



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

July 1, 2019

The Honorable Gavin Newsom
Governor
State of California
1303 10th Street, Suite 1173
Sacramento, CA 95814

Dear Governor Newsom,

I write today in response to the State of California's January 31, 2018, application to assume the Federal Railroad Administration's environmental review responsibilities under the National Environmental Policy Act, and other Federal environmental laws, for certain projects relating to the California High-Speed Rail System.

After carefully reviewing California's application and considering public input, I determined that California met the applicable statutory and regulatory requirements, so I now approve the application. Enclosed, please find a Memorandum of Understanding (MOU) with my signature. Upon your signature of the MOU, California's assumption of FRA's environmental review responsibilities will be effective, and California will be solely responsible for carrying out those responsibilities.

Once you have returned the signed MOU, my staff will contact the California High-Speed Rail Authority regarding administration of the MOU requirements.

Sincerely,



Ronald L. Batory
Administrator

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE FEDERAL RAILROAD ADMINISTRATION AND THE STATE OF CALIFORNIA,
ACTING THROUGH ITS CALIFORNIA STATE TRANSPORTATION AGENCY AND ITS
CALIFORNIA HIGH -SPEED RAIL AUTHORITY,
FOR THE STATE OF CALIFORNIA'S PARTICIPATION IN THE SURFACE TRANSPORTATION
PROJECT DELIVERY PROGRAM PURSUANT TO 23 U.S.C. 327**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the FEDERAL RAILROAD ADMINISTRATION (FRA), an administration in the UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT), and the State of CALIFORNIA (the State), acting by and through its CALIFORNIA STATE TRANSPORTATION AGENCY (CalSTA) and its CALIFORNIA HIGH SPEED RAIL AUTHORITY (CHSRA), and hereby provides as follows:

WITNESSETH

Whereas, Section 327 of Title 23 of the U.S. Code (U.S.C.) establishes the Surface Transportation Project Delivery Program (Project Delivery Program), which allows the Secretary of the United States Department of Transportation (USDOT Secretary) to assign, and states to assume, the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (NEPA), and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other actions required under any other Federal environmental laws, with respect to highway, railroad, public transportation, or multimodal projects within the state; and

Whereas, the USDOT Secretary's responsibilities to administer the Project Delivery Program have been delegated to the Administrators of the Federal Highway Administration (FHWA) (49 C.F.R. 1.85(a)(21)), FRA (49 C.F.R. 1.89(q)), and the Federal Transit Administration (49 C.F.R. 1.91(c)).

Whereas, on July 1, 2007, FHWA and the California Department of Transportation (Caltrans) entered into a Memorandum of Understanding under which Caltrans assumed certain duties and responsibilities of FHWA under NEPA and other Federal environmental laws as authorized by a pilot program established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, Aug. 10, 2005) (Pilot Program); and

Whereas, on August 10, 2011, FHWA and Caltrans entered into an Amended Memorandum of Understanding; and

Whereas, Section 1313 of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141, July 6, 2012) made the Pilot Program permanent and expanded its scope to include railroad, public transportation, and multimodal projects; and

Whereas, on September 25, 2012, FHWA and Caltrans entered into another Memorandum of Understanding allowing Caltrans to continue to participate in the Project Delivery Program under the terms of the Original and Amended Memorandum of Understandings; and

Whereas, on December 23, 2016, FHWA and Caltrans entered into a revised Memorandum of Understanding allowing Caltrans to continue to participate in the Project Delivery Program; and

Whereas, 23 U.S.C. 327(a)(2)(B)(ii) authorizes USDOT to assign the duties and responsibilities of the FRA under NEPA and other Federal environmental laws to a State for one or more railroad projects if the State has been assigned such duties and responsibilities for highway projects; and

Whereas, in a May 12, 2017, letter to the President of the United States, the Governor of the State of California expressed an interest in participating in the Project Delivery Program with respect to the California High-Speed Rail (HSR) System; and

Whereas, in a June 16, 2017, letter to the USDOT Secretary, the Secretary of CalSTA requested that USDOT initiate the process to allow the State to participate in the Project Delivery Program with respect to the California HSR System; and

Whereas, pursuant to 23 C.F.R. 773.107(b), on November 9, 2017, the State gave public notice of its intention to participate in the Project Delivery Program for railroad projects and provided the public with an opportunity to comment;

Whereas, pursuant to 23 U.S.C. 327(a)(2)(B)(ii) and (b)(2) and 23 C.F.R. 773.109(c), on January 31, 2018, the State submitted an application to FRA to participate in the Project Delivery Program and assume FRA's responsibilities for certain railroad projects within the State; and

Whereas, on May 2, 2018, FRA published a *Federal Register* notice and provided an opportunity for comment on the State's application and a draft of this MOU and solicited the views of the public and other Federal agencies concerning these materials as required by 23 C.F.R. 773.111(a); and

Whereas, the USDOT Secretary, acting by and through FRA, has considered the application and comments received as a result of the *Federal Register* notice as required by 23 C.F.R. 773.111(a) and has determined that the State's application package meets all the requirements of 23 U.S.C. 327 and 23 C.F.R. part 773.

Now, therefore, FRA and the State agree as follows:

PART 1. PURPOSE OF MEMORANDUM OF UNDERSTANDING

1.1 Purpose

This MOU officially approves the State's application to participate in the Project Delivery Program and is the written agreement required pursuant to 23 U.S.C. 327(a)(2)(B)(ii) and (c). FRA's decision to execute this MOU is based upon the information, representations, and commitments contained in the State's January 31, 2018, application package and consideration of comments received during the comment period.

PART 2. EFFECTIVE DATE

This MOU is effective upon final execution by both parties (the Effective Date).

PART 3. ASSIGNMENTS AND ASSUMPTIONS OF RESPONSIBILITY

3.1 Assignments and Assumptions of NEPA Responsibilities

3.1.1 Pursuant to 23 U.S.C. 327(a)(2)(B)(ii), on the Effective Date, FRA assigns, and the State assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of FRA's responsibilities for compliance with NEPA with respect to the railroad projects identified in subpart 3.3. This assignment includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for assigned projects, such as 23 U.S.C. 139, 49 U.S.C. 24201, 40 C.F.R. parts 1500-1508, 23 C.F.R. part 771, USDOT Order 5610.1C (Jul. 30, 1985), and FRA's Procedures for Considering Environmental Impacts (published at 64 Fed. Reg. 28545 (May 26, 1999) and 78 Fed. Reg. 2713 (Jan. 14, 2013)), as applicable.

3.1.2 On the cover page of each environmental assessment (EA), finding of no significant impact (FONSI), environmental impact statement (EIS), and record of decision (ROD) and in any

documentation corresponding to a categorical exclusion (CE) determination, prepared for a railroad project assigned under this MOU, the State will insert the following language:

"The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being or have been carried out by the State of California pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated _____, and executed by the Federal Railroad Administration and the State of California."

The State will provide the same or substantially similar disclosure to the public and agencies as part of initial agency outreach and public involvement, including in any notice of intent or scoping meeting notice and as otherwise appropriate.

3.2 Assignments and Assumptions of Responsibilities to Comply with Federal Environmental Laws Other Than NEPA

3.2.1 Pursuant to 23 U.S.C. 327(a)(2)(B), on the Effective Date, FRA assigns, and the State assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of FRA's responsibilities for environmental review, consultation, or other action required or arising under the following Federal environmental laws for the assigned railroad projects described in subpart 3.3:

Environmental Review Process

- Efficient environmental reviews for project decisionmaking, 23 U.S.C. 139
- Efficient environmental reviews, 49 U.S.C. 24201

Air Quality

- Clean Air Act, 42 U.S.C. 7401–7671q, except to the extent 23 U.S.C. 327 requires FRA to retain responsibility for conformity determinations required under Section 176 of the Clean Air Act (42 U.S.C. 7506)¹

Noise

- Noise Control Act of 1972, 42 U.S.C. 4901–4918

Wildlife

- Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531–1544
- Marine Mammal Protection Act, 16 U.S.C. 1361–1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1891d

¹ Under 23 U.S.C. 327(a)(2)(B)(iv)(II), FRA may not assign its responsibility for making air quality conformity determinations. If the statute is amended to remove this prohibition, the State may seek to assume FRA's responsibility for conformity determinations consistent with 23 C.F.R. 773.113.

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act, 42 U.S.C. 9671–9675
- Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992k

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101–307108, et seq., except to the extent 23 C.F.R. 773.105(b)(4) requires FRA to retain responsibility for government-to-government consultation with Indian tribes
- Archeological Resources Protection Act, 16 U.S.C. 470aa–479mm
- Title 54, Chapter 3125 – Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
- Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001–3013; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act, 7 U.S.C. 4201–4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387 (Sections 401, 402, 404, 408, and Section 319)
- Safe Drinking Water Act, 42 U.S.C. 300f–300j-26
- Rivers and Harbors Act of 1899, 33 U.S.C. 401 and 403
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901–3902 and 3921
- Flood Disaster Protection Act, 42 U.S.C. 4001–4133
- General Bridge Act of 1946, 33 U.S.C. 525–533
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1466

Parklands and Other Special Land Uses

- 49 U.S.C. 303 (Section 4(f))
- Land and Water Conservation Fund Act, 54 U.S.C. 200301–200310

Executive Orders

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low -Income Populations
- E.O. 13112, Invasive Species as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species
- E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects

3.2.2 In accordance with 23 U.S.C. 327(a)(2)(D), any FRA environmental review responsibility not explicitly listed in subpart 3.1 and this subpart 3.2 will remain the responsibility of FRA unless the parties add new responsibilities through the process established in Part 14 of this MOU and consistent with 23 C.F.R. 773.113(b).

- 3.2.3 Nothing in this MOU abrogates the State's responsibility to comply with the requirements of any Federal environmental law (e.g., Section 404 of the Clean Water Act) that may apply directly to the State independent of FRA's involvement.
- 3.2.4 The FRA's responsibilities for Government-to-Government consultation with Indian tribes, as defined in 36 C.F.R. 800.16(m) and Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, are not assigned to or assumed by the State under this MOU. The FRA remains responsible for such Government-to-Government consultation, including initiation of consultation. A notice from the State to an Indian tribe advising the tribe of a proposed activity is not considered "Government-to-Government consultation" within the meaning of this MOU. If an Indian tribe raises a concern or issue to FRA related to a project or projects assigned under this MOU during Government-to-Government consultation, and FRA, in consultation with the tribe, determines the State will not satisfactorily resolve the issue or concern, then FRA may withdraw the assignment of all or part of the responsibilities assigned for the project or projects pursuant to the provisions of subpart 9.1. This MOU does not abrogate, or prevent future entry into, any agreement among the State, FRA, and a tribe under which the tribe agrees to permit the State to administer Government-to-Government consultation activities for FRA. However, such agreements are administrative in nature and do not relieve the FRA of its legal responsibility for Government-to-Government consultation.
- 3.2.5 In accordance with 23 U.S.C. 327(a)(2)(B)(iv), this MOU does not permit the State to assume the FRA's responsibilities for conformity determinations required under Section 176 of the Clean Air Act (42 U.S.C. 7506) or any responsibility for the transportation planning process under 23 U.S.C. 134 or 135 and 49 U.S.C. 5303 or 5304.
- 3.2.6 On the cover page of each biological evaluation or assessment, historic properties or cultural resources report, Section 4(f) evaluation, or other such reports prepared under the authority granted by this MOU and distributed to other agencies or the public, the State will insert the following language:

"The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by the State of California pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated _____, and executed by the Federal Railroad Administration and the State of California."

The State will provide the same or substantially similar disclosure to the public and agencies as part of agency outreach and public involvement procedures.

- 3.2.7 The State will continue to adhere to the terms of Biological Opinions (BOs) issued by the United States Fish and Wildlife Service or National Marine Fisheries Service (together, the Services) prior to the Effective Date, to the extent that the terms of those BOs remain in effect. The State is responsible for reinitiating consultation, if required under a BO issued prior to the Effective Date, and will comply with any revisions or amendments to a BO made after the Effective Date. The State will assume FRA's ESA Section 7 (16 U.S.C. 1536) responsibilities for consultations (formal and informal) ongoing as of the Effective Date with respect to the projects described in subpart 3.3. The State will assume FRA's environmental review role and responsibilities as identified in existing interagency agreements among the State, the Services, and FRA, or negotiate new agreements with the Services, if needed.
- 3.2.8 The State will not make any determination that an action constitutes a constructive use of a publicly owned park, public recreation area, wildlife refuge, waterfowl refuge, or historic site under Section 4(f) without first consulting with FRA and obtaining FRA's views on such determination. The State will provide FRA written notice of any proposed constructive use determination, and FRA will have thirty (30) calendar days to review and provide comment. If

FRA objects to the constructive use determination, the State will not proceed with the determination.

3.3 Assigned Railroad Projects

3.3.1 Except as provided by section 3.3.2 below, the assignments and assumptions of the FRA's responsibilities under subparts 3.1 and 3.2 apply to the environmental review, consultation, or other action pertaining to the environmental review of the following railroad projects located within the State. As applicable, the State's responsibilities for a particular railroad project could be as the lead agency, cooperating agency, or participating agency. As necessary, the State will be responsible for reevaluating railroad projects, as may be necessary from time to time under the laws and rules listed in subparts 3.1 and 3.2, for which construction is not completed prior to the Effective Date.

A. Projects necessary for the design, construction, and operation of the California HSR System, including the following project sections and any ancillary facilities (including, but not limited to, electrical interconnections and network upgrades):

1. Merced to Sacramento
2. San Francisco to San Jose
3. San Jose to Merced
4. Merced to Fresno (including the Central Valley Wye Supplemental EIS)
5. Fresno to Bakersfield (including the Supplemental EIS for the Locally Generated Alternative)
6. Bakersfield to Palmdale
7. Palmdale to Burbank
8. Burbank to Los Angeles
9. Los Angeles to Anaheim
10. Los Angeles to San Diego

B. Projects directly connected to stations on the California HSR System, including the following Los Angeles County Metropolitan Transportation Authority projects:

1. Link Union Station
2. West Santa Ana Branch Transit Corridor

The FRA or the State, acting through CalSTA and CHSRA, may identify additional projects that fall within this class of projects and, by mutual agreement, the FRA and the State may determine that such projects are appropriate for assignment under this MOU. In such circumstances, no amendment to this MOU would be necessary.

C. The ACEforward project within the Altamont Corridor Express system.

3.3.2 Projects that cross state boundaries or that cross or are adjacent to international boundaries are excluded from the railroad projects for which FRA environmental review responsibilities are being assumed by the State. For purposes of this MOU, a project is considered "adjacent to international boundaries" if it requires the issuance of a new, or modification of an existing, Presidential Permit by the United States Department of State.

3.3.3 As provided in 23 U.S.C. 327(a)(2)(D), any railroad project that is not assumed by the State under this subpart 3.3 remains the responsibility of the FRA.

3.4 Effect of Assumption

3.4.1 For purposes of carrying out the responsibilities assigned under this MOU, and subject to the limitations contained in 23 U.S.C. 327 and this MOU, following the Effective Date, the State will

be deemed to be acting as FRA with respect to the environmental review, consultation, and other action required under those responsibilities.

- 3.4.2 Pursuant to 23 U.S.C. 327(c)(3)(B)–(C) and subpart 4.3 of this MOU, third parties may challenge the State's actions in carrying out environmental review responsibilities assigned under this MOU. Except as provided in 23 U.S.C. 327(c)(3)(B)–(C) and subpart 4.3 of this MOU, this MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any third party against the State, its departments, agencies, or entities, its officers, employees, or agents. This MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any third party against the United States or its departments, agencies, entities, officers, employees, or agents.

PART 4. CERTIFICATIONS AND ACCEPTANCE OF JURISDICTION

4.1 Certifications

The State hereby makes the following certifications in accordance with 23 U.S.C. 327(c)(3)(C):

- A. The State has the legal authority to accept all the assignments of responsibility identified in Part 3 of this MOU;
- B. The State has the legal authority to take all actions necessary to carry out the responsibilities it has assumed under this MOU;
- C. The Governor of the State has the legal authority to execute this MOU on behalf of the State;
- D. The State currently has laws in effect that are comparable to 5 U.S.C. 552, and those laws are located at California Government Code § 6250, et seq.; and
- E. Any decision by a California state agency regarding the public availability of a document under California Government Code § 6250, et seq. is reviewable by a California court of competent jurisdiction.

4.2 The State's Commitments

- 4.2.1 The State will exercise the powers and authorities granted under this MOU through CalSTA and/or CHSRA, as appropriate.
- 4.2.2 As provided at 23 U.S.C. 327(c)(3)(D), the State will maintain and commit the financial resources necessary to carry out the responsibilities it has assumed under this MOU. The State believes, and FRA agrees, that the summary of financial resources contained in the State's application, dated January 31, 2018, appears to be adequate for this purpose. Should FRA determine, after consultation with the State, that those financial resources are inadequate to carry out FRA's responsibilities, the State will take appropriate action to obtain and commit the additional financial resources needed to carry out these responsibilities. If the State is unable to obtain or commit the necessary additional financial resources, the State will inform FRA, and this MOU will be amended to assign only the responsibilities that are commensurate with the State's available financial resources, as determined appropriate by FRA.
- 4.2.3 The State will maintain adequate organizational and staff capability at CHSRA, including competent and qualified consultants and outside counsel where necessary or desirable, to effectively carry out the responsibilities it has assumed under this MOU. Should the State choose

to meet these requirements, in whole or in part, with consultant services and/or outside counsel, the State will maintain an adequate number of trained and qualified state employees, including counsel, to oversee the consulting work. The State's commitment includes, without limitation:

- A. Using appropriate environmental, technical, legal, and managerial expertise;
- B. Devoting adequate staff resources; and
- C. Demonstrating, in a consistent manner, the capacity to perform the State's assumed responsibilities under this MOU and applicable Federal laws.

In approving the State's application for assignment, FRA relied upon the State's representations in Section 5.1 and 5.2 of the assignment application regarding CalSTA's and CHSRA's current organizational structure related to NEPA assignment, and the State's representations in Section 6.1 of the assignment application regarding the updated organizational structure related to NEPA assignment to be adopted prior to the Effective Date (NEPA Assignment Organizational Structure). Before adopting any material changes to the NEPA Assignment Organizational Structure, the State will provide FRA with written notice of the proposed changes for a 30-day review period before implementing the changes. If FRA has concerns with such proposed changes, the FRA will inform the State of those concerns during such review period, and FRA and the State will confer to resolve any such concerns. Without amending this MOU, FRA may agree to shorten or waive such review period.

Should FRA determine, after consultation with the State, that CHSRA's staff capability and/or NEPA Assignment Organizational Structure is inadequate to carry out the responsibilities the State assumes under this MOU, the State will take appropriate action to obtain adequate organizational and staff capability to carry out these responsibilities. If the State is unable to obtain adequate organizational and staff capability, the State will inform FRA, and the MOU will be amended to assign only the responsibilities that are commensurate with the available organizational and staff capability, as determined appropriate by FRA.

- 4.2.4 The State will ensure CHSRA maintains and implements policies and procedures to effectively carry out the responsibilities the State has assumed under this MOU. The State asserts, and FRA agrees, that the policies and procedures described in Sections 5.3 through 5.11 (Existing Procedures) and Sections 6.2 through 6.4 (Proposed Modifications) of the State's application for assignment, submitted January 31, 2018, are adequate for these purposes.
- A. The State will ensure that, within six (6) months of the Effective Date, CHSRA will revise the Existing Procedures to reflect the Proposed Modifications, resulting in an updated set of policies and procedures for carrying out the responsibilities assigned under this MOU (Updated Procedures).
 - B. The State will provide FRA with a copy of the Updated Procedures (via email or other electronic means) 30 days before implementing the Updated Procedures. If FRA has concerns with the Updated Procedures, the State and FRA will confer to resolve any such concerns.
 - C. After adopting the Updated Procedures pursuant to paragraph A of this section 4.2.4, the State may at any time modify those procedures, provided that the State provides FRA with a copy of any proposed modification (via email or other electronic means) for a 30-day review period before implementing the modification. If FRA has concerns with any proposed modification, the FRA will inform the State of those concerns during the 30-day review period, and FRA and the State will confer to resolve any such concerns. Without amending this MOU, FRA may agree to shorten or waive the 30-day review period.

- D. Should FRA determine, after consultation with the State, that the then-most-recent Updated Procedures are no longer adequate to carry out the responsibilities assigned under this MOU, the State will direct CHSRA to take appropriate action to amend or revise the Updated Procedures to remedy the identified deficiencies. If CHSRA is unable to revise or amend the Updated Procedures to adequately address the identified deficiencies, the State will inform FRA, and the MOU will be amended to assign only the responsibilities that are commensurate with the acceptable portions of the Updated Procedures, as determined appropriate by FRA.
- 4.2.5 When carrying out the requirements of Section 106 of the National Historic Preservation Act, as amended, the State will comply with 36 C.F.R. 800.2(a)(1). All actions that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, will be carried out by or under the direct supervision of a person or persons who meet the Secretary of Interior's Professional Qualification Standards (published at 48 Fed. Reg. 44716, 44738–39, Sept. 29, 1983). The State will ensure that all documentation required under 36 C.F.R. 800.11 is reviewed and approved by a staff member or consultant who meets the Professional Qualification Standards.

4.3 Federal Court Jurisdiction

As provided at 23 U.S.C. 327(c)(3)(B), and pursuant to Section 13979.2 of the California Government Code, the State hereby expressly consents to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility assigned to the State under this MOU. This consent to Federal court jurisdiction will remain valid for any decision or approval made by the State pursuant to any responsibility assigned under this MOU, even after termination of the State's participation in the Project Delivery Program or FRA's withdrawal of assignment.

PART 5. APPLICABILITY OF FEDERAL LAW

5.1 Procedural and Substantive Requirements

- 5.1.1 As provided at 23 U.S.C. 327(a)(2)(C), in assuming the FRA's responsibilities under this MOU with respect to the railroad projects assigned described in subpart 3.3, the State will be subject to the same procedural and substantive requirements that apply to the FRA in carrying out these responsibilities. Such procedural and substantive requirements include Federal statutes and regulations; Executive Orders issued by the President of the United States; USDOT Orders; Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 C.F.R. parts 1500–1508); FRA Orders; official guidance and policy issued by the CEQ, Office of Management and Budget (OMB), USDOT, or the FRA (e.g., OMB Memorandum M-15-20, Guidance Establishing Metrics for the Permitting and Environmental Review of Infrastructure Projects); any applicable Federal court decisions; and, subject to section 5.3.2 below, interagency agreements such as programmatic agreements, memoranda of understanding, memoranda of agreement, and other similar documents that relate to the environmental review process (e.g., the 2015 Red Book – Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects).
- 5.1.2 After the Effective Date, FRA will use its best efforts to notify the State of any new or revised final Federal policies and guidance applicable to FRA's responsibilities under NEPA and other environmental laws assumed by the State under this MOU within fourteen (14) calendar days of issuance. FRA may accomplish such notification by e-mail, web posting (with email or mail to the State notifying of web posting), mail, or publication in the Federal Register (with email or mail to the State notifying of publication). In the event that FRA does not notify the State of a new or

revised Federal policy or guidance as described in this section 5.1.2, and if the State had no actual knowledge of such policy or guidance, then a failure by the State to comply with such Federal policy or guidance will not be a basis for termination of the State's participation in the Project Delivery Program.

5.2 Rulemaking

Consistent with 23 U.S.C. 327(f), nothing in this MOU permits the State to assume any rulemaking authority of the USDOT Secretary or FRA. Additionally, nothing in this MOU permits the State to establish policy and guidance on behalf of the USDOT Secretary or FRA. The State's authority to establish State regulations, policy, and guidance concerning the State environmental review of railroad projects will not supersede applicable Federal environmental review regulations, policy, or guidance established by or applicable to the USDOT Secretary or FRA.

5.3 Other Federal Agencies

- 5.3.1 The State will work with all other appropriate Federal agencies concerning the laws, guidance, and policies that such other Federal agencies are responsible for administering.
- 5.3.2 For interagency agreements among FRA, the State, and another Federal or state agency, six (6) months after the Effective Date, FRA and the State will contact the other agency to determine whether any action should be taken with respect to such agreement. Such actions may include:
- A. Consulting with the other agency to obtain written consent to the continuation of the interagency agreement in its existing form, but with the substitution through assignment of the State for FRA; or
 - B. Negotiating with the other agency to amend the interagency agreement as needed so that the interagency agreement continues but that the State assumes FRA's responsibilities.

If the other agency does not agree to the assignment or amendment of the interagency agreement, then to the extent permitted by applicable law and regulation, the State will carry out the assumed environmental review, consultation, or other related activity in accordance with applicable laws and regulations but without the benefit of the interagency agreement.

- 5.3.3 Upon termination of the State's participation in the Project Delivery Program, FRA and the State will contact the signatory to any interagency agreement and determine whether the interagency agreement should be amended or reinstated as it was on the Effective Date of this MOU.
- 5.3.4 As provided at 23 U.S.C. 327(a)(2)(E), nothing in this MOU preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency other than USDOT (including FRA), under applicable statutes and regulations with respect to a project.

PART 6. LITIGATION

6.1 Responsibility and Liability

As provided in 23 U.S.C. 327(e), the State will be solely responsible and solely liable for carrying out all of FRA's responsibilities it has assumed under this MOU, in lieu of and without further approval of the FRA. The FRA and USDOT will have no responsibility or liability for the performance of the responsibilities assumed by the State, including any decision or approval made by the State while participating in the Project Delivery Program.

6.2 Litigation

- 6.2.1 Nothing in this MOU affects the United States Department of Justice's (hereinafter USDOJ) authority to litigate claims, including the authority to approve a settlement on behalf of the United States if either FRA or another agency of the United States is named in such litigation, or if the United States intervenes pursuant to 23 U.S.C. 327(d)(3). In the event FRA or any other Federal agency is named in litigation related to matters under this MOU, or the United States intervenes in the litigation, the State agrees to coordinate with FRA and any USDOJ or Federal agency attorneys in the defense of that action.
- 6.2.2 The State will defend all claims brought against the State in connection with its discharge of any responsibility assumed under this MOU. In the event of litigation, the State will provide qualified and competent legal counsel, including outside counsel if necessary. The State will provide the defense at its own expense, subject to any applicable Federal law concerning the use of Federal funds for attorney's fees for outside counsel hired by the State. The State will be responsible for opposing party's attorney's fees and court costs if a court awards those costs to an opposing party, or in the event those costs are part of a settlement agreement.
- 6.2.3 The State will notify the FRA and USDOJ's Assistant Attorney General for the Environment and Natural Resources Division within seven (7) calendar days of the State's Legal Division's receipt of service of process of any complaint concerning discharge of any responsibility assumed under this MOU. The State will notify FRA and USDOJ prior to its response to the complaint. In addition, the State will notify FRA within seven (7) calendar days of receipt of any notice of intent to sue concerning its discharge of any responsibility assumed under this MOU.
- 6.2.4 The State will provide FRA and USDOJ copies of any motions, pleadings, briefs, or other such documents filed in any case concerning its discharge of any responsibility assumed under this MOU. The State will provide such copies to the FRA and DOJ within seven (7) calendar days of service of any document, or in the case of any documents filed by or on behalf of the State, within seven (7) calendar days of the date of filing.
- 6.2.5 The State will notify the FRA and USDOJ prior to settling any lawsuit, in whole or in part, and will provide the FRA and USDOJ with a reasonable amount of time of at least ten (10) calendar days, to be extended, if feasible based on the context of the lawsuit, up to a maximum of thirty (30) total calendar days, to review and comment on the proposed settlement. The State will not execute any settlement agreement until: (1) FRA and USDOJ have provided comments on the proposed settlement; (2) FRA and USDOJ have indicated that they will not provide comments on the proposed settlement; or (3) the review period has expired, whichever occurs first.
- 6.2.6 Within seven (7) calendar days of receipt by the State, the State will provide notice to FRA and USDOJ of any court decision on the merits, judgment, and notice of appeal arising out of or relating to the responsibilities the State has assumed under this MOU. The State will notify FRA and USDOJ within five (5) days of filing a notice of appeal of a court decision. The State will confer with FRA and USDOJ regarding the appeal at least forty-five (45) days before filing an appeal brief in the case.
- 6.2.7 The State's notification to FRA and USDOJ in sections 6.2.3, 6.2.4, 6.2.5, and 6.2.6, will be made by electronic mail to FRALegal327@dot.gov and NRS DOT.enrd@doj.gov, unless otherwise specified by FRA and USDOJ. For copies of motions, pleadings, briefs, and other documents filed in a case, as identified in section 6.2.4, the State may opt to either send the materials to the email addresses identified above, send hardcopies to the mail address below, or add to the distribution list in the court's electronic filing system (e.g., PACER) the following two email addresses: FRALegal327@dot.gov and efile_nrs.enrd@usdoj.gov. FRA and USDOJ's comments under section 6.2.5 and 6.2.6 will be made by electronic mail to legal@hsr.ca.gov unless otherwise specified by the State. In the event that regular mail is determined necessary, mail should be sent by overnight mail service to:

For USDOJ: Assistant Attorney General for the Environment and Natural Resources Division at 950 Pennsylvania Avenue, NW, Room 2143, Washington, DC 20530.

For FRA: Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE, West Building, Washington, DC 20590.

For the State: Chief Counsel, California High-Speed Rail Authority, 770 L Street, Suite 620, Sacramento, California 95814.

6.3 Conflict Resolution

- 6.3.1 In discharging any of the FRA's responsibilities under this MOU, the State agrees to comply with the requirements of any statute, regulation, guidance, or policy regarding conflict resolution applicable to USDOT or FRA.
- 6.3.2 The State agrees to follow 40 C.F.R. part 1504 in the event of pre-decision referrals to CEQ for Federal actions determined to be environmentally unsatisfactory. The State also agrees to coordinate and work with CEQ on matters brought to CEQ with regard to the environmental review responsibilities for the railroad projects for which the State has assumed the FRA's environmental review responsibilities under this MOU.

PART 7. INVOLVEMENT WITH OTHER AGENCIES

7.1 Coordination

The State will seek early and appropriate coordination with all appropriate Federal, State, and local agencies in carrying out any of the responsibilities assigned under this MOU.

7.2 Processes and Procedures

- 7.2.1 The State will ensure CHSRA maintains appropriate processes and procedures providing proactive and timely consultation, coordination, and communication with all appropriate Federal agencies in order to carry out any of the responsibilities assigned under this MOU. The State will formally document these processes and procedures in the form of an executed interagency agreement or in other such form as appropriate.
- 7.2.2 The State will submit environmental impact statements together with comments and responses to the Environmental Protection Agency (EPA) as required by 40 C.F.R. 1506.9 and for EPA's review as required by Section 309 of the Clean Air Act (42 U.S.C. 7609).

PART 8. INVOLVEMENT WITH FRA

8.1 Generally

- 8.1.1 Except as specifically provided otherwise in this MOU, FRA will not provide any project-level assistance to the State in carrying out any of the responsibilities the State has assumed under this MOU. Project-level assistance includes any advice, consultation, or document review with respect to the discharge of such responsibility for a particular assumed project. However, project-level assistance does not include process or program-level assistance as provided for in section 8.1.4, discussions concerning issues addressed in prior projects, interpretations of any applicable law for which responsibility is assumed under this MOU or other laws contained in

Title 23 U.S.C. or Title 49 U.S.C., interpretations of any FRA or USDOT regulation, or interpretations of FRA or USDOT policies or guidance.

- 8.1.2 The FRA will not intervene, broker, act as intermediary, or be otherwise involved in any issue involving the State's consultation or coordination with another Federal agency with respect to the State's discharge of any of the responsibilities assigned under this MOU. However, the FRA may attend meetings between the State and other Federal agencies and submit comments to the State and the other Federal agency in the following extraordinary circumstances:
- A. FRA reasonably believes that the State is not in compliance with this MOU;
 - B. FRA determines that an issue between the State and the other Federal agency concerns emerging national policy issues under development by the FRA or USDOT; or
 - C. Upon request by either the State or the other Federal agency and agreement by FRA.

The FRA will notify both the State and the relevant Federal agency prior to attending any meetings between the State and such other Federal agency.

- 8.1.3 Other Federal agencies may raise concerns regarding the State's compliance with this MOU to FRA, and FRA will review the concerns and any information provided by the Federal agency to FRA. Following FRA's review, if FRA and the Federal agency still have concerns about the State's compliance with this MOU, FRA will notify the State of the concern and will coordinate with the State and the relevant Federal agency to resolve the issue. FRA may also take appropriate actions as otherwise permitted under this MOU to ensure the State's compliance.
- 8.1.4 At the State's request, FRA will assist the State in evaluating its environmental program and in developing or modifying any of its processes or procedures to carry out the responsibilities it has assumed under this MOU, including, but not limited to, those processes and procedures concerning the State's consultation, coordination, and communication with other Federal agencies.

8.2 Record Retention

- 8.2.1 The State will retain project files and general administrative files pertaining to its discharge of the responsibilities it has assumed under this MOU in accordance with applicable legal requirements (e.g., 2 C.F.R. 200.333, 49 C.F.R. part 18²), and the provisions below.
- 8.2.2 The State will maintain copies of all RODs, Draft and Final EISs, EAs, FONSI, CE determinations, and Section 4(f) evaluations and determinations issued or approved by the State as lead agency under this assignment MOU for a period of eight (8) years after approval of the document. After eight (8) years, the State will transmit such documents (in paper or electronic form, at the State's discretion) to FRA to be managed in accordance with FRA records retention and disposal policies and procedures.
- 8.3.3 Nothing contained in this MOU is intended to relieve the State of its recordkeeping responsibilities under 2 C.F.R. 200.333–200.337 or other applicable laws.

² FRA and CHSRA are parties to a cooperative agreement funding, among other things, the environmental review for Phase I of the California HSR System. Because the cooperative agreement was executed before the adoption of 2 C.F.R. part 200, CHSRA is still subject to the requirements of 49 C.F.R. part 18 for the environmental reviews conducted under that agreement.

8.3 Federal Register

For any documents that are proposed by the State to be published by FRA in the *Federal Register*, such as a Notice of Intent under 40 C.F.R. 1501.7 or a Notice of Final Agency Action under 23 U.S.C. 139(f) (to the extent applicable), the State will transmit such document to the FRA. FRA will promptly submit such document to be published in the *Federal Register* on behalf of the State. The State will, upon request by FRA, reimburse FRA for the expenses associated with publishing such documents in the *Federal Register* (excluding FRA's overhead). If and when permitted by the operating procedures of the Government Printing Office and the *Federal Register*, the State will take over the procedures described above from the FRA.

8.4 Participation in Resource Agency Reports

8.4.1 The State will provide all reasonable data and information requested by FRA and resource agencies for the preparation of national reports in a timely manner to the extent that the information relates to determinations, findings, and proceedings associated with projects assumed under this MOU. Such reports include but are not limited to:

- A. Information on the completion of and duration to complete environmental documentation for EIS, EA, and documented CE projects assumed under this MOU;
- B. Archeology reports requested by the National Park Service;
- C. ESA Expenditure Reports requested by the Services;
- D. NEPA litigation reports requested by CEQ; and
- E. Environmental conflict resolution reports requested by OMB and CEQ.

8.4.2 The State will directly submit project schedules and any other required data regarding EAs and EISs for posting on the searchable website maintained under Section 41003(b) of the Fixing America's Surface Transportation Act (42 U.S.C. 4370m-2(b)) and 23 U.S.C. 139(o), commonly known as the "Federal Permitting Dashboard".

8.5 Conformity Determinations

The State will, for any railroad project located in air quality nonattainment and maintenance area, with respect to the National Ambient Air Quality Standards, and prior to approving any CE determination, FONSI, or ROD, ensure and document that the project satisfies air quality conformity requirements under 42 U.S.C. 7506(c) and 40 C.F.R. Part 93, Subpart B. Pursuant to 23 U.S.C. 327(a)(2)(B)(iv)(II), for any project requiring a project-level conformity determination under the Federal Clean Air Act and its implementing regulations, the FRA will make the project level conformity determination. FRA will restrict its review to data, analyses, applicable comments and responses, and other relevant documentation that enable FRA to make the project-level conformity determination. FRA may request that the State consolidate this information and documentation in a memorandum to facilitate FRA's decisionmaking.

8.6 Enforcement

If FRA determines that the State is not in compliance with this MOU, then FRA will take appropriate action to ensure the State's compliance, including withdrawing assignment of any responsibilities that have been assumed as provided in Part 9 of this MOU or terminating the State's participation in the Project Delivery Program as provided in Part 13 of this MOU.

PART 9. WITHDRAWAL OF ASSIGNED RESPONSIBILITIES

9.1 FRA-Initiated Withdrawal of Assigned Projects

- 9.1.1 The FRA may, at any time, withdraw the assignment of all or part of the FRA's responsibilities that have been assumed by the State under this MOU for any project or projects upon FRA's determination that:
- A. With respect to that project or projects, the State is not in compliance with a material term of this MOU or applicable Federal laws or policies, and, after having been given reasonable notice and an opportunity to take corrective action, the State has not taken corrective action to the satisfaction of FRA;
 - B. The project or projects involve significant or unique national policy interests for which the State's assumption of the FRA's responsibilities would be inappropriate; or
 - C. The State cannot satisfactorily resolve an issue or concern raised in a Government-to-Government consultation process with an Indian tribe, as provided in section 3.2.4.
- 9.1.2 FRA will notify the State in writing if it makes a preliminary determination to withdraw assignment of the FRA's responsibilities under section 9.1.1. FRA's notification will include the reasons for its determination. Upon receipt of this notice, the State may submit any comments or objections to FRA within thirty (30) calendar days, unless FRA agrees to an extension. Upon receipt of the State's comments or objections, FRA will make a final determination within thirty (30) calendar days, unless extended by FRA for cause, and notify the State of its decision. In making its final determination, FRA will consider the following: the State's comments or objections, the effect the withdrawal will have on FRA's program, the amount of disruption to the project or projects concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest.
- 9.1.3 The FRA will withdraw assignment of the responsibilities the State has assumed for any railroad project when the preferred alternative identified in the EA or Final EIS is a railroad project that is specifically excluded in section 3.3.2. In such case, section 9.1.2 will not apply.

9.2 State-Initiated Withdrawal of Assignment of Projects

- 9.2.1 The State may, at any time, request FRA withdraw all or part of the FRA's responsibilities that the State has assumed under this MOU for any existing or future project or projects.
- 9.2.2 Upon the State's decision to request that FRA withdraw the assignment of all or part of the FRA's responsibilities under section 9.2.1, the State will informally notify FRA of its desire for FRA to withdraw assignment of its responsibilities. No less than 30 days after providing FRA with informal notice, the State will provide FRA with a formal written notice explaining the reasons the State is requesting to withdraw assignment of the responsibilities. Upon receipt of this notice, the FRA will have 30 calendar days, unless extended by FRA for cause, to determine whether it will withdraw assignment of the responsibilities requested and communicate its determination to the State in writing. In making its determination, FRA will consider the reasons the State desires FRA to withdraw assignment of the responsibilities, the effect the withdrawal of assignment will have on FRA's program, the amount of disruption to the project or projects concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest.

9.3 Effect of Withdrawal On the Right to Terminate

FRA and the State agree that (1) nothing in this Part shall affect either party's ability to terminate this MOU in accordance with Part 13; and (2) the withdrawal of all or part of FRA's responsibilities under this Part does not effectuate termination of this MOU.

PART 10. PERFORMANCE MEASURES

10.1 General

- 10.1.1 FRA and the State have established performance measures that the State will seek to attain and that FRA will consider when evaluating the State's administration of the responsibilities it has assumed under this MOU during FRA's audits, which are required under 23 U.S.C. 327(g).
- 10.1.2 The State will collect and maintain all necessary and appropriate data related to the attainment of the performance measures. In collecting these data, the State will monitor its progress toward meeting the performance measures and include its progress in the self-assessment summary provided under section 11.1.5 of this MOU, which will be made available to the FRA.

10.2 Performance Measures

The performance measures applicable to the State in carrying out the responsibilities it has assumed under this MOU are as follows:

- A. Compliance with NEPA and other Federal environmental statutes and regulations:
- i. Maintain documented compliance with procedures and processes set forth in this MOU for the environmental responsibilities assigned under this MOU.
 - ii. Maintain documented compliance with the requirements of all applicable Federal statutes and regulations for which responsibility is assigned under this MOU.
- B. Quality Control and Assurance for NEPA decisions:
- i. Maintain and apply internal quality control and assurance measures and processes, including a record of:
 - a. Involvement of legal counsel as appropriate during the environmental review process, including legal sufficiency reviews in accordance with the FRA's Environmental Procedures or FRA regulations, as applicable;
 - b. Compliance with FRA's and the State's environmental document content standards and procedures, including those related to quality control and quality assurance (QA/QC); and,
 - c. Completeness and adequacy of documentation of project records for projects done under the Project Delivery Program.

- C. Relationships with agencies and the general public:
- i. Ensure effective communication among the State, Federal and State resource agencies, and the public resulting from assumption of responsibilities under this MOU.
 - ii. Maintain effective responsiveness to substantive comments received from the public, agencies, and interest groups on NEPA documents and environmental concerns.
 - iii. Maintain effective NEPA conflict resolution processes whenever appropriate.

PART 11. AUDITS AND MONITORING

11.1 General

- 11.1.1 The FRA will monitor and oversee the State's compliance with this MOU. In years one (1) through four (4) of this MOU's term, FRA's annual audits, conducted pursuant to 23 U.S.C. 327(g), will be the primary mechanism to (1) oversee the State's compliance with this MOU and applicable Federal laws and policies, (2) determine the State's attainment of the performance measures identified in Part 10, and (3) collect information needed for the USDOT Secretary's annual report to Congress pursuant to 23 U.S.C. 327(i). Pursuant to 23 U.S.C. 327(h), after the fourth year of the State's participation in the Project Delivery Program, the FRA will monitor the State's compliance with the MOU and with applicable Federal laws and policies, and assess whether the State is attaining the performance measures listed in Part 10 of this MOU. The FRA's monitoring and oversight may also include submitting requests for information to the State and other relevant Federal agencies, verifying the State's financial and personnel resources dedicated to carrying out the responsibilities assigned under this MOU, and reviewing documents and other information.
- 11.1.2 Pursuant to 23 U.S.C. 327(c)(4), the State is responsible for providing FRA any information FRA reasonably considers necessary to ensure that the State is adequately carrying out the responsibilities assigned. When requesting information subject to 23 U.S.C. 327(c)(4), FRA will provide the request to the State in writing, and the request will identify with reasonable specificity the information required, the reason such information is deemed necessary, and indicate a deadline for CHSRA to provide the information. The State will, in good faith, work to ensure the information requested is provided by the deadline. The State's response to an information request under this paragraph will include, where appropriate, making relevant employees and consultants available at their work location (including in-person meeting, teleconference, videoconference, or other electronic means as may be available).
- 11.1.3 The State will make project files and general administrative files pertaining to its discharge of the responsibilities it has assumed under this MOU reasonably available for inspection by FRA at the files' locations (including, where applicable, through an electronic portal or website) upon reasonable notice, which is not less than five (5) business days. These files will include, but are not limited to, all letters and comments received from governmental agencies, the public, and others with respect to the State's discharge of the responsibilities assigned under this MOU. As used in this paragraph, the terms "project files" and "general administrative files" include only documents in the custody and control of the State (whether paper or electronic).
- 11.1.4 In carrying out the responsibilities assigned under this MOU, the State will carry out regular QA/QC activities to ensure that the assigned responsibilities are being conducted in accordance with applicable law and this MOU. At a minimum, the State's QA/QC activities will include the review and monitoring of its processes and performance relating to project decisions,

environmental analysis, project file documentation, checking for errors and omissions, legal sufficiency reviews, and taking appropriate corrective action as needed. Within six (6) months of the Effective Date, the State will finalize a QA/QC process that satisfies the requirements of this section 11.1.4. In developing and implementing the QA/QC process, the State will consult with the FRA. The State will cooperate with FRA to address recommendations FRA may have with respect to its QA/QC process.

- 11.1.5 The State will perform regular self-assessments of its QA/QC process and performance to determine whether its process is working as intended, to identify any areas needing improvements in the process, and to timely take any corrective actions necessary to address the areas needing improvement. At least one (1) month prior to the date of a scheduled FRA audit, the State will transmit a summary of its self-assessment(s) to the FRA. The summary will include: a description of the scope of the self-assessment(s) conducted and the areas reviewed; a description of the process followed in conducting the self-assessment; a list of the areas identified as needing improvement; any corrective actions that have been or will be implemented; a statement from the Director of Environmental Services concerning whether the processes are ensuring that the responsibilities the State has assumed under this MOU are being carried-out in accordance with this MOU and all applicable Federal laws and policies; and a summary of the State's progress toward attaining the performance measures listed in Part 10 of this MOU. The State will conduct its self-assessments at least once annually.
- 11.1.6 Every three (3) months after the Effective Date for a period of two (2) years, the State will provide a report to the FRA listing any approvals and decisions the State has made with respect to the responsibilities the State has assumed under this MOU. After the second year, the State will submit its approval and decision report to the FRA at least once every six months. At its discretion, the State may satisfy the requirement of this paragraph by giving FRA access to a searchable on-line database that contains records of approvals and decisions made by the State under this MOU.

11.2 Auditing

- 11.2.1 Pursuant to 23 U.S.C. 327(g)(3), each audit carried out under this MOU will be carried out by an audit team, consisting of members that FRA designates in consultation with the State. Such consultation will include a reasonable opportunity for the State to review and provide comments on the proposed members of the audit team.
- 11.2.2 Pursuant to 23 U.S.C. 327(g)(1)(A), FRA and the State will meet, no later than 180 days after the Effective Date, to review implementation of the MOU and discuss plans for the first annual audit.
- 11.2.3 Pursuant to 23 U.S.C. 327(c)(4), the State will provide FRA any information FRA reasonably considers necessary to ensure that the State is adequately carrying out the responsibilities assigned. In accordance with this Part, the State will make documents and records available for review by FRA and will provide FRA with copies of any such documents and records as may be requested by FRA.
- 11.2.4 The State will cooperate with FRA in conducting audits, including providing FRA with information consistent with this Part and making all employees (including consultants) available at reasonable times. The State will make employees (including consultants) available either in-person at their normal place of business or by telephone, at the discretion of FRA.
- 11.2.5 The State and the FRA will each designate an audit coordinator who will be responsible for coordinating audit schedules, requests for information, and arranging audit meetings.
- 11.2.6 The FRA audits will include, but not be limited to, consideration of the State's technical competency and organizational capacity, compliance with the commitments in subpart 4.2, the

adequacy of the financial resources committed by the State to administer the responsibilities assigned, quality control and quality assurance process, attainment of performance measures, compliance with this MOU's requirements, and compliance with applicable Federal laws and policies in administering the responsibilities assigned.

11.3 Scheduling of Audits

- 11.3.1 For each annual audit, the designated audit coordinators for FRA and the State will work to establish general audit schedules at least three (3) months prior to the semiannual or annual anniversary dates of the Effective Date. The general audit schedules will include the dates that FRA will conduct the audit.
- 11.3.2 The State's audit coordinator will make all reasonable efforts to ensure all necessary employees (including consultants) are available to FRA during the specified dates on the general audit schedule. The State will also ensure that all of its documents and records are made reasonably available to FRA as needed during the general audit schedule.
- 11.3.3 After the general audit schedule is established, the audit coordinators will work to establish specific audit schedules at least two weeks prior to the scheduled audit. The specific audit schedules will include the dates, times, and locations during which FRA will meet with the State's employees (including consultants) and review documents and records.
- 11.3.4 To the maximum extent practicable, the specific audit schedule will identify all employees (including consultants) and documents and other records that the State will make available to FRA during the audit. With respect to employees, the State will work with FRA to specifically identify each employee. With respect to documents and other records, the State and FRA will try to be as specific as possible, although a general description of the types of documents will be acceptable.
- 11.3.5 Should FRA determine that it needs access to an employee or a document or other record that is not identified in the specific audit schedule, the State will make reasonable efforts to produce such employee or document or other record on the specified dates.

11.4 Other Federal or State Agency Involvement

The FRA may invite other Federal or State agencies as deemed appropriate, including State Historic Preservation Officers (SHPOs), to assist FRA in conducting an audit under this MOU by sitting in on interviews, reviewing documents obtained by FRA, and making recommendations to FRA. FRA will advise the State of the Federal or State agency's role in the audit.

11.5 Audit Report and Findings

- 11.5.1 Upon completing each audit, FRA will transmit to the State a draft of the audit report and allow the State a period of fourteen (14) calendar days within which to submit written comments to FRA. The FRA will grant any reasonable request by the State to extend the deadline to comment on the draft audit report. That extension will not exceed a total of thirty (30) calendar days. The FRA will review the comments and revise the draft audit report as may be appropriate.
- 11.5.2 As required by 23 U.S.C. 327(g)(2), FRA will make the draft audit report available for public comment. In carrying out this requirement and following the process described in section 11.5.1, FRA will publish the audit report in the *Federal Register* and allow a comment period of thirty (30) calendar days. The FRA will then respond to the public comments by incorporating the comments and responses into the final audit report. FRA will publish the final audit report in the *Federal Register* not later than sixty (60) calendar days after the comment period closes.

- 11.5.3 As required by 23 U.S.C. 327(g)(1)(C), FRA will ensure that the time period for completing an annual audit, from initiation to completion (including public comment and responses to those comments) does not exceed 180 days. The schedule prepared pursuant to section 11.3.1 will identify the date the audit is initiated.

PART 12. TRAINING

Within ninety (90) days after the Effective Date of this MOU, the State and FRA, in consultation with other Federal agencies as deemed appropriate, will assess the State's need for training and develop a training plan. The State will implement the training plan and will have all appropriate employees (including consultants hired for the purpose of carrying out FRA's responsibilities assigned under this MOU) attend applicable training. The training plan will be updated by the State and FRA, in consultation with other Federal agencies as appropriate, annually during the term of this MOU. While the State and FRA may take other agencies' recommendations into account in determining training needs, the State and FRA will jointly determine the training required under this part. Training may be provided by FRA, another Federal agency, or other parties, as appropriate.

PART 13. TERM, TERMINATION, AND RENEWAL

13.1 Term

This MOU has a term of five (5) years from the Effective Date.

13.2 Termination by the FRA

- 13.2.1 As provided by 23 U.S.C. 327(j)(1), FRA may terminate the State's participation in the Project Delivery Program, in whole or in part, at any time subject to the procedural requirements in 23 U.S.C. 327 and this Part 13.
- 13.2.2 If FRA determines that the State is not adequately carrying out the responsibilities assigned to the State under this MOU, FRA will provide to the State a written notification of its determination and provide the State a period of at least 120 calendar days to take such corrective action as the FRA determines is necessary to comply with this MOU, as identified in the FRA's written notification.
- 13.2.3 If, after notification and the corrective action period provided under this subpart, 3.2, the State fails to take satisfactory corrective action, as determined by FRA, FRA will provide the State with its written determination whether to terminate the State's participation in the Project Delivery Program in whole or in part. Any responsibilities terminated by FRA that have been assumed by the State through this MOU will transfer back to FRA.
- 13.2.4 The State's failure to adequately carry out the responsibilities assigned to the State may include, but is not be limited to:
- A. Persistent neglect of, or noncompliance with, any Federal laws, regulations, or policies;
 - B. Failure to cooperate with FRA in conducting an audit or any oversight or monitoring activity;
 - C. Failure to secure or maintain adequate personnel and financial resources to carry out the responsibilities assigned;
 - D. Substantial noncompliance with this MOU; or

- E. Persistent failure to adequately consult, coordinate, and/or take the concerns of other Federal agencies, as well as SHPOs, into account in carrying out the responsibilities assigned.

13.3 Termination by the State

- 13.3.1 The State may terminate its participation in the Project Delivery Program, in whole or in part, at any time by providing to FRA a notice at least 120 calendar days prior to the date that the State seeks to terminate its participation in this Project Delivery Program, and subject to such terms and conditions as FRA may provide.
- 13.3.2 Any such withdrawal of assignment which FRA and the State have agreed to under a transition plan will not be subject to the procedures or limitations provided for in Part 9 of this MOU and will be valid as agreed to in the transition plan.

13.4 Effect of Termination of Assignment for Highway Projects

Consistent with 23 U.S.C. 773.117(d), if the State's assumption of FHWA's responsibilities for the environmental review of highway projects is terminated, the State's responsibilities assigned under this MOU will automatically terminate.

13.5 Transition Plan

In the event of termination under subparts 13.3, 13.4, or 13.5 of this Part, FRA and the State will develop a transition plan consistent with 23 C.F.R. 773.117(c) to transition the responsibilities that the State has assumed back to FRA to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected Federal, State, and local agencies.

13.6 Validity of State Actions

Any environmental approvals made by the State pursuant to the responsibilities the State has assumed under this MOU will remain valid after termination of the State's participation in the Project Delivery Program or withdrawal of assignment by FRA. As among the USDOT Secretary, FRA, and the State, the State will remain solely liable and solely responsible for any decision or approval it makes pursuant to any of the responsibilities it has assumed while participating in the Project Delivery Program.

13.7 Suspension

The State's consent to Federal court jurisdiction and waiver of sovereign immunity under this MOU currently expires on January 1, 2021. Affirmative action by the State of California will be necessary to extend the State's consent and waiver. If the State does not extend the consent to Federal court jurisdiction and waive sovereign immunity, then the State's participation in the Program will be suspended on January 1, 2021, for three months, which may be extended after consulting with the State. If the State does not provide adequate certification as required by 23 C.F.R. 773.109(a)(6) and 773.115(c)(2) within this time period, then this MOU and the State's participation in the Program under this MOU will be terminated.

- A. During the period of suspension, the State will not make any NEPA decisions or implement any of the environmental review responsibilities assigned under this MOU.
- B. If, during the period of suspension, the necessary actions are taken to authorize a new consent to Federal court jurisdiction and waiver of sovereign immunity, then the State's participation in the Program will resume on the day the FRA acknowledges receipt of adequate certification provided by the State as required by 23 C.F.R. 773.109(a)(6) and 773.115(c)(2).

13.8 Renewal

This MOU is renewable in accordance with 23 U.S.C. 327 and implementing regulations, as in effect at the time of the renewal.

PART 14. AMENDMENTS

14.1 Generally

This MOU may be amended at any time upon mutual agreement by both the FRA and the State pursuant to 23 C.F.R. 773.113(b).

14.2 Additional Projects, Classes of Projects and Environmental Review Responsibilities

14.2.1 The FRA may assign, and the State may assume, responsibility for additional projects, and additional environmental review responsibilities, beyond those identified in Part 3 of this MOU in accordance with 23 C.F.R. 773.113(b).

14.2.2 Should the State decide to request responsibility for additional projects or classes of projects, or additional environmental review responsibilities, beyond those identified in Part 3 of this MOU, such request will be treated as an amendment to the State's original application that was submitted to FRA pursuant to 23 U.S.C. 327(b) and 23 C.F.R. part 773. In developing the application supplement, the State will identify the additional projects, classes of projects, and environmental review responsibilities it wishes to assume and make any appropriate adjustments to the information contained in the State's original application, including the verification of personnel and financial resources.

PART 15. AGENCY CONTACTS

15.1 Administrative Contacts

FRA and the State have established agency contacts who are responsible for administering the requirements of this MOU for their respective agencies. Unless otherwise provided for, all written notices or other documents required by this MOU should be sent to the agency contact.

For FRA: Ms. Stephanie Perez, Lead Environmental Protection Specialist, 1200 New Jersey Avenue, S.E., West Building, Washington, DC 20590

For the State: Mr. Mark McLoughlin, Director of Environmental Services, California High-Speed Rail Authority, 770 L Street, Suite 620, Sacramento, California, 95814

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed in duplicate as of the date of the last signature written below.

FEDERAL RAILROAD ADMINISTRATION



STATE OF CALIFORNIA

July 1, 2019
Date

_____ Date