

**PROGRAMMATIC AGREEMENT  
AMONG  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
THE FEDERAL HIGHWAY ADMINISTRATION  
THE DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION  
AND  
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING  
IMPLEMENTATION OF THE FEDERAL AID HIGHWAY PROGRAM  
IN WASHINGTON, DC**

**WHEREAS**, the U.S. Department of Transportation (USDOT), Federal Highway Administration (FHWA) administers the Federal Aid Highway Program (Program) in the District of Columbia authorized by 23 U.S.C. § 101 et seq. through the District of Columbia Department of Transportation (DDOT) (23 U.S.C. § 315); and

**WHEREAS**, the District of Columbia FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Program in Washington, DC 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); and

**WHEREAS**, in accordance with 36 CFR 800.14(b)(1)(i), the Advisory Council on Historic Preservation (ACHP), DDOT, FHWA and the District of Columbia State Historic Preservation Officer (SHPO) agree that certain projects carried out through the Program will have similar and repetitive effects on properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) and/or the DC Inventory of Historic Sites (DC Inventory), hereafter referred to as historic properties, and that those effects are unlikely to be adverse; and

**WHEREAS**, the projects identified in Appendix A (*Projects That Qualify for Streamlined Review*) are approved for purposes of compliance with Section 106 of the NHPA as they relate to Federal Aid Highway projects. Compliance with this Programmatic Agreement (Agreement) does not fulfill the requirements of other applicable laws or regulations, such as, but not limited to, projects that require review by the U.S. Commission of Fine Arts and/or the Old Georgetown Board. It also does not address compliance with Section 106 of the NHPA for other Federal Undertakings unless they have been reviewed in accordance with Stipulation I.B. of this Agreement; and

**WHEREAS**, pursuant to the consultation conducted in accordance with 36 CFR 800.14(b), ACHP, DDOT, FHWA and SHPO have developed this Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in the District of Columbia, and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

**WHEREAS**, DDOT has participated in the consultation and has been invited to be a signatory to this Agreement due to its roles and responsibilities pursuant to this Agreement; and

**WHEREAS**, ACHP, DDOT, FHWA and SHPO are the Signatories to this Agreement; and

**WHEREAS**, this Agreement supersedes the previous Programmatic Agreement executed on August 28, 2008 among ACHP, DDOT, FHWA and SHPO, its First Amendment executed on August 24, 2018, and its Second Amendment executed on August 21, 2020; and

**WHEREAS**, this Agreement may be superseded by a new Agreement where the Signatories agree through the development and execution of the new Agreement. If this Agreement is superseded by a new Agreement, this Agreement will have no further force or effect upon the execution of the superseding Agreement; and

**WHEREAS**, FHWA and DDOT have consulted with the Consulting Parties listed in Appendix B regarding the development and implementation of this Agreement. FHWA and DDOT announced a 30-day public comment period in the DC Register on May 21, 2021. The Consulting Parties listed in Appendix B were notified via email of the public comment period. DDOT and FHWA provided an overview of the Agreement on the public website (<https://ddot.dc.gov/page/section-106-pa>) summarizing the Agreement and the process for submitting public comments; and

**WHEREAS**, FHWA has consulted with Federally-recognized Indian tribes (Tribes) with ancestral ties to Washington, DC about this Agreement, has requested their comments, and no comments were received. These Tribes are listed in Appendix C; and

**WHEREAS**, 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 Part 800; and

**NOW, THEREFORE**, ACHP, DDOT, FHWA and SHPO agree that the Program in the District of Columbia 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 the District of Columbia and that these stipulations shall govern compliance of the Program with Section 106 until this Agreement expires or is terminated.

## **STIPULATIONS**

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

### **I. Purpose and Responsibilities**

- A. This Agreement sets forth the process by which FHWA, with the assistance of DDOT, shall fulfill its responsibilities under Section 106 for the Program in the District of Columbia. Furthermore, this Agreement establishes the basis for DDOT to conduct internal, streamlined reviews of certain activities which, based on previous experience, are the types of activities that the Signatories agree are unlikely to cause adverse effects on historic properties and, therefore, do not require additional review by ACHP, FHWA or SHPO.
- B. Federal agencies who recognize FHWA as the lead federal agency for an undertaking may fulfill their obligations under Section 106 of the NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and DDOT follow the requirements of the Agreement and the agency's undertaking does not have the potential to cause effects on historic properties beyond those considered by FHWA and DDOT.
- C. FHWA Responsibilities. FHWA shall ensure that DDOT carries out the requirements of this Agreement in order to fulfill its responsibilities under the NHPA, and as a condition of its award to DDOT of any assistance under the Program. FHWA retains the responsibility to consult with Tribes as required under 36 CFR 800, as amended. DDOT may assist FHWA if individual Tribes agree to alternate procedures.
- D. DDOT Responsibilities. DDOT's Environmental Program Branch (EPB) is the branch within DDOT that recommends the level of environmental action/documentation and resource studies that will be required for a project as well as provides recommendations on the requirements for coordination with SHPO. DDOT EPB shall review projects internally to determine whether a proposed project qualifies for streamlined review pursuant to Appendix A (*Projects That Qualify for Streamlined Review*). If DDOT determines that a project does not have the potential to cause effects on historic properties or qualifies for streamlined review pursuant to Appendix A, it shall document its decision in the DDOT Project Development & Environmental Review Checklist I (Form I) (Appendix D) and no further review by ACHP, FHWA or SHPO will be required. If DDOT determines that a project does not qualify for streamlined review pursuant to Appendix A it shall notify and assist FHWA in meeting its Section 106 responsibilities pursuant to 36 CFR Part 800. If DDOT is unsure whether a project qualifies for streamlined review pursuant to Appendix A, it shall consult with SHPO. If DDOT and SHPO agree, the project will be streamlined or reviewed subject to 36 CFR Part 800 accordingly. If DDOT and SHPO do not agree, DDOT shall consult with FHWA to make a final decision regarding whether the project qualifies for streamlined review pursuant to Appendix A or requires review pursuant to 36 CFR Part 800.
- E. SHPO Responsibilities. SHPO shall advise, assist, review and consult with FHWA and DDOT, as needed, regarding the applicability of this Agreement to projects proposed for implementation with Program funds, and regarding other matters relating to Section 106.

- F. **ACHP Responsibilities.** The ACHP will be notified of findings of adverse effect by FHWA and will be invited to participate in resolving the adverse effect of an undertaking in accordance to 36 CFR 800.6(a)(1). The ACHP will participate, in accordance with Stipulation XII, in the resolution of disputes that may occur through the implementation of this Agreement.

## **II. Project Review**

### **A. Projects That Do Not Have the Potential to Cause Effects on Historic Properties**

Pursuant to 36 CFR 800.3(a)(1), FHWA has no further obligations under Section 106 after it determines a project has no potential to cause effects on historic properties. FHWA defines such projects as non-construction related activities including planning. FHWA delegates its authority to determine whether Program-funded projects have potential to cause effects on historic properties to DDOT pursuant to Stipulation I.D. of this Agreement.

### **B. Projects That Qualify For Streamlined Review**

DDOT routinely utilizes Program funds to implement the projects identified in Appendix A, and as defined in Appendix E (*Definitions*) which the Signatories agree are unlikely to adversely affect historic properties, provided they are not part of larger projects that have potential to cause adverse effects due to their broader scope or for other reasons. Absent extraordinary circumstances, these projects qualify for streamlined review by DDOT's EPB pursuant to Stipulation I.D. above, and shall not require further review by ACHP, FHWA or SHPO. EPB shall document its decision in the DDOT Project Development & Environmental Review Checklist I (Form I) (Appendix D).

### **C. Projects That Do Not Qualify For Streamlined Review**

FHWA, with the assistance of DDOT, shall carry out the process outlined in 36 CFR Part 800 for all Program-funded projects that do not qualify for streamlined review.

### **D. Coordination of Planning Related Activities**

Pursuant to 36 CFR 800.1(c), and in order to ensure that planning-related activities do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate adverse effects that may result from implementation of a plan or project, DDOT shall notify SHPO of its intent to develop any plans, studies or related activities that may have potential to affect historic properties in the future and consult early to seek and incorporate SHPO comments.

## **III. Professional Qualification Standards**

- A. Activities 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 activities in the form of reports,

standard 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 (SOI) Professional Qualifications Standards (published in 48 FR 44738-44739).

- B. DDOT will use SOI qualified staff or SOI qualified consultants to carry out “complex projects” that do not qualify for streamlined review in accordance with Stipulation II.C. of this Agreement, and may use the services of persons who do not meet these qualification standards provided their activities are conducted under the direct supervision of a person who does meet the standards.
- C. For “routine projects” that do not qualify for streamlined review in accordance Stipulation II.C. of this Agreement, DDOT will consult with SHPO on the need for SOI qualified staff or SOI qualified consultants.

#### **IV. Consultation with Tribes**

FHWA shall take the lead in consultation with Indian tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36 CFR 800.3(c)-(f). DDOT may provide general coordination information to Tribes but FHWA shall retain ultimate responsibilities for complying with all federal requirements pertaining to government-to-governments consultation with Tribes.

#### **V. Emergency Situations**

For purposes of this Agreement, emergencies are defined as natural disasters, man-made disasters or other occurrences that require urgent highway system and/or 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/or facilities; 3.) protect remaining highway facilities and/or 4.) restore essential traffic. The following stipulations apply only to emergency situations:

- A. Repairs to address emergency situations as defined above can occur regardless of funding category, and regardless of declaration made by an authorized Federal or DC agency.
- B. If the emergency repair may affect historic properties DDOT shall notify FHWA and SHPO via the means of notification most accessible prior to initiating any work. This notification should include an explanation of how the action meets the requirements for emergency as defined in this Agreement. The notice shall include NRHP listed or eligible resources in the project area, and anticipated affects of the emergency action on the resources. DDOT shall take any comments received in 48 hours into account in carrying out the emergency work and modify the emergency repairs in accordance with any FHWA/SHPO comments to the extent possible.
- C. If emergency repairs must be completed within thirty (30) days of the occurrence of the event that caused the emergency or the declaration of the emergency by an

authorized Federal or DC agency, the processing of environmental documentation will happen concurrently or after the fact. In these cases, DDOT will comply with the procedures in the stipulations of this Agreement to extent possible, but the reviews will likely be conducted after the emergency work is completed. To the maximum extent possible, DDOT shall take any timely comments into account, modify the emergency repairs in accordance with FHWA/SHPO comments, and ensure that work is limited only to those tasks which are necessary to repair the emergency. DDOT shall contact FHWA and SHPO after the emergency repairs are completed to determine whether additional consultation will be required. Any such consultation will be conducted in accordance with this Agreement and/or 36 CFR Part 800, as applicable.

- D. For emergency repairs taking longer than thirty (30) days to complete, DDOT shall comply with 36 CFR Part 800.

## **VI. Post-Review Discoveries**

- A. If any previously unidentified, potentially NRHP eligible archaeological or historic built environment resources are discovered, or if any unanticipated effects on historic properties are identified after DDOT has completed its review in accordance with this Agreement, DDOT shall immediately stop work on the relevant aspects of the associated project and notify FHWA and SHPO.
- B. DDOT shall consult with FHWA and SHPO in accordance with 36 CFR 800.13 to evaluate, record and document the NRHP eligibility of the discovered resources, take into account the unanticipated effects on historic properties, and design a plan for avoiding, minimizing, or mitigating adverse effects on any historic properties.
- C. No further work will proceed in the area of discovery until the requirements of 36 CFR 800.13 have been met.
- D. If the SHPO does not file an objection within 72 hours of receipt of DDOT's plan for addressing the discovery, DDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA without notifying ACHP.

## **VII. Identification and Treatment of Human Remains**

- A. In the event that human remains are identified prior to, during, or after project construction, DDOT will develop a treatment plan in consultation with FHWA and SHPO. If it is determined that the human remains are associated with a Native American occupation, DDOT and FHWA will consult with the Tribes prior to the development or execution of a treatment plan.
- B. Should human remains be encountered during any activity covered by this Agreement:

1. DDOT shall immediately halt work in the vicinity and implement measures to protect the human remains from inclement weather and vandalism, and notify the Metropolitan Police Department (MPD), and the District of Columbia Office of the Chief Medical Examiner (OCME) of the discovery, as well as SHPO and FHWA. MPD and OCME will complete their obligations under Statute §5-1406 of the District of Columbia Code.
2. If MPD and OCME determine that the human remains are not subject to a criminal investigation by local or federal authorities, DDOT and FHWA shall prepare a treatment plan in consultation with the SHPO and shall comply with all applicable federal and District of Columbia laws and regulations governing the discovery and disposition of human remains and consider ACHP's 2007 *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects*, available at <https://www.achp.gov/sites/default/files/policies/2018-06/ACHPPolicyStatementRegardingTreatmentofBurialSitesHumanRemainsandFuneraryObjects0207.pdf>. If the human remains are potentially Native American, then DDOT and FHWA shall follow agency guidance on the Native American Graves and Repatriation Act (NAGPRA) and continue to consult with SHPO.

### **VIII. Review and Monitoring**

- A. DDOT shall submit an Annual Report to ACHP, FHWA and SHPO by November 1<sup>st</sup> the year the Agreement becomes effective and annually thereafter on or before November 1<sup>st</sup>. At a minimum, the Annual Report shall include summary information on projects that qualified for streamlined review, an assessment of the effectiveness of the Agreement, a description of any concerns with the Agreement, and any recommendations for revisions to the Agreement. ACHP, FHWA, and SHPO will review the Annual Report and provide comments to DDOT and the other Signatories within thirty (30) days of receipt. If requested by any Signatory to this Agreement, DDOT will invite the other Signatories to a meeting to discuss and resolve any issues resulting from the review of the Annual Report.
- B. ACHP, FHWA and SHPO may monitor activities carried out pursuant to this Agreement, and the ACHP shall review such activities if so requested by any Signatory. DDOT shall cooperate with the other Signatories as they review and monitor the activities carried out pursuant to this Agreement. DDOT shall also consult and cooperate with ACHP, FHWA and SHPO regarding any potential misapplication of the list of streamlined projects and any measures that should be taken to rectify such actions.

### **IX. Amendments**

Any Signatory to this Agreement may propose amendments at any time, whereupon all Signatories shall consult to consider such amendments. Amendments will be effective on

the date they are signed by all Signatories and filed with ACHP.

## **X. Termination**

- A. If any Signatory to this Agreement determines that the terms of this Agreement are not or cannot be carried out, that Signatory shall immediately consult with the other Signatories to develop an amendment per Stipulation IX above. If within thirty (30) days, or another time period agreed upon by all Signatories, an amendment cannot be agreed upon, any Signatory may terminate this Agreement upon written notification to the other Signatories.
  
- B. If the Agreement is terminated, FHWA and DDOT must either a.) execute another Programmatic Agreement pursuant to 36 CFR 800.14(b), or b.) comply with 36 CFR 800.4 through 800.6 for each individual project that is to be implemented with Program funds.

## **XI. 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 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 property if DDOT determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; 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 documents prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

## **XII. Dispute Resolution**

Should any Signatory to this Agreement object in writing to any action carried out in accordance with the Agreement, the Signatories shall consult to resolve the objection. If the Signatories are unable to resolve the disagreement, FHWA shall forward all documentation relevant to the dispute to ACHP. Within forty-five (45) days after receipt of all pertinent documentation, ACHP will either:

- A. Provide FHWA with recommendations, which FHWA will take into account in reaching a final decision regarding the dispute; or
  
- B. Notify FHWA that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request shall be taken into account by FHWA in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute. Any ACHP recommendation or comment will be understood to pertain only to the subject of the dispute. FHWA's responsibility to carry out all actions under this Agreement that are not subjects of the dispute will remain unchanged.



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 to this Agreement, that Signatory shall immediately notify FHWA. FHWA shall immediately notify the other Signatories in writing of the objection. Any Signatory may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period that shall not be less than forty-five (45) calendar days. FHWA shall consider the objection and take all comments from other parties into account in reaching its decision. Within fifteen (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.

### **XIII. Duration**

This Agreement shall become effective upon execution by ACHP, DDOT, FHWA, and SHPO, and shall continue in full force and effect for five (5) years, or until it is amended or terminated as provided above. Prior to the end of the five-year term, DDOT shall consult with ACHP, FHWA and SHPO to determine interest in renewing this Agreement. The Agreement may be extended for an additional term upon the written agreement of the Signatories.

Execution and implementation of this Agreement evidence that FHWA has delegated certain Section 106 responsibilities to DDOT, and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in the District of Columbia; 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.

Signatures follow on separate pages

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IMPLEMENTATION OF THE FEDERAL AID HIGHWAY PROGRAM  
IN WASHINGTON, DC**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Rick Gonzalez, AIA  
Vice Chairman  
Advisory Council on Historic Preservation

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Date

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FEDERAL HIGHWAY ADMINISTRATION

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Joseph C. Lawson  
Division Administrator  
Federal Highway Administration

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Date

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DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER

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David Maloney  
State Historic Preservation Officer  
District of Columbia State Historic Office

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Date

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DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

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Everett Lott  
Director  
District Department of Transportation

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Date