

# Exhibit 2.10: Guidelines for Memoranda of Agreement

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## Exhibit 2.10: Guidelines for Memoranda of Agreement

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### Introduction

The federal agency is responsible for writing the Memorandum of Agreement (MOA), which details the stipulations for mitigation that must be carried out to comply with 36 CFR 800. It typically follows that State Historic Preservation Officer's (SHPO) concurrence on a Finding of Adverse Effect. In such cases, additional documentation in the finding is required that describes and evaluates any proposed mitigation measures or alternatives that were considered to resolve or mitigate the undertaking's adverse effects on historic properties. This information should be presented in a section entitled Alternatives and Mitigation Measures Considered, inserted before the Conclusions. Where an MOA does not accompany the Finding of Adverse Effect, this information is not included in the finding, but is submitted with the MOA as supporting documentation.

The Advisory Council on Historic Preservation's (ACHP's) regulations provide for development of two-party MOAs between a federal agency and SHPO. Typically, ACHP will not be involved in the consultation, but must be sent a copy of the MOA for inclusion in its files for, in this case, the Federal Highway Administration's (FHWA) Section 106 program.

The FHWA assigned its National Environmental Policy Act (NEPA) responsibilities to Caltrans. As a result, Caltrans is considered "FHWA," for purposes of NEPA and also for FHWA's Section 106 responsibilities. The first amended Section 106 Programmatic Agreement<sup>1</sup> ([106 PA](#)) documents Caltrans's FHWA role in its introductory clauses.

MOAs have three basic parts, plus the signatures:

- 1) Title: This identifies the undertaking, the signatories, and that it is an MOA.
- 2) Preamble (Whereas Clauses): As explained in the *ACHP's Guide on Section 106 Agreement Documents*, these cite the statutory authority for the undertaking; introduce the signatories (typically Caltrans as assigned by FHWA and SHPO for

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<sup>1</sup> *First Amended Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act as it Pertains to the Administration of the Federal-Aid Highway Program in California.*

two-party MOAs<sup>2</sup>); provides relevant background facts about the project; briefly describe the consultation process; and identify the consulting parties; explain that Caltrans as assigned by FHWA has determined its federal undertaking will have an adverse effect on historic properties; has consulted with SHPO under Section 106, has considered alternatives; parties with which Caltrans as the federal agency has consulted with other parties, including the relevant Caltrans District; and that Caltrans and SHPO agree that that the stipulations that follow will be implemented, and that the MOA is in effect until it expires or is terminated.

The “Now Therefore” clause concludes this first section of the MOA. This is the clause in which Caltrans as assigned by FHWA and SHPO agree that that the stipulations that follow will be implemented, and that the MOA is in effect until it expires or is terminated.

- 3) Stipulations: These describe in detail all the commitments that Caltrans as assigned by FHWA ensures will be completed in order to avoid, minimize or mitigate adverse effects to historic properties. They also include standard administrative stipulations for monitoring and reporting, dispute resolutions, late discoveries, address amendments in case the project changes or is modified, the MOA’s expiration date and how to terminate the MOA.

The “Execution clause concludes the stipulations section. It comes immediately after the stipulations and explains that by the federal agency and SHPO (Caltrans CSO Chief, as assigned by FHWA, and SHPO) signing the MOA and Caltrans CSO forwarding it to the ACHP, Caltrans as the federal agency is demonstrating that has afforded the ACHP an opportunity to comment and has taken into account the effects of the undertaking on historic properties, all in accordance with 36 Code of Federal Regulations (CFR) Part 800, which implement Section 106.

- 4) Signatures: The Caltrans CSO Chief, as assigned by FHWA and SHPO are the signatories that have the power to amend and terminate the MOA; invited signatories, including the relevant Caltrans District and applicants (such as local governments) are those that have some kind of responsibility for implementing or monitoring historic property treatment stipulations and that Caltrans CSO has invited to sign; and concurring parties are those that have been consulted and are essentially endorsing the MOA but cannot amend or terminate the MOA, nor does a concurring party’s refusal to sign the MOA prevent it from being executed.

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<sup>2</sup> ACHP becomes a signatory if it decides to participate, in which case it would be a three-party MOA.

Caltrans, as assigned by FHWA and SHPO are signatories to the MOA. Signatories have the sole authority to execute, amend, or terminate the agreement. Caltrans may invite additional parties to be signatories, usually parties who assume obligations under the agreement. Invited signatories have the same rights to terminate or amend the MOA as the other signatories. Caltrans *may* invite consulting parties to concur in the MOA; however, *consulting party(s)' do not have the rights to amend or terminate it.* Their signature(s) simply shows that they are familiar with the terms of the MOA and do not object to the terms. Refusal by any consulting party invited to concur in the MOA does not invalidate it.

The ACHP has online guidance for the timing, consultation and content of MOAs in its [Guidance on Section 106 Agreement Documents](#).

The stipulations that follow suggest language that is almost always appropriate depending on property type. The “whereas clauses” are largely standardized while the stipulations vary greatly depending on the historic properties involved. Section 800.6(c)(4)-(9) of the ACHP’s regulations provide specific requirements for what should be included as stipulations in an MOA that govern the way it can be terminated or amended.

What follows is meant to illustrate the components that are typically found in MOAs; it is not an actual template. Contact the CSO Section 106 PA/Coordination Branch Chief in the Caltrans Division of Environmental Analysis, Cultural Studies Office in Sacramento for recent examples of executed MOAs.

Black text = required headings and text

*Blue italic text = instructions and guidance to be considered*

*Red italic text = locations where specific text related to the project should to be inserted in an actual document*

*Purple text = sample text that can be used in document, as appropriate*

*The Title format illustrated below is the standard format for two-party MOAs.*

## MEMORANDUM OF AGREEMENT

**BETWEEN THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE (*UNDERTAKING*) PROJECT, (*LOCATION*) COUNTY,  
CALIFORNIA**

### Standard Preamble (Whereas Clauses)

*These clauses are presented in the order they typically appear. While there may be additional clauses, these “whereas” clauses below need to be in the MOA.*

**WHEREAS**, the Federal Highway Administration (FHWA) has assigned and the California Department of Transportation (Caltrans, including all subordinate divisions defined below) has assumed FHWA responsibility for environmental review, consultation, and coordination pursuant to 23 USC 327, which became effective on October 1, 2012 and applies to this undertaking; and

**WHEREAS**, pursuant to the January 2014 *First Amended Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act as it Pertains to the Administration of the Federal-Aid Highway Program in California* (Section 106 PA), Caltrans is deemed to be a federal agency for all highway-aid projects it has assumed, and in that capacity Caltrans has assigned the role of “agency official” to the Caltrans Division of Environmental Analysis (DEA) Chief for the purpose of compliance with 36 CFR 800 and is responsible for oversight of District environmental responsibilities. To provide for effective compliance, day-to-day responsibilities and coordination of the Section 106 process are further delegated to the DEA Cultural Studies Office (CSO) Chief; and

**WHEREAS**, the Caltrans has determined that the **Name of Undertaking**, which is described in Attachment A to this Memorandum of Agreement (MOA), on **Location information** County, California; will have an adverse effect on **[list historic property(ies)]**, a property determined to be eligible for inclusion in the National Register of Historic Places (National Register); and

**WHEREAS**, Caltrans has consulted with the California State Historic Preservation Officer (SHPO) pursuant to stipulation X.C and XI of the Section 106 PA, and where the Section 106 PA so directs, in accordance with 36 CFR Part 800, the regulation that implements Section 106 of the National Historic preservation Act of 1966 (16 U.S.C. 470f), as amended, regarding the Undertaking's effect on historic properties, and has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding pursuant to 36 CFR § 800.6(a)(1); and

*Below is an alternate paragraph when Caltrans must invite the ACHP to participate—as opposed to notifying the ACHP—when any one of the four conditions exist as stipulated in the Section 106 PA Stipulation X.C.3.*

**WHEREAS**, Caltrans has consulted with the California State Historic Preservation Officer (SHPO) pursuant to stipulation X.C and XI of the Section 106 PA, and where the Section 106 PA so directs, in accordance with 36 CFR Part 800, the regulation that implements Section 106 of the National Historic preservation Act of 1966 (16 U.S.C. 470f), as amended, regarding the Undertaking's effect on historic properties, and, pursuant to Stipulation X.C.3 of the Section 106 PA, Caltrans has notified and invited the Advisory Council on Historic Preservation (ACHP) to participate in this agreement pursuant to 36 CFR § 800.6(a)(1) and per its **date of letter** the ACHP has elected **to participate / not to participate**; and

**WHEREAS**, Caltrans, in consultation with the SHPO, has determined that the Undertaking's adverse effects cannot be avoided, and that implementation of the treatments set forth in Stipulation \_\_\_ of this MOA will satisfactorily take into account the Undertaking's adverse effects on the historic property; and

*The following whereas clauses may or may not be needed, depending on the undertaking, and type and degree of consultation and whether other entities will be responsible for completing any of the stipulations.*

**WHEREAS**, the United States Army Corps of Engineers (Corp), an invited signatory to the Section 106 PA, is a signatory to this MOA because there are historic **property[ies]** affected by this project within its jurisdiction; and

WHEREAS, the Caltrans has consulted with Caltrans District *[number of district]* and invited the District to sign this MOA as an invited signatory; and

WHEREAS, the Caltrans has consulted with *[list names of entities that will have responsibility for implementing one or more of the historic property treatment stipulations]* and invited *[list names]* to sign this MOA as an invited signatory(ies); and

WHEREAS, *[list Native American groups, list individuals by name as appropriate; any other consulting parties such as historical societies]* have participated in the consultation; and

WHEREAS, Caltrans has invited *[list Native American groups, list individuals by name as appropriate; any other consulting parties such as historical societies]* to sign this MOA as concurring parties; and

## Standard Now Therefore Clause

*Use this standard language for all federal undertakings that are governed by the Section 106 PA.*

NOW, THEREFORE, the Caltrans and the SHPO agree that if the Undertaking proceeds, the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

### STIPULATIONS

Caltrans shall ensure that the following stipulations are carried out:

## Sample Historic Property Treatment Stipulations

*Insert historic property treatment stipulations here. The Area of Potential Effects is always the first stipulation, followed by other “Treatment of Historic Property” stipulations. The type and number of stipulations will depend on the type of historic property that is adversely effect, the scope of the project, historic properties can be avoided through protective measures, and whether there are properties of concern to Native Americans.*

*The stipulations that follow are sample stipulations FHWA and Caltrans have used on other federal undertakings in California. Not every one of them needs to be*

*included in an MOA. They are provided only as samples because they illustrate the variety of mitigation measures that are available.*

Contact the CSO Section 106 PA/Coordination Branch Chief for recent examples of executed MOAs.

## I. AREA OF POTENTIAL EFFECTS

*This stipulation may include a statement about the APE or may refer to supporting documentation.*

### Sample Area of Potential Effects Stipulations

#### Sample 1:

The Area of Potential Effects (APE) for the Undertaking is depicted in Attachment **xx** of this MOA. Attachment **xx** set forth hereunder may be amended through consultation among the MOA parties without amending the MOA proper.

#### Sample 1:

A. The Undertaking's area of potential effects (APE) is depicted in Figure **add number** of the attached (date) Data Recovery Plan for Archaeological Site CA-**xxx-xxxx**, Name of federal undertaking Project, County name County (Attachment B: Data Recovery Plan). The APE includes the maximum existing or proposed right-of-way for all alternatives under consideration, easements (temporary and permanent), and encompasses the areas of the "project limits" and the "archaeological site limits" and adjacent staging area. The area of direct impact (ADI), also depicted in Figure 3 of the Data Recovery Plan, encompasses the "defined work area boundary." The APE and ADI are depicted in Attachment **add number**: Exhibit **add number** of this document.

B. If modifications to the Undertaking, subsequent to the execution of this MOA, necessitate the revision of the APE, District **add number** will consult with Caltrans and the SHPO to facilitate mutual agreement on the subject revisions. If Caltrans, District **add number**, and the SHPO cannot reach such agreement, then the parties to this MOA shall resolve the dispute in accordance with Stipulation **add number** below. If Caltrans, District \_\_\_\_, and the SHPO reach mutual agreement on the proposed revisions, then District **add number** will submit a final map of the revisions, consistent with the requirements of Stipulation VIII.A and Attachment 3 of the Section 106 PA no later than **add number** days following such agreement

## II. TREATMENT OF THE HISTORIC PROPERTY

*Treatment of historic properties should take into consideration advice in [Section 106 PA Attachment 6](#). For archaeological sites this section may reference a Treatment Plan, Environmentally Sensitive Area Plan or Data Recovery Plan that contains details of proposed activities and that has been reviewed by SHPO.*

### Sample Archaeological Site Stipulations

1. Caltrans shall ensure that the adverse effects of the Undertaking on archaeological site CA-~~xxx-xxx~~ are resolved by implementing the ***date and name of*** Data Recovery Plan (DRP) that is Attachment\_\_ of this MOA. Data recovery is prescribed for archaeological deposits contributing to the National Register eligibility of this historic property within the Undertaking's construction area of direct impact (ADI) as shown in Figure ***add number*** of the DRP.
2. In order to eliminate or minimize the potential to affect contributing deposits of CA-~~xxx-xxx~~ outside of the ADI, Caltrans will protect those contributing deposits by identifying them as Environmentally Sensitive Areas (ESAs), which shall be described in information included in the final construction plans of the Undertaking, and by enclosing in the temporary fencing the remainder of the site areas located outside the ADI. Caltrans shall further ensure that: 1) construction activities within ***add number*** feet of the properties shall be monitored by an archaeologist and Native American monitor; and 2) the integrity of the fence line as installed will be monitored by the archaeologist throughout the duration of the construction activities in the vicinity of the sites. An ESA Action Plan, prepared in accordance with Attachment 5 of the Section 106PA, is appended to this MOA as Attachment ***add number***.
3. Caltrans shall include provisions to ensure against incidental damage to those portions of CA-~~xxx-xxx~~ outside the ADI; such provisions will specify the establishment of an Environmentally Sensitive Area (ESA) around these areas. The ESA shall conform to the stipulations and attachment 5 of the Section 106 PA. The ESA Action Plan is part of the DRP.
4. Any MOA party may propose amendments to the DRP. Such amendment will not require amendment of this MOA. Disputes regarding amendments proposed hereunder shall be addressed through further consultation among the MOA parties, and a reasonable time frame for such consultation shall be established by Caltrans. If the dispute is resolved within this time frame, the MOA parties shall proceed in accordance with the terms of that resolution. If

the dispute is not resolved within this time frame, Caltrans shall render a final decision regarding the dispute and the MOA parties shall proceed in accordance with the terms of that decision.

5. Caltrans will not authorize the execution of any Undertaking activity that may affect (36 CFR§800.16(i)) historic properties in the Undertaking's APE until the requirements set forth in paragraph(s) *add number* and *add number* of this stipulation have been met.
6. Caltrans shall ensure that, to the extent permitted under §5097.98 and §5097.991 of the California Public Resources Code, the materials and records resulting from the activities prescribed by this MOA are curated in accordance with 36 CFR §79. The *name(s) of tribe(s)* have indicated their intention to rebury all recovered materials, while the *name(s) of tribe(s)* wish(es) to curate recovered materials at their tribal museum for potential display. Caltrans will continue to consult with *name(s) of tribe(s)* to reach consensus on the final disposition and or curation of artifacts recovered during data recovery. Until such time as an agreement can be reached between the parties, Caltrans shall curate all recovered artifacts at *name(s) of facility(ies)*.

### Sample Built Environment Stipulations

1.
  - a. *Use this stipulation only if the historic property is a National Historic Landmark or is nationally significant or when SHPO decides that historic properties with state or local significance should go to the Library of Congress; see Exhibit 7.6: Heritage Documentation for HABS/ HAER / HALS, Section 106 Documentation that NPS will review.*

Prior to the start of any work that could adversely affect any characteristics that qualify the *name of property* as a historic property, Caltrans shall consult with the National Park Service Pacific West Region office as to the required level [*choose as applicable*] Historic American Building Survey (HABS), Historic American Engineering Record (HAER), Historic American Landscape Survey (HALS) of documentation, shall ensure such documentation consistent with National Park Service standards is completed. The *name of entity responsible for doing the work* shall prepare draft and final reports to be reviewed by Caltrans and approved by NPS. NPS approval of the completed documentation is required prior to any alteration or demolition of the *name of property*.
  - b. Upon completion and after NPS approval, the District will distribute [*choose as applicable*] HABS/HAER/HALS documentation to the NPS for

transmittal to the Library of Congress; the Office of Historic Preservation; the California Room of the California State Library; **names of appropriate repositories**; Caltrans District **add number**; and Caltrans Headquarters Library and History Center.

2. a. *Use this stipulation when for all other historic properties as outlined in [Exhibit 7.6: Heritage Documentation for HABS/ HAER / HALS, Section 106 Documentation that NPS does not review](#).*  
Prior to the start of any work that could adversely affect any characteristics that qualify the **name of property** as a historic property, Caltrans shall consult with the SHPO as to the required level [*choose as applicable*] Historic American Building Survey (HABS), Historic American Engineering Record (HAER), Historic American Landscape Survey (HALS) of documentation, shall ensure such documentation consistent with National Park Service standards is completed. The **name of entity responsible for doing the work** shall prepare draft and final reports to be reviewed by Caltrans and SHPO. Caltrans and SHPO approval of the completed documentation is required prior to any alteration or demolition of the **name of property**.  
  
b. Upon completion and after SHPO approval, the District will distribute the [*choose as applicable*] HABS/HAER/HALS documentation the Office of Historic Preservation; the California Room of the California State Library; **names of appropriate repositories**; Caltrans District **add number**; and Caltrans Headquarters Library and History Center.
3. The **name of entity responsible for doing the work** shall work with the **name of entity** to place the historical information from the HABS/HAER/HALS report on a **name of entity** website with a link to a public website available to the public for a minimum period of **add number** years. The information link will also be made available to the Caltrans Transportation Library and History Center at Caltrans Headquarters in Sacramento for inclusion on its website. The **name of entity responsible for doing the work** shall prepare draft and final website text and design to be reviewed and approved by Caltrans.
4. The **name of entity responsible for doing the work** shall produce a documentary (motion picture or video) that addresses the history of the **name(s) of the affected historic properties/and or their historical context, and their importance** and use within the broader contextual history of **add relevant information**. The motion picture or video shall be of broadcast quality, between **add number** - and **add number** minute duration, and shall be made available to

- local broadcast stations, public access channels in the local cable systems, and requesting schools/libraries; one copy shall be submitted to the Caltrans Transportation Library and History Center at Caltrans Headquarters in Sacramento. The ***name of entity responsible for doing the work*** submit preliminary and final copies to Caltrans for review and approval prior to making the documentary available to recipients.
5. The ***name of entity responsible for doing the work*** shall produce and publish a booklet on the ***name(s) of the affected historic properties/and or their historical context, and their importance*** and use within the broader contextual history of ***add relevant information***. The booklet shall be ***describe format*** and shall include high quality black and white images of the ***name(s) of the affected historic properties***, historic photographs or drawings, as appropriate and text describing each of the ***name(s) of the affected historic properties***, year built, builder, resource type, significant character-defining features and its historic significance. The ***name of entity responsible for doing the work*** shall post an electronic version of the booklet on a The ***name of entity responsible for doing the work*** website and produce paper copies for distribution to local libraries, institutions and historical societies. One copy shall be submitted to the Caltrans Transportation Library and History Center in Sacramento. The ***name of entity responsible for doing the work*** shall maintain the camera-ready master booklet and produce additional copies if there is demand. The ***name of entity responsible for doing the work*** shall submit preliminary and final copies to Caltrans for review and approval prior to making the booklet available to recipients.
  6. The ***name of entity responsible for doing the work*** shall install two new freestanding informative permanent plaques or signage at public locations that provide a brief history of the ***name(s) of the affected historic properties and their historic importance***, and the reasons it/they was/were replaced or demolished. The ***name of entity responsible for doing the work*** shall submit preliminary and final copies of the text of the plaques or signage and the design thereof to Caltrans and SHPO for review and approval prior to installation.
  7. The ***name of entity responsible for doing the work*** shall offer artifacts removed from the ***name(s) of the affected historic properties*** during demolition to local museums, or other suitable facilities to be determined by Caltrans, ***name of entity responsible for doing the work***. The accepting

institutions shall arrange their own transportation to deliver the artifacts to designated locations.

8. Impacts to the Built Environment Related to Selection of either Alternative, and assuming the project alternative ultimately selected would have adverse effects on the following historic property(ies), these measures apply only if in such cases an adverse effect would occur to the property due to implementation of the Undertaking:

**a. Name of Historic Property or District**

- i. Prior to any work that would adversely affect any characteristics that qualify the **Name of Historic Property or District** as a historic property, Caltrans shall ensure that the recordation measures set forth in section **add number** and **add number** of this stipulation are completed.
- ii. The **name of entity responsible for doing the work** shall take large-format (4" x 5" or larger negative size) black and white photographs showing elevations of each of the individual **Name of Historic Property** contributors located within the APE. Photographs shall be processed for archival permanence in accordance with the Historic American Building Survey (HABS) photographic specifications. Views of the individual contributors shall include details of unique or character-defining architectural features and overviews of the property's setting and vegetation. A minimum of **add number** large format photographs that address various neighborhood street views in the **Name of Historic District**, both within and outside the APE, separate from photographs of the individual contributors, also shall be taken. A written report of between **add number** and **add number** pages shall be prepared, which upon its completion and approval shall be distributed, at a minimum, to the Regional Information Center at **names of host facility**, the **names of relevant and potential repositories**, Caltrans District **add number**, California Office of Historic Preservation and Caltrans Headquarters Transportation Library and History Center.
- iii. For those contributors to the **Name of Historic District** that will be directly impacted by the project, including relocation or destruction, in addition to the requirements established in **add number** of this stipulation, the **name of entity responsible for doing the work** shall take large-format photographs of interior detailing, if possessing integrity and dating from the period of historic significance, as

- determined by the Caltrans principal architectural historian or professionally qualified staff designee. Caltrans will consult with SHPO regarding recordation level and specifications for completing additional documentation.
- iv. The ***name of entity responsible for doing the work***, in concert with Caltrans CSO and District \_\_ will prepare a marketing plan to offer to the public the availability and relocation of each of the property contributors in the ***name of Historic District*** which would be directly impacted and fully acquired for right-of-way purposes by the Undertaking, if avoidance is not feasible. Notices of availability will be made through local newspapers and letters to be sent to local historical museums and heritage organizations. Such buildings would be available for a minimum of ***add number*** calendar days and building relocation costs would only be reimbursed for up to the estimated cost of demolition. The current owner will have the right of first refusal.
- v. If any buildings considered historic contributors will not be relocated as specified in ***add number*** of this stipulation, as appropriate, decorative, interpretive or character-defining building elements will be offered by the ***name of entity responsible for doing the work*** to local historical societies/museums, then offered to architectural recycling companies before demolishing the building completely.
- vi. The ***name of entity responsible for doing the work***, in consultation with Caltrans CSO, District \_\_, and SHPO, will develop an interpretive project that results in the documentation of the district's history and meaning to the general public by means of a pamphlet (not to exceed ***add number*** pages) on the immediate area's architectural heritage. This pamphlet will highlight the ***name of Historic District***, in the context of the social, economic, and cultural trends of ***period of significance of the Historic District***, with an emphasis on the ***styles or other important values*** reflected in the contributors within the district. ***Provide number of copies*** of the pamphlet will be published. These professionally researched, written and printed materials will be offered at no cost through the local museums and heritage organizations.
- vii. The ***name of entity responsible for doing the work***, in consultation with Caltrans CSO, District ***add number***, and SHPO, shall contribute content to a ***name of entity responsible for doing the work***-maintained website that will provide a user-friendly guide on the various major ***styles or other values*** represented within the

***name Historic District***, (with a special focus on the ***styles or other values*** of the contributors) and may include display historic photographs, maps, and other readily accessible background materials. The ***name of entity responsible for doing the work*** shall create the website within ***add number*** years of execution of this MOA and maintain the website through construction of the project.

- viii. Incorporation of hardscape features (including soundwalls) and landscape and architectural treatments that are compatible with the general character of the ***name of Historic District***, including color, texture, plants and vine treatment, shall be considered by the ***name of entity responsible for doing the work***, as feasible. If such context sensitive features are not feasible, documentation to justify the decision shall be submitted to Caltrans CSO, District ***add number*** and SHPO.
- ix. The ***name of entity responsible for doing the work***, in consultation with CSO, District ***add number***, and SHPO, shall restore any contributor parcels for which a temporary construction easement is required to its pre-construction conditions, following the *Secretary of the Interior's Standards for the Treatment for Historic Properties with Guidelines for Rehabilitation*.

### **Standard Stipulation for Treatment of Human Remains of Native American Origin**

*The following stipulation is standard in MOAs and is typically the third stipulation.*

#### **III. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN**

As legally mandated, human remains and related items discovered during the implementation of the terms of this Agreement and the Undertaking will be treated in accordance with the requirements of Health and Safety Code Section 7050.5(b). If pursuant to of Health and Safety Code Section 7050.5(c) the coroner determines that the human remains are or may be those of a Native American, then the discovery shall be treated in accordance with the provisions of Public Resources Code Sections 5097.98 (a)(d).

*When the undertaking occurs on Caltrans property (e.g., in Caltrans right of way, or other property that Caltrans owns, add the sentence below to this stipulation.*

Caltrans, as the landowner, shall ensure, to the extent possible, that the views of the Most Likely Descendent(s), as determined by the California Native American

Heritage Commission, is taken into consideration when decisions are made about the disposition of Native American human remains and associated objects.

### **Standard Stipulation for Discoveries and Unanticipated Effects**

*The following stipulation is standard in MOAs.*

#### \_\_\_ DISCOVERIES AND UNANTICIPATED EFFECTS

If Caltrans determines after construction of the Undertaking has commenced, that either the Undertaking will affect a previously unidentified property that may be eligible for the National Register, or affect a known historic property in an unanticipated manner, Caltrans will address the discovery or unanticipated effect in accordance with 36 CFR §800.13(b)(3). Caltrans at its discretion may hereunder and pursuant to 36 CFR §800.13(c) assume any discovered property to be eligible for inclusion in the National Register. *(Or cite relevant document).*

Standard Administrative Stipulations

*The following stipulations are standard in MOAs and typically follow the historic property treatment stipulations.*

#### \_\_\_ ADMINISTRATIVE PROVISIONS

##### A. STANDARDS

1. **Definitions.** The definitions provided at 36 CFR § 800.16 are applicable throughout this MOA.
2. **Professional Qualifications.** Caltrans will ensure that only individuals meeting the *Secretary of the Interior's Professional Qualification Standards* (48 FR 44738-39) (**PQS**) in the relevant field of study carry out or review appropriateness and quality of the actions and products required by Stipulations **[Add relevant stipulations]** in this MOA. However, nothing in this stipulation may be interpreted to preclude Caltrans or any agent or contractor thereof from using the properly supervised services of persons who do not meet the PQS.
3. **Documentation Standards.** Written documentation of activities prescribed by stipulations **[Add relevant stipulations]** of this MOA shall conform to *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740) as well as to applicable standards and guidelines established by the SHPO. **[Add others as applicable.]**

4. **Curation and Curation Standards.** Caltrans shall ensure that, to the extent permitted under § 5097.98 and § 5097.991 of the California Public Resources Code, the materials and records resulting from the activities prescribed by this MOA are curated in accordance with 36 CFR §79.

## B. CONFIDENTIALITY

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

## C. RESOLVING OBJECTIONS

1. Should any party to this MOA object at any time in writing to the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect to implementation of the MOA (other than the Undertaking itself), or to any documentation prepared in accordance with and subject to the terms of this MOA, Caltrans shall immediately notify the other MOA parties of the objection, request their comments on the objection within 15 days following receipt of Caltrans' notification, and proceed to consult with the objecting party for no more than 30 days to resolve the objection. Caltrans will honor the request of the other parties to participate in the consultation and will take any comments provided by those parties into account.
2. If the objection is resolved during the 30-day consultation period, Caltrans may proceed with the disputed action in accordance with the terms of such resolution.
3. If at the end of the 30-day consultation period, Caltrans determines that the objection cannot be resolved through such consultation, then Caltrans shall forward all documentation relevant to the objection to the ACHP, including Caltrans' proposed response to the objection, with the expectation that the ACHP will, within thirty (30) days after receipt of such documentation:
  - a. Advise Caltrans that the ACHP concurs in Caltrans' proposed response to the objection, whereupon Caltrans will respond to the objection accordingly. The objection shall thereby be resolved; or

- b. Provide Caltrans with recommendations, which Caltrans will take into account in reaching a final decision regarding its response to the objection. The objection shall thereby be resolved; or
  - c. Notify Caltrans that the objection will be referred for comment pursuant to 36 CFR § 800.7(c) and proceed to refer the objection and comment. Caltrans shall take the resulting comments into account in accordance with 36 CFR § 800.7(c)(4) and Section 110(1) of the NHPA. The objection shall thereby be resolved.
4. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, Caltrans may proceed to implement its proposed response. The objection shall thereby be resolved.
  5. Caltrans shall take into account any of the ACHP's recommendations or comments provided in accordance with this stipulation with reference only to the subject of the objection. Caltrans' responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.
  6. At any time during implementation of the measures stipulated in this MOA, should a member of the public raise an objection in writing pertaining to such implementation to any signatory party to this MOA, that signatory party shall immediately notify Caltrans. Caltrans shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment in writing on the objection to Caltrans. Caltrans shall establish a reasonable time frame for this comment period. Caltrans shall consider the objection, and in reaching its decision, Caltrans will take all comments from the other signatory parties into account. Within 15 days following closure of the comment period, Caltrans will render a decision regarding the objection and respond to the objecting party. Caltrans will promptly notify the other signatory parties of its decision in writing, including a copy of the response to the objecting party. Caltrans' decision regarding resolution of the objection will be final. Following issuance of its final decision, Caltrans may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.
  7. Caltrans shall provide all parties to this MOA, and the ACHP, if the ACHP has commented, and any parties that have objected pursuant to section\_\_ of this stipulation, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.

8. Caltrans may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

#### D. AMENDMENTS

1. Any signatory party to this MOA may propose that this MOA be amended, whereupon all signatory parties shall consult for no more than 30 days to consider such amendment. The amendment will be effective on the date a copy signed by all of the original signatories is filed with the ACHP. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation *[Add relevant stipulation]*, below.
2. Attachments to this MOA may be amended through consultation as prescribed in Stipulation *add number* or section *add number* of Stipulation *add number*, as appropriate, without amending the MOA proper.

#### E. TERMINATION

1. If this MOA is not amended as provided for in section D. of this stipulation, or if either signatory proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other MOA parties, explain the reasons for proposing termination, and consult with the other parties for at least 30 days to seek alternatives to termination. Such consultation shall not be required if Caltrans proposes termination because the Undertaking no longer meets the definition set forth in 36 CFR § 800.16(y).
2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with the terms of that agreement.
3. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other MOA parties in writing. Termination hereunder shall render this MOA without further force or effect.
4. If this MOA is terminated hereunder, and if Caltrans determines that the Undertaking will nonetheless proceed, then Caltrans shall comply with the requirements of 36 CFR 800.3-800.6, or request the comments of the ACHP pursuant to 36 CFR Part 800.

## F. DURATION OF THE MOA

1. Unless terminated pursuant to section E. of this stipulation, or unless it is superseded by an amended MOA, this MOA will be in effect following execution by the signatory parties until Caltrans, in consultation with the other signatory parties, determines that all of its stipulations have been satisfactorily fulfilled. This MOA will terminate and have no further force or effect on the day that Caltrans notifies the other MOA signatories in writing of its determination that all stipulations of this MOA have been satisfactorily fulfilled.
2. The terms of this MOA shall be satisfactorily fulfilled within ten (10) years following the date of execution by the signatory parties. If Caltrans determines that this requirement cannot be met, the MOA parties will consult to reconsider its terms. Reconsideration may include continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, Caltrans will comply with section \_\_\_ of this Stipulation if it determines that the Undertaking will proceed notwithstanding termination of this MOA.
3. If the Undertaking has not been implemented within **spell out number (numeral)** years following execution of this MOA, this MOA shall automatically terminate and have no further force or effect. In such event, Caltrans shall notify the other signatory parties in writing and, if it chooses to continue with the Undertaking, shall reinitiate review of the Undertaking in accordance with 36 CFR Part 800.

## G. REPORTING REQUIREMENTS AND RELATED REVIEWS

*The reporting requirements and related reviews stipulation can vary in its location. Often this stipulation is related to, and appears with, historic property treatment stipulations e.g., mitigation documentation report requirements, reviews of plans and stages of construction for rehabilitation projects, or other reports generated by the mitigation stipulations. However, when this stipulation is associated with project programmatic agreements (see [Project Programmatic Agreement](#) below), this would be an administrative stipulation that appears in the administrative stipulations.*

Each **[insert a specific time period]** following the execution of this MOA until it expires or is terminated, Caltrans shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Caltrans's efforts to carry out the terms of this MOA.

## H. EFFECTIVE DATE

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

## Putting the MOA into effect (MOA Execution)

*The following paragraph is the standard language for a two-party MOA between Caltrans as the federal agency and SHPO.*

**EXECUTION** of this MOA by Caltrans and the SHPO, its filing with the ACHP in accordance with 36 CFR §800.6(b)(1)(iv), and subsequent implementation of its terms, shall evidence, pursuant to 36CFR§800.6(c), that this MOA is an agreement with the ACHP for purposes of Section 110(l) of the NHPA, and shall further evidence that Caltrans has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that Caltrans has taken into account the effects of the Undertaking on historic properties.

## MOA Signatures

*The signatory parties always follow the MOA execution paragraph and are always in the following order: First, the Caltrans Division of Environmental Analysis Chief, who has been delegated to sign MOAs, as assigned by FHWA, followed by the SHPO's signature on the same page. If the ACHP decides to participate in the MOA (making it a "three-party" MOA), ACHP signs last under the signatory parties.*

*Then, the District Director signs as an invited signatory, as well as any other entity that Caltrans CSO has approved as an invited signatory, such as a local government. Finally, entities that are concurring parties sign; their signatures serve to endorse the MOA, but they have no responsibilities under the agreement.*

**SIGNATORY PARTIES:<sup>3</sup>**

**California Department of Transportation**

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

**Name**, Chief  
Division of Environmental Analysis

**California State Historic Preservation Officer**

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

**Name**  
State Historic Preservation Officer

*When ACHP participates in the MOA, it becomes a three-party MOA and the following signature block is the last “signatory” block on this page.*

**Advisory Council on Historic Preservation**

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

**Name**, Executive Director  
Advisory Council on Historic Preservation

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*Insert a page break after these signatures.*

*Invited signatories are on a separate page from the signatories.*

**INVITED SIGNATORY:<sup>4</sup>**

**California Department of Transportation**

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

**Name**  
District Director  
District \_\_, **City**

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<sup>3</sup> A signatory has the sole authority to execute, amend, or terminate the agreement. In California, Caltrans, as assigned by FHWA, is the federal agency and the SHPO or THPO are signatories. The ACHP is a signatory as well when it has participated in consultation. and ACHP’s signature is almost always required for the MOA to take effect, per ACHP’s online [Guidance on Section 106 Agreement Documents](#).

<sup>4</sup> As the federal agency official per the Section 106 PA, Caltrans CSO may invite additional parties to sign the MOA, such as an Indian tribe or that attaches religious and cultural significance to historic properties affected by the undertaking (off tribal lands), or any party that **assumes a responsibility** under the MOA. An invited signatory, upon signing the MOA has the authority to amend and terminate the agreement. However, if an invited signatory refuses to sign the MOA, it does not prevent the MOA from taking effect and the MOA “cannot impose a duty or responsibility on a party that has not signed” the MOA, per ACHP’s online [Guidance on Section 106 Agreement Documents](#).

*Follow the above format for any other invited signatories.*

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*Insert a page break after these signatures.*

*Concurring party signatures are on a separate page from the signatories and invited signatories.*

**CONCURRING PARTY(IES):<sup>5</sup>**

**Name of Organization or Local Entity**

By \_\_\_\_\_ Date \_\_\_\_\_  
**Name**  
**Title**

*Follow the above format for any other invited signatories.*

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*Insert a page break after these signatures.*

*Include any attachments, such as APE maps, project descriptions, ESA or SOIS plans, Data Recovery Plans, etc. and make sure each attachment is mentioned in the MOA itself.*

*Caltrans must submit a copy of the executed MOA, along with its supporting documentation specified in Section 800.11(f), to ACHP prior to approving the undertaking in order to meet the requirements of Section 106. 36 CFR §800.6(b)(1)(iv).*

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<sup>5</sup> A concurring party is a consulting party that Caltrans, as assigned by FHWA and at Caltrans' sole discretion, has invited to concur in the MOA. But, concurring parties do not have the authority to amend or terminate the MOA, their signatures are not required to execute the MOA, and the MOA may not assign any responsibilities to those who refuse to sign. A concurring party's signature essentially signifies that the party endorses the MOA, per ACHP's online [Guidance on Section 106 Agreement Documents](#). [

## MOA Checklist for Content

What follows below are points to consider when drafting an MOA and is adapted for Caltrans use from the ACHP's *Section 106 Agreement Checklist: Content*.

### Title

- Is this a Memorandum of Agreement or Programmatic Agreement?
- Are all the signatories named in the title? These include: Caltrans as assigned by FHWA, SHPO/THPO, and ACHP if participating.
- Is the undertaking(s) named in the title?

### Preamble – Whereas Clauses

- Is the entire undertaking and the nature of federal involvement described?
- Does a clause note the agreement was developed pursuant to Section 106 of the National Historic Preservation Act? Also include pursuant to the January 2014 First Amended Section 106 PA.
- Is Caltrans, as assigned by FHWA named as the responsible federal agency?
- If there is a lead federal agency, has it been named? If so, also identify the role(s) of other involved federal agencies [\[36 CFR §800.2\(a\)\(1\)\]](#)
- Is an applicant for federal-aid highway funds involved? If so, are the applicant's role and responsibilities described? This could be the Caltrans District or a local government for local assistance.
- If other federal funds, permits, or licenses may be used or required in the future for the undertaking, is an "other federal involvement" stipulation included? And the federal agency invited to be a signatory?
- Is the appropriate SHPO/THPO(s) named?
- Are all other consulting parties listed, including any Indian tribes, and representatives of local governments? See [36 CFR §800.2\(c\)](#).
- In a Programmatic Agreement, is the reason why a programmatic approach is needed described? See [36 CFR §800.14\(b\)\(1\)](#).
- Are historic properties affected by the undertaking listed? If numerous, consider summarizing and referencing an appendix.
- Does a clause acknowledge historic properties would or may be adversely affected? If historic properties would be adversely affected by the undertaking, briefly describe how.

- Is a clause stating that the ACHP has been notified of the finding of adverse effect included?
- If the ACHP was invited to participate and is participating in the consultation, is this stated?
- Is a reference included to the agency's public involvement efforts?
- Is the clause, "Now, therefore, Caltrans, as assigned by FHWA [for Caltrans as the federal agency] and SHPO/THPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties" included?

### Stipulations

- Are the stipulations preceded by a clear statement that the federal agency shall ensure that these terms are carried out? Due to the Caltrans NEPA assignment and per the Section 106 PA, Caltrans is the federal agency that should be mentioned in this statement.
- Has the Area of Potential Effects for the undertaking(s) been identified?
- Are procedures for responding to the unanticipated discovery of historic properties or inadvertent adverse effects to identified historic properties included? Where appropriate; see [36 CFR §800.6\(c\)\(6\)](#). See also [36 CFR §800.13](#).
- Are procedures for responding to emergency situations included? See [36 CFR §800.12](#).
- Is the need for confidentiality of sensitive information identified where appropriate? See [36 CFR §800.11\(c\)](#).
- Has the use of qualified professionals been stipulated where appropriate? See the [Section 106 PA Stipulation III](#) and [Attachment 1](#), as well as the Secretary of the Interior's professional qualifications standards, and 36 CFR §800.2(a)(1).
- If archaeological data recovery is stipulated, is a data recovery plan attached or referenced in the agreement? See the [Section 106 PA Attachment 6](#) and SERv2 [Chapter 5 Section 5.8.1](#), as well as [Exhibit 5.6](#). See the ACHP's archaeological guidance at [www.achp.gov/archguide](http://www.achp.gov/archguide).
- Are procedures for public involvement included for any ongoing reviews carried out according to the agreement's terms? See [36 CFR §800.2\(d\)](#) and [800.6\(a\)\(4\)](#).
- Are procedures for monitoring and reporting on agreement implementation included as appropriate to the project? Where appropriate; see [36 CFR §800.6\(c\)\(4\)](#).

- If other federal funds, permits, or licenses may be used or required in the future for the undertaking, is an “other federal involvement” stipulation included? Has Caltrans invited that federal agency to be a signatory?
- Is a dispute resolution procedure included?
- Are provisions for the amendment and termination of the agreement included? See [36 CFR §§800.6\(c\)\(7\)](#) and [800.6\(c\)\(8\)](#).
- Is the agreement’s duration specified? Required by [36 CFR §800.6\(c\)\(5\)](#).
- Is compliance with other federal laws, such as the Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act, and state and/or tribal laws, including state burial laws, acknowledged where appropriate? While these other laws can be noted in an MOA/PA, Section 106 agreements are solely for documenting an agency’s compliance with Section 106 of the NHPA. As such, Section 106 agreement documents should not provide for an agency’s compliance with other statutes.
- Do the stipulations conclude with an affirmation statement consistent with the template MOA?

### **Signatures**

- Are the signature blocks for signatories, invited signatories, and concurring parties clearly identified?
- Have all parties that are assigned responsibilities in the agreement been asked to be invited signatories?
- Does each signature line include a printed name, title, agency/organization, and date?

## MOA Checklist for Reviewers

What follows below are points to consider when reviewing the final drafts of MOA and is adapted for Caltrans use from the ACHP's *Section 106 Agreement Checklist: Reviewer's*.

### Editing and Mechanics

- Are all acronyms and abbreviations identified and used consistently?
- Are all of the provisions agreed upon during consultation included? Make sure stipulations are grouped logically.
- Do the stipulations clearly identify who is responsible for carrying out each measure?
- Do all tasks have clear timeframes for initiation and completion?
- Have all terms and references been used correctly and consistent with regulatory definitions? Avoid terms like “project area” or “cultural resource” or “historical resource” that are not used in 36 CFR Part 800.
- Are all stipulations written in the active voice? This is particularly important so that the parties with responsibilities clearly understand what is being asked of them.
- Is the process for post-review decision making described in a complete, logical, and organized way? Who makes the decisions? Who is consulted? When do decisions need to be made? What information is needed?
- Are all attachments and appendices cited in the MOA included? Confine lengthy lists of historic properties, detailed procedural instructions, maps, address lists, etc. to appendices.
- Are spelling, grammar, page numbering, section numbering, etc. accurate and consistent?
- Can a cold reader understand the MOA and what it requires? A cold reader should not have to refer to consultation meeting minutes or other background documents to understand the MOA's provisions.
- Are the signature blocks for signatories, invited signatories, and concurring parties clearly separated or designated on the signature page(s)?

### Preparation

- Are all parties to whom the MOA has assigned responsibilities included as signatories or invited signatories?

- Does the duration of the MOA allow adequate time for project implementation and the completion of all stipulations?
- Does Caltrans (as the federal agency) leadership support commitments made in the MOA?
- If the MOA is executed in counterparts,<sup>6</sup> does each signature page include the title of the MOA? Caltrans, as the federal agency, should compile the individually executed counterparts into a single document before forwarding the MOA to the ACHP for signature or filing.
- If the ACHP is participating in the consultation, have all the other signatories, and invited signatories with assigned responsibilities, signed the MOA before Caltrans forwards the document to the ACHP for signature?
- Once fully executed, has the MOA been filed with the ACHP?
- Once fully executed, has a copy of the MOA been provided to all consulting parties?
- Has the executed MOA been made available to the public?

## MOA Amendments

There are a few reasons for which it is appropriate to amend MOAs: the project scope or size might change such that there are additional historic properties within an expanded APE, or different approaches are needed to avoid, minimize or mitigate adverse effects to historic properties in the APE; Caltrans or other signatories to the MOA might not be able to carry out their stipulations within the agreed upon timeframe; or Caltrans, as the federal agency, may change the scope or features of the undertaking.

When the MOA needs to be changed, Caltrans prepares an amended MOA following the same format as for the original MOA. Use the same project title block and add “Amendment to” before that title.

### Amended MOA Preamble’s Whereas Clauses:

- Identify the original project title and when it was originally executed,
- Identify how the amended MOA will be referenced, for example the “Original Project Title, as Amended Month, Day, Year,”

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<sup>6</sup> ACHP uses “counterparts” to mean “that each signatory, invited signatory, and concurring party may sign and date a separate signature page concurrently or sequentially that are then attached together to make up a single agreement with all signatures,” per ACHP’s online *Guidance on Section 106 Agreement Documents*.

- Include concise explanation of the reasons for the amendment
- State that Caltrans, as assigned by FHWA and described in Stipulation VI *First Amended Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in California*, executed January 2014 (Section 106 PA) will send a copy of this executed amendment to the ACHP (if ACHP is not a signatory).
- Include a clause that states, “NOW, THEREFORE in accordance with Stipulation \_\_\_ [*insert the number of the amendment stipulation in the original MOA*] of the MOA, Caltrans and the SHPO [*and any invited signatories*] agree to amend the MOA as follows.”
- Include the appropriate Stipulations that address the changes needed
  1. Amend Stipulation \_\_\_ [*insert the number of the stipulation to be amended*] so it reads as follows: *Insert the amended text of the stipulation.*

If the amendment involves adding a new stipulation to the Agreement, add the new stipulation.
  2. Stipulation \_\_\_ [*insert the number of the new stipulation*]: *Insert the amended text of the new stipulation.*
- Insert signature and date lines for all Signatories. If the amendments add duties to a party that did not sign the original MOA, add a signature line for that party.

Amended MOAs Amendments are executed in the same manner as the original agreement in that the same signatories and invited signatories sign, and Caltrans files a fully-executed copy with the ACHP

## Project Programmatic Agreements

A project Programmatic Agreement (PA) may be preferable to using an MOA for multiple or complex projects when:

1. It is not possible to fully determine in advance what effects there might be to historic properties or There are occasions where completing the Section 106 process prior to making a final decision on a particular undertaking is not practical. Typically, a project PA is used when Caltrans cannot fully determine how a project may affect historic properties in the APE or cannot determine the location, significance or character of the historic property (.e.g., archaeological sites, large land areas, multiple activities, or widely divergent alternatives within the APE), or Caltrans or a local agency is legally mandated to make a final decision on the project that does not mesh with the timeframes for complying with Section 106.
2. Caltrans has routine management and maintenance activities involving historic properties for which federal funds, permits or licenses may be required, such as maintaining historic highways or bridges.

The process for consulting with affected parties and drafting a project PA is the same as for a project MOA. The PA format is the same as described above for an MOA, in terms of including the PA title, preamble, stipulations and signatures. However, it may contain stipulations for how to phase identification and evaluation of historic properties, how to phase assessing potential effects to historic properties, or developing the appropriate plans for treating the types of historic properties that are found when prudent and feasible alternatives are identified.

Additionally, the process for consulting with affected parties and drafting a project PA for Caltrans routine management or maintenance activities is the same as for a project MOA, but the activities will be more focused in the stipulations and may not address adverse effects, but rather ways in which adverse effects can be avoided, when CSO or SHPO review is appropriate and situations in which certain activities may have an adverse effect.