
UP PIRATE - Continuing Section 106 Consultation - Final Executed MOA

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 1 attachment (3 MB)

UP PIRATE FINAL MOA 2-20-26 EXECUTED.pdf;

Dear Consulting Parties:

On June 30, 2022, the Union Pacific Railroad Company (UP) filed a petition with the Board requesting authority to construct and operate approximately six miles of new rail line in Maricopa County, Arizona (the proposed Pecos Industrial Rail Access and Train Extension [PIRATE] rail line).

Over the past three years, the Surface Transportation Board's Office of Environmental Analysis (OEA) has circulated six drafts of the project's Memorandum of Agreement (MOA) for review and comment to the Section 106 consulting parties under the National Historic Preservation Act. OEA has revised each of the subsequent drafts to address the comments and input from the Section 106 consulting parties. The Final MOA was circulated on February 9, 2026, and OEA is now providing you with the executed agreement.

OEA has filed the fully executed MOA with the Advisory Council on Historic Preservation and is providing the attached copy to all Section 106 consulting parties. Along with the rest of the record in this proceeding, the fully executed MOA is available on the Board's website (www.stb.gov). OEA is continuing to revise the draft Historic Properties Treatment Plan (HPTP) and will be seeking additional input from the Section 106 consulting parties soon.

Thank you for your continued participation in the historic review process. Should you have any questions, please contact Alan Tabachnick, the Board's Federal Preservation Officer, at Alan.Tabachnick@stb.gov.

Sent on behalf of Alan Tabachnick, the Board's Federal Preservation Officer.

Kind Regards,

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**UP PIRATE (FD 36501) Continuing Section 106 Consultation
Distribution List for the Final Executed MOA (February 24, 2026)**

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Arizona SHPO	Caroline Klebacha	Archaeological Compliance Specialist	cklebacha@azstateparks.gov
Arizona SHPO	Mary-Ellen Walsh	Archaeological Compliance Specialist	mwalsh@azstateparks.gov
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Arizona State Museum	Dr. Patrick Lyons	Director	plyons@arizona.edu
Arizona State Museum	Brad Stone	Arizona Antiquities Act Administrator	bstone@arizona.edu
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Flood Control District of Maricopa County	Paul Baughman	Chief Engineer	paul.baughman@maricopa.gov
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Gila River Indian Community	Larry Benallie, Jr.	Archaeological Compliance Specialist	Larry.BenallieJr@gric.nsn.us
Gila River Indian Community	Reylynne Williams	Tribal Historic Preservation Officer (THPO)	Reylynne.Williams@gric.nsn.us

Consulting Party	Contact	Position	Email
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Mescalero Apache Tribe	Thora Walsh Padilla	President	tpadilla@mescaleroapachetribe.com
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Pascua Yaqui Tribe	Dr. Karl Hoerig	THPO	Karl.Hoerig@pascuayaqui-nsn.gov
Pueblo of Zuni	Arden Kucate	Governor	arden.kucate@ashiwi.org
Pueblo of Zuni	Kurt Dongoske	THPO	kdongoske@gmail.com
Salt River Pima Maricopa Indian Community	Martin Harvier	President	gary.bohnee@srpmic-nsn.gov
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Salt River Pima Maricopa Indian Community	Angela Garcia-Lewis	Cultural Resources Compliance Supervisor	Angela.Garcia-Lewis@srpmic-nsn.gov

Consulting Party	Contact	Position	Email
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San Tan Historical Museum	Keith Johanson	President	santanhistoricalmuseum@gmail.com
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Tonto Apache Tribe	Jeri DeCola	Cultural and NAGPRA Representative	jdecola@tontoapache.org
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**MEMORANDUM OF AGREEMENT BETWEEN THE SURFACE TRANSPORTATION
BOARD AND THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 – UNION PACIFIC RAILROAD COMPANY –
CONSTRUCTION AND OPERATION EXEMPTION – IN MARICOPA COUNTY**

WHEREAS, on June 30, 2022, the Union Pacific Railroad Company (UP) filed a petition with the Surface Transportation Board (Board) under 49 United States Code (U.S.C.) § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate approximately 6.0 miles of new rail line that would connect industrial properties to UP's Phoenix Subdivision main line in Maricopa County, Arizona (the Project) in Docket No. FD 36501; and

WHEREAS, as defined in 36 C.F.R. § 800.3(a), the Board has determined that the Project constitutes an Undertaking subject to review under Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), 54 U.S.C. § 306108, and its implementing regulations (36 C.F.R. Part 800); and

WHEREAS, all consulting Federal agencies (Federal Aviation Administration [FAA] and U.S. Army Corps of Engineers [Corps]) have agreed that the Board is the lead federal agency responsible for compliance with Section 106 of the NHPA for this Undertaking; and

WHEREAS, the Board's Office of Environmental Analysis (OEA) is responsible for carrying out the agency's responsibilities under the NHPA and is preparing this Memorandum of Agreement (MOA) pursuant to Section 106 of the NHPA and pursuant to 36 C.F.R. Part 800 of the Advisory Council on Historic Preservation (ACHP)'s regulations implementing Section 106; and

WHEREAS, OEA has defined the Area of Potential Effects (APE), which contains approximately 449 acres within portions of Sections 1 through 9 and 16 of Township 2 South, Range 7 East and Section 36 of Township 1 South, Range 7 East, as depicted on the U.S. Geological Survey's Higley, Ariz., and Desert Well, Ariz., 7.5-minute topographic quadrangles. The APE includes two alternatives, only one of which will be authorized for construction if the Undertaking is approved by the Board. The APE encompasses all areas of ground-disturbing physical effects that may also cause auditory, visual, or vibrational effects to historic properties as a result of the Undertaking. The Arizona State Historic Preservation Office (SHPO) concurred with OEA's definition of the initial APE (dated May 2, 2022) and revised APE (dated October 14, 2025). The APE is depicted in Attachment A; and

WHEREAS, OEA documented the cultural resources survey results in *A Class III Cultural Resources Survey for the Union Pacific Railroad Company Pecos Industrial Rail Access and Train Extension (PIRATE) Project, Mesa and Queen Creek, Maricopa County, Arizona* (Rainey and Stubing 2022), and *A Class III Addendum Cultural Resources Survey for the Union Pacific Railroad Company Pecos Industrial Rail Access and Train Extension (PIRATE) Project, Mesa and Queen Creek, Maricopa County, Arizona* (Powell 2023, revised September 2025), which OEA provided to the Consulting Parties for review and comment; and

WHEREAS, a total of 2.35 acres in the APE consists of private land that will not be acquired or accessed for the Project, is not included in the Undertaking (see Attachment B), and was not surveyed for cultural resources; and

WHEREAS, the two cultural resources surveys identified three eligible sites (AZ U:10:2[ASM], AZ U:10:152[ASM], and AZ U:10:275[ASM]), one listed site (AZ U:10:69[ASM] – listed under AZ U:10:25[ASU]), and one in-use historic structure (the Mesa to Winkelman Spur of the Southern Pacific Railroad), that OEA determined to be eligible for inclusion in the National Register of Historic Places (NRHP) with SHPO concurrence (December 20, 2022); and

WHEREAS, OEA has determined, pursuant to 36 C.F.R. § 800.5(a), that the Undertaking would have an adverse effect on four historic properties, including AZ U:10:2(ASM), AZ U:10:69(ASM), AZ U:10:152(ASM), and AZ U:10:275(ASM), which are eligible for, and/or listed on, the NRHP under Criterion D (36 C.F.R. Part 63) and would have no adverse effect to the character-defining features of the in-use historic structure; and

WHEREAS, [REDACTED]

WHEREAS, on July 28, 2023, OEA discovered that there had been extensive disturbance to two of the historic properties (AZ U:10:2[ASM] and AZ U:10:152[ASM]), [REDACTED] from construction activities by third parties on land owned by UP within the APE; and

WHEREAS, the Section 106 process did not move forward while the Board considered the applicability of Section 110(k) (anticipatory demolition) of the NHPA; and

WHEREAS, a thorough damage assessment was also conducted—*Noninvasive Cultural Resources Damage Assessment for AZ U:10:2(ASM) and AZ U:10:152(ASM), Mesa, Maricopa County, Arizona* (Powell 2024) and *Invasive Cultural Resources Damage Assessment Technical Report for AZ U:10:2(ASM), Mesa, Maricopa County, Arizona* (Luhnow et al. 2025)—that revealed five locations of disturbance, including excavation of two retention basins and removal of 40,500 cubic yards of soil and impacts to almost 18 acres of land within two NRHP-eligible sites (AZ U:10:2[ASM] and AZ U:10:152[ASM]) [REDACTED]; and

WHEREAS, the Board issued a decision on June 3, 2025, stating that “no determination that Section 110(k) is applicable will be issued under 36 C.F.R. § 800.9(c),” and that “the Board will continue with the Section 106 process”; and

WHEREAS, the SHPO is authorized to enter into this MOA to fulfill the role of advising and assisting federal agencies in carrying out their Section 106 responsibilities under the NHPA and its implementing regulations at 36 C.F.R. §§ 800.2(c)(1)(i) and 800.6(b), and the SHPO is a Signatory to this MOA; and

WHEREAS, UP has specific Section 106 responsibilities under this MOA and is an Invited Signatory; and

WHEREAS, part of the Undertaking will require a permit from the Corps, which has jurisdiction over activities that discharge dredged or fill materials into any waters of the United States under Section 404 of the Clean Water Act of 1972 (33 U.S.C. § 1344), the issuance of which requires Section 106 review for that Undertaking, and pursuant to 36 C.F.R. § 800.3(f), the Corps has been included in Section 106 consultation and is invited to sign this MOA as a Concurring Party; and

WHEREAS, the FAA administers regulations regarding airport-protected services, airspace notification, and filing requirements for structures that may be a potential hazard to air navigations, and the FAA has been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and has been invited to sign this MOA as a Concurring Party; and

WHEREAS, the Mesa Gateway Airport Authority (MGAA) occupies the aviation infrastructure of the former Williams Air Force Base, which is adjacent to the Undertaking and the MGAA has been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and has been invited to sign this MOA as a Concurring Party; and

WHEREAS, the Flood Control District of Maricopa County (FCDMC) manages the Rittenhouse and Ellsworth flood control channels and will review UP's design plans for construction and operation of the Undertaking, which may require the approval of a right-of-way permit, and pursuant to 36 C.F.R. § 800.3(f), the FCDMC has been included in Section 106 consultation and is invited to sign this MOA as a Concurring Party; and

WHEREAS, the Arizona State Land Department (ASLD) administers state trust land within the APE and a right-of-way permit will be needed to construct the Undertaking within the existing agricultural leased lands between Merrill and Signal Butte Roads, and the ASLD has been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and is invited to sign this MOA as a Concurring Party; and

WHEREAS, the Arizona State Museum (ASM) has defined authorities and responsibilities under Arizona Revised Statutes (ARS) §§ 41-841 through 41-844, for portions of the Undertaking on State Lands (defined as including state, county, city, and municipal lands) and under ARS § 41-865 for private lands, and the ASM has been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and has been invited to sign this MOA as a Concurring Party; and

WHEREAS, the Salt River Project Agricultural Improvement District (SRP), an agricultural improvement district organized under the laws of the State of Arizona and the Salt River Valley Water Users' Association, a corporation organized under the laws of the Territory (now State) of Arizona, and because there is SRP infrastructure within the APE, the SRP has been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and has been invited to sign this MOA as a Concurring Party; and

WHEREAS, land owned by the City of Mesa (City) is included in the APE, and because the City has developed the Pecos Advanced Manufacturing Zone (PAMZ) on this land, the City has been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f), and has been invited to sign this MOA as a Concurring Party; and

WHEREAS, the APE includes land owned by the Town of Queen Creek (Town), and, as such, the Town has been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and has been invited to sign this MOA as a Concurring Party; and

WHEREAS, the San Tan Historical Society, Mesa Historical Museum, and Arizona Museum of Natural History have interest in the archaeological and historic resources within the APE and have been included in Section 106 consultation pursuant to 36 C.F.R. § 800.3(f) and have been invited to sign as Concurring Parties to this MOA; and

WHEREAS, OEA has consulted with known Native American Tribes (Descendant Communities) that may attach religious or cultural importance to affected properties pursuant to 36 C.F.R. § 800.2(c)(2)(ii)(A-F) and these tribes (the Four Southern Tribes, Hopi Tribe, Mescalero Apache Tribe, Pascua Yaqui Tribe, Pueblo of Zuni, Tonto Apache Tribe, and Yavapai-Apache Nation) have been invited to sign as Concurring Parties to this MOA; and

WHEREAS, the Four Southern Tribes, Hopi Tribe, and Pascua Yaqui Tribe have expressed interest in this Undertaking and are actively engaged in Section 106 consultation, including the development of this MOA; and

WHEREAS, the Four Southern Tribes have designated the Gila River Indian Community as the lead Tribe for the Four Southern Tribes; and

WHEREAS, the Yavapai-Apache Nation indicated that they would continue to participate in the Section 106 consultation, but do not have any concerns (Corder [Yavapai-Apache Nation] to Luhnnow [Jacobs] dated May 6, 2022); and

WHEREAS, the White Mountain Apache Tribe has declined to participate in the Section 106 consultation (Altaha [White Mountain Apache Tribe] to Luhnnow [Jacobs] dated May 10, 2022); and

WHEREAS, UP, SHPO, Gila River Indian Community, Salt River Pima-Maricopa Indian Community, Ak-Chin Indian Community, and Tohono O'odham Nation are in the process of developing a Memorandum of Understanding (MOU) for certain voluntary commitments to be undertaken by UP related to the Project. The Board will not be a party to this MOU and the MOU will be outside of the jurisdiction of the Board and the scope of this MOA; and

WHEREAS, OEA solicited information and concerns about the historic properties from members of the public as part of the National Environmental Policy Act in accordance with 36 C.F.R. § 800.2(d)(3); and

WHEREAS, all days referred to in this MOA are calendar days, unless otherwise noted; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), OEA has notified the ACHP of the adverse effect finding and provided the documentation specified in 36 C.F.R. § 800.11, and on December 22, 2022, and again on August 15, 2025, the ACHP chose not to participate in consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

NOW, THEREFORE, the Board and the SHPO agree that this MOA shall be implemented in accordance with the following stipulations to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

The Board, through OEA, shall ensure that the following measures are carried out for this Undertaking.

I. Definitions

The definitions and associated acronyms in Attachment C follow 36 C.F.R. § 800.16 and are used within this MOA. “Signatories” refers to Signatories and Invited Signatories.

II. Roles and Responsibilities

The Signatories agree that the Board is the lead agency for administering and implementing this MOA, and is responsible for ensuring that UP, as the Applicant, completes all the measures set forth in this MOA. On behalf of the Board, OEA’s responsibilities under this MOA include:

- Consulting and coordinating with the Consulting Parties;
- Conducting Government-to-Government consultation with the Tribes;
- Ensuring that all Signatories carry out their responsibilities;
- Reviewing and approving all submissions to the Consulting Parties, including the additional cultural resources inventory reports (if needed),
- Overseeing and approving all cultural resource work undertaken by UP;
- Seeking SHPO concurrence with all agency compliance decisions.

UP, under direction from OEA, is responsible for:

- Retaining a qualified cultural resource contractor (Contractor) (see Stipulation III.A);
- Implementing the Historic Property Treatment Plan (HPTP);
- Conducting any additional cultural resources inventory work (if needed), Post-Review Letter Report (if needed), Variance Inventory Report (if needed), the Preliminary Reports of Findings, and final Comprehensive Data Recovery Technical Report.

III. Professional Qualifications

All work shall meet the Secretary of the Interior (SOI)'s Standards for Archaeology, Cultural Anthropology, and Historic Preservation (SOI Standards; 36 C.F.R. § 800.2(a)(1); 48 *Federal Register* [FR] Vol. 48, No. 190, 44738-44739; September 29, 1983), and any work involving state and municipal lands shall be completed in accordance with ASM standards.

- A. UP shall retain a Contractor and cultural anthropologist(s) (Ethnographer) of its choice that meets the SOI's Professional Qualification Standards (36 C.F.R. § 800.2(a)(1); 48 FR Vol. 62, No. 119, 33715-33716; June 20, 1997). The Ethnographer will have demonstrated regional specialization in central and southern Arizona and will have experience working directly with the Four Southern Tribes. Cultural resources work for the Undertaking will be completed by an individual or under the direct supervision of an individual who meets the SOI's qualifications.
- B. In recognition of the special expertise Tribal experts have concerning properties of traditional religious and/or cultural significance, the standards of 36 C.F.R. § 61 will not apply to tribally designated representatives carrying out identification and evaluation efforts for such properties of Tribal interest.

IV. Tribal Consultation

- A. OEA shall conduct Government-to-Government consultation for the purposes of identifying, evaluating, documenting, and mitigating adverse impacts to properties of religious and cultural significance to Tribes as identified during the Section 106 consultation process.
- B. Tribes that might attach religious and cultural significance to historic properties in the APE have been identified by OEA and have been invited to be Consulting Parties for this Undertaking.
- C. OEA shall continue to conduct Government-to-Government consultation with Tribes throughout the duration of the Undertaking.
- D. OEA acknowledges that each Tribe defines Government-to-Government consultation differently and will work individually with interested Tribes to accommodate their preferences.
- E. Consultation has been initiated through formal consultation letters transmitted electronically. Continuing consultation may also include video conferences, in-person meetings, in-field meetings, or other types of meetings, as dictated by Tribal preference.
- F. Tribal consultation may also include ethnographic studies to aid in identification and evaluation efforts.

V. Traditional Cultural Place

As defined in the 2024 update to *National Register Bulletin 38*, a Traditional Cultural Place (TCP) is a building, structure, object, site, or district that may be listed or eligible for listing in the NRHP for its significance to a living community because of its association with cultural beliefs, customs, or practices that are rooted in the community's history and that are important in maintaining the community's cultural identity (National Park Service 2024).

[REDACTED]

- A. OEA will continue conducting Government-to-Government consultation with Native American Tribes to further evaluate any known and newly identified TCPs and resolve any potential effects to these properties by the Undertaking.
- B. The Four Southern Tribes have indicated that a TCP evaluation study is necessary to fully address the potential effects on cultural and natural properties that may qualify as TCPs within the APE and vicinity. OEA is continuing Government-to-Government consultation with the Four Southern Tribes to outline the scope of the TCP evaluation and identify an ethnographer that is acceptable to the Tribes and meets the qualifications standards outlined in Stipulation III.
- C. The ethnographer will work closely with elders and traditional cultural specialists from the Four Southern Tribes [REDACTED]
[REDACTED] The scope of the TCP evaluation will be determined by OEA based on communication with the ethnographer in conjunction with elders and other Native consultants.
- D. The ethnographer will record the results of Tribal interviews, oral histories, background research, field visits, and other appropriate sources reviewed for the TCP study. [REDACTED]
[REDACTED] The ethnographer will prepare two reports. The first report will be a comprehensive summary limited to review by the Four Southern Tribes and Gila River Indian Community Tribal Historic Preservation Officer (THPO). A second redacted report will provide information sufficient to provide an evaluation of the NRHP eligibility and integrity of each TCP identified. Given the confidential nature of this information, the second report will have limited distribution designated by the Gila River Indian Community THPO. OEA will conduct Government-to-Government consultation with Gila River Indian Community THPO to discuss the results of the TCP

evaluation. In consultation with Gila River Indian Community THPO, OEA will provide a consultation letter to SHPO outlining each TCP and its NRHP eligibility determination for SHPO review and concurrence.

- E. Once the TCP evaluations are complete and SHPO has concurred with the results, OEA will continue Government-to-Government consultation with the Four Southern Tribes and Gila River Indian Community THPO [REDACTED], OEA, the Four Southern Tribes, the Gila River Indian Community THPO and the SHPO will continue consultation to formulate mitigation measures for the resolution of the adverse effect.

VI. Construction Variance and Review Process

All construction needs cannot be anticipated in advance, and areas required for additional workspace (e.g., new design changes, access roads, ancillary facilities, reroutes, etc.) may be identified at any time following the finalization of the survey reports (Rainey and Stubing 2022; Powell 2023, revised 2025). If any newly identified construction needs would result in ground-disturbing activities outside of the surveyed areas identified in the survey reports and does not require authorization from the Board, UP will request a variance review from OEA, after having the variance APE surveyed for cultural resources by a qualified professional.

- A. If no cultural resources or properties of cultural or religious significance to Tribes are present within the variance APE, the results of the Class I and Class III inventories will be reported on the SHPO Survey Report Summary Form prior to any variance issuance or use of the variance APE for Project-related activities. OEA will provide an expedited review of the variance request, not to exceed seven (7) working days following receipt, and will provide UP with written recommendations regarding the variance issuance via electronic mail (email). Consulting Parties and Tribes will be informed of these recommendations via email.
- B. If cultural resources or properties of cultural or religious significance to Tribes are present within the variance APE, UP's Contractor will prepare a Variance Inventory Report and submit it via email to OEA. OEA will make determinations of eligibility and submit the Variance Inventory Report to the Consulting Parties for review and comment. The Consulting Parties will provide an expedited review within seven (7) working days or less. If no objections to the determinations of eligibility and the proposed variance are received at the end of the 7-day period, OEA shall provide UP's Contractor with written approval of the variance via email. If objections are received, additional consultation regarding the variance will follow in accordance with the dispute resolution process found in Stipulation XXII.

VII. Evaluation of Historic Properties

- A. OEA has evaluated and will continue to evaluate the NRHP eligibility of cultural resources in accordance with 36 C.F.R. § 800.4(c)(1) and will follow guidance provided in the *National Register Bulletins 15* and *38*. The NRHP evaluation of any new cultural resources will be provided to the Consulting Parties during implementation of this MOA.

VIII. Resolving Adverse Effects

- A. Where possible, UP shall avoid or minimize effects to historic properties through redesigning the Project or by placing infrastructure outside of historic property boundaries. Where historic properties cannot be avoided, OEA and UP shall ensure that effects to identified historic properties are resolved through the development and implementation of an HPTP (see Stipulation IX). During construction, UP shall fence sensitive archaeological sites to protect them, and a qualified archaeological monitor shall monitor all construction activities within the APE.
- B. If adverse effects to any newly recorded NRHP-eligible historic property cannot be avoided, those effects would be resolved in accordance with procedures outlined in the approved HPTP (Stipulation IX).
- C. A historic context about the indigenous occupation (through the protohistoric period) of the Queen Creek Delta will be prepared to National Park Service standards. The document will summarize the results of archaeological research and discuss site chronology, use, settlement, and socioeconomic changes from a cultural landscape framework. This work shall incorporate, as appropriate and with tribal coordination and approval, information from oral history and ethnography of traditional cultural practices in the region. A research design for future investigations shall be provided. An electronic version of the approved, final document will be made available on the SHPO website.

IX. Historic Properties Treatment Plan

- A. OEA shall direct UP to develop an HPTP in consultation with the Consulting Parties to this MOA. The HPTP will define the specific field methodologies to be used for archaeological data recovery at sites AZ U:10:2(ASM), AZ U:10:69(ASM), AZ U:10:152(ASM), and AZ U:10:275(ASM); the procedures to be followed for archaeological monitoring of the Undertaking's construction activities as described in Stipulation VIII.A; and the process for unanticipated encounters of additional historic properties or human remains, funerary objects, sacred ceremonial objects, and objects of national or tribal patrimony that may be affected by the Undertaking. If encountered, the treatment of animal funerary remains would be the same as the treatment of human remains.

- B. OEA shall ensure that the HPTP is consistent with the Secretary of Interior's Standards and Guidelines for Archaeological Documentation (48 FR 190, 44734-44737; September 29, 1983), ACHP's *Treatment of Archaeological Properties: A Handbook* (November 5, 1980), and the Rules Implementing the Arizona Antiquities Act (ARS §§ 41-841 through 41-844), and that it shall be approved and implemented prior to construction.
- C. The HPTP shall include the following:
1. Previous research results, a discussion of the damage to archaeological sites discovered during the environmental and historic review of the Project, and a research design that includes the research questions to be addressed through data recovery, archival research, documentation, and interpretation, with an explanation of their relevance and importance.
 2. Identification of properties or portions of the properties where data recovery is to be carried out, any property or portion of property that would be affected by the Undertaking without treatment, and a rationale for untreated portions (e.g., discussion of the sampling strategy).
 3. Data recovery expectations, phased data recovery methods, and level of effort (in text and depicted on site plan view maps) required for the treatment of sites, including treatment locations and sampling methods, sample size, and procedures for selecting specific sample units.
 4. Archival, field, and laboratory methods to be used, with an explanation of their relevance to the research questions.
 5. Results of any Tribal consultation, that is, incorporating tribal perspectives into the cultural history, research design, analysis, interpretation, data recovery/methodology, and repatriation of human remains, funerary objects, sacred ceremonial objects, and objects of national or tribal patrimony sections. If encountered, the treatment of animal funerary remains would be the same as the treatment of human remains.
 6. Protocol for documenting and repatriating human remains, funerary objects, sacred ceremonial objects, and objects of national or tribal patrimony. In the event that human remains, funerary objects, sacred ceremonial objects, and objects of national or tribal patrimony are encountered, a description will be included of the methods and procedures for the recovery, inventory, treatment, and repatriation procedures that is consistent with the Burial Discovery Agreement drafted for this Undertaking. If encountered, treatment of animal funerary remains would be the same as the treatment of human remains.
 7. Methods to be used in managing and disseminating the resultant data to the professional community and the public, including a proposed schedule for Undertaking tasks and a schedule for submitting draft and final reports

(Preliminary Reports of Findings and a Comprehensive Data Recovery Technical Report) to OEA, which shall then distribute the approved documents to the Consulting Parties for review and comment.

8. Strategy for a public outreach program with the goal of disseminating information about the results of the cultural resources investigations to the public. Some examples of public outreach programs include interpretative signage at the MGAA, site tours, print media, electronic media, presentations and lectures, the historic context study, and ways to enhance local heritage education curriculum. UP, in consultation with OEA, shall develop one or more of these approaches based on the results of the cultural resources investigation.
 9. Project suspension/termination plan that stipulates the procedures to be followed if the Project is halted during data recovery for any reason. The plan shall outline the steps needed to stabilize the sites and/or complete any data recovery or other treatment measures that are in progress at the time of Project termination. Additionally, the plan shall include a component outlining how documenting, reporting, securely escorting, housing, and repatriating human remains, funerary objects, sacred ceremonial objects, and objects of national or tribal patrimony will be completed.
 10. Discussion of permits, personnel qualifications, coordination, and cultural sensitivity training for construction personnel.
 11. Proposed disposition and curation of recovered materials and records in accordance with relevant federal, state, municipal, and private ordinances: NHPA; Arizona Antiquities Act (ARS §§ 41-841 through 41-844); State Historic Preservation Act (ARS §§ 41-861 through 41-864); and ARS §§ 41-865.
 12. Procedures for monitoring, evaluating, and treating encounters of unanticipated or newly identified cultural resources during construction of the Undertaking. In the event that any such cultural deposits associated within the sites are encountered, the procedures in the Monitoring and Discovery Plan (MDP), a component of the HPTP, will be followed.
- D. OEA shall submit the draft HPTP to the Signatories and Concurring Parties to this MOA for a thirty (30) day review period.
1. If any Consulting Party fails to respond with comments within thirty (30) days of receipt of the initial submission of the HPTP, OEA shall follow up with the Consulting Party by phone call or email. If the Consulting Party does not respond within seven (7) days of OEA's follow-up, OEA's responsibilities under this Stipulation are fulfilled.

2. If, as a result of this review, Consulting Parties determine that revisions of the HPTP are necessary, OEA shall direct UP to revise the HPTP. OEA shall provide the revised plan to all Consulting Parties for their review. The Consulting Parties shall have thirty (30) days from receipt of the revised plan to comment on any revisions proposed. If any Consulting Party does not respond, OEA will follow up with the Consulting Party by phone call or email. If the Consulting Party does not respond within seven (7) days of OEA's follow-up, OEA's responsibility under this Stipulation is fulfilled.
3. OEA shall ensure that any written comments received are considered during final HPTP preparation.
4. OEA shall provide the final HPTP to all Parties to this MOA.

X. Transition Between Phase I to Phase II Data Recovery

- A. All archaeological sites within the APE will require complete Phase I data recovery efforts.
- B. After completion of Phase I data recovery efforts, OEA shall direct UP to conduct a site visit(s) for the Consulting Parties to review the adequacy of the field investigations per the HPTP (in-field consultation). The purpose of in-field consultation is to evaluate whether Phase I data recovery efforts have been completed successfully at individual sites or if additional (Phase II) data recovery efforts are needed.
- C. Tribes may request field visits separate from the other Consulting Parties.
- D. Upon completion of the in-field consultation, OEA shall provide written notes of the in-field consultation session(s) and shall email the notes to all Consulting Parties. Consulting Parties shall have seven (7) days to review the in-field consultation notes and provide comments to OEA. OEA shall review any comments received and amend and distribute the final in-field consultation notes, as appropriate.
- E. When the Phase I data recovery field efforts have been reviewed and are considered complete, UP shall prepare a Preliminary Report of Findings for each individual site as outlined in Stipulation XI.
- F. In the event that Phase II data recovery efforts are recommended, Consulting Parties shall have seven (7) days to review the in-field consultation notes (Stipulation XI.D). If Consulting Parties agree that Phase II data recovery efforts are warranted, UP's Contractor may begin Phase II data recovery efforts at individual site(s). OEA shall direct UP to conduct a site visit(s) for the Consulting Parties at the conclusion of the Phase II data recovery efforts to review the adequacy of the field investigations per the HPTP (in-field consultation). At the completion of Phase II data recovery efforts at individual site(s), a combined Phase I and Phase II Preliminary Report of Findings shall be prepared as outlined in Stipulation XI and distributed to the Consulting Parties.

XI. Preliminary Report of Findings

- A. Upon completion of the Phase I and Phase II (if necessary) data recovery fieldwork, UP shall prepare a Preliminary Report of Findings (see Stipulation X.E and X.F) for each individual site and provide it to OEA for review within fourteen (14) days of the in-field consultation meeting.
- B. Each Preliminary Report of Findings shall contain the following, at a minimum:
 - 1. A discussion of the methods and treatments used during data recovery and justification for any methods or treatments that deviated from the HPTP, referencing the communication with SHPO, ASM, and relevant land manager(s) on any modifications to the HPTP.
 - 2. A detailed site map showing all features, damage areas, artifact concentrations, point-provenienced artifacts, and hand-excavated units at the site.
 - 3. A general tabulation of recovered artifacts, samples, and features.
 - 4. Recommendations for site clearance for the purposes of allowing construction to proceed.
- C. Once OEA has approved an individual Preliminary Report of Findings, it shall be provided to the Consulting Parties, who shall have fourteen (14) days from receipt to review and provide written comments to OEA. If any Consulting Party does not respond within this review period, OEA shall follow up with the Consulting Party to see if they have any comments. If a Consulting Party does not respond within five (5) days of OEA's follow-up, OEA's responsibility under this Stipulation is fulfilled.
- D. If revisions to a Preliminary Report of Findings are made, all Consulting Parties shall have seven (7) calendar days from receipt to review the revisions and provide comments to OEA. If any Consulting Party does not respond within this review period, OEA shall follow up with the Consulting Party to see if they have any comments. If a Consulting Party does not respond within five (5) days of OEA's follow-up, OEA's responsibility under this Stipulation is fulfilled.

XII. Comprehensive Data Recovery Technical Report

- A. After completing fieldwork and Stipulation XI, UP shall prepare a draft Comprehensive Data Recovery Technical Report that summarizes all documentation, interpretations, and syntheses for all sites investigated. UP shall provide the draft Comprehensive Data Recovery Report to OEA for review within two (2) years of the completion of the fieldwork. Once OEA has approved this report, UP shall distribute it to the Consulting Parties for review and comment for a sixty (60) day review period.

- B. OEA shall ensure that the Consulting Parties' comments on the draft Comprehensive Data Recovery Technical Report are addressed by UP in a revised report. Once revisions to the draft Comprehensive Data Recovery Technical Report have been completed, all Consulting Parties shall have ten (10) days from receipt to review the revisions and comment matrix and provide written comments to OEA. If any Consulting Party does not respond within ten (10) days, OEA shall follow up with the Consulting Party. If the Consulting Party does not respond within five (5) days of OEA's follow-up, OEA's responsibility under this Stipulation is fulfilled.
- C. OEA shall ensure that any written comments received are taken into account during preparation of the final Comprehensive Data Recovery Technical Report.
- D. The final Comprehensive Data Recovery Technical Report shall be prepared by UP and approved by OEA. Once approved, UP shall distribute the final Comprehensive Data Recovery Technical Report to all Parties to the MOA.

XIII. Construction in Non-Site Areas

Following acceptance of the final HPTP, pending compliance with all other applicable laws and regulations, and approval of the Undertaking by the Board, UP may begin construction in areas within the APE that have been subjected previously to Class III survey (Powell 2023, revised September 2025; Rainey and Stubing 2022) with negative findings on lands under any ownership or jurisdiction, subject to the jurisdiction's right-of-entry and right-of-way requirements, where all effects to historic properties and unevaluated cultural resources will be avoided and an archaeological monitor will be present during ground-disturbing activities, as per agreed-upon measures described in the approved HPTP.

XIV. Construction in Site Areas

Following fulfillment of Stipulation XI.D, resolution of the comments from the Consulting Parties on the Preliminary Report of Findings, concurrence from SHPO on the completion of data recovery program at individual site(s), and pending compliance with all other applicable laws and regulations, and approval of the Undertaking by the Board, UP may begin construction within archaeological site boundaries within the APE on lands under any ownership or jurisdiction, subject to the appropriate jurisdiction's right-of-entry and right-of-way requirement. An archaeological monitor shall be present during ground-disturbing activities, as per agreed-upon measures described in the approved HPTP.

XV. Communication Among Parties to the MOA

- A. Email may serve as the official correspondence method for all communications regarding this MOA and its provisions. Attachment D provides a list of contacts and email addresses. Contact information in Attachment D may be updated as needed without an amendment to this Agreement. It is the responsibility of each

Consulting Party to immediately inform OEA of any change in name, email address, or phone number of any point of contact. OEA will forward this information to all Consulting Parties.

- B. OEA may elect to create a Project-specific SharePoint website to maintain the draft final version of the Comprehensive Data Recovery Technical Report that will be distributed electronically to the Consulting Parties. Consulting Parties may request a bound hard copy instead of an electronic version.

XVI. Confidentiality

The Board shall maintain confidentiality of sensitive information regarding historic properties with religious or cultural significance to Native American Tribes to the maximum extent allowed by Federal and state law. However, any documents or records that the Board has in its possession are subject to the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and its exemptions, as applicable. The Board shall evaluate whether a FOIA request for records or documents would involve a sensitive historic property or a historic property with religious or cultural significance to a Tribe. If such documents contain information that the Board is authorized to withhold from disclosure by other statutes, including Section 304 of the NHPA, then the Board, through OEA, would consult with the Keeper of the NRHP and the ACHP regarding withholding the sensitive information. If a Tribally sensitive property is involved, the Board, through OEA, shall also consult with the relevant Tribe prior to making a determination in response to a FOIA request.

XVII. Public Participation

OEA shall continue to seek and consider public views in a manner that reflects the nature and complexity of the Undertaking and its potential effects on historic properties and the likely interest of the public in the effects on historic properties. OEA shall ensure that an appropriate level of public involvement is provided, in accordance with 36 C.F.R. § 800.2(d)(2). OEA shall ensure public access to findings made pursuant to this MOA and consider comments and objections by members of the public in a timely manner.

XVIII. Emergencies

Should an emergency situation occur that could affect historic properties or impact any party's ability to meet its responsibilities under this MOA, UP shall immediately notify OEA. OEA shall then immediately notify the ACHP and the SHPO of the condition that has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the ACHP and/or the SHPO desire to provide technical assistance to OEA, they shall submit comments within seven (7) days from notification if the nature of the emergency or hazardous condition allows for such coordination.

XIX. Curation

OEA and UP shall ensure that all artifacts, samples, and records resulting from data recovery are curated in accordance with 36 C.F.R. Part 79, except as determined through consultation with Native American Tribes and carried out in accordance with Federal and state laws pertaining to the treatment and disposition of human remains, animal funerary remains, sacred ceremonial objects, and objects of national or Tribal patrimony. The Huhugam Heritage Center has the first right of refusal to serve as the Project's curation facility. The standards and guidelines of the approved curation facility shall be followed.

XX. Annual Review of the MOA, Annual Report, and Annual Meeting

- A. Implementation and operation of this MOA shall be evaluated on an annual basis by all of the Consulting Parties. UP shall prepare the annual report for OEA's review. Once approved, OEA shall be responsible for distributing the annual report to all Parties and requesting whether the Parties would like to meet to discuss the annual report. The annual report shall minimally include the following:
 1. Additional historic property surveys and results, if any;
 2. Status of mitigation activities;
 3. Ongoing and completed public outreach activities;
 4. Any issues that are affecting or may affect OEA's ability to continue to meet the terms of the MOA;
 5. Any disputes and objections received, and how they were resolved;
 6. Any additional Parties that have become Signatories or Concurring Parties to this MOA in the past year; and
 7. Proposed plans for next year's activities.
- B. If a Consulting Party requests to convene an in-person or virtual meeting to discuss the annual report, OEA shall review the request, and as appropriate shall schedule a meeting on or near the anniversary date of execution of this MOA. At the annual meeting, the Consulting Parties shall review the effectiveness and application of this MOA. If the Parties do not request a meeting, the annual report distribution shall be considered fulfillment of this Stipulation.
- C. Within fourteen (14) days after the annual meeting, OEA shall summarize the meeting, including, if appropriate, proposed actions and how they are to be addressed, in a letter to the Consulting Parties.

XXI. Post-Review Encounters

If new cultural resources are encountered during construction or if unanticipated effects on historic properties are identified, OEA shall direct UP to implement the Project-specific MDP that is part of the HPTP.

- A. In the event that an encounter of human remains, funerary objects, sacred ceremonial objects, and objects of national or tribal patrimony occurs, OEA shall ensure that UP follows the procedures outlined in the HPTP and the Project's Burial Discovery Agreement. If encountered, the treatment of animal funerary remains would be same as the treatment of human remains.
- B. In the event that an encounter of archaeological or historic material not associated with ancestral remains occurs, OEA shall ensure that UP follows procedures detailed in the MDP that is part of the HPTP. Any cultural resources discovered by UP during construction or other ground-disturbing activities shall be addressed and treated promptly in consultation with appropriate parties and in accordance with all applicable laws. UP shall cease all ground-disturbing activities within 100 feet (30 meters) of any encounter and notify OEA of the encounter within 48 hours. OEA will notify SHPO and the ASM of the encounter.
- C. OEA shall confer with the Consulting Parties on the NRHP eligibility of the newly discovered cultural resources. If NRHP-eligible, OEA shall ensure that treatment measures follow the final HPTP. UP shall prepare a Post-Review Letter Report detailing the encounter, documenting the NRHP eligibility of the resource, and summarizing how it will be addressed based on the previously agreed-upon guidelines in the HPTP. The Post-Review Letter Report shall be submitted to OEA for review and approval. Once approved, OEA shall distribute the Post-Review Letter Report to the Consulting Parties, and the Consulting Parties shall have seven (7) days to respond to the Post-Review Letter Report with comments. If any Party (excluding the SHPO and the ASM) does not respond within seven (7) days of OEA's follow-up, OEA shall authorize UP to proceed with the agreed-upon protocols outlined in the MDP.

XXII. Dispute Resolution

- A. Should any Consulting Party to this MOA object to the manner in which the terms of the MOA are implemented, OEA shall consult with the objecting Party to resolve the objection. If OEA determines that the objections cannot be resolved, OEA shall:
 - 1. Forward all documentation relevant to the dispute, including OEA's proposed resolution, to the ACHP. The ACHP shall provide OEA with its opinion on the resolution of the objection within thirty (30) days of receiving adequate documentation. OEA shall prepare a final decision that will take into account any timely opinions or comments regarding the dispute from the ACHP, Signatories, and Concurring Parties and provide them with a copy of the final decision. OEA shall then proceed according to its final decision.

2. If the ACHP does not provide comments regarding the dispute within the thirty (30) day allotted time period, OEA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, OEA shall prepare a written response that will take into account any timely comments regarding the dispute from the Signatories and Concurring Parties to the MOA and provide them and the ACHP with a copy of such written response.
- B. Any recommendation or comment provided by the ACHP shall be understood to pertain only to the subject of the dispute. Responsibilities under this MOA that are not subject to the dispute shall remain unchanged.

XXIII. Amendments

If any Signatory determines an amendment to its terms is needed, that Party shall immediately notify OEA and request an amendment. The proposed amendment shall be submitted in draft form with the request. The Signatories to this MOA shall consult to review and consider such an amendment. If the Signatories agree to the amendment, the amendment shall become effective on the date it is signed by all Signatories. OEA shall file any amendments with the ACHP and provide copies of the executed amendment to the Parties of this MOA.

XXIV. Duration

This MOA shall commence upon execution by the Board and the SHPO and its filing with the ACHP. This MOA shall remain in effect until the completion of all mitigation commitments hereto specified, or for ten (10) years from the date of its execution, whichever is earlier and subject to the below paragraph.

At least six (6) months prior to the tenth (10) anniversary of the MOA execution date, the Signatories shall consult to determine whether this MOA should be extended. If the Signatories agree to extend the MOA, the Board, through OEA, shall update it as needed, in consultation with all Signatories. Unless otherwise agreed by and between the Signatories, the extended MOA must be signed and executed by all Signatories prior to the tenth (10) anniversary of its date of execution.

XXV. Termination

In the event that any Signatory determines that its terms will not or cannot be carried out, that Party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation XXIII. If within thirty (30) days (or another time period agreed to by all Signatories), an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated and prior to work continuing on the Undertaking, OEA must either (a) execute an Agreement pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of ACHP under 36 C.F.R. § 800.7. OEA shall notify the Signatories as to the course of action it will pursue.

XXVI. Counterpart Signatures

This MOA may be executed in multiple counterparts, each of which, when assembled to include an original signature for each Party to sign this MOA, will constitute a complete and fully executed original. All such fully executed original counterparts collectively constitute a single MOA. Signatures transmitted by fax, email (in PDF format), and electronic signature are also permitted as binding signatures to this MOA.

Execution of this MOA by the Board and the SHPO and implementation of its terms are evidence that OEA has considered the effects of the Undertaking on historic properties and afforded the ACHP an opportunity to comment.

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

SIGNATORY

Surface Transportation Board

Signature: _____

Danielle Gosselin, Director, Office of Environmental Analysis

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

SIGNATORY

Arizona State Historic Preservation Office

Signature: _____

Kathryn Leonard, Arizona State Historic Preservation Officer

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

INVITED SIGNATORY

Union Pacific Railroad Company

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Ak-Chin Indian Community

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Arizona State Land Department

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Arizona State Museum

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Arizona Museum of Natural History

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

City of Mesa

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Federal Aviation Administration

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Flood Control District of Maricopa County

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Gila River Indian Community

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Hopi Tribe

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Mesa Historical Museum

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Mescalero Apache Tribe

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Mesa Gateway Airport Authority

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Pascua Yaqui Tribe

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Pueblo of Zuni

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

San Tan Historical Society

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Salt River Project

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Salt River Pima-Maricopa Indian Community

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
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REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Tohono O'odham Nation

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
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REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Tonto Apache Tribe

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
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THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Town of Queen Creek

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

U.S. Army Corps of Engineers

Signature: _____

Printed Name/Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE SURFACE TRANSPORTATION BOARD AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**DOCKET NO. FD 36501 UNION PACIFIC RAILROAD COMPANY
CONSTRUCTION AND OPERATION EXEMPTION IN
MARICOPA COUNTY**

CONCURRING PARTY

Yavapai-Apache Nation

Signature: _____

Printed Name/Title: _____

Date: _____

ATTACHMENT A: PROJECT APE (REDACTED)

Figure A-1. Location of APE (1 of 2)

Figure A-2. Location of APE (2 of 2)

ATTACHMENT B: UP LETTER REGARDING UNSURVEYED AREAS

ATTACHMENT C: ACRONYMS, ABBREVIATIONS, AND DEFINITIONS

A. Acronyms and Abbreviations

ACHP	Advisory Council on Historic Preservation
Agreement	Memorandum of Agreement (this Agreement)
APE	Area of Potential Effects
ARS	Arizona Revised Statutes
ASLD	Arizona State Land Department
ASM	Arizona State Museum
Board	Surface Transportation Board
C.F.R.	Code of Federal Regulations
City	City of Mesa
Corps	U.S. Army Corps of Engineers
email	electronic mail
FAA	Federal Aviation Administration
FCDMC	Flood Control District of Maricopa County
FOIA	Freedom of Information Act
FR	Federal Register
HPTP	Historic Properties Treatment Plan
MDP	Monitoring and Discovery Plan
MOA	Memorandum of Agreement
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NRHP	National Register of Historic Places
OEA	Office of Environmental Analysis (part of the Board)
PAMZ	Pecos Advanced Manufacturing Zone
PIRATE	Pecos Industrial Rail Access and Train Extension
MGAA	Mesa Gateway Airport Authority
SHPO	State Historic Preservation Officer
SOI	Secretary of the Interior
SRP	Salt River Project Agricultural Improvement District
THPO	Tribal Historic Preservation Officer
TCP	Traditional Cultural Place
Town	Town of Queen Creek
UP	Union Pacific Railroad Company
U.S.C.	United States Code

B. Definitions

1. Adverse Effect occurs when an Undertaking may alter, directly or indirectly, any of the characteristics that qualify a historic property for inclusion in the National Register of Historic Places (NRHP) in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association (see criteria of adverse effect at § 800.5(a)(1) of Title 36 of the *Code of Federal Regulations* (36 C.F.R. § 800.5[a][1])).
2. Advisory Council on Historic Preservation (ACHP) is an independent federal agency established pursuant to Section 201 of the National Historic Preservation Act (NHPA). Under Section 106 of the NHPA, the ACHP must be afforded an opportunity to comment on federal, federally assisted, or federally licensed Undertakings that may affect historic properties.
3. Archaeological Site generally means any material remains of past human life or activities in history or prehistory that are of archaeological interest, including, but not limited to, pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human remains, or any portion or piece of any of the foregoing items that are of human design, manufacture, possession, or use.
4. Area of Potential Effects (APE) means the geographic area(s) within which an Undertaking may cause changes in the character or use of historic properties, if any such properties exist. The APE is influenced by the nature and scale of an Undertaking and may be different for different kinds of effects caused by the Undertaking (36 C.F.R. § 800.16[d]). The APE must include all areas of direct, indirect, and reasonably foreseeable cumulative effects, including, but not limited to, staging areas, temporary construction easements, access roads, and utility corridors.
5. Arizona State Land Department (ASLD) administers state trust land within Arizona. They have defined authorities and responsibilities for disposition and permitting of state trust land.
6. Arizona State Museum (ASM) is the curation repository for the State of Arizona. They have defined authorities and responsibilities for permitting on state, county, city, and municipal lands. Additionally, they have responsibilities for encounters of human remains, animal funerary remains, sacred ceremonial objects, and objects of national or Tribal patrimony on privately owned and state lands.
7. Concurring Parties are those interested parties who may be asked to sign a Memorandum of Agreement (MOA) but do not have the rights to amend or terminate the MOA.

8. Consulting Parties have consultative roles in the Section 106 process and include the State Historic Preservation Officer (SHPO); Tribal Historic Preservation Officer (THPO); Tribes, land managing agencies, and local governments; applicants for federal assistance, permits, licenses or other approvals; and any party with a demonstrated legal or economic relation to the Undertaking or concern with the Undertaking's effect on historic properties (36 C.F.R. § 800.2[C]). Consulting Parties may be invited to be Concurring Parties or Signatories to an MOA.
9. Cultural Resources Survey refers to the study of an area to identify the cultural resources in that area or that may be present. This term includes Class I, Class II, and Class III surveys. Class I means a literature review/records overview. Class II means a sample inventory conducted in the field at less than 100 percent coverage. Class III means an intensive inventory conducted in the field at 100 percent survey coverage as defined by SHPO.
10. Environmental Assessment is an environmental analysis prepared pursuant to the National Environmental Policy Act (NEPA) to determine whether a federal action would significantly affect the environment and thus require a more detailed environmental impact statement.
11. Historic Property is any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP. This term includes artifacts, records, and remains that are related to and located within such properties. The phrase "eligible for inclusion on the NRHP" means properties formally determined as such by the Secretary of the Interior (SOI) or by a federal agency in consultation with SHPO. Properties that have been determined eligible for inclusion are accorded the same protections as properties listed in the NRHP (36 C.F.R. § 800.16[1][1]).
12. Historic Property Treatment Plan (HPTP) is a document that describes the archaeological methods and procedures that will be used to recover significant information on archaeological sites that will be impacted by the proposed Project.
13. In-Use Historic Structures are defined by the ASM as buildings, structures, transmission lines, pipelines, canals, trails, roads, and railroads that are greater than 50 years old but are currently operated, maintained, or repaired for original or similar purposes.
14. National Environmental Policy Act (NEPA) is a United States environmental law enacted on January 1, 1970, that promotes the enhancement of the environment.
15. National Historic Preservation Act (NHPA) of 1966, as amended, established processes to assess, designate, and protect historic and cultural resources. NHPA directs federal agencies to take into account the effect of any Undertaking on historic properties.
16. National Register of Historic Places is the official list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture maintained by the Keeper of the NRHP on behalf of the SOI (36 C.F.R. Part 60).

17. Monitoring and Discovery Plan (MDP) is a document that describes the methods and procedures that will be followed during monitoring efforts for archaeological sites that are within the Project's APE.
18. Office of Environmental Analysis (OEA) is the office within the Surface Transportation Board responsible for directing the environmental review process, conducting independent analysis of all environmental data, and making environmental recommendations to the Surface Transportation Board.
19. Pecos Advanced Manufacturing Zone (PAMZ) is an industrial development zone within the City of Mesa that provides benefits to businesses to encourage manufacturing operations.
20. Phase I Data Recovery is a component of an eligible site's mitigation treatment and is the first phase of data recovery efforts.
21. Phase II Data Recovery is a component of an eligible site's mitigation treatment and is the final phase of data recovery efforts.
22. Signatories or Signatory are parties who assume obligations under the MOA. Signatories have the ability to terminate or agree to amend the MOA. The term includes Invited Signatories but does not include others who sign the MOA as Concurring Parties.
23. State Historic Preservation Officer (SHPO) is the official appointed or designated by the governor pursuant to Section 101(b)(1) of the NHPA to administer the state historic preservation program (36 C.F.R. § 800.16[v]).
24. Surface Transportation Board is a Federal independent regulatory agency with jurisdiction over certain surface transportation matters, including new rail line construction, abandonment, and mergers.
25. Tribal Historic Preservation Officer (THPO) is the official designated by a federally recognized Tribe to direct a program approved by the National Park Service in which the THPO must have assumed some or all of the functions of State Historic Preservation Officers on Tribal lands. This program was made possible by the provisions of Section 101(d)(2) of the NHPA.
26. Traditional Cultural Place (TCP), as defined in *National Register Bulletin 38*, is a property that is listed in or is eligible for inclusion in the NRHP because of its association with cultural practices or beliefs of a living community that are: (1) rooted in that community's history and (2) important in maintaining the continuing cultural identity of the community (see National Park Service Bulletin 38). TCPs are referred to in 36 C.F.R. § 800 as properties of religious and cultural significance, which may be historic properties as defined in 36 C.F.R. § 800.16[l][1]).
27. Undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency including (1) those carried out by or on behalf of the agency; (2) those carried out with federal financial assistance; and (3) those requiring a federal permit, license, or approval (36 C.F.R. § 800.16[y]).

ATTACHMENT D: CONSULTING PARTY CONTACT INFORMATION

LEAD AGENCY CONTACT INFORMATION

Surface Transportation Board

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AGENCY CONTACT INFORMATION

Advisory Council on Historic Preservation

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Arizona State Museum

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Federal Aviation Administration

Tearanni Williams	(602)792-2896	tearanni.e.williams@faa.gov
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Mesa Historic Preservation Office

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Meg Eaton	(480)644-5550	meg.eaton@mesaz.gov

Mesa Historical Museum

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Mesa Office of Economic Development

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Mesa Gateway Airport Authority

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Salt River Project

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State Historic Preservation Office

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Salt River Pima-Maricopa Indian Community

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Tohono O'odham Nation

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Yavapai-Apache Nation

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PROJECT APPLICANT**Union Pacific Railroad Company**

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