

**FINAL  
PROGRAMMATIC AGREEMENT  
BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE MORRO BAY WATER RECLAMATION FACILITY PROJECT,  
SAN LUIS OBISPO, CALIFORNIA  
November 2019**

**WHEREAS**, the City of Morro Bay (City) plans to construct the Water Reclamation Facility Project (Undertaking) within the Morro Bay city limits and unincorporated areas of San Luis Obispo County east of the City that would replenish area groundwater and establish a drought-resistant and sustainable water future for Morro Bay to comply with California Coastal Commission Requirements; and

**WHEREAS**, the United States Environmental Protection Agency (EPA), is partially funding the Undertaking pursuant to the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014 (33 United States Code [USC] Sections 3901-3914), as amended by section 1445 of the Fixing America's Surface Transportation Act of 2015 and section 5008 of the Water Infrastructure Improvements for the Nation Act of 2016;

**WHEREAS**, the EPA has determined that funding the Undertaking requires compliance with Section 106 of the NHPA (54 USC§ 300101) and its implementing regulations found in 36 CFR Part 800; and

**WHEREAS**, the City of Morro Bay (City) has also applied for Clean Water State Revolving Funds (CWSRF) to finance the Undertaking. The State Water Resources Control Board, as a concurring party, administers the CWSRF Program on behalf of the EPA, requiring compliance with Section 106 of the National Historic Preservation Act(NHPA); and

**WHEREAS**, the California Department of Transportation (Caltrans) District 5 has participated in the consultation since the pipeline corridor is partially within Caltrans State Route 1 right-of-way owned and administered by Caltrans District 5; and the Regional Water Quality Board Region 3 will be issuing a National Pollution Discharge Elimination System permit for the Undertaking; and the California Coastal Commission will be issuing a Coastal Development Permit for the Undertaking; and the California Department of Fish and Wildlife will be issuing a Stream Bed Alteration Permit for construction of the pipe bride at Morro Creek; and

**WHEREAS**, the Undertaking consists of phased construction, beginning with a new Water Reclamation Facility (WRF; construction Phase 1), followed by new collection system components (lift stations and pipelines; construction phase 2), a new distribution system to convey recycled water from the WRF to new injection wells (construction phase 3) in the Morro Valley, and decommissioning the existing wastewater treatment plant (construction phase 4). The EPA and the City, in consultation with the State Historic Preservation Officer (SHPO), has defined the Undertaking's Area of Potential Effects (APE) as described in Attachment A; and

**WHEREAS**, a records search and survey have identified nine archaeological resources adjacent to or within the project APE. One site has been determined eligible for the National Register and most others contain or are likely to contain human remains and, if intact, will be considered eligible. Two of these known resources are buried within the area identified as sensitive for buried resources, confirming the area's sensitivity (Attachments B1 and D). Three historic-era built

environment resources have been identified in the APE. The existing wastewater treatment plant has been determined ineligible and will be demolished as part of the project. The two other resources will be completely avoided (Attachments B2 and E); and

**WHEREAS**, there are no eligible historic-era built resources within the APE (Attachment E); and,

**WHEREAS**, the EPA in consultation with the California State Historic Preservation Officer (SHPO) has determined preparation of this Agreement is the appropriate means to ensure completion of the identification of historic properties as a phased approach for the identification and evaluation of historic properties, pursuant to 36 CFR § 800.4(b)(2); and the resolution of adverse effects on historic properties within the APE pursuant to 36 CFR § 800.5(a)(3), subsequent to the approval of the Undertaking, because the Undertaking consists of a corridor and large land areas portions of which are within an urban setting with restricted access and highly sensitive for buried Native American archaeological deposits; and

**WHEREAS**, the EPA has consulted with the SHPO in accordance with the regulation implementing Section 106 of the National Historic Preservation Act of 1966 (36 CFR § 800.5) as amended regarding the Undertaking's potential to affect historic properties; has decided to prepare a Programmatic Agreement (Agreement) pursuant to 36 CFR § 800.4(b)(2) and 800.14(b), and will file a copy of this Agreement with the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR § 800.6(b)(iv); and

**WHEREAS**, the EPA has consulted with the Native American Heritage Commission and Native American tribes-including the BarbarefioNenturefio Band of Mission Indians, Coastal Band of the Chumash Nation, Northern Chumash Tribal Council, Salinan Tribe of Monterey and San Luis Obispo Counties, Santa Ynez Band of Mission Indians (Federally recognized), Santa Ynez Band of Chumash Indians, Xolon-Salinan Tribe, yak tityu tityu Northern Chumash Tribe, Chumash Council of Bakersfield, and San Luis Obispo County Chumash Council, who may attach religious or cultural importance to affected properties and who have been consulted (pursuant to 36 CFR § 800.2 (c)(2)(ii)(A-F)) regarding the cultural sensitivity of the project area-and have invited these Native American tribes and individuals, who are Consulting Parties, to be Concurring Parties to this Agreement; and one Federally recognized Indian tribes (as identified in 36 CFR § 800.16(m)) expressed an interest in consulting on the Undertaking; and

**WHEREAS**, the City has done extensive public outreach with the community during the preparation of the Final Environmental Impact Report and subsequent addendum in the form of City Council meetings, public hearings, and workshops. Specifics regarding this outreach including the number of occurrences, specific subjects, and dates can be provided upon request; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), EPA has notified the Advisory Council on Historic Preservation (ACHP) of its intent for the phased identification of historic resources and a Programmatic Agreement will be prepared, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii) as stated in their September 13, 2019 letter; and

**WHEREAS**, EPA has coordinated its compliance with Section 106 and NEPA, pursuant to 36 CFR §800.8 through its preparation of an Environmental Impact Report (EIR) for the Project;

**WHEREAS**, through the process conducted in preparing the EIR, EPA has determined that the Project may have an effect on properties qualifying for protection under Section 106, consisting

of those properties listed or eligible for listing on the State and National Registers of Historic Places ("Historic Properties");

**WHEREAS**, the City, as the grantee and project sponsor, is an Invited Signatory to this Agreement; and

**NOW, THEREFORE**, the EPA and SHPO agree that, upon EPA's decision to proceed with the Undertaking, the EPA shall ensure that the Undertaking is implemented in accordance with the following Stipulations to take into account the effects of the Undertaking on historic properties; and further agrees that these Stipulations shall govern the Undertaking and all of its parts until this Agreement expires or is terminated.

## **STIPULATIONS**

### **I. ROLES AND RESPONSIBILITIES**

#### **A. ENVIRONMENTAL PROTECTION AGENCY**

EPA will ensure that the terms of this Agreement are carried out and will require, as a condition of any approval of Federal funding for the Undertaking, adherence to the Stipulations set forth herein.

As the lead Federal agency, EPA shall be responsible for ensuring the provisions of the Agreement are completed and consistent with requirements of 36 CFR Part 800. EPA shall be responsible for the following:

1. Make all determinations of eligibility for historic properties and the finding of effect of the Undertaking and participate in the resolution of adverse effects and disputes.
2. Determine the APE in consultation with the City and SHPO pursuant to Stipulation II; modify the APE as necessary to account for project changes in accordance with Stipulation II; and notify all Parties to the Agreement of any change to the APE.
3. Conduct government-to-government consultation with Federally-recognized Native American tribes.
4. Consult with other consulting parties, such as, non-Federally-recognized Native American tribes and individuals, the public, and local governments, as appropriate.
5. Circulate documents, comments on documents, and final documents among all Parties to this Agreement and any Concurring Parties that choose not to sign the document, as appropriate.
6. Maintain documentation of Section 106 compliance in coordination with the City.
7. Respond to written requests from other Federal agencies under 36 CFR § 800.2(a)(2). If EPA receives a written request from another Federal agency that intends to carry out, fund, license, permit, or approve an Undertaking covered by this Agreement, EPA shall notify the SHPO and the City of such request within fifteen (15) calendar days. EPA may invite such Federal Agency to become a Signatory Party to the Agreement pursuant to 36 CFR § 800.6(c)(2). If such Federal agency agrees to become a Signatory Party, EPA shall comply with Stipulation VIII.D to amend this Agreement.

## B. CITY OF MORRO BAY

The City is responsible for implementing and coordinating all activities described in the Agreement to carry out the Stipulations below. City will consult with EPA and SHPO, as appropriate, in planning and implementing the Stipulations of this Agreement. City will submit all documents required by this Agreement to all Parties to this Agreement as stipulated, for review. City will also ensure that all treatment measures developed by City as a result of consultation are compliant with government-wide policies and regulations.

City will ensure that all historic preservation and archaeological work is performed by, or under the direct supervision of, a person or persons who meet, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 *Federal Register* 44738-44739) (Appendix A to 36 CFR § 61) in the relevant field of study, as described under the Administrative Provisions of this Agreement. Hereinafter, such persons will be referred to as Qualified Professionals.

## II. AREA OF POTENTIAL EFFECTS (APE)

The APE for the Undertaking is depicted in Attachment A of this Agreement, incorporating known resources within or adjacent to the design APE (Attachments A and B). The APE may be amended in consultation among the appropriate Parties to this Agreement with jurisdiction over the area of change without amending the Agreement proper.

As the Undertaking progresses, design changes or modifications may be necessary. City shall inform EPA of any such design changes or design modifications. EPA will determine if the design changes or modifications affect additional areas that would necessitate modifications of the APE. If EPA determines additional areas would be affected, EPA will submit a modified APE to SHPO and to all Parties to this Agreement and will follow the review process in Stipulation VI. Disputes will be resolved in accordance with Stipulation VIII.C.

## III. PHASED IDENTIFICATION, EVALUATION, AND TREATMENT OF ARCHAEOLOGICAL RESOURCES

EPA and City shall ensure that identification, evaluation, assessment of adverse effects, and treatment to resolve adverse effects to historic properties of archaeological sites as a result of construction activities is conducted pursuant to the *Archaeological Survey, Research Design, and Treatment Plan for the Morro Bay Wastewater Reclamation Facility Project, San Luis Obispo County, California* (ARTP; Far Western 2018), appended to this Agreement as Attachment D. The ARTP identifies the scope of fieldwork for exploratory testing, testing/evaluation, data recovery/mitigation, analytical methods, and documentation; thresholds of eligibility; a schedule for implementation; inadvertent discovery protocol; protocol for the treatment of human remains; and protocol for consultation with SHPO and Consulting Parties. Any Party to this Agreement may propose to update the ARTP; this will not require amendment of this Agreement. Updates to the ARTP shall follow the process outlined in Stipulation VI. Disputes will be resolved in accordance with Stipulation VIII.C.

A. PHASED IDENTIFICATION OF ARCHAEOLOGICAL RESOURCES

Due to the lack of surface visibility, restricted access prior to construction, and potential for subsurface archaeological resources within the APE (Attachment C), a phased approach to identification will be employed.

1. A records search and pedestrian survey have been undertaken to identify surface evidence of cultural resources. Survey methods and findings were documented, along with a research design and treatment plan (Attachment D).
2. No additional identification efforts are required for construction phase 1 (new water reclamation facility) as this project component was surveyed with negative results and excellent ground visibility and is situated on an ancient upland landform with a low sensitivity for buried resources.
3. The next phase of archaeological identification will be preconstruction testing within accessible portions of the Area of Direct Impact of construction phase 2 (conveyance pipelines). For existing sites and in areas of high sensitivity for buried resources, mechanical trenching where feasible, hydraulic continuous coring within paved streets, or hand augering for shallow deposits with difficult access, will test for presence/absence and, if present, for integrity, content, and boundaries. Documentation will include field methods, findings, eligibility determinations, finding of effect for construction phase 2, recommendations for mitigation measures for historic properties, and recommendations for construction monitoring, submitted to the SHPO for review and concurrence.
4. The next phase of archaeological identification will be testing for construction phase 3 (proposed injection wells), conducted once project designs are complete. This will involve deep cores to test for presence/absence and, if present, integrity, content, and boundaries. This work will be documented in an addendum to the initial test report including finding of effect for construction phase 3, and submitted to the SHPO for review and concurrence.
5. Some presence/absence testing within the ADI might only be possible immediately prior to construction when accessibility is possible (e.g., private property), but prior to actual construction disturbance. This will include coring and/or trenching in sensitive areas to test for presence/absence and, if present, integrity, content, and boundaries. This work will be documented in an addendum to the initial test report and submitted to the SHPO for review and concurrence.
6. The last phase of archaeological identification will be for demolition of below-ground structures within the existing water treatment plant (construction phase 4) located in an archaeologically sensitive area. Identification methods will likely be construction monitoring, although this will be informed by testing in areas immediately adjacent for construction phase 2.
7. If eligible or assumed eligible archaeological resources are identified within the ADI as a result of test excavations, avoidance will be the first priority. The only

potential option for avoidance for the conveyance system would be boring under a site, while redesign of the injection well locations to avoid a site could be easily done. Vertical and horizontal environmentally sensitive area (ESA) designations will protect any historic properties within or adjacent to the APE from potential effects during construction. No work can take place within the ESAs. The process outlined in *Establishment of Environmentally Sensitive Areas* of the ARTP shall be followed.

8. If archaeological resources are identified within the ADI that do not meet the thresholds of eligibility for listing in the National Register of Historic Places (NRHP) under Stipulation III.B., no further consideration will be given under the terms of this Agreement.
9. If archaeological resources are identified within the ADI that meet the thresholds of eligibility under Stipulation III.B, they will be considered eligible for listing in the NRHP, and if they cannot be protected and avoided in place, assessment of effects and mitigation of adverse effects as presented in *Thresholds of Eligibility* of the ARTP will be followed.
10. As a final identification/evaluation phase, if unexpected finds are noted during construction, work will be halted in the area until qualified archaeologists can examine the find and determine eligibility (see Stipulation III.E).
11. The ARTP may be updated in consultation with the Parties to this Agreement without amending this Agreement proper.

## B. EVALUATION

The following thresholds will be used to make eligibility recommendations in the field by the Qualified Professional. The *Thresholds of Eligibility* of the ARTP includes a more thorough discussion about the protocols for evaluating resources for eligibility for the NRHP.

1. It is often not possible to determine whether prehistoric sites and features are eligible for the NRHP until laboratory studies have been completed and analyzed. Therefore, any prehistoric site or feature, with the exception of isolated artifacts (defined as less than three artifacts per 100 square meter area) will be assumed eligible for the NRHP under Criterion D until laboratory studies have been completed unless they are clearly mixed redeposits and contain no human remains, or have already been determined ineligible. The EPA shall consult with Native American tribes that may attach religious or cultural significance to the archaeological deposit to determine if the site has values that may qualify it as NRHP eligible under Criteria A, B, or C in addition to, or instead of, Criterion D.
2. Due to the history of ground disturbance in the project vicinity, secondary deposits of prehistoric archaeological sites could possibly be encountered. Such deposits can be considered eligible for the NRHP under Criterion D only if they are substantial in volume and represent a narrow time period of human occupation. If these criteria

are met, the secondary deposit will be considered eligible for the NRHP under Criterion D. Regardless of eligibility, if human remains are present some form of treatment will be required. The EPA shall consult with Native American tribes that may attach religious or cultural significance to the archaeological deposit to determine if the site has values that may qualify it as NRHP-eligible under Criteria A, B, or C in addition to, or instead of, Criterion D.

3. All historic-period resources at least 50 years of age at the time of construction that have not been evaluated for listing on the NRHP will be treated as eligible for this Undertaking only and will be avoided, except as noted under Stipulation III.B4, 5.
4. Ubiquitous historic-period infrastructure elements such as water supply systems, gas, electric and sewer lines, and buried roads have little research value. Therefore, they will not be considered eligible for the NRHP under Criterion D and such resources will not be given any further consideration under the terms of this PA. If remains of utility lines have interpretive potential, they will be photographed and documented.
5. Secondary historic-period deposits consist of artifacts or features deposited at a location separate from where they were originally used and can include sheet refuse in addition to hollow/filled features such as backfilled wells, refuse pits, and outhouses. Secondary deposits associated with industry, commercial, and domestic behavior are often arranged horizontally and may contain discrete caches that can be accurately dated. Therefore, secondary deposits may be able to address questions important in history if materials are present in sufficient numbers and are at least 50 years of age at the time of construction. At minimum, artifact caches and features must have a minimum number of items of at least 35 and faunal assemblages must contain at least 100 bones or bone fragments. If these criteria are met, the secondary deposit will be considered for eligibility for the NRHP under Criterion D. If it is unclear if a resource meets the thresholds for eligibility it will be assumed eligible for the NRHP under Criterion D.
6. In consultation with SHPO (per Stipulation VI below and consistent with 36 CFR § 800.4[c]), the EPA shall make determinations of eligibility in accordance with the NRHP criteria set forth in 36 CFR § 60.4 for all potential historic properties within the APE that are consistent with the *Secretary of the Interior's (SOI) Standards and Guidelines for Archeology and Historic Preservation* as outlined in *Thresholds of Eligibility* of the ARTP.
7. If EPA and SHPO are unable to agree on the NRHP eligibility of a resource, EPA shall obtain a determination from the SOI in accordance with 36 CFR § 800.4(c)(2). The determination of the SOI shall be final for the purposes of this Agreement.

### C. ASSESSMENT OF EFFECTS

The potential for adverse effects to identified resources is assessed in accordance with the definition for the criteria of adverse effect per 36 Code of Federal Regulations (CFR) §800.5(a)(1)---an adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historical Places (National Register) in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

1. EPA will make an explicit finding of effect as part of the test reports, describing the anticipated effect of the project construction phase on resources eligible or recommended as eligible for the NRHP, by applying the criteria of adverse effect consistent with 36 CFR Part 800.5(a)(1).
2. EPA shall ensure that copies of the preconstruction testing reports inclusive of draft Finding of Effects (FOE) are submitted concurrently to all consulting parties (including Applicants, THPOs, Invited Tribal Leaders/Representatives) to this Agreement. EPA shall write to these parties to participate, pursuant to 36 CFR § 800.2 and in accordance with Stipulation VI. EPA shall consider recommendations on the draft FOE made by all Parties to the PA.
3. EPA shall revise the preconstruction testing reports and FOE as appropriate and distribute it to all Parties of this Agreement and submit the final FOE to SHPO for review and concurrence in accordance with Stipulation VI.
4. If the Signatory Parties are unable to reach agreement on effects, EPA shall resolve the disagreement in accordance with Stipulation VIII.C.

### D. TREATMENT OF HISTORIC PROPERTIES

Pursuant to 36 CFR § 800.6(a), EPA shall continue consultation with all Parties to this Agreement through the pre-construction test reports which will include finding of effects and recommendations, and annual reports, to develop and evaluate measures that could avoid, minimize, or mitigate adverse effects on historic properties. Consultation will follow the process outlined in Stipulation VI. If there are unavoidable adverse effects to historic properties, EPA will consult with interested tribes to develop appropriate mitigation plans, per the ARTP.

1. The preconstruction testing reports and finding of effects will include recommendations for mitigation of identified historic properties in the ADI and where limited construction monitoring may be warranted. Any part of the historic property (vertical and horizontal extent) not affected by construction will be protected as an ESA, in accordance with the ARTP, to ensure that no work takes place within those areas as outlined in Stipulation 111.A.6.
2. In consultation with interested Native Americans, other mitigation measures will include, but not be limited to, data recovery excavations at identified intact



temporal components or column samples from specific site types, along with public outreach such as displays, web pages, classroom presentations, etc.

3. If human remains are identified during testing, data recovery will ensure that all burials and isolated bone are identified and removed from the ADI, in consultation with the Most Likely Descendant. This often takes the form of slow, careful mechanical stripping of the entire impact area within site boundaries, with archaeological and Native American monitors observing.

#### E. CONSTRUCTION MONITORING

Per *Construction Monitoring* of the ARTP, archaeological monitoring of construction activities by a Qualified Professional and Native American will be conducted in areas with known or a high potential for human remains. Monitors will be familiar with procedures and conditions presented in the ARTP, including but not limited to inadvertent discoveries, thresholds of eligibility, and EPA and City roles and responsibilities. A monitoring report, documenting methods and findings, will be prepared immediately following the end of construction.

1. The Archaeological and Native American Monitors will observe soil disturbance during construction activities (e.g., manual or machine excavations, grading). The Archaeological monitor will observe consistency or changes in soils or may examine specific materials that may be cultural in origin.
2. Should a resource be identified, it will be evaluated per Stipulations III.A and III.B, followed by determination of eligibility, assessment of effects, and treatment, per Stipulations 111.C, 111.D, and 111.E as appropriate.
3. Observations will be performed by the Monitors in accordance with all appropriate and applicable safety requirements and laws.

#### F. TREATMENT AND DISPOSITION OF ARCHAEOLOGICAL MATERIALS

1. Archaeological materials will be treated in accordance with *Laboratory Methods* described in the ARTP, with consideration of redundancy of material, relevance to stated research issues, given space issues in curation facilities.
2. Upon completion of the final project documents, archaeological materials deemed suitable per the ARTP, in consultation with local Native Americans, will be curated at the San Luis Obispo County Archaeological Society which meets federally recognized standards.

### **IV. NATIVE AMERICAN CONSULTATION**

In 2017, 2018 and 2019, consultation with the Native American Heritage Commission (NAHC) and with individuals and groups identified by the NAHC occurred regarding the proposed Undertaking and its effects on historic properties-BarbarefioNenturefio Band of Mission Indians, Coastal Band of the Chumash Nation, Northern Chumash Tribal Council,

Salinan Tribe of Monterey and San Luis Obispo Counties, Santa Ynez Band of Mission Indians (Federally recognized), Santa Ynez Band of Chumash Indians, Xolon-Salinan Tribe, yak tityu tityu Northern Chumash Tribe, Chumash Council of Bakersfield, and San Luis Obispo County Chumash Council. These consultation efforts are detailed in Appendix C of the ARTP. EPA will continue to consult with these individuals and groups and will afford them, should they so desire, the opportunity to participate in the implementation of the Agreement and of the Undertaking.

Native American tribes or individuals will be invited to provide input on the identification, evaluation, and proposed treatment of historic properties, including but not limited to archaeological sites and public interpretation, as stipulated elsewhere in the document. Native American tribes or individuals will be provided copies of the draft preconstruction testing reports for review and comment. EPA and City will extend invitations for input through such means as letters of notification, public meetings, and/or site visits. EPA and City will allow reviewers thirty (30) calendar days to respond from the receipt of a document, unless otherwise stipulated. Failure by any reviewer to comment within this time period shall not preclude EPA and City from proceeding or allowing draft reports to be finalized or proceeding with final treatment protocols to resolve adverse effects.

On July 10, 2018 a letter from Mr. Fred Collins from the Northern Chumash Tribal Council was received by the City voicing concerns over a portion of the pipeline route passing through Lila Keiser Park that would potentially impact known cultural sites. Based on these concerns, the City worked with Mr. Collins and Caltrans to determine the feasibility of an alternative route that would avoid this area. This route had previously been considered technically infeasible. Following these discussions, the City decided to modify the alignment to the satisfaction of Mr. Collins (as shown in Attachment A) and undertake additional environmental analysis that ultimately resulted in the City completing an addendum that was received by the City Council on September 10, 2019.

## **V. LATE DISCOVERIES AND UNANTICIPATED EFFECTS**

- A. If EPA determines, during implementation of the ARTP or after construction of the Undertaking has commenced, that either the implementation of the ARTP or the Undertaking will affect a previously unidentified property that may be eligible for the NRHP, or affect a known historic property in an unanticipated manner, EPA and City will address the discovery or unanticipated effect in accordance with the ARTP for archaeological resources. EPA may assume any unanticipated discovered property to be eligible for inclusion in the NRHP, as noted in Stipulation V.
- B. For properties determined eligible or assumed to be eligible pursuant to Stipulation V.A above, EPA will notify all Parties to this Agreement of those actions that it proposes to avoid, minimize, or mitigate adverse effects. All parties will have forty-eight (48) hours to provide their comments on the proposed actions. EPA will ensure that the recommendations are considered prior to granting approval of the measures that City will implement to resolve adverse effects. EPA will provide the Parties to this Agreement notification of the measures to be implemented. City will carry out the approved measures prior to resuming construction activities in the location of the discovery.
- C. EPA will notify the SHPO within forty-eight (48) hours if human remains are found and will also notify Caltrans District 5 if any are encountered within their right-of-way.

- D. Any human remains and related items discovered during the implementation of the terms of this Agreement and of the Undertaking will be treated in accordance with the requirements of Section 7050.5(b) of the California Health and Safety Code. If, pursuant to Section 7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are or may be of Native American origin, then the discovery will be treated in accordance with the provisions of Section 5097.98(a)-(d) of the California Public Resources Code. EPA, in coordination with City, will ensure that the remains are not damaged or disturbed further until all Stipulations in Section 7050.5 and Section 5097.98 have been met.
- E. EPA will ensure that the expressed wishes of Native American individuals, tribes, and organizations are taken into consideration when decisions are made regarding the disposition of other Native American archaeological materials and records relating to Native tribes.
- F. EPA will coordinate with the property owner regarding archeological resources or disposition of human remains discovered on their property or within their right-of-way. Caltrans District 5 will participate in decisions regarding the disposition of any archaeological resources or human remains discovered within its right-of-way.

## VI. REPORTING REQUIREMENTS AND REVIEW PROCEDURES

- A. For all documents and deliverables produced in accordance with this Agreement, EPA shall have thirty (30) calendar days to review. After completing its review, EPA shall provide a draft document to all Parties of this Agreement for a thirty (30) calendar-day review and comment period, while respecting confidentiality concerns of all Parties to this Agreement in accordance with Stipulation VIII.B. Any written comments provided within the thirty (30) calendar day review and comment period shall be considered in the revision of the document or deliverable. EPA may extend this review and comment period up to an additional thirty (30) calendar days, if requested.

EPA shall document and report the substantive written comments received for the document or deliverable and how comments were addressed. EPA shall provide the comments and response document with a final document or deliverable to SHPO for review and concurrence. Should SHPO determine that the final document or deliverable does not meet the standards set forth in 36 CFR § 800.11(a), the Signatory Parties shall continue to consult on the document or deliverable.

Failure of any party to this Agreement to respond within thirty (30) calendar days of any submittal shall not preclude EPA from proceeding to the next step in this Agreement.

Should the EPA and the **SHPO** be unable to reach agreement on the final document or deliverable submitted for concurrence, the EPA and the SHPO shall consult for a period not to exceed fifteen (15) calendar days following the receipt of the SHPO's written objection in an effort to come to agreement on the issues to which the SHPO has objected. Should the SHPO and the EPA be unable to agree on the issues to which the SHPO has objected, the SHPO and the EPA shall proceed in accordance with Stipulation VIII.C (Dispute Resolution), below. The timeframe to consult to resolve a disagreement or objection may be extended by mutual consent between the EPA and the SHPO.

The EPA may address multiple steps in 36 CFR § 800.3-800.6 with a request for expedited consultation pursuant to 36 CFR § 800.3(g). The SHPO shall have thirty (30) calendar days to respond.

- B. Addendums to the test report will cover any work accomplished following submittal of the test report for review. This would include injection wells and testing during construction.
- C. Following the end of construction, EPA will prepare a Mitigation Monitoring report for the Undertaking to present field methods and findings during monitoring.
- D. Within 12 months after the EPA has determined that any required data recovery fieldwork has been completed, in accordance with Stipulation 111.D.2, the EPA will ensure preparation, and subsequent concurrent distribution to the Parties of this Agreement for review and comment, the draft report that documents the results of implementing and completing the ARTP. The other Parties to this Agreement will be afforded 30 days following receipt of the draft technical report to submit written comments to the EPA. Failure of these Parties to respond within this time frame shall not preclude the EPA from authorizing revisions to the draft technical report, as the EPA may deem appropriate. The EPA will provide other Parties to this Agreement with written documentation indicating whether and how the draft technical report will be modified in accordance with any comments received from the other Parties to this Agreement. Unless any of the Parties to this Agreement objects to this documentation in writing to the EPA within 30 days following receipt, the EPA may modify the draft technical report, as the EPA may deem appropriate. Thereafter, the EPA may issue the report in final form and distribute this document in accordance with Paragraph F of this Stipulation.
- E. Copies of the final technical report documenting the results of the ARTP implementation will be distributed by EPA to the other Parties to this Agreement, to the Central Coast Information Center, UC Santa Barbara, of the California Historic Resources Information System, and to interested tribes.
- F. If excavations gather significant data, public outreach deliverables can include, but not be limited to, displays, panels, brochures, publications, or a web site, per Stipulation 111.D.2.

## **VII. ANNUAL REPORT**

In addition to the final reports described within this Stipulation, EPA shall provide the Parties to this Agreement an annual update on the implementation of this Agreement. Such update shall include any scheduling changes proposed, any problems encountered, failures to adopt proposed mitigation measures, and any disputes and objections received in EPA's efforts to carry out the terms of this Agreement. The update will be due no later than December 31 of each year, beginning December 31, 2019 and will continue annually thereafter throughout the duration of this Agreement. The review of the Annual Report by all Parties to this Agreement shall follow the procedure outlined in Stipulation VI. At the request of any Party to this Agreement, or if deemed necessary, EPA shall ensure that one or more meetings are held to facilitate review and comment, to address questions, or to resolve comments.

## VIII. ADMINISTRATIVE PROVISIONS

### A. STANDARDS

1. **Definitions.** The definitions provided in 36 CFR § 800.16 are applicable throughout this Agreement.
2. **Professional Qualifications.** City will ensure that historic, architectural, ethnographic, and archaeological work conducted pursuant to this Agreement is carried out by, or under the direct supervision of, persons meeting or exceeding the pertinent qualifications set forth in the Secretary of the Interior's Professional Qualification Standards (36 CFR § 61) in those areas in which the qualifications are applicable for the specific work performed.

City will ensure that only individuals meeting the Secretary of the Interior's Professional Qualification Standards in the relevant field of study carry out or review appropriateness and quality of the actions and products required by this Agreement. However, nothing in this Stipulation may be interpreted to preclude EPA or any agent or contractor thereof from using the properly supervised services of persons who do not meet the Professional Qualification Standards.

3. **Documentation Standards.** Written documentation of activities prescribed by Stipulation VI of this Agreement will conform to the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* as amended and annotated (48 CFR § 44716-44740), as well as to applicable standards and guidelines established by SHPO.
4. **Curation Standards.** EPA will ensure that, to the extent permitted under Sections 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the activities prescribed by this Agreement are curated in accordance with 36 CFR § 79. EPA will ensure that, to the extent permitted by applicable law and regulation, the views of the Most Likely Descendant(s) are taken into consideration when decisions are made about the disposition of other tribal archaeological materials and records.

### B. CONFIDENTIALITY

The Parties to the Agreement acknowledge that the historic properties covered by this Agreement are subject to the provisions of Section 304 of the National Historic Preservation Act and Section 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement are consistent with said sections.

### C. DISPUTE RESOLUTION

1. Should any Party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, EPA shall notify the other Signatories and consult with such Parties to resolve the objection. If EPA determines that such objection cannot be resolved, EPA will:
  - a. Forward all documentation relevant to the dispute, including the EPA's proposed resolution, to the ACHP. The ACHP shall provide EPA with its advice

on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision of the dispute, EPA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP or and Party to this Agreement and provide them with a copy of this written response. EPA 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, EPA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, EPA shall prepare a written response that takes into account any timely comments regarding the dispute from any Party to this Agreement and provide them and the ACHP with a copy of such written response.
  - c. EPA's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.
2. At any time during implementation of the measures stipulated in this Agreement, should a member of the public raise an objection in writing pertaining to such implementation to any Party to this Agreement, that Party shall immediately notify EPA. EPA shall immediately notify all Parties to this Agreement in writing of the objection. Any Party to this Agreement may choose to comment in writing on the objection to EPA during a comment period of not less than 15 days following receipt of the notification, unless agreed upon by all Parties. EPA shall consider the objection, and in reaching its decision, EPA will take all comments from all Parties into account. A copy of all comments will be provided to the SHPO before final decision by EPA. Within 15 days following closure of the comment period, EPA will render a decision regarding the objection and respond to the objecting party. EPA will promptly notify all Parties of its decision in writing, including a copy of the response to the objecting party. EPA's decision regarding resolution of the objection will be final. Following issuance of its final decision, EPA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

#### D. AMENDMENTS

1. Any Signatory or Invited Signatory Party to this Agreement may propose in writing that this Agreement be amended, whereupon all Signatory and Invited Signatory Parties will consult for no more than thirty (30) days to consider such amendment. EPA may extend this consultation period. The amendment process will comply with 36 CFR § 800.6(c)(7).

The amendment will be effective on the date a copy signed by the Signatory and Invited Signatory Parties is filed with the ACHP. This Agreement may be amended only upon the written agreement of the Signatory and Invited Signatory Parties.

2. In the event that another federal agency not initially a Party to or subject to this Agreement receives an application for funding/license/permit for the Undertaking as described in this Agreement, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this Agreement and notifying Signatory Parties and Invited Signatories that it intends to do so. The proposed amendment by another federal agency is subject to Stipulation VIII.D.

The amended agreement will be evidenced by filing with the ACHP and implementation of the terms of this Agreement.

E. TERMINATION

If any Signatory Party or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that Party shall immediately consult with the other Signatory Parties and Invited Signatories to attempt to develop an amendment per Stipulation VIII.D. If within thirty (30) days (or another time period agreed to by all Signatory Parties and Invited Signatories) an amendment cannot be reached, any Signatory Party or Invited Signatory may terminate this Agreement upon written notification to the other Signatory Parties and Invited Signatories.

Once this Agreement is terminated, and prior work continuing on the Undertaking, EPA must either (a) execute a Programmatic Agreement pursuant to 36 CFR § 800.14 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. EPA shall notify the other Signatory Parties and Invited Signatories as to the course of action it will pursue.

Execution of this Agreement by EPA and SHPO and implementation of its terms evidence that EPA has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

F. DURATION OF THE PROGRAMMATIC AGREEMENT

1. Unless terminated pursuant to Stipulation VIII.E or amended pursuant to Stipulation VIII.D of this agreement, this PA will be in effect following its execution by the Signatory Parties until the EPA in consultation with the other parties to this PA, determines that all terms of this PA have been satisfactorily fulfilled, or within five (5) years of execution of this PA, whichever comes first. Upon a determination that all terms of this PA have been satisfactorily fulfilled, EPA will immediately notify the other parties to this PA in writing that all terms of this PA have been satisfactorily fulfilled and this agreement will have no further force or effect.
2. If the Undertaking has not been initiated within five (5) years following execution of this Agreement by the Signatory Parties, this Agreement will automatically terminate and have no further force or effect. In such event, EPA will notify the other Parties to the Agreement in writing and, if it chooses to continue with the Undertaking, will reinitiate review of the Undertaking in accordance with 36 CFR § 800.

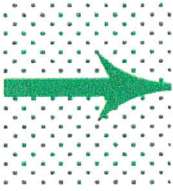
G. EFFECTIVE DATE

This Agreement will take effect on the date that it has been executed by EPA and SHPO.

H. EXECUTION

Execution of this Agreement by EPA and SHPO, its filing with the ACHP in accordance with 36 CFR § 800.6(b)(1)(iv), and subsequent implementation of its terms, evidenced that the EPA has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that EPA has taken into account the effects of the Undertaking on historic properties.

**SIGNATORY PARTIES**



**United States Environmental Protection Agency**

By: [Signature]  
Andrew Sawyers, Director/Office of Wastewater Management

Date: 12/9/19

**California State Historic Preservation Officer**

By: [Signature]  
Julianne Polanco, State Historic Preservation Officer

Date: 12/13/19

**INVITED SIGNATORIES**

**City of Morro Bay**

By: \_\_\_\_\_  
Rob Livick, PE/PLS, Public Works Director/City Engineer

Date: \_\_\_\_\_

**CONCURRING PARTIES**

**State Water Resources Control Board**

By: \_\_\_\_\_  
Leslie Laudon, Deputy Director, Division of Financial Assistance

Date: \_\_\_\_\_

**BarbareiiioNentureiio Band of Mission Indians**

By: \_\_\_\_\_  
\_\_\_\_\_  
Chairperson

Date: \_\_\_\_\_

**Chumash Council of Bakersfield**

By: \_\_\_\_\_  
\_\_\_\_\_  
Chairperson

Date: \_\_\_\_\_



**Coastal Band of the Chumash Nation**

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Chairperson

**Northern Chumash Tribal Council**

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Chairperson

**Salinan Tribe of Monterey and San Luis Obispo Counties**

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Chairperson

**San Luis Obispo County Chumash Council**

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Chairperson

**Santa Ynez Band of Mission Indians**

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Chairperson

**Santa Ynez Band of Chumash Indians**

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Chairperson

**Xolon-Salinan Tribe**

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Chairperson

**yak tityu tityu Northern Chumash Tribe**

By: \_\_\_\_\_ .Date: \_\_\_\_\_

Mona  
Chairperson

Tucker

**ATTACHMENTS**

Attachment A: Area of Potential Effects

Attachment B: List of Cultural Resources within the Area of Potential Effects

Attachment C: Project Area Buried Site Sensitivity

Attachment D: *Archaeological Survey, Research Design, and Treatment Plan for the Morro Bay Wastewater Reclamation Facility Project, San Luis Obispo County, California*

Attachment E: *Historic Architectural Resources Assessment for the Morro Bay Water Reclamation Facility*