

**FIRST AMENDMENT TO THE
MEMORANDUM OF AGREEMENT**

**AMONG THE FEDERAL RAILROAD ADMINISTRATION, THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY,
THE SURFACE TRANSPORTATION BOARD, THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO
DISTRICT, THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND THE ADVISORY COUNCIL
ON HISTORIC PRESERVATION REGARDING THE FRESNO-BAKERSFIELD SECTION OF THE CALIFORNIA
HIGH-SPEED TRAIN SYSTEM IN FRESNO, KINGS, TULARE, AND KERN COUNTIES**

WHEREAS, the Federal Railroad Administration (FRA) and the California High-Speed Rail Authority (Authority) propose to construct a high-speed train (HST) system in California and have completed a Final Environmental Impact Report/Final Environmental Impact Statement (EIR/EIS) for the Fresno to Bakersfield Section of the HST Project (Undertaking), which consists of constructing a new rail alignment, stations, maintenance facilities, electrical substations, and other appurtenant facilities between Fresno and Bakersfield; and

WHEREAS, the *Programmatic Agreement (PA) Among FRA, The Advisory Council On Historic Preservation (ACHP), The California State Historic Preservation Officer (SHPO), And The Authority Regarding Compliance With Section 106 Of The National Historic Preservation Act (NHPA) (16 United States Code [U.S.C] § 470f) And In Accordance With Its Implementing Regulations (36 Code Of Federal Regulations [CFR] Part 800), As It Pertains To The California High-Speed Train Project*, was executed on June 15, 2011; and

WHEREAS, during the research in preparation of updated recordation, four additional contributing properties to the Washington Irrigated Colony Rural Historic Landscape within the APE were identified by the FRA and the Authority as eligible for inclusion in the National Register of Historic Places:

- 5437 S. Cedar Avenue
- 5835 S. Cedar Avenue
- 7910 S. Cedar Avenue
- 1850 S. Cedar Avenue

WHEREAS, the FRA and the Authority, in consultation with the SHPO, have applied the criteria of adverse effect to these historic properties and have determined that the Project will have an indirect adverse effect on:

- 7910 S. Cedar Avenue
- 1850 S. Cedar Avenue

WHEREAS, the Signatories have proposed this amendment to the MOA to (1) establish an efficient and effective program alternative for classes of project activities that have the potential to affect historic properties, but following appropriate screening as outlined in Attachment 1, may be determined to be exempt from further Section 106 review and; (2) establish a streamlined documentation and review alternative for continued phased identification efforts as outlined in Attachment 2 of this Agreement for surveys that result in negative findings of archaeological sites; and

WHEREAS, the concurring parties to this first amended MOA have been consulted regarding this amendment; and

WHEREAS, Stipulation VIII.J of the 2014 Fresno to Bakersfield MOA requires a bi-annual report documenting the implementation of this MOA, to be submitted to the FRA on April 1st, and October 1st of each year, and Stipulation V.I.1 of the 2013 of the Merced to Fresno First Amended MOA requires an annual report, to be submitted no later than three months after the end of the State's fiscal year, so the Signatories of the 2014 Fresno to Bakersfield MOA have agreed to change the reporting period to once annually, and to be consistent with the annual submittal dates required in the 2013 Merced to Fresno First Amended MOA; and

WHEREAS, this amended MOA will be referenced in all future documentation as the *First Amendment to the Memorandum of Agreement Among the Federal Railroad Administration, the California High-Speed Rail Authority, the Surface Transportation Board, the U.S. Army Corps of Engineers, Sacramento District, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Fresno-Bakersfield Section of the California High-Speed Train System in Fresno, Kings, Tulare, and Kern Counties*; and

NOW, THEREFORE, the FRA, the Authority, the STB, the USACE, the SHPO, and the ACHP (the Signatories) agree that the Undertaking will be implemented in accordance with the Stipulations of the MOA and the following Stipulations:

STIPULATIONS

The FRA and the Authority shall ensure that the following stipulations of this Amendment to the MOA are carried out as follows:

I. SCREENED CONSTRUCTION ACTIVITIES EXEMPT FROM FURTHER REVIEW

The Signatories have identified classes of construction activities that have the potential to affect historic properties, but following appropriate screening in accordance with the screening process outlined in Attachment 1 to this Amendment, may be determined exempt from further Section 106 review (Screened Activities). The Authority will ensure that this process is satisfactorily followed and adequately documented. Notwithstanding the foregoing, the Authority will ensure that activities that occur in areas of archaeological sensitivity will be monitored by Qualified Investigators and consulting Native American Tribes during all ground disturbing activities, regardless of the outcome of the screening process.

II. STREAMLINED NEGATIVE ARCHAEOLOGICAL SURVEY RECORDING AND REPORTING

The Signatories have established procedures for documenting negative archaeological survey findings as part of the phased identification program, which are provided in Attachment 2 to this Amendment. The Authority will complete (or cause to be completed) detailed supplemental negative Archaeological Survey Reports (NASR) consistent with the requirements outlined in Attachment 2. The Authority will report on the NASRs with the PA/MOA annual report to signatories and consulting parties. The annual report sent to all signatories, except ACHP, will include a compact disk of all NASRs. If any signatory or Native American tribal consulting party

requests a copy of any NASR, the Authority will provide it within ten business days of the request.

III. REVISIONS TO ATTACHMENTS

Each attachment to this Agreement may be individually revised or updated through consultation and agreement in writing from the Signatories without requiring amendment of this Agreement, unless the Signatories through such consultation decide otherwise. Upon revising any attachment or appendix, the Authority and FRA shall append any revised documents to this Agreement and distribute the final revised attachments to the other parties to this Agreement.

IV. REPORTING

The Authority will prepare a single annual report documenting the implementation of this MOA, all other project section MOAs, and the PA. The reporting period will be consistent with the state of California's fiscal year, July 1 through the following June 30, and be submitted to all signatories and consulting parties for review within three months of the end of the state fiscal year, September 31, until all treatment is completed. There will be a thirty-day (30-day) period to review and comment on the Report. The Report will be finalized after the close of the thirty-day (30-day) comment period.

SIGNATORIES

FEDERAL RAILROAD ADMINISTRATION

By: Marys A. Osterhues Date: 12/22/16

Name: Marys A. Osterhues

Title: Chief, Environmental and Corridor Planning

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

By: Jeff Morales Date: 12-16-16

Name: Jeff Morales

Title: Chief Executive Officer

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: Julianne Polanco Date: 4 Jan 2017

Name: Julianne Polanco

Title: California State Historic Preservation Officer

SURFACE TRANSPORTATION BOARD

By: Victoria Rutson Date: 12/22/16

Name: Victoria Rutson

Title: Director, Office of Environmental Analysis

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

By: _____ Date: _____

Name: Michael S. Jewell

Title: Chief, Regulatory Division

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 2/10/17

Name: John M. Fowler

Title: Executive Director

SIGNATORIES

FEDERAL RAILROAD ADMINISTRATION

By: _____ Date: _____

Name: Marlys A. Osterhues

Title: Chief, Environmental and Corridor Planning

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

By: _____ Date: _____

Name: Jeff Morales

Title: Chief Executive Officer

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Name: Julianne Polanco

Title: California State Historic Preservation Officer

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____

Name: Victoria Rutson

Title: Director, Office of Environmental Analysis

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

By: *Michael S. Jewell* Date: 19 December 2016

Name: Michael S. Jewell

Title: Chief, Regulatory Division

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

Name: John M. Fowler

Title: Executive Director

ATTACHMENT 1

TO THE FIRST AMENDED MOA FOR THE FRESNO-BAKERSFIELD SECTION

SCREENED ACTIVITIES

Screened activities are classes of construction-related activities that have the potential to affect historic properties, but following appropriate screening, may be determined exempt from further Section 106 review under this Amendment. As with all construction activities, screened activities may only be undertaken within Authority-approved APE delineations.

This Attachment applies only when the construction activity is limited exclusively to one or more of the classes of Screenable Construction Activities listed below. The Authority must document any decision to "screen" an activity prior to commencing with any construction activities. A construction activity will not qualify as exempt if there may be historic properties present that could be affected, nor will it qualify as exempt from review if conditions must be imposed to ensure that potential historic properties would not be affected. If the Authority determines through the screening process that a listed project construction activity has the potential to affect historic properties, the Authority will instead follow Stipulation II of the this agreement, if appropriate, and Attachment C of the PA.

The Authority is responsible for ensuring that a Qualified Investigator (QI) screen all individual construction activities that fall within the classes of construction activities listed below to determine if the individual construction activity requires further consideration. All construction activities, including the identification of mandatory and/or designated storage, disposal, or borrow areas, depth of disturbance, and construction easements, must be identified prior to the screening process. If additional features or activities are added to a previously screened activities, that activity must also be screened.

The Screening Process

The screening process must be appropriate to the specific complexity, scale, scope, and location of the construction activities. It is the responsibility of the Design Builder's (DB) QI to complete a Cultural Resources Screening Memorandum and acquire approval from the Authority's Project Contract Manager's (PCM) QI that the activity is screenable and that the documentation presented in the Screening Memorandum sufficiently supports this determination. The PCM will forward the approved memo to the Authority for final approval, prior to commencing with any ground-disturbing activities, thus exempting the proposed construction activities from further review under Section 106. At a minimum, each screening process shall include the following procedures:

- Literature/records review to determine potential for presence of historic properties.
- Review archaeological sensitivity maps prepared during the environmental process, appended to the Archaeological Treatment Plan (ATP).
- Review of detailed construction activity plans that include depth of disturbance, identification of storage, disposal or borrow areas, easements, and access routes.
- Review of aerial photographs, historic maps, or as-built records.

The screened activities will be summarized in the PA/MOA annual report. The memos will be available to the SHPD or any other MOA signatory or consulting party upon request.

"Screenable" Construction Activities

The following activities may be subject to screening provided the process outlined above is followed and that the PCM's QI concurs by signature, and the Authority agrees via email, that the memo adequately supports the decision.

- Minor utility installation or relocation in previously disturbed areas.
- Utility potholing and relocation within existing utility easements.
- Addition or replacement of devices, such as fencing, safety barriers, or signs.
- Modification of traffic control systems or devices utilizing existing infrastructure, including installation, removal, or modification of regulatory, warning, or informational signs or signals.
- Removal of landscaping, vegetation or irrigation systems.
- Preliminary engineering tests, such as seismic, geologic, or hazardous materials testing that require potholing or drilling, provided qualified archaeological monitors are present and, if available, consulting Native Americans. If the tests are being conducted in an archaeologically sensitive area, the activity will not be screened.

ATTACHMENT 2

TO THE FIRST AMENDED MOA FOR THE FRESNO-BAKERSFIELD SECTION NEGATIVE ARCHAEOLOGICAL SURVY REPORT PROTOCOLS

The protocol described in this Attachment applies only when the phased historic properties identification effort results in a negative records search and negative findings through archaeological survey, as noted below. If the DB's QI determines that an Archaeological Survey is negative, the Authority will ensure that the QI completes an addendum ASR, including the content, methodology, level of effort, and documentation requirements as described in PA Attachment C, with all relevant supporting data included. To be considered a negative addendum ASR (NASR), each of the following criteria must be met:

1. Archaeological pedestrian survey has been completed with no resources identified, or the area is completely covered/paved.
2. Record search has been completed and no archaeological resources are recorded in the APE, with a buffer agreed upon in consultation with the Authority.
3. A designated tribal participant (as pre-identified by the Authority) accompanied the archaeological surveyors. Or, a tribal participant was invited to accompany the surveyors, but declined to participate.

A NASR will be approved through the following process:

1. DB submits draft NASR to PCM QI.
2. PCM QI reviews for adequacy, finalizes and approves draft for forwarding.
3. PCM QI submits draft NASR to Authority.
4. Authority reviews and approves draft NASR.
5. Authority approves work to proceed.
6. PCM QI submits final NASR to Authority.
7. Authority ensures all final NASRs produced during each Annual Report reporting period are documented in the Annual Report; a CD of all NASRs produced during the reporting period will be provided to all MOA signatories, except for the ACHP, and tribal consulting parties.

Once a NASR has been approved by the Authority through this process, work may proceed at that location subject to any archaeological and/or tribal monitoring requirements as recommended in the NASR. Monitoring will be required if the area is determined to be sensitive pursuant to parameters defined in the monitoring plan or geotechnical technical studies, or if ground surface visibility is very limited, such as paved or covered with fill.