

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL AVIATION ADMINISTRATION,  
BUREAU OF LAND MANAGEMENT, NEW MEXICO STATE LAND  
OFFICE,  
NEW MEXICO SPACEPORT AUTHORITY,  
NEW MEXICO STATE HISTORIC PRESERVATION OFFICER,  
AND ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
SPACEPORT AMERICA PROJECT,  
SIERRA COUNTY, NEW MEXICO**

WHEREAS, the Federal Aviation Administration (FAA) Office of Commercial Space Transportation, is evaluating a Launch Site Operator License application from the New Mexico Spaceport Authority (NMSA or licensee), pursuant to 14 Code of Federal Regulation (CFR) part 420, for the development and operation of a commercial space launch site in the Jornada del Muerto basin, New Mexico (the Project or Spaceport America), as described in Attachment 1A; and

WHEREAS, the Project would add to existing amateur vertical launch capabilities, and would include construction of a horizontal runway and additional vertical launch facilities, storage and maintenance areas, infrastructure, and visitor amenities (Attachment 2); and

WHEREAS, the initial FAA license to operate the commercial space launch site would be valid for five (5) years, is subject to the terms and conditions of the license, and is renewable upon application by the licensee; and

WHEREAS, the FAA is the lead agency for complying with Section 106 of the National Historic Preservation Act (NHPA) as amended (16 USC 470f), and the regulations implementing Section 106 of the Act (36 CFR Part 800); and

WHEREAS, this Agreement has been developed, pursuant to 36 CFR 800.14(b), to govern the implementation of a program for the resolution of adverse effects on known historic properties, as well as the completion of determinations of eligibility, assessment of effects, and the resolution of adverse effects, as appropriate, for historic properties subsequently determined eligible upon approval of the undertaking, and that this Agreement will govern completion of FAA's and BLM's Section 106 compliance responsibilities; and

WHEREAS, the FAA invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation for this undertaking by letter dated September 2, 2008; the ACHP agreed to participate in consultation on September 10, 2008; and

WHEREAS, the New Mexico State Land Office (NMSLO) owns in fee the property on which the Spaceport America commercial space launch site would be constructed and has entered into a lease agreement with NMSA for use of their portion of the property; and

WHEREAS, the NMSA, as the Applicant for the Launch Site Operator License, and NMSLO as a state property managing agency, are Invited Signatories pursuant to 36 CFR 800.6(c)(2), and are included in all references in this document to the “Signatories;” and

WHEREAS, the Bureau of Land Management (BLM) manages Federal property on which offsite infrastructure to support the Spaceport America facility would be constructed and maintains responsibilities under Section 110 of NHPA (16 USC 470h-2(f)) to provide for preservation of historic properties on those lands and is a Signatory to this Agreement; and

WHEREAS, the BLM, pending FAA approval of the Launch Site Operator License application, would issue a permit for the infrastructure rights-of-way, an undertaking subject to Section 110 of the NHPA, as well as a permit for excavation under the Archeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 470 aa-mm) and its regulations (43 CFR 7), all constituting Federal undertakings by BLM; and

WHEREAS, on June 17, 2008 the NMSLO granted BLM a right-of-way over a 5.7 mile strip of land owned by the State of New Mexico, which is within the Project’s easement but outside the proposed facility boundaries, for the purpose of establishing a primitive recreational trail along the El Camino Real de Tierra Adentro National Historic Trail (NHT); and

WHEREAS, the BLM and National Park Service (NPS) jointly manage El Camino Real de Tierra Adentro NHT, established by Congress in the National Trails System Act (16 USC 1641), including the portion of the NHT located within the Area of Potential Effects (APE) for the proposed Spaceport America commercial space launch site; and

WHEREAS, the FAA has consulted with the New Mexico State Historic Preservation Officer (NMSHPO) on the effects of the Project on historic properties listed in and eligible for listing in the National Register of Historic Places (NRHP), and NMSHPO is a Signatory to this Agreement; and

WHEREAS, the FAA identified the following nine tribes as having religious or cultural affiliation with the Project area and provided each of them with information about the Project: the Comanche Indian Tribe, Fort Sill Apache Tribe of Oklahoma, Hopi Tribe, Isleta Pueblo, Kiowa Tribe of Oklahoma, Mescalero Apache Tribe, Navajo Nation, White Mountain Apache Tribe, and Ysleta del Sur Pueblo (Tribes), and tribes were provided opportunities to participate in site visits to the Project area and participate in the Section 106 process, as described in Appendix B, and will continue to be consulted regarding determinations of eligibility, assessment effects, and resolution of adverse effects resulting from actions taken as part of this Project. The views of all nine Tribes have been sought. The following tribes, Ysleta del Sur Pueblo, Comanche Tribe, and Hopi

Tribe have indicated their intent to act as Consulting Parties and have been invited to sign this Agreement as Concurring Parties; and

WHEREAS, FAA has recognized the following as Consulting Parties in the Section 106 process (see Appendix A), and will invite these parties to sign this Agreement as Concurring Parties pursuant to 36 CFR 800.6(c)(3): National Aeronautics and Space Administration (NASA); U.S. Army White Sands Missile Range (WSMR); National Park Service (NPS); New Mexico Department of Transportation (NMDOT); Sierra County; National Trust for Historic Preservation (NTHP); New Mexico Heritage Preservation Alliance (NMHPA); El Camino Real de Tierra Adentro Trail Association (CARTA); Ysleta del Sur Pueblo; Comanche Tribe; Hopi Tribe; Mr. Dennis Wallin (representative for the private property owners); and

WHEREAS, the public has been provided opportunities to comment on the Project and participate in the Section 106 process, first in FAA's publication of the Notice of Intent in the Federal Register on January 23, 2006 (71 FR 3915), through public scoping meetings in 2006 and public hearings in 2008 as part of the National Environmental Policy Act (NEPA) process, and through a 45 day review and comment period for the Draft Environmental Impact Statement (EIS), and the FAA has considered the public's comments in development of this Agreement; and

WHEREAS, the FAA has prepared the following reports in its evaluation of the proposed Project: (1) *Final Environmental Impact Statement for the Spaceport America Commercial Launch Site, Sierra County, New Mexico*; (2) *Cultural Resources Survey of 2,720 Acres for the Proposed Spaceport America, Sierra County, New Mexico*; and (3) *Cultural Resources Survey of 463 Acres of Offsite Fiber Optics and Transmission Lines, Sierra County, New Mexico*, which includes an addendum report in Appendix E entitled *Cultural Resource Survey of 181 Acres of Water Well Field and Pipeline and Transmission Line Corridors for Proposed Spaceport America, Sierra County, New Mexico*; and these reports provide supporting information to this Agreement; and

WHEREAS, the FAA, in consultation with the NMSHPO, established two APEs for the Project as provided at 36 CFR Part 800.4(a) and Part 800.16(d), which include the Physical APE, comprised of the areas that may be directly affected by physical ground disturbance and construction of the commercial space launch site, and the Setting APE, comprised of the area within five miles of the facility wherein potential visual and audible effects to historic properties may occur, as described in the EIS and shown in Attachments 1A-E; and

WHEREAS, the NMSA has used the Spaceport America Planning and Design Advisory Committee (SAPDAC) forum to hear the concerns of Consulting Parties in regard to potential visual effects of the proposed Spaceport America facilities on the landscape, and has responded by taking measures in the design of facility components to minimize potential visual effects of facilities including placement of 15 miles of power distribution lines underground, design of the main runway to follow natural topographic contours, and

design of the terminal hangar according to aesthetic criteria that will minimize the impact to viewers; and

WHEREAS, the FAA has undertaken efforts to identify historic properties eligible for listing on the NRHP in consultation with NMSHPO and has identified historic properties within both the Physical and Setting APEs; a complete listing of these historic properties is included as Attachment 4 in this Agreement; and

WHEREAS, the FAA, in consultation with the Signatories and Consulting Parties, determined that the Spaceport America project will have an Adverse Effect on historic properties, as identified in the summary table at Attachment 4; and may have an effect on additional historic properties yet to be identified; and

WHEREAS, the FAA will require NMSA to implement the construction and operation phases of the Project in accordance with the stipulations outlined in this Agreement through the terms and conditions of the Launch Site Operator License, the regulations of which specifically state (14 CFR 420.41(a)) that: "A license to operate a launch site authorizes a licensee to operate a launch site in accordance with the representations contained in the licensee's application, with terms and conditions contained in any license order accompanying the license, and subject to the licensee's compliance with 49 U.S.C. subtitle IX, chapter 701 and this chapter," and further, as stated in 14 CFR 405.3(b), "The FAA may suspend or revoke any license or permit issued to such licensee or permittee under [these laws] if the FAA finds that a licensee or permittee has substantially failed to comply with any requirement of the Act, any regulation issued under the Act, the terms and conditions of a license or permit, or any other applicable requirement...;" and

WHEREAS, the Spaceport America facility, if approved and constructed, will be operated by NMSA on a long-term basis and NMSA will incur management responsibilities for historic properties within the facility boundaries;

NOW, THEREFORE the FAA, BLM, NMSLO, NMSA, NMSHPO, and ACHP agree that the Project will be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties:

## **STIPULATIONS**

The FAA and BLM, in coordination with NMSA, shall ensure that the following measures are carried out:

### **I. Professional Qualifications:**

a. Professional qualifications. All work carried out pursuant to this Agreement shall be carried out by or under the direct supervision of qualified individuals meeting the federal qualifications in the discipline appropriate to the properties being treated, as established by the Secretary of the Interior and published in 36 CFR Part 61, Appendix A, as well as

New Mexico state standards for qualified individuals specified in 4.10.8.11 NMAC and 4.10.11.9 NMAC.

b. Standards, guidelines, and statutes. All cultural resource work pursuant to this Agreement shall be consistent with NHPA (16 USC 470), ARPA (16 USC 470aa-mm), the Native American Graves Protection and Repatriation Act (NAGPRA, 25 USC 3001 et seq.), and the New Mexico Cultural Properties Act (18-6-1 et seq. New Mexico Statutes Annotated 1978) and carried out in accordance with the following standards, guidelines, and statutes as applicable:

- i. The Secretary of Interior: *Standards and Guidelines for Archeology and Historic Preservation* (1983) (48 FR 44716-44742).
- ii. BLM Manual Supplement H-8100-1, *Procedures for Performing Cultural Resource Fieldwork on Public Lands in the Area of New Mexico BLM Responsibilities*.
- iii. Advisory Council on Historic Preservation: *Treatment of Archeological Properties: A Handbook* (1980), and the *ACHP Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects*, dated February 23, 2007.
- iv. National Register Bulletin 15 - *Guidelines for Applying the National Register Criteria for Evaluation*,
- v. New Mexico standards for archaeological survey (4.10.15 NMAC), excavation (4.10.16 NMAC, excavation of human burials (4.10.11 NMAC), mechanical excavation (4.10.14 NMAC), and monitoring (4.10.17 NMAC).

c. Curation. All materials resulting from work carried out pursuant to this Agreement shall be curated in accordance with 36 CRF Part 79 and the New Mexico state standards (4.10.8.19 NMAC).

## **II. Tribal Consultation Protocols:**

a. The Native American tribal consultation process for the proposed Spaceport America project, for which the activities conducted to date are summarized in Appendix B, shall continue under this Agreement.

b. FAA and NMSA shall afford Tribes, including but not limited to the Ysleta del Sur Pueblo, Comanche Tribe, and Hopi Tribe, the opportunity to review and comment on any draft plan or report associated with the Section 106 undertaking, including documentation related to the identification and evaluation of historic properties, the assessment of effects, the evaluation of alternatives to avoid and minimize adverse effects, and the development of mitigation plans consistent with Stipulation V.

- c. Tribes may contact FAA at any time to request government-to-government consultation and/or confidentiality regarding their concerns about the effects of the undertaking on properties of religious and cultural significance to the Tribes.
- d. The FAA and BLM on BLM land, shall consult with all nine tribes recognized as having connections to the Project area, and those who are not already Concurring Parties to this Agreement shall be afforded the opportunity to become a Concurring Party at their discretion.
- e. The FAA, and BLM on BLM land, shall consult with tribes to agree upon a procedure for notifying and consulting with tribes in the event of a discovery of human remains and/or funerary objects, and will include these protocols in the unanticipated discoveries plan described in Stipulation X.
- f. Training for the construction workforce regarding the implementation of this Agreement, described in detail in Stipulation VII(c), will include sensitivity to the concerns of tribes. If requested, a tribal representative may meet with construction personnel to present material in person to the workforce.

### **III. Identification and Evaluations of Eligibility:**

- a. The FAA and NMSA shall evaluate properties identified but not yet evaluated for NRHP eligibility, including but not limited to the Goetz Ranch, archaeological sites LA111421 and LA112367 in the area of the utility corridor, sites LA112370, LA112371, and LA112374 in the area of the access road and utility corridor, site 155970 in the area of the runway, and LA156866 and LA156867 in the area of the fiber optic line
  - i. NMSA will establish the scope of archaeological evaluation work in Test Excavation plans approved by the NMSHPO and the New Mexico Cultural Properties Review Committee (CPRC) prior to implementation, as required by 4.10.16 NMAC.
  - ii. If testing will affect less than five (5) percent of a site, testing plans may be developed under a general permit for review by the NMSHPO without the involvement of the CPRC.
- b. The FAA shall distribute determinations of eligibility to BLM, the NMSHPO and THPOs and Indian Tribes for a (30) day review period, copying other Signatories and Consulting Parties on this correspondence.
  - i. If BLM, the NMSHPO, THPOs, and Indian Tribes concur with the FAA's determinations of eligibility, or if no objections are received within the 30-day review period, the FAA may proceed.
  - ii. The FAA will consult to resolve any objections received regarding determinations of eligibility received in writing within the 30-day review

period. If the FAA cannot resolve the objection, the FAA will refer the property in question to the Keeper of the NRHP per 36 CFR 800.4(c)(2).

c. If NMSA makes modifications of, or additions to, the planned construction of the Spaceport America facility, the FAA shall review the proposed plans, pursuant to 14 CFR 420, as well as the agency's responsibilities under Section 106 of the NHPA and the terms of this Agreement, to determine if the APEs should be expanded.

- i. If the FAA determines, in consultation with NMSHPO, that additional work is necessary to identify and evaluate historic properties, the procedures for identification will follow those described in 36 CFR 800.4, including consultation with NMSHPO, Tribes, and Consulting Parties, and New Mexico standards cited in Stipulation I.
- ii. The FAA shall evaluate the eligibility of any identified property and seek the concurrence of the BLM, NMSHPO, THPOs, and Indian Tribes, per Stipulation III.b above.

#### **IV. Assessments of Effect:**

a. The FAA shall assess the effects of the Project on historic properties in consultation with the NMSHPO, Consulting Parties, and Tribes.

- i. The FAA shall distribute determinations of effect to all Signatories and Consulting Parties to this Agreement for a thirty (30) day review period.
- ii. If Signatories and Consulting Parties concur with the FAA's determinations of effect, or if no objections are received within the 30-day review period, the FAA may proceed.
- iii. The FAA will consult to resolve any objections received regarding determinations of effect received in writing within the 30-day review period. If the FAA cannot resolve the objection, the FAA will follow the procedure at Stipulation XII(c).

b. If the FAA determines, through consultation, that an effect will be adverse, FAA and NMSA will evaluate alternatives to avoid or minimize the adverse effect in consultation with NMSHPO, Tribes, Signatories, and Consulting Parties.

c. If the FAA determines that the adverse effect cannot be avoided, the FAA and NMSA shall follow the procedures described in Stipulation V.

## V. Mitigation Plan Development and Coordination:

a. NMSA shall develop mitigation plans and submit them to FAA for approval, including mitigation plans for identified historic properties and monitoring described in Stipulation IX.

- i. Mitigation Plans shall recommend appropriate mechanisms for resolving the effects of the proposed Project, taking into account the range and types of historic properties that would be affected and the kind of effect, giving careful consideration to the extent of information that can be effectively gathered, mitigation options to be employed, and the research methodologies necessary, and making arguments supporting the level of investigation and how the activities address historic preservation concerns and goals. For example, data recovery may not be the appropriate treatment for all archaeological sites, but should be one component of an overall approach to investigating material evidence and site context with the goal of understanding settlement patterns in the region. The following are examples of the kinds of considerations that could be included in mitigation plan:
  - 1) Historic research. Research into the historical elements of the Project area could include, but is not limited to: Frontier exploration and settlement along the Camino Real de Tierra Adentro National Historic Trail; the role of the Aleman Ranch within the regional settlement history; the impacts of transportation and rail development on the region; and changing patterns of Native American settlement and use of the region. Potential repositories of historical data, including University holdings; the National Archives; Historic American Engineering Record (HAER) Collections; census data; General Land Office records; and local historical newspapers may be searched for information on the Project area, including but not limited to the Aleman Draw Historic District, the Camino Real de Tierra Adentro Trail, and the Burlington Northern Santa Fe rail line (formerly the AT&SF).
  - 2) Prehistoric research. Mitigation plans could outline prehistoric research themes relevant to the known and reasonably expected resources of the area that will be researched, including but not limited to: development of chronology and cultural histories; the interaction of settlement, land use, and subsistence practices in the region; and the dynamics of trade, interaction, and economy.
- ii. Mitigation plans shall address the resolution of adverse effects to eligible properties.
  - 1) To the extent practicable plans should group sites and resources by research theme and method of investigation, so as to facilitate consideration of effects and mitigation measures and make reviews by Consulting Parties more efficient.
- iii. A short popular summary of archaeological excavations suitable for distribution in a newspaper, newsletter, or magazine shall be prepared by NMSA as described in 4.10.16.16 NMAC. This popular report will provide

information to the interested general public about the state's heritage and how excavations at the Spaceport America commercial space launch site contribute to that research.

- iv. NMSA shall coordinate with BLM and NPS on interpretive historic products related to El Camino Real de Tierra Adentro NHT managed by those agencies, including sharing of research data related to the NHT.

b. NMSA, in consultation with the other Signatories and Consulting Parties to this Agreement, will develop a plan that outlines an overall approach to mitigation plans that will discuss the historical context of the area, research themes that can be reasonably addressed, and the data recovery, creative mitigation, and compensatory measures appropriate to mitigate adverse effects.

- i. Subsequent mitigation plans will tier off of the information discussed in this overall approach document; and
- ii. The mitigation plans will consider the measures previously discussed in consultation (see Attachment 3).

c. Development, review, and approval of all mitigation plans shall follow the following procedure:

- i. Drafts of all mitigation plans shall be distributed by the FAA to the Signatories and Consulting Parties to this Agreement for a thirty (30) day review and comment period.
- ii. All comments on mitigation plans shall be taken into consideration by the FAA, under the acknowledgement that NMSLO and BLM have primary land managing responsibilities for portions of the Project area, and that plans for archaeological fieldwork on state land must be performed under a permit issued by the CPRC. The FAA shall attempt to resolve any conflicting comments through continued consultations or, if necessary, through appeal to the ACHP as described in Stipulation XII(c).
- iii. The FAA shall proceed unless an objection to a plan is received in writing within the 30 day review period.
- iv. The FAA shall notify NMSA, and the Signatories and Consulting Parties of approval of any mitigation plan.
- v. NMSA has primary responsibility for implementation of mitigation plans, and FAA has responsibility for the oversight of these actions.

d. Mitigation plans involving archaeological testing and data recovery shall be performed under the appropriate permit for federal, state or private land issued by the BLM or CPRC and require that NMSA obtain the appropriate approvals from the BLM, and NMSLO prior to commencement of fieldwork

e. Monitoring activities, described in Stipulation IX, must be considered and coordinated with mitigation planning as described in this Stipulation, as well as construction planning and implementation described in Stipulation VII.

f. If it is necessary for NMSA to make changes to actions presented in the mitigation plans, NMSA shall send a letter or email to the FAA, NMSHPO, and appropriate land managing agency(ies) that explains the proposed change for a five (5) day review and comment period. If these parties concur with the proposed changes, or fail to provide notification of an objection to the proposed change within the five (5) day review period, NMSA will implement the proposed changes. If a timely objection is made, the FAA, in consultation with NMSHPO and appropriate land managing agency(ies), will take the objection into account before notifying NMSA of its approval or denial of the proposed deviations.

g. Mitigation work will be completed before construction activities are authorized to begin. Construction may begin in an area once NMSA completes the on-site work contained in an approved mitigation plan and the preliminary field report has been filed according to Stipulation XII.

h. The results of the historic and prehistoric research, as well as archaeological investigations, will be summarized in final technical reports, as required by 4.10.16 NMAC and as described in Stipulation XII.

i. NMSA shall designate interpretive spaces, such as display cases for exhibition, within the Spaceport America offsite visitor centers. These interpretive spaces will be accessible to visitors and will provide information on the prehistory and history of the area.

## **VI. Design Review:**

a. The design of facilities shall consider, to the extent practicable, the criteria developed during the collaborative input process created by the SAPDAC meetings, through which the primary site infrastructure, terminal and hangar facility (THF) and the aircraft rescue and fire-fighting facility (ARFF) were developed, which include:

- i. Design criteria
  - 1) low-profile design
  - 2) sloped elevations to break up sight lines
  - 3) use of non-reflective materials on surfaces
  - 4) natural berms to mask the visual imposition of a structure
  - 5) use of natural colors to blend structures into the surroundings to the extent practicable
  - 6) strategic use of texture, height, distance, and orientation in design and siting to minimize visual impairment of the setting
  - 7) use of vegetation to blend structures into the surroundings

- 8) following natural contours to minimize the contrast of topographic relief
- 9) burying components underground, where appropriate
- 10) use of lighting products and designs that are consistent with the standards of the International Dark-Sky Association (IDA, 2002) and the New Mexico Night Sky Protection Act.

b. NMSA shall provide plans for structures and signage, during the schematic design stage, or approximately 20 percent design, to the NMSHPO for their review and comment.

c. The NMSHPO shall provide comments to NMSA within thirty (30) days of receipt of adequate information.

#### **VII. Construction Management and Protection Planning:**

a. NMSA shall minimize direct physical adverse effects of construction on historic properties or portions of historic properties by use of protective fencing around historic properties and may include fencing along rights-of-way. The placement of fencing shall be designed so that construction activities do not inadvertently affect historic properties, or to minimize the extent of effects as follows:

- i. NMSA shall fence historic properties, or portions of properties, located within 100 feet (ft) of the construction area limits to protect against inadvertent impacts. NMSA will consult with NMSLO and BLM to determine the type and duration of fencing. NMSA shall inspect fencing daily during construction and repair when necessary.
- ii. NMSA shall provide an archaeologist who meets the qualifications specified in Stipulation I of this Agreement who shall be present to monitor installation and/or removal of fencing as needed, including the following guidelines:
  - 1) Placement of fencing will be designed to avoid inadvertent impacts to sites, and shall precede any construction in the vicinity.
  - 2) In undisturbed areas within archaeological sites, fence and marker placement and/or removal shall be conducted by hand to avoid or minimize damage within the sites. Fencing materials and associated equipment will be hand-carried on undisturbed portions of archaeological sites.

b. Construction procedures shall follow best management practices during construction, including use of erosion control methods and silt fences, to minimize the potential for construction activities to indirectly effect historic properties.

c. NMSA shall provide cultural resource sensitivity training to the Spaceport America workforce as follows:

- i. Training efforts shall apply to NMSA employees, construction contractors and subcontractors, and launch operators working within the facility. The training program will include a brief presentation on cultural sensitivity, how to avoid inadvertent impacts to archaeological sites within the Project area, what to do in the event of an inadvertent discovery, and will include sensitivity to the concerns of tribes and, if so requested, a tribal representative may meet with employees, contractors and subcontractor to present material in person to the workforce.
- ii. The training will be developed and approved by the field supervisor overseeing the archaeological data recovery, or another designee meeting the professional qualification standards in Stipulation I with similar knowledge of the Project and the area's cultural resources.
  - a. The FAA shall distribute the draft training curriculum to all Signatories and Consulting Parties to this Agreement for a thirty (30) day review and comment period.
  - b. All comments received regarding the training shall be taken into consideration by the FAA, and the agency shall consult to resolve any conflicting comments or, if necessary, through appeal to the ACHP as described in Stipulation XII(c).
  - c. The FAA shall approve the final training curriculum and notify all Signatories and Consulting Parties of its approval.
- iii. For construction activities, training shall be provided to all staff and contractors working within the Project area.
- iv. During operation of the facility the cultural sensitivity training shall be administered to launch operators as part of their site safety and operation materials.
- v. A clause regarding this cultural resource training program and the ramifications of violations of procedures shall be included in all relevant contract documents issued for the Project, including subcontracts.
- vi. Documentation of the implementation of this training program shall be provided to the FAA as part of the reporting procedures described in Stipulation XII(a).

#### **VIII. Measures to Minimize Other Indirect Effects:**

- a. NMSA will minimize potential vehicular impacts to the surrounding area during facility operations by providing bus transportation for events and launches.

b. During facility operations, NMSA may implement “launch-free times,” during which no launch or landing activities will take place at the facility. “Launch-free times” would be made publicly known, through an online calendar of events, or other reasonably accessible means, to facilitate planning by stakeholders in the region.

c. NMSA shall coordinate with NMSLO and the New Mexico Department of Cultural Affairs regarding their initiative to develop a management plan for portions of the NHT on state land. FAA may consider amending this Agreement as appropriate to reflect the provisions of approved state planning actions. Any approved state planning documents will be shared with all consulting parties through posting on the project web site.

**IX. Monitoring:**

a. The following procedures shall be followed with regard to development, review, and approval of monitoring activities:

- i. NMSA will plan for monitoring activities as an integral element of the mitigation planning process and coordinated with the activities of construction, mitigation, and operations as a means of: 1) assuring site protection measures, and 2) long-term monitoring in instances when construction and operational activities are being conducted in an archaeological site or other historic property where there is a high probability of finding subsurface features and deposits, as described in the state regulation 4.10.17 NMAC.
- ii. Monitoring personnel and procedures shall conform to the applicable state and federal guidelines in Stipulation I, including the New Mexico Standards for Monitoring (4.10.17 NMAC), which requires all archaeological monitoring be performed under a permit approved by the CPRC, and BLM procedures on BLM land.

b. Monitoring on private land will be conducted in accordance with state regulations 4.10.17 NMAC and will include procedures developed in consultation with the landowner in Project documents.

c. Any proposed modifications to monitoring plans shall be carried out according to the procedures described in Stipulation V(h).

**X. Post-Review Discoveries:**

a. Prior to the start of construction activities, NMSA shall develop an Unanticipated Discoveries Plan. The Unanticipated Discoveries plan may be part of the Mitigation Plans and shall be developed in consultation as described in Stipulation V.

b. The Unanticipated Discoveries Plan shall describe procedures in the event that previously unidentified properties are discovered during implementation of the Project. The Unanticipated Discoveries Plan shall include provisions for the protection and treatment of human remains, which shall coincide with state and federal provisions for discovery of human burials including 4.10.11 NMAC, and the Native American Graves Protection and Repatriation Act (25 USC 3001 et seq, and amendments).

c. If the FAA, determines that a post-review discovery is an historic property, the terms of this Agreement shall apply and the procedures described in Stipulation IV *Assessments of Effect* will be followed.

d. If Native American human remains and/or funerary objects are discovered, the FAA, and BLM if the discovery is on BLM land, will consult with the nine tribes recognized as having connections to the Project area. If the Native American human remains and/or funerary objects are discovered on state or private land, the FAA shall provide the NMSHPO with information on the FAA's tribal consultation efforts and results to assist the NMSHPO in coordinating tribal consultation pursuant to Section 18-6-11.2 of the Cultural Properties Act (New Mexico Statutes Annotated 1978). All burial sites, human remains and funerary objects shall be treated with dignity and respect at all times.

#### **XI. Long-Term Management:**

a. This Agreement shall be in effect for the five (5) year period of the Launch Site Operator License, unless amended.

- i. If NMSA applies to the FAA to modify their license, the FAA shall review the proposed modifications to determine if amendments to this Agreement are necessary.
- ii. If necessary, as described above, the FAA and BLM shall undertake a review of the measures being carried out under this Agreement in consultation with the Signatories and Consulting Parties by notifying them in writing of potential changes.
- iii. If such a review does not coincide with a scheduled Consulting Party meeting, such as an annual meeting described in Stipulation XIII, the FAA shall hold a separate meeting of Consulting Parties to provide information on changes and amendments. A minimum of 21 days notice will be provided for such meetings.

b. At the end of the five-year period of the Launch Site Operator License, if NMSA applies to renew the license, NMSA will provide the Signatories and Consulting Parties with a summary of how it plans to manage historic properties within the Spaceport America boundaries. If operations and the effects to historic properties will remain substantially the same over the term of a new license, then FAA shall consult to seek an amendment to extend the term of this Agreement through the term of a new license. If

effects may change substantially, Signatories and Consulting Parties shall consult to amend this Agreement or develop a new Agreement.

## **XII. Administrative Stipulations:**

- a. The reporting required of this Agreement shall conform to the following protocols:
  - i. Progress reports. Progress reports shall be submitted quarterly by NMSA to the FAA for the duration of this Agreement following its execution. Progress reports may be in letter format and shall describe fieldwork activities for historic properties as well as relevant construction progress that was initiated, underway, or completed for the most recent performance period, and identify steps to be initiated, continued, or completed in the next month. The information included in the report shall address the status of compliance for all stipulations.
  - ii. Preliminary field reports. Preliminary reports on the progress of mitigation work shall be prepared, as described in 4.10.16.14 NMAC. Preliminary reports will demonstrate the completion of data recovery, or other procedures and site treatments, approved in the Plans. NMSA shall distribute preliminary reports to the FAA, NMSHPO, and the appropriate land managing agency(ies), and those parties will have ten (10) business days to review the report and either concur or request additional fieldwork. If further work is deemed necessary the parties will consult with NMSA to determine the nature and scope of that work. The FAA will notify NMSA that construction may proceed in the area of the completed fieldwork if a timely objection is not made.
  - iii. Technical reports. Technical reports describing the results of the historical research, fieldwork activities, and laboratory analyses shall be prepared according to the standards and permit guidelines appropriate to the type of resource, for example final report standards for archaeological excavation (NMAC 4.10.16.15). Review procedures for technical reports shall follow those described in the appropriate resource regulations, including a sixty (60) calendar day review of draft technical reports by the Signatories. NMSA shall issue final reports no later than two years from the completion of fieldwork activities.
  - iv. Distribution of final technical reports. The NMSA shall prepare sufficient copies of final technical reports completed pursuant to this Agreement for the FAA to distribute to the New Mexico Historic Preservation Division and for dissemination to the Consulting Parties (see Appendix A), appropriate public libraries, educational institutions, and other repositories.
- b. Annual Meeting: The FAA will coordinate a meeting of the Signatories and Concurring Parties to be held each year in October or November, or another mutually

agreed upon date, to discuss activities carried out pursuant to this Agreement during the preceding year and activities scheduled for the upcoming year.

- i. NMSA shall prepare an annual report based upon the progress reports in Stipulation XII.a.i of activities as they relate to compliance with the stipulations of this Agreement, and shall distribute it to all parties to this Agreement at least fifteen (15) days prior to the Annual Meeting. The annual report shall include the following:
    - 1) A description of the past year's effort and anticipated upcoming efforts for identification, evaluation, mitigation, and protection of historic properties;
    - 2) An evaluation of the progress of mitigation activities, including data recovery as well as creative or compensatory mitigation.
    - 3) A description of any known or expected changes to the Undertaking;
  - ii. The FAA shall evaluate the effectiveness of this Agreement and whether any amendments or changes are needed based on NMSA's progress reports or project modifications and provide its evaluation to Signatories prior to the Annual Meeting.
  - iii. The meeting shall be held in a location agreed upon by consensus of the Signatories, and parties may participate by telephone if they so desire. The FAA will distribute minutes of the meeting to all Signatories and Consulting Parties within two weeks of the meeting.
- c. Dispute resolution shall conform to the following protocols:
- i. Should any Signatory object to any plans or actions proposed pursuant to this Agreement or the manner in which the terms of this Agreement are implemented, the objecting party will provide written notice to the FAA and NMSA. The FAA shall take the objection into account and consult, as needed, within ten (10) days with the Signatories to resolve the objection. Copies of written objections shall be submitted simultaneously to all Signatories.
  - ii. If the FAA determines that the objection cannot be resolved, the FAA shall forward all documentation relevant to the dispute to the ACHP and request that the ACHP provide its advice on the resolution of the objection. Within twenty-one (21) days of receipt of all pertinent documentation, the ACHP shall either provide the FAA with recommendations to take into account in reaching a final decision regarding the dispute; or notify the FAA that it will comment pursuant to 36 CFR Part 800.7) and proceed to comment.

- iii. The FAA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, and Consulting Parties and provide them with a copy of this written response. The FAA will then proceed according to its final decision.
  - iv. Any ACHP comment provided in response to such a request shall be taken into account by the FAA, in accordance with 36 CFR Part 800.6(c)(2), with reference only to the subject of the dispute. All responsibilities to carry out actions under this Agreement that are not subject to the dispute shall remain unchanged.
- d. The FAA shall take all public comments into consideration in reviewing actions carried out under this Agreement. At any time during implementation of the activities covered in this Agreement, should an objection pertaining to this Agreement or the effect of any activity on historic properties be raised by a member of the public, the FAA will notify the Signatories to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Agreement to resolve the objection.
- e. Any Signatory to this Agreement may request that the other Signatories consider amending it, in which case the parties shall consult to consider the proposed amendment(s). Amendments will be executed in the same manner as the original Agreement. Consulting parties may suggest proposed amendments to the Signatories, who shall consult to consider them.
- f. If any Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XII(e) above. If within thirty (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories.
- i. Once the Agreement is terminated, and prior to work continuing on the undertaking, the FAA must either (a) execute an MOA pursuant to 36 CFR § 800.6, (b) execute a revised Programmatic Agreement pursuant to 36 CFR § 800.14(b), or (c) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The FAA shall notify the signatories as to the course of action it will pursue.
- g. This Agreement shall become effective upon execution by the FAA, ACHP, NMSHPO, BLM, NMSA, and NMSLO, and shall remain in effect for a term of five years from its date of execution at which time NMSA may seek to extend this Agreement for an additional time.
- h. The FAA and BLM shall attach this Agreement or the stipulations called for in this Agreement to any Record of Decision, approval(s), or other conditions issued for the

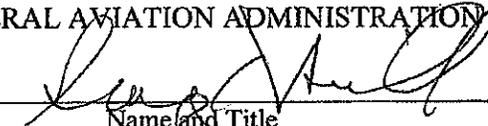
Project so that this Agreement and its requirements become legally enforceable and binding on those activities.

i. Execution and implementation of this Programmatic Agreement is evidence that the FAA and BLM have afforded the ACHP an opportunity to comment on the Spaceport America Project and its effects on historic properties, that the FAA and BLM have satisfied responsibilities under the NHPA, including Section 110 as well as Section 106 pursuant to the implementing regulations at 36 CFR 800.

**A. SIGNATORIES**

FEDERAL AVIATION ADMINISTRATION

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

  
Name and Title

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

12/12/08

**A. SIGNATORIES**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fook, Executive Director  
Name and Title

Date: 12/15/08

**A. SIGNATORIES**

BUREAU OF LAND MANAGEMENT

By: Linda S. Rundlee  
Name and Title

Date: 12/12/08

**A. SIGNATORIES**

NEW MEXICO STATE HISTORIC PRESERVATION OFFICER

By: Katherine Slich, NMSHPO  
Name and Title

Date: 12 December 2008

**B. INVITED SIGNATORIES**

NEW MEXICO SPACEPORT AUTHORITY

By: Annika Glick, Board Chair, NMSA  
Name and Title

Date: December 12, 2008