

Attachment B:

Memorandum of Agreement

Between the Federal Transit Administration and the

California State Historic Preservation Officer

Regarding the Los Angeles Westside Subway Extension Project



**MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL TRANSIT ADMINISTRATION
AND THE
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

**REGARDING THE LOS ANGELES WESTSIDE SUBWAY EXTENSION PROJECT,
LOS ANGELES COUNTY, CALIFORNIA**

WHEREAS, the Federal Transit Administration (FTA) is considering providing funding to the Los Angeles County Metropolitan Transportation Authority (LACMTA or Metro) for the Los Angeles Westside Subway Extension Project (Undertaking) within the cities of Los Angeles and Beverly Hills, as well as within unincorporated portions of Los Angeles County, pursuant to Federal transit law (49 USC Chapter 53); and,

WHEREAS, the Undertaking consists of extending the LACMTA heavy rail subway system for nearly nine (9) miles via Wilshire Boulevard from the current western terminus of the Metro Purple Line at the Wilshire/Western Station to a new western terminus near the West Los Angeles Veterans Affairs (VA) Hospital. The Undertaking may be built entirely in one phase or built in three consecutive construction phases. The Undertaking includes construction of seven (7) new stations and will provide direct connections from the west side of the county to all elements of the existing Metro system, improve transit travel time, and provide more reliable transit service to transit riders. Improvements are also planned for the existing Division 20 Maintenance and Storage Facility west of the Los Angeles River between E. 1st Street and Jesse Street. There are two station options for each of the Century City, Westwood/UCLA, and Westwood/VA Hospital stations; and,

WHEREAS, FTA has defined the Undertaking's area of potential effect (APE) for archaeological resources as a radius of 100-feet along the potential subway alignment and maintenance facilities, including areas where the alignment veers outside the roadway right of way. FTA has defined the Undertaking's APE for architectural resources as extending one parcel past the limits of the above-ground project improvements for the stations, service areas, construction staging and laydown areas and any above-ground facilities; and,

WHEREAS, the FTA has determined that the project would constitute an Undertaking as per 36 CFR § 800.16(y), which requires compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 USC § 470f); and,

WHEREAS, FTA will be the lead Federal agency for the Undertaking, with the LACMTA, a grant applicant, as required by FTA, and as an invited signatory to this MOA; and,

WHEREAS, FTA has consulted with the California Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 USC § 470f) on eligibility and effects for properties within the APE; and, regarding the Undertaking's potential to affect historic properties, has decided to prepare a Memorandum of Agreement (MOA) pursuant to 36 CFR §§ 800.4(b)(2) and 800.6(c); and,

WHEREAS, FTA, in consultation with SHPO, has determined that, pursuant to 36 CFR § 800.3, the Ace Gallery is eligible for inclusion in the National Register of Historic Places (NRHP); and pursuant to 36 CFR § 800.5(a), FTA, in consultation with SHPO has determined that the Undertaking will have an adverse effect on a historic property, the Ace Gallery; and,

WHEREAS, FTA, in consultation with SHPO, pursuant to 36 CFR § 800.5(a), has determined that the Undertaking would have no adverse effect on the thirty-eight (38) individual architectural historic properties and two (2) historic districts which are on or eligible for listing in the National Register of Historic Places, and mitigation measures are included in this MOA to minimize the effects on the historic properties within the APE.

WHEREAS, FTA, in consultation with SHPO, pursuant to 36 CFR § 800.5(a), has determined that the Undertaking would have no adverse effect on the one (1) identified archaeological historic property, CA-LAN-2610 or undocumented archaeological resources within the APE provided the measures in this MOA are implemented.

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FTA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with the required documentation and the ACHP has not chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and,

WHEREAS, no Federally-recognized Indian tribes (as defined in 36 CFR § 800.16(m)) expressed an interest in consulting on the Undertaking; however, LACMTA, on behalf of the FTA, consulted with the Native American Heritage Commission and the local Native American community regarding the cultural sensitivity of the project area; and,

WHEREAS, LACMTA, on behalf of the FTA, has consulted with eighteen (18) local government offices, historical organizations, and individuals interested in historic preservation in Los Angeles County about the Undertaking and its effects on historic properties; and,

WHEREAS, this MOA was developed with appropriate public involvement (pursuant to 36 CFR §§ 800.2(d) and 800.6(a)) and the public was provided the opportunity to comment on the Undertaking and will hereafter be provided with further opportunities to comment on the Undertaking as stipulated further in this MOA; and,

WHEREAS, the FTA and the SHPO are signatories pursuant to 36 CFR § 800.6(c)(1) and LACMTA is an invited signatory pursuant to 36 CFR § 800.6(c)(2); and,

NOW, THEREFORE, all signatories agree that, upon FTA's decision to proceed with the Undertaking, FTA shall ensure that the Undertaking is 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

FTA will ensure that the terms of this MOA are carried out and will require, as a condition of any approval of Federal funding for the Undertaking, adherence by LACMTA to the stipulations set forth herein.

I. ARCHITECTURAL HISTORIC PROPERTIES

A. Treatment to Resolve Adverse Effect

1. HABS/HAER Documentation

The adverse effects of the Undertaking on the Ace Gallery will be resolved by FTA by requiring LACMTA to implement and complete National Park Service Historic American Building Survey (HABS) or Historic American Engineering Record (HAER) documentation, pursuant to Section 110(b) of the National Historic Preservation Act for the adversely-affected property. Prior to any action, the photo-recording and documentation consistent with the standards of the National Park Service HABS or HAER will be prepared by a Secretary of Interior qualified professional architectural historian or historic architect. Whenever possible, HABS/HAER documentation Level 2 would be employed whenever measured drawings for a property are available. If measured drawings are not available, HABS/HAER documentation Level 1 would be employed.

The HABS/HAER documentation will be forwarded by the LACMTA to the FTA and SHPO for review. The FTA, in consultation with LACMTA and SHPO, will approve the materials and permit LACMTA to proceed with demolition of the adversely-affected property.

Following approval of the HABS/HAER documentation, LACMTA will ensure that the materials are placed on file with LACMTA and Responsible Agencies, historical societies and preservation groups, local university and community libraries, and other appropriate national and local repositories and archives, as identified by LACMTA.

2. Public Website Development

In connection with HABS/HAER documentation, LACMTA will develop a public website linked to LACMTA's website concerning the history of the Ace Gallery. The website would be based on the photographs produced as part of the HABS/HAER documentation, and historic archival research previously prepared as part of the Undertaking and historic documentation. A public website, which provides historic and documentary information regarding historic properties that would be substantially altered or demolished as a result of the Undertaking, will be prepared and maintained for a ten-year period.

B. Treatment to Avoid Adverse Effects

1. Design Phase Planning

The Undertaking would be designed in adherence to the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Rehabilitating Historic Buildings* and the *Guidelines for the Treatment of Cultural Landscapes* at the following four historic properties that will be altered by either construction staging activities or station entrances to ensure there is no adverse effect to these properties:

- LACMA West May Company – WSE 24 (6067 Wilshire Boulevard)
- Union Bank Building—WSE 14 (9460 Wilshire Boulevard)
- Linde (Westwood) Medical Plaza - WSE 10 (10921 Wilshire Boulevard)
- VA Medical Center Historic District—WSE 41 (11301 Wilshire Boulevard) including the Wadsworth Theater and Contributing Landscape Elements

Designs will ensure the preservation of the character-defining features of the historic properties, and would avoid damaging or destroying materials, features, or finishes that are important to the property, while also considering economic and technical feasibility. LACMTA will ensure that the SHPO has opportunity to review the design by the architectural historian.

2. Design Review and Monitoring

LACMTA will retain the services of a qualified historic preservation consultant with experience in architectural preservation to review structural designs and construction activities, and will require onsite periodic construction monitoring by a historic preservation consultant to ensure protection of historic fabric and compliance with approved designs and the *Secretary of the Interior's Standards for the Rehabilitation of Historic Properties*.

C. Construction Phase

1. Geotechnical Investigations

For the historic properties noted in Stipulation II.D.1, further geotechnical investigations will be undertaken to evaluate soil, groundwater, seismic, and environmental conditions along the alignment. This analysis will assist in the development of appropriate support mechanisms and measures for cut and fill construction areas. The subsurface investigation would also identify areas that could cause differential settlement as a result of using a tunnel boring machine (TBM) in close proximity to historic properties. An architectural historian or historical architect who meets the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61) will provide input and review of final design documents prior to implementation of the mechanisms and measures. The review will evaluate whether the geotechnical investigations and support measures for cut and fill, and measures to prevent differential settlement meet the Secretary of the Interior's *Standards for the Treatment of Historic Properties*. The evaluation of measures will be forwarded by the LACMTA to the FTA and SHPO for review. Then FTA, in consultation with the SHPO, upon the SHPO's concurrence, shall approve the evaluation and permit the LACMTA to proceed with construction.

D. Treatment to Avoid Adverse Effect to Historic District Contributing Historic Landscape Element

1. Pre-Construction Survey

LACMTA will develop a survey of the contributing landscape elements of the VA Medical Center Historic District located within twenty (20) feet of the Westwood/VA Hospital North and South Station portal-related cut-and-cover and construction staging areas during final design. The survey will be prepared by a qualified architectural historian and historic landscape architect and/or qualified arborist with the assistance of a technician/surveyor using high-resolution GPS equipment. The survey will establish an inventory of each mature historic tree species and the precise location of each individual tree in the survey area. The inventory survey will also assess the feasibility of temporarily removing and then replanting the extant trees in their original location, including how the trees should be moved and temporarily stored.

A report on the results of the inventory will be submitted to FTA, LACMTA and the SHPO for review and will be placed on file with LACMTA and supplied to other signatories to this MOA if requested.

2. Landscape Protection Measures

The results of the pre-construction survey will be used for marking trees to be avoided during construction, for implementation of relocation recommendations as necessary if avoidance of any of the trees is infeasible, and for onsite use during construction activities to ensure the historic trees remaining in place are protected.

Should any of the trees that are temporarily removed not survive a reasonable period after they are replanted, as determined by a qualified arborist, LACMTA will obtain and plant adult-aged replacement trees of the same species to rehabilitate the historic landscape.

3. Construction Monitoring

LACMTA will retain the services of a qualified historic preservation consultant with experience in the preservation of historic landscapes. The consultant will review the existing landscape designs and proposed construction activities, and develop a plan for onsite periodic construction monitoring to ensure protection of historic fabric and compliance with the *Guidelines for the Treatment of Cultural Landscapes*.

E. Reporting Reviews

1. SHPO Review and Comment

Upon completion of construction and any reports prepared for resolution of adverse effects, the SHPO shall have thirty (30) days to review the draft and comment on the level of effort, results, and eligibility recommendations; those comments shall be incorporated into the final technical report, as appropriate. If no response by the SHPO is received by the FTA and/or LACMTA within thirty (30) days, the FTA and LACMTA shall assume concurrence and authorize the final technical report and/or the historic architectural documentation.

2. Document Submittal

Within thirty (30) days of receipt of comments on any draft report, the FTA and LACMTA shall submit the final technical report and/or historic architectural documentation to the SHPO, the appropriate California Historical Resources Information System information center, and the appropriate Indian tribe(s), and shall make it available to other interested persons who meet the confidentiality requirements. Reports prepared with archaeological site information shall not be distributed to the general public, except in an abridged form that does not include sensitive information about archaeological site locations or human remains.

3. Report Standards

All reports generated as a result of this MOA shall be consistent with contemporary professional standards and the Secretary of the Interior's guidelines.

II. ARCHAEOLOGICAL RESOURCES

This MOA accordingly sets forth the following measures to be implemented to reduce potential construction impacts within the APE to known archaeological historic properties and to undocumented archaeological resources, including human remains.

A. Consultation with Native American Individuals, Tribes and Organizations and Treatment of Cultural Remains and Artifacts.

1. The parties to this MOA agree that Indian burials and related items discovered during the implementation of the MOA and the Undertaking will be treated in accordance with the requirements of § 7050.5(b) of the California Health and Safety Code. If, pursuant to § 7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are or may be of Native American origin, then the discovery shall be treated in accordance with the provisions of §§ 5097.98 (a) - (d) of the California Public Resources Code.
2. LACMTA will ensure that the expressed wishes of Native American individuals, tribes, and organizations are taken into consideration when decisions are made regarding the disposition of other Native American archaeological materials and records relating to Indian tribes.

B. Confidentiality

The signatories to this MOA acknowledge that archaeological historic properties covered by this MOA are subject to the provisions of § 304 of the National Historic Preservation Act of 1996 and § 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of archeological site information, and having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are consistent with §304 of the National Historic Preservation Act.

C. Worker Training

Prior to initiating ground-disturbing activities, a qualified archaeologist will conduct a short cultural resources awareness training session for all construction workers and supervisory personnel. Each worker will learn the proper procedures to follow in the event cultural resources or human remains are uncovered during ground-disturbing activities.

D. Unanticipated Discoveries

If FTA and LACMTA determines, after any future construction of the Undertaking has commenced, that project activities will affect a previously unidentified property that may be eligible for the NRHP, or affect a known historic property in an unanticipated manner, FTA and LACMTA will address the discovery or unanticipated effect in accordance with 36 CFR § 800.13(b)(3). The LACMTA must notify the FTA and SHPO within forty-eight (48) hours of the discovery. FTA, at its discretion, may hereunder, and pursuant to 36 CFR § 800.13(c), assume any unanticipated discovered property to be eligible for inclusion in the NRHP.

For properties determined eligible or assumed to be eligible pursuant to Stipulation I.E., LACMTA will notify the FTA, ACHP, and SHPO of those actions that it proposes to avoid, minimize, or mitigate adverse effects. Consulting parties will have forty-eight (48) hours to provide their views on the proposed actions. The FTA will ensure that the timely-filed recommendations of consulting parties are taken into account prior to granting approval of the measures that the LACMTA will implement to resolve adverse effects. The LACMTA will carry out the approved measures prior to resuming construction activities in the location of the discovery.

III. ADMINISTRATIVE PROVISIONS

A. Standards

1. Definitions

The definitions set forth at 36 CFR § 800.16 are applicable throughout this MOA.

2. Professional Qualifications

LACMTA shall ensure that all historic preservation and archaeological work are performed by LACMTA under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications in the Secretary of the Interior's *Professional Qualification Standards* (48 CFR §§ 44738-44739) in those areas in which the qualifications are applicable for the specific work performed.

3. Documentation Standards

Written documentation of activities prescribed by Stipulations I, II of this MOA shall conform to *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* as amended and annotated (48 CFR §§ 44716-44740) as well as to applicable standards and guidelines established by the SHPO.

4. Curation and Curation Standards

LACMTA shall ensure that, to the extent permitted under §§ 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the activities prescribed by this MOA curate in accordance with 36 CFR Part 79. FTA will ensure that, to the extent permitted by applicable law and regulation, the views of the Most Likely Descendant(s) are taken into consideration when decisions are made about the disposition of other tribal archaeological materials and records.

B. Dispute Resolution

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FTA shall consult with such party to resolve the objection. If FTA determines that such objection cannot be resolved, FTA will:

1. Forward all documentation relevant to the dispute, including the FTA's proposed resolution, to the ACHP. The ACHP shall provide FTA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FTA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. FTA will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FTA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FTA shall prepare a written response that takes 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.
3. FTA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

C. Amendments

Any MOA party may propose that this MOA be amended, whereupon the MOA parties will consult for no more than thirty (30) days to consider such amendment. FTA 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 any of the signatory parties in accordance with Section D of Stipulation III.

D. Termination

If any signatory to this MOA determines that its terms will not or cannot be carried out, that signatory shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation C of Stipulation III, above. If within thirty (30) days (or another time period agreed to by all signatories) agreement on 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, FTA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FTA shall notify the signatories as to the course of action it will pursue.

E. Duration of the MOA

1. Unless terminated pursuant to Section D of Stipulation III above, or unless superseded by an amended MOA, this MOA will be in effect following execution by the signatory parties until FTA, in consultation with the other MOA parties, determines that all of its stipulations have been satisfactorily fulfilled. This MOA will terminate and have no further force or effect on the day that FTA notifies the other MOA parties in writing of its determination that all stipulations of this MOA have been satisfactorily fulfilled.
2. The terms of this MOA shall be satisfactorily fulfilled within twenty (20) years following the date of execution by the signatory parties. If FTA determines that this requirement cannot be met, the MOA parties 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, FTA will comply with Section D of Stipulation III, above, if it determines that the Undertaking will proceed notwithstanding termination of this MOA.
3. If the Undertaking has not been implemented within ten (10) 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, FTA 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.

F. Effective Date

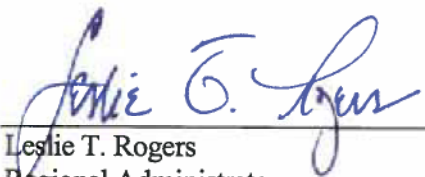
This MOA will take effect on the date that it has been fully executed by FTA, LACMTA, and SHPO.

G. Execution


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

SIGNATORY

Federal Transit Administration

By  Date MAR 6 2012
Leslie T. Rogers
Regional Administrator
FTA Region IX

California State Office of Historic Preservation

By  FOR MILFORD WAYNE DONALDSON Date 3/7/12
Milford Wayne Donaldson
State Historic Preservation Officer
Office of Historic Preservation, Sacramento

INVITED SIGNATORY PARTY:

Los Angeles County Metropolitan Transportation Authority

By Arthur T. Leahy
Arthur T. Leahy
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority

Date 12-19-11