

**DRAFT
MEMORANDUM OF AGREEMENT
AMONG
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,
THE COUNTY OF EL DORADO,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE SILVA VALLEY PARKWAY INTERCHANGE PROJECT
EL DORADO COUNTY, CALIFORNIA**

WHEREAS, the United States Army Corps of Engineers, Sacramento District (Corps) proposes to issue a permit (Undertaking) pursuant to Section 404 of the Clean Water Act to the County of El Dorado (County), for the Silva Valley Parkway Interchange Project located in El Dorado County, California (Project); and

WHEREAS, the Project would include grading and construction of an interchange between Silva Valley Parkway and State Highway 50 within an approximately 197-acre project site, as depicted in the January 5, 2011, *US50/Silva Valley Pkwy Interchange* map (Attachment 1 of this Memorandum of Agreement (MOA)); and

WHEREAS, the Corps, in consultation with the California State Historic Preservation Officer (SHPO) and in accordance with 36 CFR § 800.4(a)(1), has established the Undertaking's Area of Potential Effects (APE) as including all areas to be developed as part of the Undertaking, including all temporary and permanent easements areas and construction staging areas, depicted in Attachment 1 to this MOA; and

WHEREAS, the Corps, in consultation with SHPO and in accordance with 36 CFR § 800.4(b) and § 800.4(c), has inventoried historic properties within the Undertaking's APE and has determined that CA-ELD-1266-H (Mormon Tavern Site), CA-ELD-585/H (Tong Cemetery feature), and CA-ELD-585/H (cabin and privy feature) are eligible for listing in the National Register of Historic Places (NRHP) under Criterion D, and three segments of the old Lincoln Highway, SV-15/P-9-809, SV-27/P-9-809, and SV-28/P-9-809, are eligible for listing in the NRHP under Criterion A, and the SHPO has concurred with this determination; and

WHEREAS, the Corps, in consultation with SHPO, has applied the criteria in 36 CFR § 800.5(a) for determining adverse effect, and determined that the Undertaking will have an adverse effect on SV-28/P-0-809 and will have an adverse effect on CA-ELD-1266-H, CA-ELD-585/H (Tong Cemetery feature), and CA-ELD-585/H (cabin and privy feature) if it is determined they cannot be avoided during construction; and

WHEREAS, the Corps has considered alternatives to the Undertaking, has chosen to proceed with the Undertaking, and has determined to resolve adverse effects of the Undertaking on SV-28/P-0-809, CA-ELD-1266-H, CA-ELD-585/H (Tong Cemetery feature), and CA-ELD-585/H (cabin and privy feature) through the execution and implementation of this MOA; and

WHEREAS, the Corps has consulted with the Clarksville Region Historical Society (CRHS) and invited the CRHS to participate in this MOA as an invited signatory party; and

WHEREAS, the Corps has consulted with the Lincoln Highway Association's California Chapter (LHA) and invited the LHA to participate in this MOA as a concurring party; and

WHEREAS, the County, who is the Clean Water Act Section 404 permit applicant, has participated in the consultation and has been invited to participate in this MOA as a signatory party; and

WHEREAS, the Advisory Council on Historic Preservation (Council) has been notified of this Undertaking and has declined to participate in the Section 106 consultation process in a letter dated October 11, 2012; and

NOW, THEREFORE, the Corps, the County, and the SHPO agree that 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

The Corps shall make this MOA a condition of the Clean Water Act Section 404 permit for the Project and shall ensure that the following measures are carried out by the County to the satisfaction of the Corps:

I. TREATMENT OF ADVERSE EFFECTS OF HISTORIC PROPERTIES

A. TREATMENT OF HISTORIC PROPERTIES

1. The County shall implement the September 2012, *Historic Property Treatment Plan, Silva Valley Interchange, El Dorado Hills, El Dorado County, California* (Plan), included as Attachment 2 of this MOA. A qualified archeologist, as described in Stipulation III.A.1, and with the authority to stop construction activities should any concerns arise regarding adverse effects to historic properties, will monitor implementation of the Plan.
2. The Plan may be amended through consultation among the MOA parties, as described in Stipulation IV.D, without amending the MOA.

B. DISCOVERY OF CULTURAL REMAINS DURING GROUND-DISTURBING ACTIVITIES

1. The County shall employ a qualified archeologist, as described in Stipulation III.A.1, will monitor all project-related ground-disturbing activities.

2. Should any human remains or significant cultural material (that which was not previously identified through remote sensing and subsequently addressed in accordance with the Plan) be discovered during project implementation, the archaeologist will ensure work immediately ceases (allowing for necessary safety precautions to be completed) within 100 feet of the discovery and the discovery location secured from additional impacts from project construction. The archaeologist, or other County representative, shall immediately notify the Corps of the discovery. The Corps shall coordinate with SHPO and appropriate Tribe(s), regarding the discovery, pursuant to 36 CFR § 800.13. In the event that human remains are discovered, procedures under Section 7050.5 of the State of California Health and Safety Code and Section 5097.98 of the Public Resources Code shall be employed. Once the Corps is notified of the discovery, a report shall be prepared pursuant to Stipulation II.C of this MOA.
3. Once treatment of the significant archeological find or the treatment of human remains has been completed in the area secured from project construction, the project may resume in that area.

C. NATIVE AMERICAN CONSULTATION AND MONITORING

1. Should any cultural material or human remains of Native American origin be discovered during project construction, the archaeologist will ensure work immediately ceases (allowing for necessary safety precautions to be completed) within 100 feet of the discovery and the discovery location secured from additional impacts from project construction. The archaeologist, or other County representative, shall immediately notify the Corps of the discovery. The Corps shall coordinate with SHPO and appropriate Tribe(s), Native American Heritage Commission, if appropriate, and Most Likely Descendent (MLD), if appropriate, regarding the discovery, pursuant to 36 CFR § 800.13. Artifacts associated with burials are to be treated in the same manner as the human remains in accordance with the recommendations of the MLD.

II. REPORTING REQUIREMENTS AND RELATED REVIEWS

- A. Within ten (10) days of completion of all fieldwork required by the Plan prior to the start of construction, the County shall notify the Corps and the SHPO.
 1. At least 30 days prior to the start of construction, the archaeologist shall prepare a draft report detailing the steps taken to complete the pre-construction fieldwork and submit the draft report to the Corps, CHRS, and the SHPO concurrently for comment and review. The Corps, CHRS, and the SHPO shall have 30 days to review and comment on the draft report. Upon receipt of comments from the Corps and/or the SHPO, or after the 30-day

review period has lapsed, the archaeologist shall prepare the final report and submit three copies of the final report to the Corps. The Corps shall forward a copy of the final report to the SHPO and CHRS.

B. Within ten (10) days of completion of construction activities, the County shall notify the Corps and SHPO.

1. Within 60 days of completion of construction activities, the archaeologist shall prepare a draft report and submit it to the Corps and the SHPO concurrently for comment and review. The report shall include a site map, photographs of the site and historic properties before and after all fieldwork and construction activities, and any other observations, such as unanticipated discovery results. The Corps and the SHPO shall have 30 days to review and comment on the draft report. Upon receipt of comments from the Corps and/or the SHPO, or after the 30-day review period has lapsed, the archaeologist shall prepare the final report and submit three copies of the final report to the Corps. The Corps shall forward a copy of the final report to the SHPO and CRHS.

C. Should any human remains, determined to not be of Native American origin, or significant cultural material be discovered during project construction, the archeologist shall prepare a draft report on the discovery and distribute the report concurrently to the Corps, CRHS, and the SHPO. The report shall fully describe the finding(s) with maps and photographs. Disposition of any artifacts and remains shall be clearly addressed as stipulated in the Plan. Artifacts or features of cultural or temporal significance shall be completely described with drawings and/or photographs. The Corps, CRHS, and the SHPO shall have 30 days to review and comment on the draft report. Upon receipt of the comments from the Corps and/or the SHPO, or after the 30-day review period has lapsed, the archaeologist shall prepare the final report and submit two copies of the final report to the Corps. The Corps shall forward a copy of the final report to the SHPO and CHRS.

D. All reports shall be of professional quality and shall include good photographs and maps, and illustrations, as appropriate, as specified in Stipulation III.A of this MOA.

III. STANDARDS

A. PROFESSIONAL QUALIFICATIONS AND STANDARDS

1. Professional Qualifications.

All historic preservation activities implemented pursuant to this MOA shall be conducted by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of Interior's *Professional Qualifications Standards* (PQS) for Archeology, History, or Architectural History, as appropriate (48 FR 44738-39).

2. Historic Preservation Standards.

All historic preservation activities carried out pursuant to the MOA shall meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740) as well as standards and guidelines for historic preservation activities established by the SHPO and National Park Service.

3. Curation and Curation Standards.

The Corps shall ensure that the materials and records resulting from the historic preservation work stipulated in this MOA are curated in accordance with 36 CFR Part 79.

4. Documentation Standards.

The Corps shall ensure that all written documentation prescribed by Stipulation I and II of this MOA shall conform to the *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.

IV. ADMINISTRATIVE STIPULATIONS

A. CONFIDENTIALITY.

The parties to this MOA acknowledge that Historic Properties covered by this MOA are subject to the provisions of Section 304 of the NHPA (16 U.S.C. § 470w-3), 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 Section 304 of the NHPA.

B. REPORT DISTRIBUTION.

The Corps shall ensure that copies of all technical reports and studies prepared to satisfy the terms of this MOA are provided upon completion by the County to all parties to this MOA and to the North Central California Information Center (NCCIC) of the California Historical Resources Information System (CHRIS), consistent with requirements of Stipulation IV.A., above.

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 the implementation of the MOA, or to any documentation prepared in accordance with and subject to the terms of this MOA, the Corps shall immediately notify the other parties to this MOA of the objection, and shall request their comments on the objection be provided

within 15 days following receipt of the Corps' notification, and proceed to consult with the objecting party for no more than 30 days to resolve the objection. The Corps 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, the Corps may proceed with the disputed action in accordance with the terms of that resolution.
3. If after initiating such consultation, the Corps determines that the objection cannot be resolved through consultation, the Corps shall forward all documentation relevant to the objection, including the Corps' proposed response to the objection, to the Council, with the expectation that the Council will, within 30 days after receipt of such documentation, do one of the following:
 - a. advise the Corps that the Council concurs in the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly. The objection shall thereby be resolved; or
 - b. provide the Corps with recommendations, which the Corps will take into account in reaching a final decision regarding its response to the objection. The objection shall thereby be resolved; or
 - c. notify the Corps that the objection will be referred for comment, pursuant to 36 CFR § 800.7(c), and proceed to refer the objection and comment. The Corps shall take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4) and Section 110(l) of the NHPA (16 U.S.C. § 470h-2(l)). The objection shall thereby be resolved.
4. Should the Council not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, the Corps may assume the Council's concurrence in its proposed response to the objection and proceed with implementation of that response. The objection shall thereby be resolved.
5. The Corps shall take into account any Council recommendation or comment provided in accordance with Section IV.C.3 of this stipulation, with reference only to the subject of the objection. The Corps' responsibility to ensure all actions are carried out under this MOA, that are not the subject of the objection, shall remain unchanged.
6. At any time during the implementation of the terms of this MOA, should an objection pertaining to such implementation be raised by a member of the public, the Corps shall immediately notify the other parties to this MOA in writing of the objection and take the objection into consideration. The Corps shall consult with the objecting party and, if the objecting party so requests,

with the other parties to this MOA, for no more than fifteen (15) days. Within ten (10) days following closure of this consultation period, the Corps will render a decision regarding the objection and notify all parties to this MOA of its decision in writing. In reaching its decision, the Corps will take into account any comments from the consulting parties regarding the objection, including the objecting party. The Corps' decision regarding the resolution will be final. The objection will thereby be resolved.

7. The Corps 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.
8. The Corps shall provide all parties to this MOA and the Council, when the Council has issued comments hereunder, and any parties that have objected pursuant to Section C.6 of this stipulation, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.

D. AMENDMENTS

1. Any party to this MOA may propose that this MOA be amended, whereupon all parties to this MOA will consult for no more than thirty (30) days to consider such amendment. The Corps may extend this consultation period. The amendment process shall comply with 36 CFR § 800.6(c)(1) and § 800.6(c)(7). This MOA may be amended only upon the written agreement of the signatory parties. If it is not amended, this MOA may be terminated by the Corps or the SHPO.
2. The Plan may be amended through consultation without amending the MOA proper. Any party to this MOA may propose that the Plan be amended, whereupon all parties to this MOA will consult for no more than thirty (30) days to consider such amendment. The Corps may extend this consultation period. The amendment process shall comply with 36 CFR § 800.6(c)(1) and § 800.6(c)(7). The Plan may be amended only upon agreement of the signatory parties. If the signatory parties cannot reach consensus, the Plan shall remain unchanged.

E. TERMINATION

1. Only the Corps, County, or the SHPO may terminate this MOA. If this MOA is not amended as provided for in Section D of this stipulation, or if the Corps, County, or the SHPO proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other parties to this MOA, explain the reasons for proposing termination, and consult with the other parties to this MOA for at least thirty (30) days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, then the parties shall proceed in accordance with

the terms of that agreement. Such consultation shall not be required if the Corps proposes termination because the Undertaking no longer meets the definition set forth at 36 CFR § 800.16(y).

2. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other parties to this MOA in writing. Termination hereunder shall render this MOA without further force or effect.
3. If this MOA is terminated hereunder, and if the Corps determines that the undertaking will nonetheless proceed, then the Corps shall either consult in accordance with 36 CFR § 800.6 to develop a new MOA, or request the comments of the Council, 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 the Corps, in consultation with the other parties to this MOA, determines that all the terms of this MOA have been satisfactorily fulfilled. Upon a determination by the Corps that all of the terms of this MOA have been satisfactorily fulfilled, the Corps will immediately notify the other parties to this MOA in writing of its determination that all terms of this MOA have been satisfactorily fulfilled and of the termination of the MOA. Following provision of such notice, this MOA will have no further force or effect.
2. The terms of this MOA shall be satisfactorily fulfilled within five (5) years following the date of execution by the signatory parties. If the Corps determines that this requirement cannot be met, the parties to this MOA will consult to reconsider its terms. Reconsideration may include the continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, the Corps will comply with Section E.3 of this stipulation, if it determines that the Undertaking will proceed notwithstanding termination of this MOA.
3. If the Project has not been authorized under Section 404 of the Clean Water Act within five (5) years following execution of this MOA by the signatory parties, this MOA shall automatically terminate and have no further force or effect. In such event, the Corps shall notify the other MOA 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. EFFECTIVE DATE.

This MOA will take effect immediately upon full execution by the Corps and the SHPO.

EXECUTION of this MOA by the Corps, County, and the SHPO, pursuant to 36 CFR § 800.6, including its transmittal by the Corps to the Council in accordance with 36 CFR § 800.6 (b)(1)(iv), and subsequent implementation of its terms, shall evidence that the Corps has afforded the Council an opportunity to comment on the Undertaking and its effects on Historic Properties, and that the Corps has taken into account the effects of this Undertaking on Historic Properties.

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REGARDING
THE SILVA VALLEY PARKWAY INTERCHANGE PROJECT
EL DORADO COUNTY, CALIFORNIA**

SIGNATORY PARTIES:

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

Name: _____ Date: _____
Michael S. Jewell
Title: Chief, Regulatory Division

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

Name: _____ Date: _____
XXXX
Title: State Historic Preservation Officer

COUNTY OF EL DORADO

Name: _____ Date: _____
XXX
Title: XXX

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EL DORADO COUNTY, CALIFORNIA**

INVITED SIGNATORY PARTY:

CLARKSVILLE REGION HISTORICAL SOCIETY

Name: _____ Date: _____

Hal Erpenbeck

Title: President

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CONCURRING PARTY:

LINCOLN HIGHWAY ASSOCIATION, CALIFORNIA CHAPTER

Name: _____ Date: _____

XXX

Title: XXX

ATTACHMENT 1
Area of Potential Effects/Permit Area

ATTACHMENT 2
Historic Properties Treatment Plan