

TEMPLATE
PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE _____ STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE _____ DEPARTMENT OF TRANSPORTATION
REGARDING THE FEDERAL AID HIGHWAY PROGRAM IN _____

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. 101 et seq., implements the Federal-aid Highway Program (Program) in the state of _____ by funding and approving state and locally sponsored transportation projects that are administered by the _____ Department of Transportation (DOT);

WHEREAS, the _____ FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Program in the state of _____ complies with Section 106 of the National Historic Preservation Act (NHPA)(54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004);

WHEREAS, _____ DOT administers Federal-aid projects throughout the State of _____ as authorized by Title 23 U.S.C 302;

WHEREAS, the responsibilities of the _____ State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR Part 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;

WHEREAS, FHWA has determined that certain types of minor transportation projects processed as categorical exclusions under National Environmental Policy Act (NEPA) _____ may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the _____ State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14(b) of the regulations implementing Section 106 of the NHPA;

WHEREAS, FHWA has consulted with Federally-recognized Indian tribes (Tribes) with ancestral lands in _____ about this Agreement, has requested their comments, and has taken any comments received into account. These Tribes include _____, _____, _____;

WHEREAS, any project involving tribal lands as defined in 36 CFR 800.16(x), or any project that may affect a property identified by a federally recognized Indian tribe as possessing traditional religious and cultural significance, shall not be governed by this agreement, but shall be reviewed by FHWA in accordance with 36 CFR 800;

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Programmatic Agreement (Agreement) in order to establish an

efficient and effective program alternative for taking into account the effects of the Program on historic properties in _____ and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this agreement;

WHEREAS, FHWA has notified the public, Federal and State agencies, and Certified Local Governments (CLGs) about this Agreement, has requested their comments, and has taken any comments received into account;

WHEREAS, _____DOT has participated in the consultation and has been invited to be a signatory to this Agreement; and

[WHEREAS, this Agreement shall supercede the following previous programmatic agreements among the FHWA, SHPO, and _____DOT :]

NOW, THEREFORE, FHWA, the SHPO, the ACHP, and _____DOT agree that the Program in _____ shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in _____ and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

To aid the signatories of this PA, the stipulations are organized in the following order:

- I. Applicability and Scope
- II. Definitions
- III. Professional Qualifications Standards
- IV. Responsibilities
- V. Consultation with Tribes
- VI. Participation of Other Consulting Parties and the Public
- VII. Project Review
 - a. Excepted
 - b. Screened
- VIII. Emergency Situations
- IX. Post-Review Discoveries
- X. Identification and Treatment of Human Remains
- XI. Monitoring and Reporting
- XII. Dispute Resolution
- XIII. Amendment
- XIV. Termination
- XV. Confidentiality
- XVI. Duration of Agreement

STIPULATIONS

The FHWA, with the assistance of _____DOT, shall ensure that the following measures are carried out:

I. APPLICABILITY AND SCOPE

- A. This Agreement sets forth the process by which the FHWA, with the assistance of _____DOT, will meet its responsibilities pursuant to Section 106 and 110 of the NHPA (54 U.S.C. §§ 306102 and 306108).
- B. This Agreement only applies to highway projects classified as categorical exclusions under 23 CFR 771.115 and 23 CFR 771.117. Projects that require an Environmental Assessment or Environmental Impact Statement for compliance with NEPA will follow the procedures in 36 CFR 800.
- C. The objective of this Agreement is to make more efficient the methods by which FHWA and _____DOT review individual undertakings processed under Section 106 that may affect historic properties and to establish the process by which FHWA (who retains ultimate Section 106 responsibility, except where such responsibility has been delegated to _____DOT) carries out its Section 106 responsibilities.
- D. Through this Agreement, FHWA authorizes _____DOT to initiate and, in many cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.
- E. Through this Agreement, FHWA and _____DOT establish three categories of projects (Excepted projects and Screened Projects Types I and II) that require different levels of review and consultation with the SHPO.
- F. The FHWA retains the responsibility to consult with Tribes as required under 36 CFR 800, as amended. The _____DOT may assist FHWA if individual Tribes agree to alternate procedures.
- G. This Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in 36 CFR 800.16(x). For such undertakings, FHWA shall follow the procedures in 36 CFR Part 800.
- H. Cooperating Federal Agencies who recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and _____DOT follow the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and _____DOT.

II. DEFINITIONS

- A. Area of Potential Effects (APE)....

B. *Excepted Projects*: Undertakings which typically have no appreciable potential to cause effects to historic properties. Examples include pavement resurfacing, installation of fencing, construction of bicycle/pedestrian lanes, installation of rumble strips, and landscaping in previously disturbed ground. Work is limited to the activities listed in Appendix A. An undertaking will not qualify as excepted from review if conditions must be imposed to ensure that potential historic properties would not be affected.

C.

Screened Projects: Undertakings that have some potential to affect historic properties. Following appropriate screening by qualified professionals, some may be determined exempt from further Section 106 review under this agreement.

D. *Ground disturbance* is defined as any work or activity that results in a disturbance of the earth, including excavating, digging, trenching, drilling, augering, backfilling, clearing, and grading.

E. For purposes of this agreement, the definitions provided in 36 CFR Part 800.16 (a) through (y) shall apply whenever applicable.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

Actions prescribed by this Agreement that involve the identification, evaluation, 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 who meets the Secretary of the Interior's Professional Qualifications Standards (published in 48 FR 44738-44739). However, nothing in this stipulation may be interpreted to preclude FHWA or _____DOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the supervision of a person who does meet the standards.

IV. RESPONSIBILITIES

The following section identifies the responsibilities of FHWA and of _____DOT in complying with the terms of this Agreement.

A. FHWA Responsibilities

1. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(a)(1-4), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by _____DOT under the authority of FHWA. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out under the authority

- of this Agreement and may participate directly in any undertaking at its discretion.
2. FHWA retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). FHWA may ask _____DOT to assist in consultation if the individual Tribes agree to alternate procedures.
 3. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XI(B) of this Agreement.

B. _____DOT Responsibilities

_____DOT, using staff and/or consultants meeting the Secretary of the Interior's professional qualifications standards (48 FR 44738-9), will independently perform the work and consultation described in 36 CFR 800.3 – 36 CFR 800.5 (including any succeeding revisions to the regulations) on behalf of FHWA. Assignment of these responsibilities is based on adequate and appropriate performance by _____DOT as evaluated in monitoring by FHWA pursuant to Stipulation XIII.A of this Agreement. These responsibilities include carrying out the following requirements:

1. 36 CFR 800.3(a) Determine whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
2. 36 CFR 800.3(c) and (d) Determine whether the undertaking may occur on or has the potential to affect historic properties on tribal lands.
3. 36 CFR 800.3(e) solicit public comment and involvement.
4. 36 CFR 800.3 identify additional consulting parties who should be invited to participate in the undertakings covered by this Agreement.
5. 36 CFR 800.4(a) and (b) determine and document, in consultation with the SHPO, the scope of identification efforts and level of effort, including the undertaking's area of potential effects (APE).
6. 36 CFR 800.4 In consultation with the SHPO, identify properties within the APE included in or eligible for listing in the NRHP.
7. 36 CFR 800.5(a)(1) Determine whether historic properties may be affected by the undertaking by applying the criteria of adverse effect.
8. 36 CFR 800.6 In consultation with FHWA, the SHPO, the ACHP (if it has chosen to participate), and any other consulting parties address any adverse effects through the development, circulation, and execution of a MOA, as appropriate.
9. Provide FHWA copies of all correspondence sent out on its behalf (e.g. letters to SHPO or Tribes).

V. CONSULTATION WITH TRIBES

1. FHWA shall take the lead in identifying and establishing consultation with Indian tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36 CFR 800.3(c)-(f). _____DOT may provide general coordination information to Tribes but FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes. [If there is a standing agreement with the tribe/s, DOT may conduct day to day coordination for a specific project.]

- B. 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 ___DOT and invited by FHWA to be consulting parties.
- C. ___DOT 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.
- D. ___DOT shall ensure that consultation continues with Tribes 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.
- F. FHWA may ask ___DOT to assist in consultation if the individual Tribes agree.

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Additional Consulting Parties

1. Consulting parties shall be identified in writing by ___DOT in consultation with the SHPO pursuant to 36 CFR 800.3(c-f) and their participation in undertakings covered under this Agreement shall be governed by 36 CFR 800.3(f)(3). Individuals and organizations with a demonstrated interest in an undertaking shall be invited by ___DOT in consultation with FHWA to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by ___DOT to participate in the Section 106 process. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by ___DOT and FHWA in consultation with the SHPO.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and ___DOT's environmental compliance procedures. ___DOT's Public Involvement Plan (Attachment 1) provides guidance for identifying, informing, and involving the public. FHWA's Technical Advisory and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d), 800.3(e), and 800.1 l(c)(1 and 3).
2. The ___DOT shall continue to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.
3. For those actions that do not routinely require public review and comment (e.g., unscreened projects), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties,

- and the undertaking's potential impacts on them.
4. The ____DOT shall make FHWA and SHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

VII. PROJECT REVIEW

A. Excepted Projects

1. Certain projects have no appreciable potential to affect historic properties, whether or not there may be historic properties in the project area. The signatories to this Agreement agree that minor projects limited to the activities listed in Appendix A will require no further coordination pursuant to 36 CFR 800.3(a). Projects comprising additional activities not included in Appendix A will be subject to screening as provided for in stipulation VII.B of this agreement.
2. The ____DOT may add additional activities to the list in Appendix A upon written notice to and concurrence from all parties to this agreement.
3. For projects that are limited to the activities listed in Appendix A, ____DOT will document its finding that the action is exempt from further review and maintain that documentation in its project files.

B. Screened Projects with potential to affect historic properties

1. The ____DOT cultural resource staff will evaluate each undertaking for potential effects to historic properties. At a minimum, evaluations shall consist of [state should establish an appropriate minimum level of evaluation; e.g. a review of the state's cultural resources filed in a Geographic Information system (GIS) and a review of modern-day aerial photography]. Field investigations will be performed at the discretion of ____DOT's cultural resource staff. Provided an undertaking is limited to the activities listed in Appendices A or B, is not located within or adjacent to historic property, and has no known public controversy related to historic properties, no further coordination pursuant to Section 106 shall be required.
2. No Historic Properties Affected. For those undertakings in which there are a) no previously recorded historic properties within the Area of Potential Effect (APE) and b) no newly identified historic properties within the APE, ____DOT's cultural resource staff may issue a finding of "no historic properties affected" and will consult with the SHPO and others as ____DOT determines appropriate.
3. If there are potential historic properties identified within the APE:
 - a. ____DOT's cultural resource staff will apply the National Register Evaluation Criteria in coordination with the ____SHPO and other consulting parties, as appropriate, to assess the need for any additional

investigation and determine National Register eligibility in accordance with 36 CFR 800.4.

- b. If the APE may contain properties of traditional cultural and religious significance to Indian tribes, or identified properties within the APE may be of interest to tribes, FHWA will initiate consultation with appropriate tribes.

4. No Adverse Effect.

- a. _____DOT will apply the Criteria of Adverse Effect to any historic properties in consultation with the _____SHPO and other consulting parties, as appropriate, in accordance with 36 CFR 800. 5.

- b. The _____DOT shall include the following documentation in the project file:

- i. Any records on consultation
- ii. Any records on efforts to identify historic properties
- iii. Any findings of eligibility.
- iv. Any findings of effect.
- v. Any records on resolving adverse effects.

5. For all undertakings requiring the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under NEPA; OR for undertakings in which adverse effects to historic properties cannot be avoided, _____DOT's cultural resource staff will notify FHWA, and FHWA will notify the ACHP of the finding of adverse effect and consult with the SHPO and other consulting parties in order to resolve adverse effects and conclude the Section 106 process in accordance with 36 CFR 800.6.

VIII. EMERGENCY SITUATIONS

For the purposes of this Agreement, emergencies are defined as occurrences that require emergency highway system and facility repairs that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system and facilities; 3) protect remaining highway facilities; or 4) restore essential traffic. The following stipulations apply to emergency situations:

- A. Repairs to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
- B. If the emergency repair project could affect historic properties, _____DOT's cultural resource staff shall notify the SHPO, the FHWA, and Tribes prior to any work take place. The SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have 72 hours to respond.
- C. For projects where the repair must be made within the first 30 days of the occurrence of the event that caused the emergency or the declaration of the emergency by an

appropriate authority, the processing of environmental documentation will happen concurrently or after the fact. In these cases, _____DOT will comply with the procedures in Stipulation VIII of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.

- D. For projects taking longer than 30 days for repair, _____DOT will comply with the procedures in Stipulation VII.

- E. Written notification of an emergency action shall be provided to the SHPO. The notice shall be clearly and prominently marked as an emergency notification, and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notice shall also include a brief description of the eligibility and/or significance of the resource(s) involved, the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

IX. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When _____DOT's identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, _____DOT shall include in any environmental document, contract, and specifications a plan for discovery of such properties. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6

B. Late Discoveries

1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after _____DOT has completed its review under this Agreement, that portion of the project will stop immediately, in accordance with _____DOT Engineering Directive Memorandum Number C-16 (Attachment 3).
2. No further construction in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
3. _____DOT will consult with SHPO and Tribes, as appropriate to record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
4. If neither the SHPO nor a Tribes files an objection within 72 hours of _____DOT's plan for addressing the discovery, _____DOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the ACHP does not need to be notified.

X. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

- A. In the event that human remains are identified prior to, during, or after project construction, _____DOT will develop a treatment plan in consultation with FHWA and the SHPO. If it is determined that the human remains are associated with a Native American occupation, _____DOT and FHWA will consult with the Tribes prior to the development or execution of a treatment plan.
- B. All work conducted on human remains and abandoned cemeteries will comply with **cite applicable state law regarding burials**

XI. ADMINISTRATIVE STIPULATIONS

A. Monitoring and Reporting

1. FHWA, the SHPO, and ACHP may review activities carried out pursuant to this Agreement. _____DOT shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to FHWA, the SHPO, and ACHP in the form of a written report. Categories of information can include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, estimated time and cost savings, public objections, and inadvertent effects or foreclosures. The range and type of information included by _____DOT in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which the Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.
2. FHWA shall monitor the provisions of this Agreement no more than every 24 months after the date of execution of this agreement. The monitoring effort shall consist of a review of project records and interviews of staff at _____DOT, SHPO, as well as interviews with other consulting parties. FHWA shall prepare a report that summarizes the conclusions of monitoring that will be posted and publically available on the _____DOT website. FHWA will also transmit the monitoring report to the ACHP for review.
3. _____DOT shall prepare a written report annually on a calendar year basis. The report will provide a description of the number of Type I, I and III projects that were reviewed during the calendar year. The report will also describe accomplishments/successes achieved over the course of the year as well as suggestions for improvements. _____DOT shall submit the annual reports to FHWA, the SHPO, and ACHP no later than March 31 of each year.

B. Resolving Objections to Implementation of this Agreement

1. Should any signatory party object in writing to FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. The FHWA shall establish a reasonable time frame for such consultations.
2. Should any signatory party object to a _____DOT or FHWA determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.
3. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
4. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
 - i. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
 - ii. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - iii. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(~)(4).
5. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
6. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

7. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
8. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
9. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

XII. AMENDMENT

- A. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.
- B. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.

XIII. TERMINATION

- A. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation XIII, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
- C. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.

D. Should this Agreement be terminated, FHWA would carry out the requirements of 36 CFR Part 800 for individual undertakings.

E. 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.

XIV. CONFIDENTIALITY

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA. Section 304 allows FHWA to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if _____DOT determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

XV. DURATION OF AGREEMENT

This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect, unless it is terminated prior to that time. Ninety days prior to the conclusion of the ten year period, _____DOT will notify all parties in writing. If there are no objections from consulting parties, the term of the Agreement will automatically be extended for an additional ten years. If any party objects to extending the Agreement, or proposes amendments, _____DOT will consult with the parties to consider amendments or other actions to avoid termination.

Execution and implementation of this agreement evidence that FHWA has delegated certain Section 106 responsibilities to _____DOT, and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in _____; 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: _____ Date: _____

State Historic Preservation Officer

By: _____ Date: _____

Advisory Council on Historic Preservation

By: _____ Date: _____
John M. Fowler, Executive Director

_____ Department of Transportation

By: _____ Date: _____

APPENDIX A

[SUGGESTED]

EXCEPTED ACTIVITIES

1. General highway maintenance and repair, including filling potholes, crack sealing, joint grinding, milling and resurfacing in kind.
2. Guardrail replacement where no new bank stabilization is required.
3. Installation or maintenance of highway signs, pavement markings and/or contemporary fencing within existing operational ROW.
4. General pavement marking, line painting, or installation of sensors in existing pavements.
5. Installation of raised pavement markers.
6. Herbicidal spraying within existing ROW.
7. Mowing or brush removal/trimming within existing ROW.
8. Improvements to existing maintenance facilities.
9. Study type projects (e.g. feasibility studies).
10. Acquisition of scenic easements.
11. Storm damage repairs, such as culvert clearing or repair, shoulder reconstruction, or slide or debris removal.
12. Other...

SCREENED ACTIVITIES

1. Minor widening of less than one-half lane width, adding lanes in the median, or adding paved shoulders.
2. Minor modification of interchanges and realignments of on/off ramps.
3. Approval of utility installations along or across a transportation ROW provided no drainage of wetlands will occur.
4. Installation of noise barriers or retaining walls.
5. Addition of bicycle lanes, pedestrian walkways, or shared use paths.
6. Modification of existing features, such as slopes, ditches, curbs, sidewalks, driveways, dikes, or headwalls, within or adjacent to the ROW.

7. Minor operational improvements, such as culvert replacements and median or side-ditch paving.
8. Addition or replacement of devices, such as glare screens, median barriers, fencing, guardrails, safety barriers, energy attenuators, guide posts, markers, safety cable, ladders, lighting, hoists, or signs.
9. Abandonment, removal, reconstruction, or alteration of railroad grade crossings or separations or grade crossing protection.
10. Additions or alterations to existing buildings, such as work on or in office or equipment buildings, maintenance stations, warehouses, roadside rest areas, vista points, minor transit facilities, weigh and inspection station, or toll facilities.
11. Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety.
12. Any work on non-eligible, non-contributing bridges, including rehabilitation or reconstruction.
13. Modification of traffic control systems or devices utilizing existing infrastructure, including installation, removal, or modification of regulatory, warning, or informational signs or signals.
14. Installation of freeway surveillance or ramp metering equipment.
15. Replacement of existing highway signs.
16. Removal or control of outdoor advertising.
17. Establishment, replacement, or removal of landscaping, vegetation, or irrigation systems on state or locally owned property, including highway and local roads ROW and building sites.
18. Joint or multiple use permits with other agencies or encroachment permits.
19. Minor maintenance on historic bridges and tunnels.
20. Other...