

1 **MEMORANDUM OF UNDERSTANDING**

2 This Memorandum of Understanding (“MOU”) is entered into by the California
3 High-Speed Rail Authority (“Authority”) and the San Joaquin Valley Unified Air Pollution
4 Control District (“District”). Authority and District are collectively referred to herein as
5 the “Parties” with each being a “Party”.

6 **RECITALS**

7 **WHEREAS**, District is an air pollution control district formed by the counties of
8 Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare, and the Valley
9 portion of Kern, pursuant to California Health and Safety Code section 40150, et seq.;

10 and

11 **WHEREAS**, District is responsible for developing and implementing air quality
12 control measures within the District Boundaries as depicted in Exhibit A (“District
13 Boundaries” or “San Joaquin Valley Air Basin”) attached hereto and incorporated
14 herein, including air quality control measures for stationary sources, transportation
15 sources, and indirect sources; and

16 **WHEREAS**, despite the best efforts of District, air quality within District
17 Boundaries remains impaired such that the San Joaquin Valley Air Basin is not in
18 attainment of federal Clean Air Act standards for ozone and its precursors NOx and
19 VOCs (extreme nonattainment) and PM2.5 and is in Attainment/Maintenance status for
20 PM10 (NOx, VOC, PM10 and PM2.5 collectively, “Criteria Pollutants”); and

21 **WHEREAS**, emissions of Criteria Pollutants from the Authority’s planned high-
22 speed rail construction within District Boundaries would exacerbate that non-attainment
23 status and could threaten that Attainment/Maintenance status; and

24 **WHEREAS**, the San Joaquin Valley Air Basin is unique meteorologically in that
25 it is surrounded on three sides by mountain ranges, including to the west which
26 significantly limits the ability of ocean weather patterns and winds to refresh air in the
27 basin; and

28

1 **WHEREAS**, the Authority, in partnership with the Federal Railroad
2 Administration (“FRA”), is developing a high-speed train system (“HST System”), which
3 includes construction of guide-way segments, and ancillary facilities such as a Heavy
4 Maintenance Facility, stations, and overpasses for California pursuant to the California
5 High-Speed Rail Act (Public Utilities Code section 18500 *et seq.*) (“Rail Act”) and the
6 Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (codified at
7 Streets and Highways Code section 2704 *et seq.*) (“Bond Act”) that would serve the
8 San Francisco Bay Area, Sacramento, Central Valley, Los Angeles and San Diego
9 through various station-to-station segments (“Segments”) (as depicted in Exhibit B);
10 and

11 **WHEREAS**, the HST System includes segments or portions thereof that will be
12 constructed, if and when funding can be secured, within the boundaries of the San
13 Joaquin Valley (“SJV”) including the following: Merced to San Jose (portion), Merced to
14 Fresno (all), Fresno to Bakersfield (all), Bakersfield to Palmdale (portion), and
15 Sacramento to Merced (portion), collectively referred to as “HST SJV District Portion”;
16 and

17 **WHEREAS**, the Authority completed Program-level Environmental Impact
18 Statements/Reports (“EIS/EIR”) in 2005, 2008, 2010 and 2012 pursuant to the National
19 Environmental Policy Act (“NEPA”) and California Environmental Quality Act (“CEQA”)
20 evaluating impacts of the HST System, and selecting preferred route corridors; and

21 **WHEREAS**, a project level Final EIS/EIR (“MF FEIR”) for the Merced to Fresno
22 Segment (“MF Segment”) was approved and certified via Resolution 12-19 (“MF FEIR
23 Resolution”) and the MF Segment approved and CEQA findings made via Resolution
24 12-20 (“MF Segment Resolution”) by the Authority’s Board of Directors in May 2012
25 and FRA’s associated Record of Decision (“ROD”) issued on September 2012; and

26 **WHEREAS**, construction of a portion of the MF Segment (from approximately
27 Madera to downtown Fresno) is anticipated to commence in 2014 with connections to
28 the San Francisco Bay Area and Los Angeles Basin expected after year 2028; and

1 **WHEREAS**, the Authority found in the MF FEIR and MF FEIR Resolution that
2 construction of the MF Segment would cause significant air quality impacts from
3 construction emissions of Criteria Pollutants because the San Joaquin Valley Air Basin
4 is in non-attainment for Criteria Pollutants; and

5 **WHEREAS**, the Authority has included in the MF Segment Resolution, and in
6 the Draft EIR/EIS for the Fresno-Bakersfield Segment (and anticipates so including in
7 the draft environmental documents for other Segments of the HST SJV District Portion)
8 various requirements and mitigation measures to reduce significant construction
9 emissions associated with the HST SJV District Portion (such as using the cleanest
10 construction and hauling fleet as reasonably practicable, as detailed in MF FEIR AQ-
11 MM#1 and #2); and

12 **WHEREAS**, nevertheless, Criteria Pollutant(s) emitted during HST construction
13 within the District Boundaries would still exacerbate and/or threaten the existing non-
14 attainment and maintenance status for Criteria Pollutants within the District Boundaries;
15 and

16 **WHEREAS**, during the public process leading up to the MF FEIR, the District
17 recommended in writing that the Authority enter into a Voluntary Emission Reduction
18 Agreement (“VERA”) with the District as an additional mitigation measure (because of
19 the emissions offsets VERA implementation would achieve) for construction emission
20 impacts the MF FEIR concluded would occur in the MF Segment; and

21 **WHEREAS**, the MF Segment Resolution committed the Authority to entering
22 into a VERA with the District for the MF Segment as a mitigation measure to
23 accomplish net-zero MF Segment construction emissions of Criteria Pollutants
24 because of the San Joaquin Air Basin’s difficult air quality challenge (*i.e.*, its non-
25 attainment status), which VERA now has been drafted for the funded Madera-to-
26 Fresno portion of the MF Segment and is near ready for execution (“Madera-to-Fresno
27 VERA”); and

28

1 **WHEREAS**, the Authority understands that any significant HST construction
2 emissions air quality impacts from Criteria Pollutants within the District Boundaries
3 could be mitigated through various measures, including emissions offsets to net zero
4 through entry into VERAs, which approach would address the District’s view that any
5 net HST construction emissions of Criteria Pollutants within the District Boundaries are
6 impacts that must be fully mitigated; and

7 **WHEREAS**, the District has developed Incentive Programs around several core
8 principles, including cost-effectiveness, integrity, effective program administration,
9 excellent customer service, the efficient use of District resources, fiscal transparency
10 and public accountability; and

11 **WHEREAS**, the District’s Incentive Programs involve the District using monies
12 (such as grant funds and project-proponent-provided monies via a VERA) to fund
13 (usually on a percentage basis) the purchase and use by third parties of newer
14 equipment that emits fewer Criteria Pollutants to replace older, less-clean-burning
15 equipment (such as farm tractors), which the District administers through Individual
16 Incentive Program Funding Agreements (“IIPFAs”); and

17 **WHEREAS**, the District’s IIPFAs require the user of the new equipment to use
18 the new equipment for a minimum number of hours (based on the user’s historical use
19 of the replaced equipment) over a specified number of years, and require permanent
20 destruction of the replaced equipment; and

21 **WHEREAS**, the IIPFAs, because of their requirements, result in reductions of
22 Criteria Pollutants that get assigned to the project proponent providing the funding to
23 offset emissions by that project proponent (“Criteria Pollutant VERA Offsets”); and

24 **WHEREAS**, the Criteria Pollutant VERA Offsets, because of the requirements of
25 and protections in the IIPFAs, are secured and certified to the Authority by the District
26 (“Secured Criteria Pollutant VERA Offsets”) upon execution of each IIPFA; and

27 **WHEREAS**, the District’s Incentive Programs are regularly audited by
28 independent outside agencies including professional accountancy corporations on

1 behalf of the federal government, the California Air Resources Board (“ARB”), the
2 California Department of Finance and the California Bureau of State Audits; and

3 **WHEREAS**, the District has determined that with appropriate funding from
4 Authority, the District can source, secure and certify Criteria Pollutant VERA Offsets as
5 necessary for construction of the HST SJV District Portion.

6 **AGREEMENT**

7 **NOW THEREFORE**, the Authority and the District hereby agree as follows:

8 1. **Offset of Construction Emissions of Criteria Pollutants**

9 (i) The Authority shall fully offset all HST SJV District Portion-related HST
10 construction emissions from Criteria Pollutants by achieving surplus, quantifiable and
11 enforceable emissions reductions of Criteria Pollutants.

12 (ii) For the purpose of this MOU, “fully offset” or “net zero” means that the
13 total amount of all Criteria Pollutants emission reductions secured by the offset
14 reduction measures is equal to, or greater than, the total amount of actual Criteria
15 Pollutant HST construction emissions within the HST SJV District Portion, minus the
16 projected emissions of Criteria Pollutants that would have occurred in the locations of
17 the HST District Portion construction in the absence of HST construction as may be
18 feasible and technically calculable for specific facilities HST might replace (as individual
19 VERAs may include). “Surplus” emission reductions are reductions that are not
20 otherwise required by existing laws or regulations.

21 (iii) In order to fully offset such construction-related air emissions from the
22 HST SJV District Portion, upon each Segment in the HST SJV District Portion having
23 been approved for construction by the Authority and any applicable state or federal
24 entity , having secured funding for construction, and having approved or certified
25 associated environmental review reports and/or statements as required by applicable
26 law (“Certified Environmental Document”), the Authority and District shall enter into a
27 VERA substantially in the form of the Madera-to-Fresno VERA to cover the portion of
28 the Segment approved and funded for construction within District Boundaries prior to

1 the commencement of construction of said portion. Notwithstanding the above, nothing
2 in this MOU shall prevent the Authority from commencing any construction if, despite
3 the Authority's best efforts, timely entry into the associated VERA did not occur; in such
4 event, the Parties shall work cooperatively to accomplish entry into the VERA in time
5 for emissions offsets to occur in a timely manner to satisfy applicable law such as
6 contemporaneous offset timing requirements established by the U.S. Environmental
7 Protection Agency for general conformity.

8 2. VERA Implementation

9 (i) Upon entering into a VERA, the Authority shall provide the District with a
10 meaningful amount of Air Quality Mitigation Funds (as a deposit) as may be specified in
11 each VERA, which the District shall place in a District trust or escrow account until
12 committed in an executed and Authority-approved IIPFA. Such Funds are intended to
13 fund equipment replacement and/or retrofit to achieve Criteria Pollutant VERA Offsets
14 and to fund the District's administrative expenses to implement the VERA, as may be
15 specified in each VERA. The Authority acknowledges that the District will require
16 availability of a meaningful amount of such Funds prior to soliciting and negotiating
17 IIPFAs to accomplish Criteria Pollutant VERA Offsets on the Authority's behalf as part
18 of any individual VERA. The District acknowledges that construction of the HST SJV
19 District Portion is not fully funded, and future funding sources and availability can affect
20 how individual VERAs get funded and the provisions and terms in such VERAs. The
21 total estimated amount of Air Quality Mitigation Funds necessary for each VERA are
22 based on (a) the total tonnage of Criteria Pollutants estimated to be emitted during the
23 HST construction covered by each VERA, as estimated within a Certified
24 Environmental Document or some subsequent estimate based on more then-up-to-
25 date construction information and (b) District's cost per ton per the then-applicable rate
26 contained in District Rule 9510 as set forth in each VERA.

27 (ii) Upon receipt of a meaningful amount of such Funds as relates to an
28 individual VERA and upon the Authority's written notice to proceed from its Contract

1 Manager to the District based on relative certainty of a likely construction start date for
2 the HST construction covered by the relevant VERA, the District will commence
3 negotiating and executing (after Authority limited review and approval) and funding
4 (from the Funds in trust/escrow) IIPFAs to achieve Secured Criteria Pollutant VERA
5 Offsets on behalf of the Authority in a timely manner to satisfy applicable law or
6 general conformity regulations requiring emission reductions to be achieved
7 contemporaneous to the actual emissions to be offset. The Authority will continue to
8 fund the trust/escrow account, and District will continue to negotiate and execute
9 additional IIPFAs to create additional Secured Criteria Pollutant VERA Offsets until
10 sufficient Secured Criteria Pollutant VERA Offsets have been funded to accomplish full
11 offset to net zero for that VERA.

12 (iii) Upon execution of each IIPFA, District shall issue to the Authority a Secured
13 Criteria Pollutant VERA Offsets Receipt, by which the District ensures to the Authority
14 that such associated offsets listed in the Receipt have been secured with no further
15 involvement or funding by the Authority.

16 (iv) Through periodic reporting to each other, the Authority will monitor the actual
17 emissions resulting from construction and the District will monitor and match such
18 actual emissions to the total offsets stated in Secured Criteria Pollutant VERA Offsets
19 Receipts issued to date. The District shall certify in writing to the Authority when the
20 total Secured Criteria Pollutant VERA Offsets listed in all Receipts issued fully offset
21 the actual construction emissions of Criteria Pollutant(s) from the HST Segment portion
22 covered by the associated VERA.

23 3. Refunds

24 When total offsets stated in Secured Criteria Pollutant VERA Offsets Receipts
25 equal or exceed total actual construction emissions of Criteria Pollutants for the HST
26 construction covered in a VERA, the District shall, upon Authority written request,
27 refund the Authority any remaining Air Quality Mitigation Funds which are not
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1 encumbered through IIPFAs. The District shall have a reasonable period of time to
2 refund the unencumbered Air Quality Mitigation Funds.

3 **4. Transfer of Segment Excess Emission Reductions**

4 If total offsets stated in Secured Criteria Pollutant VERA Offsets Receipts
5 exceed total construction emissions of Criteria Pollutants for the HST construction
6 covered in a VERA, the Authority shall be credited with such excess emission (“VERA
7 Excess Emission Reduction” or “Excess”). Such VERA Excess Emission Reductions
8 shall be transferred to any other then-existing or future Authority-District VERA. If there
9 is no existing VERA and likely will not be a future VERA in time for the Authority to get
10 value for the Excess, the Authority may transfer the Excess to a third-party developer.

11 **5. District Rule 9510-Indirect Source Review**

12 Authority acknowledges that it is required to comply with all applicable laws that
13 may be in effect as the HST SJV District Portion is implemented, such as the District’s
14 current Rule 9510 (including its requirement to submit an Air Impact Assessment
15 Application). The Authority acknowledges that it is subject to all applicable provisions
16 of District Rule 9510 that are in effect at the time of submitting an Air Impact
17 Assessment Application, but the District anticipates that Criteria Pollutant Offsets to be
18 accomplished through VERAs as contemplated by this MOU will satisfy the emissions
19 reductions requirements of current Rule 9510.

20 **6. Term of MOU**

21 This MOU shall be effective upon the date it is signed. The Parties acknowledge
22 that construction of the HST SJV District Portion could span one or more decades. The
23 Parties agree to work cooperatively together over that time period to evaluate any
24 amendments necessary to this MOU to reflect any relevant circumstances that may
25 change, including but not limited to changing state and federal law requirements
26 related to air quality, changes (positive or negative) in the Clean Air Act attainment
27 status of the San Joaquin Air Basin for Criteria Pollutants or other pollutants, changing
28 and evolving HST funding, and changing state and federal law requirements related to

1 the HST System. This MOU shall be terminated by its terms when total offsets stated in
2 Secured Criteria Pollutant VERA Offsets Receipts equal or exceed total actual
3 construction emissions of Criteria Pollutants for the HST SJV District Portion.

4 7. **Exhibits.** The Exhibits to this MOU are fully incorporated and are a part
5 of this MOU, and are:

6 A. District Boundaries Map

7 B. HST System and Segment Map

8 8. **Miscellaneous.** The Recitals set forth above are hereby incorporated into
9 the terms of this MOU. Counterpart and facsimile/computer image signatures shall be
10 treated as originals. Notices under this MOU shall be given in writing to the persons
11 and addresses listed in the then-most-current VERA. This MOU contains all
12 understandings between the Parties as to the matters covered herein and incorporates,
13 integrates and supersedes any different or other oral or written understandings
14 between the Parties as to the matters covered herein. This MOU was prepared equally
15 by both Parties.

16 IN WITNESS WHEREOF, the Authority and District have executed this MOU
17 and agree that it shall be effective as of the date first written above.

18 **AUTHORITY**

19 **High Speed Rail Authority**

20 _____
21 Jeff Morales
22 Chief Executive Officer

18 **DISTRICT**

19 **San Joaquin Valley Unified Air
20 Pollution Control District**

21 _____
22 Skip Barwick
23 Governing Board Chair

24 ***Recommended for approval:***
25 San Joaquin Valley Unified Air Pollution
26 Control District

27 _____
28 Seyed Sadredin
Executive Director/APCO

Approved as to legal form:

San Joaquin Valley Unified Air Pollution
Control District

Annette Ballatore-Williamson
Interim District Counsel

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EXHIBIT A: District Boundaries/San Joaquin Valley Air Basin

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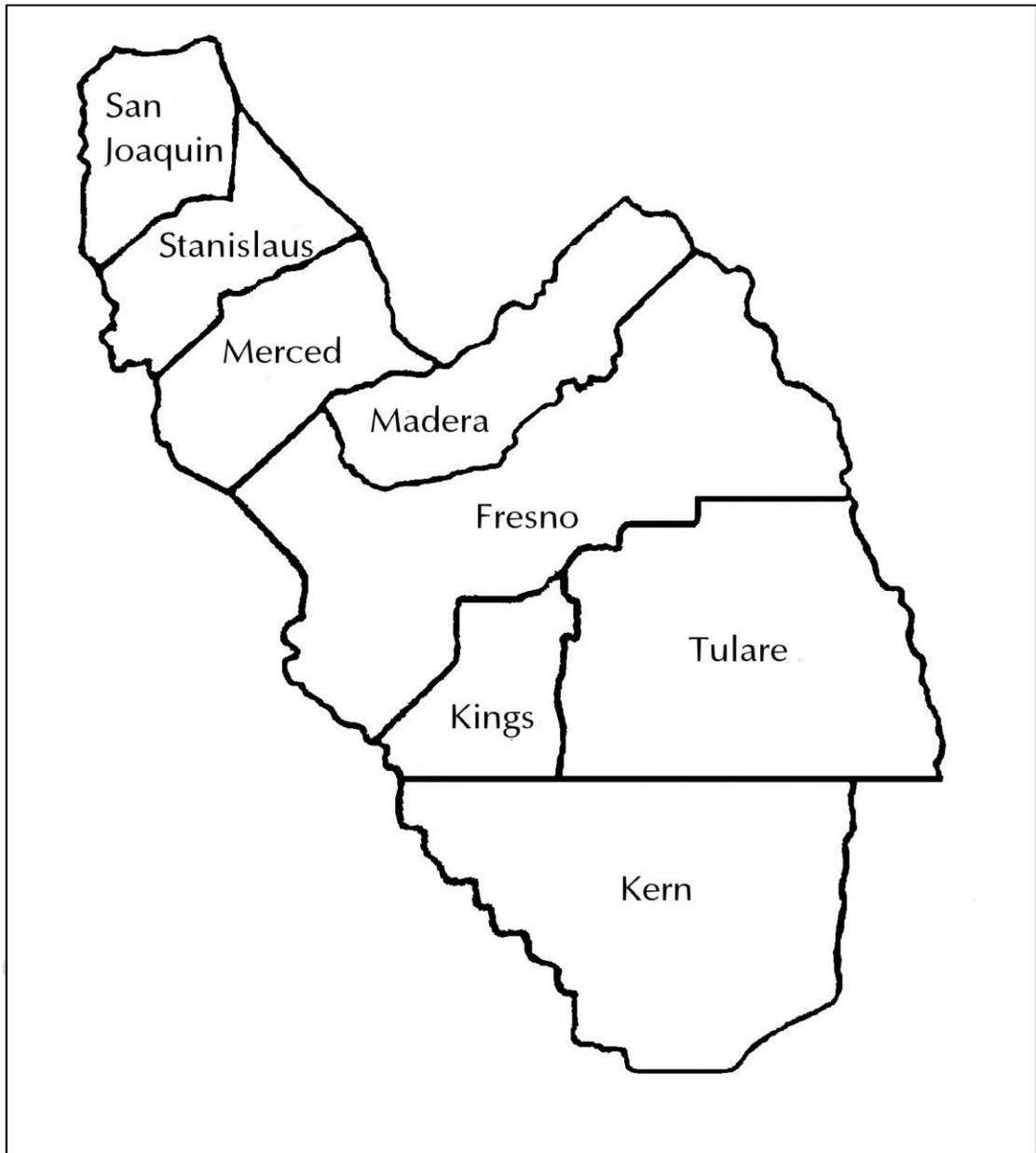


EXHIBIT B: Segments/Corridors of the HST System

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