sub features encountered;

7. Summary table of excavation units and unit area or length;

8. Preliminary field results;

9. Discussion of compliance with the HPTP; and

10. Schedule for delivering the draft and final data recovery report (no later than 1 year from end of fieldwork date).