

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND THE COLORADO DEPARTMENT OF TRANSPORTATION
REGARDING
COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC
PRESERVATION ACT, AS IT PERTAINS TO THE ADMINISTRATION OF
THE FEDERAL-AID HIGHWAY PROGRAM IN COLORADO**

WHEREAS, the Federal Highway Administration (FHWA) is the “Agency Official” responsible for compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 United States Code [U.S.C.] 470s) and the implementing regulations 36 Code of Federal Regulations (CFR) 800; and

WHEREAS, the Colorado Department of Transportation (CDOT) administers federal aid highway projects throughout the state of Colorado;

WHEREAS, the responsibilities of the Colorado State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR 800 are to advise, assist, review and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies’ requests within a specified period of time; and

WHEREAS, FHWA has determined that implementation of the federal aid program (Program) in Colorado may have an effect upon properties included on or eligible for inclusion on the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the Colorado SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b); and

WHEREAS, FHWA, CDOT, the ACHP and the SHPO executed a Programmatic Agreement regarding compliance with Section 106 of the National Historic Preservation Act as it pertains to the Administration of the Federal-Aid Highway Program in Colorado on May 6, 2010; and

WHEREAS, this amended Programmatic Agreement (Agreement) supersedes the 2010 Agreement and replaces it in full; and

WHEREAS, in developing the original Agreement, FHWA solicited the participation of Colorado Preservation Incorporated, the Mountain/Plains Regional Office of the National Trust for Historic Preservation, the Colorado Council of Professional Archaeologists, the Colorado Municipal League, Colorado Counties Incorporated, and forty-two federally-recognized Native American tribes (as listed in Attachment 5) pursuant to 800.14(b)(2)(i); and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this amended Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Colorado and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, CDOT has participated in the consultation to develop this amendment and is a signatory to the Agreement; and

WHEREAS, this Agreement and its amendment replaces the previous Memorandum of Understanding between SHPO and CDOT Regarding Section 106 and State Register Act Procedures (March 14, 1996), the Programmatic Agreement among FHWA, Council, SHPO, and CDOT Regarding Minor Highway Improvement Projects (February 15, 1991), the Memorandum of Understanding Between the Colorado Department of Highways, the Colorado State Historic Preservation Officer Regarding Cultural Resource Investigations (January 3, 1989), and the Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, and the Colorado State Historic Preservation Officer Regarding Management and Preservation of Colorado Historic Bridges (July 16, 2003).

NOW THEREFORE, FHWA, SHPO, ACHP and CDOT agree that the review of FHWA undertakings in the State of Colorado shall be administered according to the following stipulations.

STIPULATIONS

I. Applicability

- A.** This agreement shall apply to all FHWA undertakings administered under its Program in Colorado for which FHWA is the lead agency, including transportation enhancement projects, and all actions that require a federal approval or permit, whether or not federal funds have been committed to the action. This agreement shall not apply to undertakings that occur on or affect tribal lands as defined in 36 CFR 800.16(x). Unless otherwise noted, tribal lands are all Indian owned lands within the exterior boundaries of any Indian reservation. For such undertakings, FHWA shall follow the procedures in 36 CFR 800.

II. General Requirements

- A. Delegation.** FHWA has the responsibility for ensuring compliance with Section 106 of the NHPA and 36 CFR 800. By this agreement, however, FHWA authorizes CDOT to initiate, facilitate, and in most cases, conclude consultation with the SHPO and consulting parties for purposes of compliance with Section 106 of the NHPA. This authority cannot be delegated to project sponsors, consultants, or any other party. FHWA remains responsible for all Section 106 determinations made pursuant to this Agreement.
- B. Professional Qualifications Standards.** All actions prescribed in this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons meeting the Secretary of the Interior's Professional Qualification Standards as published in 36 CFR 61. Consultants working on projects on behalf of FHWA and CDOT must also meet these standards. The only actions exempt from this requirement are those related to review of projects as outlined in Attachment 6 of this agreement.

C. Definitions

1. For the purposes of this agreement, the definitions provided in 36 CFR 800.16(a) through (z) shall apply.
2. There are three classes of action defined in the Council on Environmental Quality regulations (40 CFR 1500) that implement the National Environmental Policy Act (NEPA): Categorical Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS).

III. Initiation of Section 106 Process

For all FHWA undertakings reviewed pursuant to this agreement, FHWA and CDOT shall observe the following requirements:

A. Identification of Consulting Parties:

1. As early as possible in the Section 106 process and in accordance with 36 CFR 800.2(c)(3 and 5) and 800.3(f), CDOT shall identify Native American tribes (Tribes), Certified Local Governments (CLG), Historic Preservation Commissions (HPC), and other parties with a demonstrated interest that might want to participate in the Section 106 process for the project. When a CLG or HPC is not in place, CDOT will contact the City or County in which the project is located to determine the appropriate consulting party. A list of these parties shall be provided to SHPO for review and suggested additions. CDOT shall contact the Mountains/Plains Office of the National Trust for Historic Preservation and Colorado Preservation Inc., and solicit their participation in the Section 106 process as appropriate.¹
2. Initiation of consultation with federally recognized Tribes will be undertaken by FHWA (see Stipulation III (B) below).
3. If the scope of the undertaking requires Section 106 consultation, CDOT shall send to all other potential consulting parties a letter that includes the project description, a description of efforts to identify historic properties, and an invitation to participate in the Section 106 process. Parties who provide a written response indicating a demonstrated interest in the project shall be included as official consulting parties.²
4. CDOT shall submit the written comments of the Tribes, CLG, HPC, or other consulting parties, if provided, to the SHPO.

B. Consultation with Native American Tribes:

1. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with federally recognized Tribes. However, FHWA has delegated facilitation of day-to-day tasks related to tribal consultation to CDOT. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement.
2. If the scope of the undertaking requires Section 106 consultation, and in accordance with 36 CFR 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the APE shall be identified by CDOT and invited by FHWA to be consulting parties.³
3. CDOT shall ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
4. CDOT shall ensure that consultation with Tribes continues throughout the Section 106 review process prescribed by this Agreement whenever such tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.

C. Public Involvement:

1. CDOT shall seek and consider the views of the public in a manner that is consistent with 36 CFR 800.2(d)(1-2), 800.3(e), 800.8, and 800.11(c) (1 and 3). In most cases, CDOT

¹ Typically, when projects are documented by an EA or EIS, CDOT follows this protocol.

² See Footnote #1.

³ Typically, Tribal Consultation is conducted only when projects are documented by an EA or EIS.

will rely on its process for identifying consulting parties as outlined in Stipulation III (A) of this Agreement to find groups and individuals at the local level who can represent the larger public interest in historic properties issues. Pursuant to 36 CFR 800.8, CDOT will also use the NEPA process to involve the public in review of projects involving historic properties issues, provided the NEPA documentation includes sufficient information. As appropriate, additional public involvement may be warranted to consult with the public and/or consulting parties (including federally recognized Native American Indian tribes) to resolve project effects on historic properties.

D. Establishing the Area of Potential Effects (APE)

CDOT shall follow the procedures in 36 CFR 800.4(a) to determine and document the project APE as defined in 36 CFR 800.16(d) and as outlined in Attachment 1, which summarizes CDOT practices regarding delineation and consultation on APE.

1. For large or complex projects, CDOT shall consult with SHPO staff and present a proposed APE boundary for the project. Following this consultation, CDOT shall send a map, graphic, and/or written description of the APE to SHPO requesting comments on the boundary.⁴
2. For smaller scale projects, a separate meeting with SHPO to discuss APE is not necessary. In lieu of a meeting, a detailed justification for and map of the APE boundary shall be included along with the survey report and other Section 106 documentation for the project.⁵
3. CDOT shall afford identified consulting parties an opportunity to comment on the APE for all projects.
4. CDOT shall consider requests by SHPO or consulting parties to expand or adjust APE boundaries but reserves the right to determine the appropriate boundary for the undertaking.

E. Exempted Categories.

1. Pursuant to 36 CFR 800.3(a)(1), if CDOT determines that an undertaking is a type of activity that does not have the potential to affect historic properties, then the Section 106 process is complete and no consultation with SHPO is required. CDOT has identified in Attachment 2, Screened Undertakings, a list of project types whose effects to historic properties are foreseeable, likely to be minimal or not adverse, or will have no effect at all.
2. Any undertakings that meet the screening requirements will be documented in the project file and will cite this stipulation of the Agreement along with the project number, and a description of the activity or project type listed in Attachment 2. These findings will be included in the Section 106 Tracking Report prepared pursuant to XIII (B) of this Agreement.
3. Attachment 6 (Section 106 Exempted Undertakings) contains a list of project types that do not require Section 106 review by CDOT cultural resources staff because they have little or no potential to affect historic properties. Only designated environmental staff in the CDOT Regions may review specific undertakings to determine if they meet the criteria outlined in Attachment 6. In cases where designated CDOT environmental staff determines that the undertakings meet the requirements outlined in Attachment 6, a formal review by CDOT cultural resources staff will not be required.
4. Any undertakings that meet the requirements outlined in Attachment 6 will be documented in the CDOT Region project file and copied to appropriate headquarters or

⁴ Typically, when projects are documented by an EA or EIS, CDOT follows this protocol.

⁵ Typically, when projects are documented by a CE, CDOT follows this protocol.

region CDOT cultural resources staff. The documentation will cite the stipulation of this Agreement along with the project number and a description of the activity or project type listed in Attachment 6. These undertakings will be documented in a tracking report pursuant to XIII (B) of this Agreement.

IV. Identification and Evaluation of Historic Properties

A. Project Specific Evaluations

1. **Identification of Historic Properties.** In accordance with 36 CFR 800.4(a)(2-4) and 36 CFR 800.4(b), CDOT shall identify historic properties that may be located within an undertaking's APE. CDOT shall determine the appropriate scope and type of identification efforts based on the magnitude of the project, the nature and extent of its potential effects on historic properties, and the likely nature of historic properties within the project area. CDOT shall consult formally or informally with SHPO to determine the level of effort to identify historic properties and associated survey methodology.

i. **Previously Documented Properties:**

- a. **Properties Determined Eligible.** If the property has been determined eligible within the past five years or is listed on the NRHP, CDOT may rely on the previous determination without review by the SHPO unless alterations to the property's integrity warrant reevaluation. If the property has been determined eligible or was listed on the NRHP and it has been over five years since the property was initially recorded, CDOT shall conduct a reevaluation of the property and provide appropriate documentation to SHPO and the consulting parties. Properties that are eligible or listed on the State Register of Historic Places (SRHP), shall be evaluated for eligibility to the NRHP.
- b. **Properties Determined Not Eligible.** If the property has been determined officially not eligible, CDOT may rely on the previous determination without review by SHPO unless alterations to the property's integrity warrant reevaluation. In instances where a property was less than 50 years old when it was determined not eligible, but is now more than 50 years old, CDOT will complete a re-visitation form for that property.
- c. **Properties that have been documented as field eligible or field not eligible** will be evaluated for eligibility to the NRHP.

B. Newly Identified Properties: For all newly-identified properties that will be intensively surveyed within the APE, CDOT shall apply the National Register Criteria (36 CFR 60.4). CDOT shall make an eligibility determination pursuant to 36 CFR 800.4(c) and shall provide the appropriate documentation to SHPO and the consulting parties for review and comment.

C. Linear Resources: Because linear resources (e.g., irrigation ditches and canal systems, storm sewers, functioning and abandoned railroad grades, exposed and subsurface trolley systems, abandoned road segments, functioning highways, and trails) present unique challenges with regard to identification and evaluation, CDOT has developed guidelines as outlined in Attachment 3 of this Agreement. CDOT shall evaluate linear resources in accordance with those guidelines.

D. Historic Bridge Inventories

1. In accordance with the Highway Bridge and Rehabilitation Program (23 USC 144(c)(2)), CDOT shall conduct historic bridge inventories to identify and evaluate highway bridges

in Colorado for National Register eligibility. The scope of these studies shall vary, but typically will address structures owned by CDOT, a specific chronological period in the state's bridge development, and may result in the completion of a Multiple Property Documentation Form that includes a historic context, registration requirements, and property types associated with bridges in the study. CDOT shall consult with SHPO regarding the appropriate time frame between studies, the scope and methodology for bridge inventories, and shall submit bridge inventories for SHPO review and concurrence. Once the results of the historic bridge inventories have been accepted by SHPO, the following consultation protocol shall be followed:

- i. **Non-Eligible Bridges:** For projects involving bridges in past and future historic bridge inventories determined not eligible in consultation with SHPO, CDOT can proceed without SHPO consultation and concurrence. CDOT shall not be required to re-evaluate structures determined not eligible as part of previous historic bridge inventories. CDOT history staff shall document these internal project clearances in a written memorandum and shall include these in the Section 106 Tracking Report outlined in Stipulation XIII(B) of this Agreement.
- ii. **Eligible or Listed Bridges:** Projects involving bridges determined listed or eligible to the NRHP in past and future historic bridge inventories shall be treated in accordance with 36 CFR 800 and shall require consultation with SHPO and appropriate consulting parties, except for certain types of activities as outlined in Attachment 2, Screened Undertakings (Bridges). Projects involving the activities outlined in Attachment 2 shall be evaluated and approved by the CDOT history staff per the guidelines in Attachment 2. CDOT history staff shall include these projects in the Section 106 Tracking Report outlined in Stipulation XIII(B) of this Agreement.
- iii. **Consultation with local governments and organizations:** CDOT shall notify the appropriate local governments, local historical societies or commissions, or other preservation organizations of replacement projects for bridges over 50 years of age that have been determined eligible in statewide bridge inventories.

E. Interstate Highway Exemption. The ACHP's "Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System" went into effect on March 10, 2005. This exemption releases all Federal Agencies from the Section 106 requirement for taking into account the effects of their undertakings on the Interstate System, with the exception of a limited number of individual elements associated with the system. The exceptions within the State of Colorado are listed in Attachment 4 of this Agreement. For all other elements of the Interstate System, Section 106 consultation is not necessary. Per the Exemption, CDOT will only conduct Section 106 reviews on the properties identified as exceptions to the exemption.

F. Program Comment Post 1945-Concrete and Steel Bridge

The ACHP's "Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges" went into effect November 2, 2012. The Program Comment relieves all federal agencies from the Section 106 requirement to consider effects to undertakings on common bridges and culverts constructed of concrete and steel after 1945. These common bridge types are listed in **Attachment 7** of this agreement.

The Program Comment applies to undertakings that involve applications by State transportation agencies or local governments for federal permits, approvals, or assistance that will result in the alteration, replacement, or demolition of one or more of the common bridges or culverts. The Program Comment also applies to common bridges regardless of ownership, except those located on tribal lands.

The Program Comment does not exempt the federal agency from completing Section 106 evaluations for undertakings that involve historic properties *other than* the common bridge types identified by CDOT. The Program Comment does not apply if the federal agency determines that a common bridge in question meets any of the following considerations:

1. Listed or previously determined eligible for the NRHP or located adjacent to or within a National Register listed or eligible historic district, including linear historic districts such as parkways, historic roads, or canals.
2. Includes spans of the following types: arch bridge, truss bridge, bridge with movable spans, suspension bridges, cable-stayed bridges, or covered bridges.
3. Has been identified in consultation with SHPO as having exceptional significance for association with an event or individual; being a very early or particularly important example of its type in a State or in the nation and/or having distinctive engineering or architectural features that depart from standard designs. FHWA and CDOT have determined that there are no exceptional bridges as defined by the Program Comment and have notified the US Department of Transportation Federal Preservation Officer.

G. Consultation with SHPO

1. Projects that involve properties less than 50 years of age do not require review by the SHPO, unless the property has the potential to qualify for eligibility under National Register Criteria Consideration G as set out in National Register Bulletin #15, *How to Apply the National Register Criteria for Evaluation*.
2. Projects involving properties that have been determined not eligible for the NRHP or SRHP within a five year period prior to the initiation of the project, as appropriate, do not require consultation with the SHPO. This includes properties evaluated by CDOT as well as other state and federal agencies (e.g. those listed in the COMPASS database). This assumes that the eligibility determination has been concurred with by SHPO.
3. Projects that have met the criteria of screened projects as outlined in Attachment 2 and that have been determined exempt from Section 106 review as outlined in Attachment 6 of this agreement do not require consultation with the SHPO.
4. When an archeological survey for an undertaking identifies no archaeological resources, or where only isolated finds are identified, a report will be submitted to the SHPO for information purposes only. In these cases, no consultation with SHPO or the consulting parties is necessary provided the undertaking has been reviewed by the CDOT Senior Staff Archaeologist.
5. In cases where an archeological investigation for an undertaking identifies archaeological resources other than isolated finds, CDOT shall consult with the SHPO and consulting parties as outlined in 36 CFR 800.4.

V. Findings of Effect

- A. Finding of No Historic Properties Affected.** If CDOT finds that there are no historic properties present, or there are historic properties present but the undertaking will have no effect on them as defined in 36 CFR 800.16(i), CDOT shall make a finding of “no historic properties affected” and provide supporting documentation to SHPO and the consulting parties as set forth in 36 CFR 800.11(d). CDOT shall request SHPO concurrence on the finding and request comments from the consulting parties on these findings. CDOT may consult with SHPO formally or informally regarding the application of the criteria. A record of these findings shall be included in the Section 106 Tracking Report prepared pursuant to Stipulation XIII(B) of this Agreement.

- B. Finding of No Adverse Effect.** For any undertaking that includes NRHP listed or eligible properties within an APE that will not be adversely affected by an undertaking, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), CDOT shall make a formal finding of “no adverse effect.” CDOT shall submit to SHPO and the consulting parties this finding along with the appropriate supporting documentation. CDOT shall request SHPO concurrence as well as comments from the consulting parties on these findings. CDOT shall consult with SHPO formally or informally regarding the application of the criteria. A record of these findings shall be included in the Section 106 Tracking Report prepared pursuant to Stipulation XIII(B) of this Agreement.
- C. Finding of Adverse Effect.** For any undertaking that includes NRHP listed or eligible properties that will be adversely affected as defined by 36 CFR 800.5(a), CDOT shall make a formal finding of “adverse effect.” CDOT shall submit to SHPO and the consulting parties this finding along with the appropriate supporting documentation. CDOT shall request SHPO concurrence and comments from the consulting parties on these findings. CDOT shall consult with SHPO formally or informally regarding the application of the criteria. A record of these findings shall be included in the Section 106 Tracking Report prepared pursuant to Stipulation XIII(B) of this Agreement.
- D. Effects to National Historic Landmark Districts**
1. Per 36 CFR 800.10(a) and as required by Section 110(f) of the NHPA (16 U.S.C. 470), when an undertaking may directly and adversely affect an NHL, CDOT shall, to the extent possible, undertake such planning and actions as may be necessary to minimize harm to the NHL and shall afford the ACHP a reasonable opportunity to comment on the undertaking.
 2. CDOT shall request the ACHP to participate in any consultation to resolve adverse effects on NHL.
 3. Per 36 CFR 800.10(c), CDOT shall notify the Secretary of the Interior of any consultation involving an NHL and invite the Secretary to participate in the consultation where there may be an adverse effect.
- E. Resolution of Adverse Effects.**
1. Pursuant to 36 CFR 800.6(a), CDOT shall provide to SHPO, FHWA, the Council, and consulting parties copies of documentation for findings of adverse effect. The ACHP has 15 days to respond to the agency submittal. CDOT shall consult with SHPO, FHWA, the ACHP (if participating in consultation) and consulting parties on measures to avoid, minimize, or mitigate the adverse effect.
 2. If FHWA, CDOT, SHPO and the ACHP (if participating in consultation) agree on measures to resolve the adverse effect, they shall execute a Memorandum of Agreement (MOA) in accordance with 36 CFR 800.6(c). When the ACHP elects not to participate, CDOT shall provide a copy of the executed MOA to the ACHP pursuant to 36 CFR 800.6(c).
 3. If there is failure to resolve adverse effects or FHWA is unable to execute the MOA pursuant to 36 CFR 800.6(c), FHWA will request the ACHP comment in accordance with 36 CFR 800.7.
 4. Mitigation Measures. In addition to working to avoid and minimize effects, CDOT will make an effort to consider a variety of creative mitigation options to address adverse effects to historic properties. These options could include, but are not limited to: archival documentation; educational outreach, interpretive mitigation such as brochures, signage, displays, and developing historic contexts; and other methods of supporting historic preservation efforts, such as funding local preservation projects

including surveys and interpretive signage. For bridge replacement projects involving adverse effects to metal truss structures, CDOT will implement its Adopt-a-Bridge program, which advertises truss bridges and solicits proposals for adaptive re-use of these structures.

VI. Treatment of Native American Human Remains and Related Cultural Items

- A. Treatment on Non-Federal Lands.** Native American human remains and any associated funerary objects, sacred objects, or objects of cultural patrimony encountered during archaeological surveys or excavations within a project APE or exposed during construction activities shall be treated pursuant to the unmarked human graves provision of the Colorado Historical, Prehistorical, and Archaeological Resources Act of 1973, as amended (CRS 24-80-1301ff).
- B. Treatment on Federal Lands.** Human remains encountered within a project APE on federal land will be subject to the conditions set forth in the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3002). FHWA does not have any NAGPRA responsibilities because it neither owns lands in the State of Colorado nor acts as a museum as defined in NAGPRA. In such cases, the federal agency with jurisdiction over the property will act as lead agency with regard to meeting NAGPRA obligations.

VII. Documentation Requirements

- A.** All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR 800.11 and unless otherwise agreed upon, shall be in accordance with the Colorado Office of Archaeology and Historic Preservation's *Colorado Cultural Resource Survey Manual, Guidelines for Identification: History and Archaeology* and its subsequent editions and revisions. CDOT shall complete the appropriate Colorado Office of Archaeology and Historic Preservation (OAHP) site forms to record resources.
- B.** Depending on the scope of the project and nature of resources in the APE, CDOT and SHPO shall consult on the use of alternative documentation efforts, including, but not limited to, reconnaissance-level survey, use of abbreviated site forms, site visits, photography, and tabular formats.
- C.** For projects that involve more than 50 properties, CDOT shall provide SHPO with an electronic table or spreadsheet of resources for use in their review.
- D.** Documentation, including APE boundaries and eligibility and effects recommendations, prepared by local agencies or consultants in support of findings shall be submitted to CDOT for review and approval. CDOT shall submit all documentation cited herein to SHPO, consulting parties, and when necessary, FHWA. Consultants shall not transmit findings directly to SHPO staff.
- E.** All documentation prepared under this Agreement shall be kept on file at CDOT and made available to consulting parties and the public as stipulated in this Agreement, consistent with applicable confidentiality requirements.

VIII. Communication with SHPO

- A. Formal Contacts.** Requests requiring a response from SHPO shall be submitted in writing. Submittals may be scanned and sent electronically or faxed to expedite receipt of the materials, but the hard copy version of these materials shall be forwarded to SHPO. SHPO concurrence letters may also be received electronically, followed by the hard copy version. All formal contacts shall be accompanied by a signed letter from CDOT.

B. Informal Contacts. Informal contact with SHPO may include telephone conversations, meetings, and electronic mail.

C. Review Time Frames

1. Pursuant to 36 CFR 800.4 and 800.5, SHPO and the consulting parties have 30 calendar days from receipt of the hard copy materials to review all requests from CDOT. If the SHPO does not respond within 30 calendar days, CDOT may assume the SHPO has no comments and proceed to the next step in the process.
2. CDOT shall notify SHPO in advance when larger project submittals or multiple project submittals are expected. Depending on the scale of a project(s), CDOT and SHPO may negotiate an extended review time frame for the SHPO review.
3. CDOT may submit requests for eligibility and effects concurrently. Unless otherwise arranged, the review time frame for those submittals is 30 calendar days from receipt of the submittal.
4. When SHPO requests additional information that will assist in completing review of eligibility and effects, and CDOT has provided that information in a timely manner, SHPO shall complete their review within the original 30-day period. When this is not possible, CDOT and SHPO shall negotiate a revised review time frame.

IX. Coordination with the National Environmental Policy Act (NEPA)

A. Pursuant to 36 CFR 800.8(c), CDOT may use the NEPA process and associated documentation for Section 106 purposes provided the following requirements are met:

1. CDOT shall notify SHPO and the ACHP of its intent to use the NEPA process in lieu of Section 106 as early as possible in the NEPA process and definitely before any NEPA documents have been released for review by the public.
2. CDOT shall determine whether a full or partial document substitution is appropriate.
 - i. For a full document substitution, CDOT shall use the NEPA document to address all elements of the Section 106 process, including APE consultation, and eligibility and effects determinations. If there are adverse effect determinations, a separate MOA may be executed. If the NEPA document is an EIS, resolution of adverse effects may be completed via the Record of Decision (ROD).
 - ii. For a partial substitution, select elements of the Section 106 process shall be included in the NEPA document as determined by FHWA and CDOT, in consultation with SHPO. CDOT shall provide to SHPO, the ACHP (where appropriate), and consulting parties the NEPA documentation (EA, EIS) along with a cover letter requesting comments and/or concurrence on the Section 106 determinations outlined in the designated historic preservation chapter of the document.

B. In instances where FHWA and CDOT have determined that a Tier I NEPA evaluation is necessary, CDOT and SHPO shall consult to determine the level of effort necessary to initiate and conduct Section 106 consultation for the project.

X. Phased Approach to Identification, Evaluation, and Findings of Effect

Pursuant to 36 CFR 800.4(b)(2) and 800.5(a)(3), FHWA, in consultation with CDOT, may approve the phased identification, evaluation, and application of the criteria of adverse effect for undertakings covered by the Agreement. Upon FHWA approval, and as specific aspects or locations of an alternative are refined or access gained, CDOT shall proceed with the identification and evaluation of historic properties

and with application of the criteria of adverse effect in accordance with applicable provisions of this Agreement.

XI. Post-Review Discoveries

If previously unidentified historic properties, or unanticipated effects, are discovered after CDOT has completed its review under this Agreement, no further construction in the area of the discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied. CDOT shall consult with SHPO and appropriate consulting parties to record, document and evaluate National Register of Historic Places eligibility of the property and the project's effect on the eligible property. CDOT will also consult with any consulting Indian tribes that may ascribe traditional cultural and religious significance to affected historic properties. If neither the SHPO, consulting parties, nor consulting tribes submit any objection to CDOT's plan for addressing the discovery within 48 hours, CDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the ACHP need only be notified in the event there is an adverse effect.

XII. Emergency Situations

CDOT may follow the procedures in this section for disasters and emergencies declared by the President, a resident tribal government, or the Governor of the State; or for emergency situations identified by FHWA and CDOT in accordance with established FHWA policies and procedures.

Section 101(d)(6)(B) of the NHPA requires that FHWA consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement cannot be waived unless FHWA and/or CDOT has entered into an agreement to that effect with the Indian tribe in accordance with 36 CFR 800.2(c)(2)(ii)(E).

Projects identified as emergency situations as defined in this section cannot be cleared based on the terms of Attachment 6: Section 106 Exempted Undertakings and must be reviewed by CDOT cultural resources staff.

CDOT has defined the following categories of emergency responses:

A. Emergency activities implemented within 30 days after the occurrence of a disaster or emergency event. Emergency repairs are those actions during and immediately following a disaster that restore essential traffic, minimize the extent of damage, or protect the remaining facilities. Included are temporary and interim repairs designed to stabilize highway facilities and related features until permanent repairs can be made. These actions may require work outside the established highway right of way.

1. CDOT shall notify the SHPO and any Indian Tribe that may attach religious and cultural significance to historic properties likely to be affected. Notification will be in writing or electronic mail (when appropriate) and shall be provided to SHPO within 2 business days of the disaster declaration. The notification will be clearly identified as an emergency situation and shall include an explanation of how the action meets the requirements for an emergency and will request comments within 7 calendar days of receipt of the notification. The notification shall also include a brief description of the emergency, anticipated repairs or operations, and information regarding resources if known. If time does not permit prior notification, CDOT may notify SHPO and Tribes after the fact, as soon as time allows.

2. Should the SHPO and other parties fail to comment within 7 calendar days, CDOT may proceed with the action based on available information.
3. If CDOT determines that the emergency situation does not permit 7 calendar days for comment, CDOT shall notify the SHPO and the Indian Tribes and invite comments within the time available.
4. If the SHPO, FHWA, or consulting tribe(s) object to CDOT's proposal to conduct an expedited review, to the documentation provided, or to proposed treatment measures, CDOT will consult with the objecting party and attempt to resolve the dispute. If the dispute is not resolved, FHWA will request ACHP's advice in accordance with 36 CFR 800.2(b)(2). ACHP will advise FHWA within 7 calendar days of receipt of the request, unless FHWA determines the nature of the emergency action warrants a shorter review time period.
5. These findings will be included in the Section 106 Tracking Report prepared pursuant to XIII(B) of this Agreement.

B. Permanent repair and restoration of highway facilities that are needed as a result of an emergency or disaster. This includes activities required to restore the damaged resource or facility to its original condition that is beyond the scope of the emergency repair.

1. Activities that fit this category will comply with the procedures in Stipulations III to V of this Agreement or 36 CFR 800.
2. In these situations, CDOT may request an expedited review by SHPO and consulting parties when the Section 106 review is initiated.
3. These findings will be included in the Section 106 Tracking Report prepared pursuant to Agreement.

C. Immediate Rescue and Salvage Operations conducted to preserve life or property. These activities are exempt from Section 106 and this PA, as stipulated in 36 CFR 800.12(d). Immediate rescue and salvage operations are defined as being carried out to preserve life or property and occurring within the first 10 calendar days of a declared disaster or emergency. Examples of exempt operations are included in **Attachment 8** of this agreement.

1. FHWA and CDOT shall notify the SHPO if more time is needed to complete immediate rescue and salvage operations. A response from SHPO or the tribes is not required on a proposed extension.
2. The ten day review period can be extended two consecutive times following the procedure stipulated above for up to 30 days. For any proposed extension following the completion of the second extension (30 days), FHWA and CDOT must consult with SHPO.
3. To the extent possible, a summary of the types of activities will be included in the Section 106 Tracking Report prepared pursuant to XIII(B) of this Agreement.

XIII. Administrative Provisions

- A. Dispute Resolution.** Should any signatory party object in writing to CDOT or FHWA regarding the manner in which the terms of this Agreement are carried out, CDOT shall immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the dispute. If CDOT determines that such objection(s) cannot be resolved, it shall request FHWA's assistance in resolving the objection. If FHWA determines that the objection remains unresolved, FHWA will:
1. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise FHWA on the resolution of the objection within 30 days. Any comment provided by ACHP, and all comments from the parties to this Agreement, shall be taken into account by FHWA in reaching a final decision regarding the dispute.
 2. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate information, FHWA may render a decision regarding the dispute. In reaching its decision, FHWA will take into account all comments regarding the dispute from the parties to this Agreement.
 3. FHWA and CDOT's responsibility to carry out all other actions subject to the terms of this Agreement are not subject to the dispute remain unchanged. FHWA will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. FHWA's decision will be final.
 4. When requested by any consulting party or member of the public, the ACHP may consider FHWA's findings under this PA. The provisions of 36 CFR 800.9(a) on public requests to the ACHP will apply.
- B. Section 106 Tracking Report.**
1. CDOT shall generate a written report that includes, but is not limited to, summaries in tabular form identifying all undertakings and specifying project codes, names, locations, and types, and all findings pursuant to 36 CFR 800 that were processed by CDOT for the calendar year under review pursuant to this Agreement. The report may also contain a narrative description of accomplishments, trends, concerns, recommendations, etc. regarding any aspect of this Agreement.
 2. CDOT shall prepare a report of these findings annually following execution of this Agreement. The initial report shall be prepared following completion of the first full calendar year under this Agreement. CDOT shall submit the report for each calendar year to FHWA, SHPO, and the ACHP no later than March 31 of the following year unless the signatory parties agree to amend the reporting schedule.
 3. Memoranda of Agreement (MOA) Reporting Requirements. Unless otherwise specified, reporting requirements shall not be required for individual project MOAs, but rather status of the MOA activities shall be included in the Annual Report described in this stipulation. CDOT and SHPO shall consult on whether there are project circumstances that warrant separate reporting requirements for individual MOAs.
 4. Section 106 Screened and Exempted Undertakings Reporting Requirements. CDOT cultural resources staff shall develop a standardized tracking system and internal data collection system to document undertakings that meet the requirements outlined in Attachments 2 and 6. These undertakings shall be included in the Annual Report described in this stipulation.
- C. Evaluation of the Programmatic Agreement.**
1. Once this Agreement is executed, CDOT, FHWA and SHPO shall meet by June 30th of the calendar year to evaluate its effectiveness and if warranted, suggest revisions to its

stipulations. Prior to these meetings, CDOT, on behalf of FHWA, will notify the ACHP and it may participate at its discretion. This notification may be done informally (e.g. via e-mail).

D. Amendments

1. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. An amendment is effective when it is signed by all signatories to this agreement.
2. Attachments to this Agreement may be individually amended through consultation among the signatory parties without executing a formal amendment. Proposed changes to the attachments may be adopted when CDOT obtains the written consent of the signatory parties to this Agreement, and the revised attachment is transmitted to each signatory.

E. Termination.

1. Any party to this Agreement may terminate it by providing 30 days written notice to other parties, provided that the parties will consult during the period before termination to seek agreement on amendments or other actions that would avoid termination.
2. Should consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement. Should consultations fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
3. In the event of termination, FHWA shall either consult in accordance with 36 CFR 800.14(b) to develop a new Agreement, or comply with 36 CFR Part 800 for individual undertakings.
4. Beginning with the date of termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.

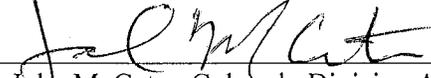
F. Duration of Agreement. This Agreement shall remain in effect for a period of 10 years after the date it takes effect, unless it is terminated prior to that time. Thereafter, provided there are no objections from the signatory parties, the terms of the Agreement will automatically be extended each year for one year. The extension of the Agreement will be reviewed as part of the annual evaluation of the Programmatic Agreement. If any party objects to extending the Agreement, or proposes amendments, the parties will work together to consider amendments or other actions to avoid termination.

G. Effective Date. This Agreement will take effect following execution by FHWA, SHPO, ACHP and CDOT. Additional attachments or amendments to this Agreement shall take effect on the dates they are fully executed by FHWA, SHPO, ACHP and CDOT.

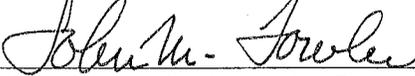
Execution and implementation of this Programmatic Agreement evidences that FHWA has afforded the ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Colorado, that FHWA has taken into account the effects of the Program and its individual undertakings on historic properties, and that FHWA has complied with Section 106 of the NHPA and 36 CFR 800 for the Program and its individual undertakings.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By:  6/17/2014
John M. Cater, Colorado Division Administrator Date

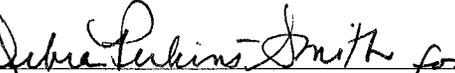
ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  6/25/14
John M. Fowler, Executive Director Date

COLORADO STATE HISTORIC PRESERVATION OFFICER

By:  6/9/14
Edward Nichols, SHPO Date

COLORADO DEPARTMENT OF TRANSPORTATION

By:  21 May 2014
Don Hunt, Executive Director Date