PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE GEORGIA DEPARTMENT OF TRANSPORTATION, THE GEORGIA STATE HISTORIC PRESERVATION OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION FOR TAKING INTO ACCOUNT HISTORIC PROPERTIES UNDER THE EMERGENCY RELIEF PROGRAM

WHEREAS, the State of Georgia may experience a disaster (natural or otherwise) event triggering a state of emergency, as declared by the President of the United States and/or the Governor of Georgia; and,

WHEREAS, the Federal Highway Administration (FHWA) makes funds available through FHWA's Emergency Relief Program under Section 125 of Title 23, U.S.C., for the repair of damage to bridges, streets, roads, or highways on the Federal-aid system, and other Federal-aid highways as a result of disasters or catastrophic failures from an external source; and,

WHEREAS, the regulations for the Emergency Relief Program allows for emergency repairs (23 CFR § 668.103), defined as those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of minimizing the extent of damage; protecting remaining facilities; or restoring essential traffic; as well as permanent repairs or restoration done as part of the emergency repairs, approved by FHWA (23 CFR § 668.109), hereby collectively referred to as Emergency Repairs; and,

WHEREAS Emergency Repairs meet the criteria for a categorical exclusion as defined in the Council of Environmental Quality regulation 40 CFR § 1508.4, and, do not normally require any further approvals by the Administration [23 CFR § 771.117(c)(9) under the National Environmental Policy Act (Title 42, U.S.C. § 4321 – 4347)]; and,

WHEREAS FHWA has determined that the Emergency Repairs may have effects on historic properties as defined in 36 CFR § 800.16; and,

WHEREAS FHWA conducts Emergency Repairs that, while they are undertakings as defined in 36 CFR 800.16, are so unlikely to affect historic properties that, in the view of FHWA and the Georgia State Historic Preservation Officer (SHPO), it is unnecessary to identify historic properties in the vicinity or view shed of some such undertakings, because no such properties shall be affected; and,

WHEREAS necessary and timely completion of Emergency Repairs do not permit FHWA to carry out the Section 106 review process within the time frames set forth in 36 CFR § 800.4 through § 800.6, FHWA has elected to comply with Section 106 of the National Historic Preservation Act (16 U.S.C. 470[f], hereinafter Section 106) through execution and implementation of a Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b); and,

WHEREAS, the signatories to this PA desire to expedite the Section 106 review for Emergency Repairs; and,

WHEREAS, FHWA has consulted with the Advisory Council on Historic Preservation (ACHP) and the SHPO in accordance with 36 CFR 800.12(a) and 36 CFR 800.14(b) to develop this PA; and,

WHEREAS, FHWA has consulted the Georgia Department of Transportation (GDOT) in the development of this PA and has invited GDOT to be a signatory to this PA; and,

WHEREAS, FHWA has invited federally recognized Indian tribes that may attach religious and/or cultural significance to historic properties that may be affected by actions carried out under this PA to participate in consultation and provide their views on the terms of this PA. These Indian tribes include the Alabama-Coushatta of Texas, Alabama-Quassarte Tribal Town, Absentee-Shawnee Tribe of Oklahoma, Cherokee Nation, Chickasaw Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Kialegee Tribal Town, Miccosukee Tribe of Indians of Florida, Mississippi Band of Choctaw Indians, Muscogee (Creek) Nation, Muscogee (Creek) National Council, Poarch Band of Creek Indians, Seminole Nation of Oklahoma, Seminole Tribe of Florida, Thlopthlocco Tribal Town, and the United Keetoowah Band; and,

WHEREAS, FHWA recognizes that it has a unique relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions, and that consultation with an Indian tribe must, therefore, recognize the government to government relationship between the federal government and Indian tribes; and,

WHEREAS, the benefits of seeking comment on Emergency Repairs from the public and interested parties need to be balanced with the health and safety of the public; and,

NOW, THEREFORE, FHWA, the SHPO, GDOT, and the ACHP agree that upon the decision of the FHWA to proceed with an Emergency Activity, FHWA will ensure that the following stipulations are implemented in order to take into account the effect of the undertaking(s) on historic properties.

STIPULATIONS

The FHWA will ensure that the following measures are carried out:

I. Applicability

This PA may be activated by the FHWA consistent with 23 CFR § 668 upon the declaration of a state of emergency by the President of the United States and/or the Governor of Georgia. Emergency Repairs under the stated declaration may follow the process in this PA for complying with 36 CFR Part 800.

GDOT may, on behalf of FHWA, initiate consultation with Indian tribes for individual undertakings carried out under the provisions of this PA. To the extent possible, GDOT and FHWA shall ensure that Indian tribes are provided information regarding proposed undertakings and are invited to participate in consultation in accordance with the requirements of Section 101(d)(6) of the NHPA and 36 CFR Part 800.

Upon receipt of a written request from any Indian tribe or officially designated representative of an Indian tribe, to consult with FHWA in lieu of or in addition to GDOT, FHWA shall consult with that Indian tribe for the particular undertaking or program to the extent possible for the particular emergency repair.

II. Eligible Emergency Repairs

All eligible Emergency Repairs are reviewed and approved by FHWA. Construction for the eligible Emergency Repair under the Emergency Relief Program normally will be completed within 180 calendar days of the occurrence of the declared emergency event. The procedures in this PA apply only to those Emergency Repairs for which construction is completed within calendar 180 days of the emergency unless the FHWA finds there to be an extenuating circumstance to construction completion that would warrant a minor time deviation.

The FHWA performs a disaster assessment and makes an Emergency Relief Program eligibility determination for Emergency Repair projects. FHWA will provide a listing of Emergency Relief projects to GDOT and SHPO when it becomes available as a result of FHWA's disaster assessment for informational purposes.

III. Exempt Section 106 Repairs

A. Rescue and salvage operations conducted to respond to immediate threats to life and property are exempt from the provisions of Section 106 [36 CFR 800.12(d)] provided that the Emergency Repairs are implemented (completed) within 30 calendar days after the disaster or emergency has been formally declared by the appropriate authority.

B. If possible, based on site conditions and accessibility, GDOT cultural resource staff will visit the project and issue an immediate finding of effect. Where measures are needed to avoid adverse effects, or to minimize or mitigate adverse effects, GDOT will work closely with construction personnel to ensure all reasonable measures are implemented. Documentation of the finding of effect will be provided to FHWA and the SHPO no later than 45 calendar days after the field visit.

C. The following will be considered immediate response Emergency Repairs conducted to preserve life or property, including to restore essential traffic operations (operations necessary to allow emergency responders to reach a disaster site or the public to reach emergency responders or shelters), which are exempt from Section 106 for 30 calendar days after the disaster or emergency is formally declared by the appropriate authority pursuant to [36 CFR 800.12(d)]. GDOT need not identify historic properties in the vicinity of the Emergency Repairs or consider the effects of Emergency Repairs provided that the repairs are limited to those specified, are not part of larger undertakings, and repairs are made in-kind. GDOT will document these findings when they occur and the information will be provided to FHWA and SHPO. The following Emergency Repairs may begin immediately without prior FHWA authorization and are exempt from Section 106.

    1. Regrading of roadway surfaces, roadway fills, and embankments

2. Temporary repairs to bring washed-out fills and slip-outs back to grade with a gravel surface or, in heavy traffic areas, with bituminous surface
3. Debris removal necessary to restore essential traffic operations
4. Erection and removal of barricades and detour signs, flagging and pilot cars during the emergency period, and placement of riprap around piers and bridge abutments to relieve severe on-going scour action
5. Dynamiting and other removal of drift piling up on bridges, including rental of boats
6. Placement of riprap on the downstream slopes of approach fills to prevent scour during overtopping of the fill
7. Removal of slides
8. Temporary repair of retaining walls
9. Construction of temporary roadway connections (detours)
10. Erection of temporary detour bridges
11. Replacement of approach fills
12. Use of ferryboats to provide temporary substitute highway traffic service
13. Other immediate Emergency Repairs conducted to preserve life or property and quickly restore and maintain essential traffic and minimize the extent of damage to protect remaining facilities.

D. When the immediate completion of the permanent work is the most economical and feasible operation to quickly restore essential traffic, the Permanent Repairs listed below accomplished with FHWA approval and completed within 30 calendar days of the disaster declaration may also be considered exempt from Section 106. Permanent Repairs not completed within the 30 calendar day time period are not exempt and should be addressed as described in Stipulation IV.

1. Repair of roads to pre-disaster conditions: number of lanes; shoulders; medians; curvature; grades; clearances; and side slopes; roadway surface; and no changes in the road elevation or width
2. Repair, replacement, or installation of traffic control devices such as traffic signs, delineators, pavement markings, interconnection and railroad warning devices, ramp and traffic surveillance control systems, improved crossing surfaces, and traffic signals
3. Repair or replacement of road lighting
4. Repair or replacement of other road infrastructure, such as curbs, berms, sidewalks, and fences
5. Repair or replacement of roadway safety elements such as barriers, guardrails, and impact attenuation devices
6. Repair of bridges to include bridge decking, expansion joints, and overlay of existing approach roads to bridges where there will be no expansion of the original wearing surface
7. Placement of permanent fill at bridge piers, wingwalls, and abutments to repair scour.
8. Permanent repair or replacement of retaining walls

9. Repair or replacement of culvert systems (structures less than or equal to 8 feet in span length), to include headwalls and wingwalls, without altering the pre-disaster disturbed earth cross-section
10. Repairs that include milling, overlay, grooving, or resurfacing of ramp, roadway, and parking lot surfaces where there will be no expansion of the original wearing surface.

IV. Streamlined Section 106 Process for Non-Exempt Emergency Repairs

GDOT will carry out the following procedures for Emergency Repairs not identified as exempt in Stipulation III. The following processes apply to all Emergency Repairs carried out within 180 calendar days under the Emergency Relief Program:

A. Notification of Declared State of Emergency

Immediately after the declared state of emergency by the President of the United States and/or the Governor of Georgia, GDOT will transmit notification to the SHPO and identified consulting parties, while FHWA/GDOT will notify the ACHP and applicable Indian tribes that may attach religious and cultural significance to historic properties likely to be affected as a result of the declared state of emergency. The notification letter will be succinct as possible given available information, will detail the proposed reporting and review/comment schedule for Emergency Repairs as outlined in this PA and will include an outlet for consulting parties to view information on designated Emergency Repairs. Pursuant to 36 CFR 800.12(b)(2), after receipt of the notification, identified parties will have 7 calendar days to review and provide comments to GDOT. If GDOT/FHWA determine that circumstances do not permit 7 calendar days for comment, the agency official will notify the ACHP, the SHPO, identified consulting parties, and applicable Indian tribes and invite any comments within the time available. Any comments received will be taken into account by FHWA/GDOT and incorporated into the planning process for designated projects under the Emergency Relief Program.

B. Identification and Evaluation of Historic Properties

1. GDOT will be responsible for the identification and evaluation of National Register of Historic Places (NRHP) eligible historic properties within the APE for Emergency Repairs. All surveys will be conducted in accordance with the GDOT/FHWA Cultural Resource Survey Guidelines in place at the time of the declared state of emergency. These guidelines have been established as a result of consultation with the SHPO and previously approved by the FHWA, SHPO, and GDOT (see Appendix B for the current GDOT/FHWA Cultural Resource Survey Guidelines). GDOT standard operating procedures pursuant to the Environmental Procedures Manual will be utilized regarding documentation, curation of archaeological materials, late discovery of historic properties, and treatment of human remains inadvertently discovered during an Emergency Repair in consultation with FHWA, SHPO, consulting parties, and applicable Indian tribes.

2. The APE for above ground historic properties for all Emergency Repairs will be limited to within the existing right-of-way of the project boundary. GDOT will evaluate all individual historic properties or historic districts 50 years old or older within the existing right-of-way of a proposed roadway/bridge removal, repair, or replacement for eligibility pursuant to 36 CFR 800.4 for in-kind Emergency Repairs. For Emergency Repairs (such as justified betterments) that require additional right-of-way or easements and have potential to introduce effects (visual, atmospheric, etc.), GDOT will consult with SHPO to determine the appropriate APE prior to the implementation of the Emergency Repair.

3. The APE for archaeological properties for all Emergency Repairs will be limited to within 100 feet of the project boundary. GDOT will conduct an archaeological investigation for Emergency Repairs that have the potential to affect archaeological properties.

4. Bridges will be evaluated using the applicable Georgia Historic Bridge Survey (GHBS) concurred with by SHPO, or any subsequent modifications or updates to that survey developed by GDOT in consultation with FHWA and SHPO. Any discrepancy in the GHBS pertaining to bridge materials, construction, history, or other pertinent information discovered by GDOT bridge maintenance or other personnel will require GDOT to comply with the Stipulations IV.C and IV.D of this PA.

5. Evaluation of NRHP eligible historic roadways and approaches to bridges will be conducted in consultation with the SHPO. Historic roadways subjected to previous evaluation by GDOT and FHWA, or others, and accepted by Georgia SHPO will not require consultation. A list of applicable historic roadways within areas subject to the declared state of emergency by the President of the United States and/or the Governor of Georgia will be provided to FHWA and SHPO pursuant to Section IV.A, "Notification of Declared State of Emergency".

C. Assessment of Effect

For each Emergency Repair where NRHP eligible historic properties, bridges, historic roadways, etc. have been identified in the APE, GDOT will assess the effects of the proposed project on historic properties by applying the Criteria of Adverse Effect pursuant to 36 CFR 800.4 & 800.5. The following resources are exempt from this process:

1. Bridges determined by the GHBS to be ineligible for the NRHP or determined NRHP eligible at the local level of significance will not require Section 106 documentation pursuant to SHPO recommendations. GDOT will supply FHWA and SHPO a list of all GHBS ineligible and NRHP eligible bridges (local level of significance) that are repaired or replaced as a result of Emergency Repairs. Treatment of bridges determined NRHP eligible at the local level of significance will not be applicable to this provision when comments are received pursuant to IV.A of this PA demonstrating the significance of the bridge to the local community. In such instances, NRHP eligible bridges with local level of significance will be documented pursuant to Section IV.D.3.a of this PA.

2. Evaluation of railroads as a historic property type under this PA will not be required as long as Emergency Repairs do not directly affect physical components of the resource that contribute to its NRHP eligibility.

D. Findings of Effect

1. No Effect/No Historic Properties Affected

Upon written determination by GDOT that no historic properties are located in the APE, or there are historic properties within the APE, but Emergency Repairs will have no effect to the resources, GDOT will transmit the findings to FHWA, SHPO, consulting parties, and applicable Indian tribes. Emergency Repairs that have similar findings of No Effect/No Historic Properties Affected will be submitted to FHWA, SHPO, consulting parties, and applicable Indian tribes together as one transmittal. If no party objects within 7 calendar days to an adequately documented finding, GDOT may proceed with the undertaking.

2. No Adverse Effect

GDOT will document findings of No Adverse Effect to historic properties located in the APE of Emergency Repair projects and will transmit the findings to FHWA, SHPO, consulting parties, and applicable Indian tribes. No Adverse Effect determinations contingent with conditions will be formalized with a Statement of Conditions document. If no party objects within 7 calendar days to an adequately documented finding, GDOT may proceed with the undertaking.

3. Adverse Effect

a. For Emergency Repairs in which the affected property is a GHBS NRHP eligible bridge determined to have a state or national level of significance (to include NRHP eligible bridges with local level of significance pursuant to IV.C.1 when applicable) and in which no other historic properties will be affected, GDOT will, prior to project implementation, archivally photograph the structure and its related features (as is feasible), pursuant to standards agreed upon by GDOT and the SHPO at the time of the declared state of emergency. The photography will be submitted to the SHPO, or if applicable, to the National Park Service for acceptance and retention. Once the recordation is accepted by the SHPO and/or the National Park Service, Section 106 compliance with the Emergency Repair will be considered complete without further review by the ACHP.

b. If project implementation will result in an adverse effect to historic properties, GDOT will consult with FHWA, SHPO, consulting parties, and applicable Indian tribes to consider means to avoid or minimize effects to historic properties. Agreed upon measures such as standard treatments, data recovery, or

implementation of alternative mitigation measures may be considered. If FHWA in consultation with the SHPO, consulting parties, and applicable Indian tribes agree that a data recovery or alternative mitigation measure is appropriate, the GDOT will develop a mitigation implementation plan. GDOT will submit the plan to FHWA, SHPO, ACHP (on behalf of FHWA), consulting parties, and applicable Indian tribes, and, with concurrence or no objections, GDOT may proceed with implementation of the plan.

E. Section 106 Review Process

1. During the period that begins 30 calendar days after the occurrence of the declared state of emergency by the President of the United States and/or the Governor of Georgia and normally ending no later than 180 calendar days after the occurrence of the emergency, consultation will be streamlined according to this section. GDOT is strongly encouraged to consult with all appropriate parties in an informal but expedited manner, utilizing telephone, fax, and e-mail on Emergency Repairs that may have adverse effects to historic properties and where there are likely to be differences in opinion regarding the effect on historic properties. Section 106 compliance requirements will be met upon completion of the following:

    a. GDOT will concurrently submit findings of identification and determinations of NRHP eligibility directly to FHWA, SHPO, consulting parties, and applicable Indian tribes for review and comment simultaneously with Assessment of Effects (where applicable) to expedite the Section 106 review process (Stipulation IV.D). The report will be formatted and submitted according to GDOT's Environmental Procedures Manual and will be accompanied by a description of the proposed Emergency Repair, a description of the historic property affected, a description of the Emergency Repair's effects to the historic property, and proposed treatment measures (which may be separate document attachments).

    b. GDOT may provide Section 106 documentation in writing, via electronic media, or at meetings at its discretion.

    c. If the evaluation of historic properties results in negative findings (no eligible or potentially eligible NRHP historic properties are located in the APE), Section 106 requirements will be deemed to have been met. FHWA, SHPO, consulting parties, and applicable Indian tribes will receive documentation for their files.

    d. If historic properties are identified in the APE of an Emergency Repair and result in No Effect/No Historic Properties Affected or No Adverse Effect (including when the undertaking is modified or conditions are imposed to avoid adverse effects), FHWA, SHPO, consulting parties, and applicable Indian tribes will have 7 calendar days after

receipt of the findings accompanied by supporting documentation to comment upon the recommendations made by GDOT, unless GDOT determines the nature of the Emergency Repair warrants a shorter review period. Any comments received will be taken into account by GDOT when finalizing any treatment for historic properties.

e. If it is determined that that the proposed action may have an adverse effect on historic properties, GDOT will propose actions to avoid or minimize the adverse effects. GDOT will document the resolution of Adverse Effects in a Commitment Letter that includes proposed mitigation measures (pursuant to Section IV.D.3) in lieu of an individual Memorandum of Agreement, and provide it concurrently to FHWA, SHPO, ACHP (on behalf of FHWA), consulting parties, and applicable Indian tribes. If the FHWA, SHPO, ACHP, consulting parties, and applicable Indian tribes provide concurrence to GDOT or if no objection is received within 7 calendar days of the receipt of the Commitment Letter (GDOT will assume concurrence), GDOT may proceed with the implementation of the commitments.

2. All documentation related to Emergency Repairs will be made available for public review via a link to GDOT's web site prior to construction. The documentation will be listed by individual Emergency Repair and schedule thereof, and will include a description of historic properties identified (if applicable) and the proposed effects to each. If applicable, Commitment Letters and Statement of Conditions for No Adverse Effect documents will also be made available for public review at this time. All information will be posted on GDOT's web site at the time the information is made available to the agencies and applicable Indian tribes for review. The public will be asked to submit comments within 7 calendar days of the posting.

3. GDOT will retain all documentation related to Emergency Repair projects in accordance with its Record Retention Policy.

4. GDOT and FHWA may extend the period to which this Stipulation applies as conditions warrant by first notifying the ACHP, the SHPO, consulting parties, and applicable Indian tribes, providing justification for the extension. The extension will be granted after all comments have been taken into account and concurrence has been received from the ACHP and SHPO.

V. Dispute Resolution

A. If FHWA, SHPO, consulting parties, or applicable Indian tribes object in writing within the time frames established by this agreement to any plans, specifications, determinations, or other actions subject to review pursuant to this PA, GDOT will consult with the objecting party and attempt to resolve the dispute for no more than 14 calendar days. If the dispute cannot be

resolved, FHWA will request the ACHP's advice on a proposed resolution in accordance with 36 CFR 800.2(b)(2). The ACHP will advise FHWA within 14 calendar days of receipt of the request, unless FHWA determines the nature of the Emergency Repair warrants a shorter time period. Should the ACHP not respond within 14 calendar days, FHWA will assume ACHP's concurrence in FHWA's proposed resolution. FHWA will take into account any ACHP recommendations or comments, and any comments from signatories or consulting parties in reaching a final decision regarding the objection. The signatories will continue to implement all other terms of this agreement that are not subject to objection. FHWA will provide the signatories with its final written decision regarding any objection resolved pursuant to this Stipulation, and may authorize any disputed action to proceed, after resolving the related objection.

B. Any dispute regarding the NRHP eligibility will be resolved in accordance with 36 CFR 800.4(c)(2).

VI. Public Involvement

At any time while the agreement is in effect, should a member of the public object in writing to implementation of its terms, GDOT will notify the other signatories in writing and take the objection into consideration. GDOT will consult with the objecting party and, if the party so requests, the other signatories, for not more than 14 calendar days. In reaching its decision regarding the objection, GDOT in consultation with FHWA will take into consideration all comments from these parties. Within 14 calendar days after the closure of this consultation period, FHWA will provide the other parties with its written decision. FHWA's decision will be final.

VII. Amendment

Any party to this PA may request that it be amended, whereupon the FHWA, the SHPO, the GDOT, and the ACHP shall consult to consider the amendment.

VIII. Termination

Any party to this PA may terminate this PA by providing 30 calendar days written notice to the other parties, provided that the parties will consult during the period prior to the proposed termination to seek agreement on amendments or other actions that would avoid termination. If termination occurs, FHWA shall comply with 36 CFR 800.4 through 36 CFR 800.6 and 36 CFR 800.12 with regard to individual Emergency Repair projects covered under this PA.

IX. Review and Duration

FHWA and GDOT will review this PA every 7 calendar years, or less if appropriate, verifying applicability with current standard operating procedures (SOP) and technology trends. FHWA

and GDOT will invite the SHPO and ACHP to participate. The PA will be amended as needed to meet SOP and technology changes pursuant to agreement by each participating party. There is no expiration date associated with this PA so long as the review clause in this stipulation is completed with due diligence.

Execution and implementation of this PA is evidence that the FHWA has afforded the ACHP a reasonable opportunity to comment on Emergency Repair projects associated with declared state of emergencies and that FHWA has taken into account the effects of such undertakings on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

BY: _____ DATE: 2/23/12

RODNEY N. BARRY, DIVISION ADMINISTRATOR

GEORGIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: 1-23-12

for DAVID CRASS, DIRECTOR AND STATE ARCHAEOLOGIST

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ DATE: 3/8/12

JOHN M. FOWLER, EXECUTIVE DIRECTOR

GEORGIA DEPARTMENT OF TRANSPORTATION

BY: _____ DATE: 2-14-12

KEITH GOLDEN, P.E., COMMISSIONER