

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY
ADMINISTRATION, THE U.S. ARMY CORPS OF ENGINEERS, CHARLESTON
DISTRICT, THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION,
THE SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

REGARDING

**SECTION 106 IMPLEMENTATION FOR FEDERAL-AID TRANSPORTATION
PROJECTS IN THE STATE OF SOUTH CAROLINA**

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 South Carolina by funding and approving state and locally sponsored transportation projects that are administered by the South Carolina Department of Transportation (SCDOT); and

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

WHEREAS, SCDOT administers Federal-aid projects throughout the State of South Carolina as authorized by Title 23 U.S.C. 302 and Section 57-1-30 of the South Carolina Code of Laws; and

WHEREAS, FHWA has delegated responsibility to the South Carolina Department of Transportation (SCDOT) through a Programmatic Agreement originally dated March 9, 1993 with updates December 13, 2011, and August 18, 2014, to coordinate with the South Carolina State Historic Preservation Officer (SHPO) on certain matters related to Section 106 of the National Historic Preservation Act; and

WHEREAS, the responsibilities of the South Carolina 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; and

WHEREAS, FHWA has determined that implementation of the Program in South Carolina 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 South Carolina State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b); and

WHEREAS, in accordance with 36 CFR § 800.2(a)(2) in processing a Department of the Army (DA) permit application, the U.S. Army Corps of Engineers, Charleston District (Corps) will generally accept for Federal or Federally assisted projects the lead Federal agency's compliance with the requirements of Section 106 of the NHPA; and

WHEREAS, for the purpose of Section 106 compliance for all FHWA undertakings in the State of South Carolina that require Corps authorization pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 and 403), the Corps has been consulted in the development of this Programmatic Agreement (Agreement), and designates FHWA as the lead Federal agency for such undertakings; and

WHEREAS, the Corps has been invited to be a signatory party to this Agreement pursuant to 36 CFR 800.2(a)(2), and FHWA will act on the Corps' behalf to fulfill both FHWA and the Corps' collective responsibilities

under Section 106 of the NHPA; and

WHEREAS, the Corps is individually responsible for compliance with Section 106 for undertakings where FHWA is not the lead Federal agency on a specific undertaking; and

WHEREAS, FHWA has notified Federally-recognized Indian tribes (Tribes) with ancestral lands in South Carolina about this Agreement, has requested their comments, and has taken any comments received into account. These Tribes include the Absentee-Shawnee Tribe, Catawba Indian Nation, Chickasaw Nation, Eastern Band of the Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Muscogee (Creek) Nation, Seminole Nation of Oklahoma, Seminole Tribe of Florida, Tuscarora Nation, United Keetoowah Band of Cherokee Indians in Oklahoma, Cherokee Nation, Shawnee Tribe; and

WHEREAS, FHWA has provided follow-up consultation with the one Tribe (Eastern Band of Cherokee Indians) that provided comments on the draft Agreement and addressed their comments; and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories 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 South Carolina and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

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

WHEREAS, all borrow pits will be reviewed in accordance with SCDOT Engineering Directive Memorandum Number C-16 (Attachment 1); and

NOW, THEREFORE, FHWA, the Corps, the SHPO, the ACHP, and SCDOT agree that the Program in the State of South Carolina 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 South Carolina 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. Short Form Report
- VIII. Project Review
- IX. Emergency Situations
- X. Post-Review Discoveries
- XI. Identification and Treatment of Remains
- XII. Administrative Stipulations
- XIII. Amendment
- XIV. Termination
- XV. Confidentiality
- XVI. Duration of Agreement

STIPULATIONS

The FHWA, with the assistance of SCDOT, 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 SCDOT, will meet its responsibilities pursuant to Section 106 and 110 of the NHPA (54 U.S.C 306108 and 54 U.S.C. 306101).
- B. The objective of this Agreement is to consolidate existing Section 106-related agreements and make more efficient the methods by which FHWA and SCDOT 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 SCDOT) carries out its Section 106 responsibilities.
- C. Through this Agreement, FHWA authorizes SCDOT to initiate and, in most cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.
- D. Through this Agreement, FHWA and SCDOT establish three categories of projects (Type I, II, and III Projects) that require different levels of review and consultation with the SHPO.
- E. The FHWA retains the responsibility to consult with Tribes as required under 36 CFR 800, as amended. SCDOT may assist FHWA if individual Tribes agree to alternate procedures.
- F. 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.
- G. 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 SCDOT 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 SCDOT.

II. DEFINITIONS

- A. Type I Projects: undertakings which typically involve minor amounts of ground disturbance. Examples include pavement resurfacing, installation of fencing, installation of rumble strips, and landscaping.
- B. Type II Projects: undertakings which typically involve a limited amount of ground disturbance adjacent to areas previously disturbed by road construction. Examples include bridge replacements on alignment, construction of bicycle/pedestrian paths, and intersection improvement projects that involve the construction of turn lanes and/or realignment of roads.
- C. Type III Projects: undertakings which typically involve a moderate to large amount of ground disturbance. Examples include road widening and new road alignments.
- 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

All actions prescribed by 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 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 SCDOT 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 direct supervision of a person who does meet the standards.

IV. RESPONSIBILITIES

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

A. FHWA (lead Federal agency) 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 SCDOT 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 SCDOT to assist in consultation if the individual Tribes agree to alternate procedures.
3. Pursuant to 36 CFR 800.6(a)(1), FHWA is responsible for notifying the ACHP of an adverse effect determination and offering the ACHP the opportunity to become a consulting party.
4. FHWA shall provide ACHP copies of any Memorandum of Agreement (MOA) developed for undertakings which adversely affect historic properties.
5. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XIII(B) of this Agreement.

B. SCDOT Responsibilities

Under the authority of FHWA, SCDOT may carry out the following steps with respect to undertakings covered by this Agreement. Assignment of these responsibilities is based on adequate and appropriate performance by SCDOT as evaluated in monitoring by FHWA pursuant to Stipulation XII(1) of this Agreement. This list is not inclusive of all responsibilities of SCDOT under this Agreement.

1. Determine under 36 CFR 800.3(a) whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
2. Determine under 36 CFR 800.3(c) and (d) whether the undertaking may occur on or has the potential to affect historic properties on tribal lands as they are defined in 36 CFR 800.16(x).
3. Solicit public comment and involvement, in accordance with 36 CFR 800.3(e) and SCDOT's public involvement procedures.
4. Except as identified in Stipulation V, identify additional consulting parties, including Tribes, as described in 36 CFR 800.3, and invite them to participate in the undertakings covered by this Agreement.
5. Except as identified in Stipulation VIII, determine and document, in consultation with the SHPO, the scope of identification efforts and level of effort, as described in 36 CFR 800.4 (a) and (b), including the undertaking's area of potential effects (APE).
6. In consultation with SHPO, determine the boundaries and eligibility of properties within the APE for listing in the NRHP.
7. Determine whether historic properties may be affected by the undertaking by applying the criteria

- of adverse effect as described in 36 CFR 800.5(a)(1)
8. In consultation with FHWA, the SHPO, and the ACHP (if it has chosen to participate), resolve adverse effects through the development, circulation, and execution of a MOA, if appropriate.
 9. Ensure conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the South Carolina Standards and Guidelines for Archaeological Investigations (updated 2013) and any successor to those guidelines.
 10. The SCDOT shall submit to the SHPO copies of all fieldwork reports and architectural survey cards, and shall ensure curation of archaeological materials produced under this PA at a facility meeting the standards of 36 CFR 79.
 11. Provide FHWA copies of all correspondence sent out on its behalf (e.g. letters to SHPO or Tribes)
 12. Notify FHWA of adverse effect findings and invite FHWA to participate in discussions with the SHPO to resolve adverse effects or any disputes.

V. CONSULTATION WITH TRIBES

- A. Where formal consultation agreements with Tribes exist, SCDOT 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. 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.
- B. In accordance with 36 CFR 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the area of potential effects shall be identified by SCDOT and invited by FHWA to be consulting parties.
- C. SCDOT 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. SCDOT 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.
- E. FHWA may ask SCDOT to assist in consultation if the individual Tribes agree to alternate procedures.

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Additional Consulting Parties

1. Consulting parties shall be identified in writing by SCDOT 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 SCDOT 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 SCDOT 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 SCDOT 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 SCDOT's environmental compliance procedures. SCDOT's Public Involvement Plan (Attachment 2) provides guidance for identifying, informing, and involving the public. FHWA's Technical Advisory (T6640.8A, October 30, 1987) 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 (c)(1 and 3).

2. The SCDOT 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., Type I 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 SCDOT 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 REPORTS

- A. The SCDOT shall use a short form report, internal memorandum, or the Cultural Resources Screening Form for surveys and testing projects conducted with in-house personnel.
- B. The use of short form reports (Example Attachment 3) by SCDOT consultants and subconsultants will be restricted to projects where ten (10) or fewer archaeological and/or architectural sites are identified and a finding of “no historic properties are affected” or “no adverse effect to historic properties” is made.
- C. Short form reports must, at a minimum, contain the following information:

 Title, Archaeologist (or other cultural resource investigator), Date of Research, County, Project Name, Project Description, Location, USGS Quadrangle Map, Date, Scale, UTM, Zone, Easting, Northing, Environmental Setting, Nearest River/Stream and Distance, Soil Type, Reference for Soils Information, Ground Surface Visibility, Current Vegetation, Investigation Description, Table or List of Previously Identified Resources (Archaeological or Architectural) in Vicinity of Project Area, Description/Discussion of Any Resources Discovered as a Result of Current Survey, and Remarks and Recommendations.
- D. Short form reports cannot be used when historic properties are identified within the APE and the SCDOT determines that the project may have an adverse effect.
- E. Short form reports may be used on projects involving eligible bridges provided that no other historic architectural or archaeological resources may be adversely affected in the APE. These reports will include a section that describes the historic context of any eligible or listed bridges within the project's APE.
- F. The SHPO reserves the right to request a full length or expanded report when additional information (contextual or otherwise) is needed to make a National Register eligibility determination.

VIII. PROJECT REVIEW

A. Type I Projects

SCDOT's cultural resource staff will implement the following review and consultation process for Type I projects. Type I projects may include the following types of undertakings:

1. Pavement resurfacing (with shoulder and ditch work)
2. Installation of fencing, walls, signs, pavement markings, traffic signals, small passenger shelters, and railroad warning devices
3. Installation of rumble strips
4. Landscaping

Type I Project Review Procedure

- a. SCDOT's cultural resource staff will evaluate each undertaking for potential effects to historic properties. At a minimum, evaluations shall consist of a review of the state's cultural resource files in a Geographic Information System (GIS) and a review of modern-day aerial photography. Field investigations will be performed at the discretion of SCDOT's cultural resource staff.
- b. SCDOT's cultural resource staff will consult with the SHPO on all determinations of eligibility made for above ground resources.
 1. On projects with less than five (5) survey eligible above ground resources that are determined to be not eligible for the National Register in consultation with SHPO, SCDOT may use the Cultural Resources Screening Form to document eligibility and assessment of effect. SCDOT would request state site numbers for all documented above ground resources and would submit digital copies of survey cards and a copy of the Cultural Resources Screening Form to SHPO.
 2. On projects with greater than five (5) survey eligible above ground resources that are determined to be not eligible for the National Register in consultation with SHPO, SCDOT would consult with SHPO to determine what level of report documentation (i.e. Cultural Resources Screening Form, internal memorandum, or short form report) would be required. SCDOT would request state site numbers for all documented above ground resources and would submit digital copies of survey cards and a copy of the Cultural Resources Screening Form to SHPO.
 3. If no eligible above ground resources are identified within a project's Area of Potential Effect, SCDOT's cultural resource staff may proceed with processing the project under the terms of this Programmatic Agreement.
- c. For those undertakings in which there are a) no previously recorded historic properties within the APE or b) no newly identified historic properties within the APE, SCDOT's cultural resource staff may issue a finding of "no historic properties affected" and will consult with the SHPO as SCDOT determines appropriate.
- d. If there are potential historic properties identified within the APE, SCDOT's cultural resource staff will apply the National Register Evaluation Criteria to determine National Register eligibility. SCDOT will then apply the Criteria of Adverse Effect to any historic properties in accordance with 36 CFR 800.4(d) and 800.5 and consult with the SHPO and others regarding the need for additional investigations and/or measures to ensure historic properties are not adversely affected.
- e. If adverse effects to historic properties cannot be avoided, SCDOT's cultural resource staff and FHWA will consult with the SHPO in order to resolve adverse effects in accordance with 36 CFR 800.6.
- f. SCDOT shall include the following documentation in the project file:
 - i. A cultural resource screening form (Attachment 3)
 - ii. Any records on consultation
 - iii. Any records on efforts to identify historic properties
 - iv. Any findings of eligibility.
 - v. Any findings of effect.
 - vi. Any records on resolving adverse effects.

B. Type II Projects

SCDOT's cultural resource staff will implement the following review and consultation process for Type II projects. Type II projects may include of the following types of undertakings:

1. Bridge replacements on alignment
2. Construction of bicycle and pedestrian lanes, paths, and facilities

3. Intersection improvement projects that involve the construction of turn lanes and/or realignment of roads.

Type II Project Review Procedure

- a. SCDOT's cultural resource staff will evaluate each undertaking for potential effects to historic properties. At a minimum, evaluations will consist of a review of the state's cultural resource files in a Geographic Information System (GIS), a review of the SCDOT bridge database, and an on-site field visit. Field investigations, such as shovel testing and probing, will be performed at the discretion of SCDOT's cultural resource staff.
- b. SCDOT's cultural resource staff will consult with the SHPO on all determinations of eligibility made for above ground resources.
 1. On projects with less than five (5) survey eligible above ground resources that are determined to be not eligible for the National Register in consultation with SHPO, SCDOT may use the Cultural Resources Screening Form to document eligibility and assessment of effect. SCDOT would request state site numbers for all documented above ground resources and would submit digital copies of survey cards and a copy of the Cultural Resources Screening Form to SHPO.
 2. On projects with greater than five (5) survey eligible above ground resources that are determined to be not eligible for the National Register in consultation with SHPO, SCDOT would consult with SHPO to determine what level of report documentation (i.e. Cultural Resources Screening Form, internal memorandum, or short form report) would be required. SCDOT would request state site numbers for all documented above ground resources and would submit digital copies of survey cards and a copy of the Cultural Resources Screening Form to SHPO.
 3. If no eligible above ground resources are identified within a project's Area of Potential Effect, SCDOT's cultural resource staff may proceed with processing the project under the terms of this Programmatic Agreement.
- c. SCDOT's cultural resource staff (or consultant) will complete a short-form report, internal memorandum report, or Cultural Resources Screening Form for all projects that involve the identification or evaluation of an archaeological site or above-ground resource (excluding bridges) within the Area of Potential Effects. See Attachment 3 for examples of completed documents.
- d. For those undertakings in which there are a) no previously recorded historic properties within the APE and b) no newly identified historic properties within the APE, SCDOT's cultural resource staff shall issue a finding of no historic properties affected and will consult with the SHPO as SCDOT deems appropriate.
- e. If there are potential historic properties identified within the APE, SCDOT's cultural resource staff will apply the National Register Evaluation Criteria in consultation with the SHPO to determine National Register eligibility.
- f. SCDOT will then apply the Criteria of Adverse Effect in consultation with the SHPO to any historic properties in accordance with 36 CFR 800.4(d) and 800.5 and consult with the SHPO and others regarding the need for additional investigations and to consider measures to avoid, minimize, or mitigate adverse effects to historic properties.
- g. If adverse effects to historic properties cannot be avoided, SCDOT's cultural resource staff and FHWA will consult with the SHPO and other consulting parties in order to resolve adverse effects in accordance with 36 CFR 800.6.
- h. SCDOT shall include the following documentation in the project file:
 - i. A cultural resource screening form (Attachment 3).
 - ii. Any records on consultation
 - iii. Any records on efforts to identify historic properties.

- iv. Any findings of eligibility.
- v. Any findings of effect.
- vi. Any records on resolving adverse effects

C. Type III Projects

Type III projects consist of all other federal-aid transportation projects that fall outside of the undertakings described as Type I or Type II projects. Except as identified in Stipulation V, SCDOT will be responsible for completing Section 106 compliance as described in 36 CFR 800 for all Type III projects. FHWA retains final authority, responsibility, and liability for all actions, findings, and determinations.

IX. 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, SCDOT's cultural resource staff shall notify the SHPO, the FHWA, and Tribes prior to any work taking 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, SCDOT 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, SCDOT will comply with the procedures in Stipulation VIII.
- 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.

X. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When SCDOT's identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, SCDOT shall include in any environmental document 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 SCDOT has completed its review under this Agreement, that portion of the project will stop immediately, in accordance with SCDOT Engineering Directive Memorandum Number C-16 (Attachment 1).
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. SCDOT 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 Tribe files an objection within 72 hours of SCDOT's plan for addressing the discovery, SCDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the ACHP does not need to be notified.

XI. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

- A. In the event that human remains are identified prior to, during, or after project construction, SCDOT 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, SCDOT 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 the South Carolina Code of Laws Title 27 Chapter 43 Removal of Abandoned Cemeteries.

XII. ADMINISTRATIVE STIPULATIONS

- A. Monitoring and Reporting
 1. FHWA, the Corps, the SHPO, and ACHP may review activities carried out pursuant to this Agreement. SCDOT 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 Corps, 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 SCDOT 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 SCDOT, 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 SCDOT website. FHWA will also transmit the monitoring report to the ACHP for review.
 3. SCDOT shall prepare a written report annually on a calendar year basis. The report will provide a description of the number of Type I, II, and III projects that were reviewed during the calendar year. The report will also describe accomplishments/successes achieved over the

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.

XIII. 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.

XIV. 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.

XV. 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 SCDOT 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.

XVI. 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, SCDOT 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, SCDOT will consult with the parties to consider amendments or other actions to avoid termination.

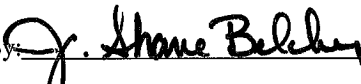
Execution and implementation of this agreement is evidence that FHWA has delegated certain Section 106 responsibilities to SCDOT, and has afforded the ACHP a reasonable opportunity to comment on the Program and its individual undertakings in South Carolina; that FHWA has taken into account the effects of the program and its individual undertakings on historic properties; that FHWA has complied with Section 106 of the NHPA and 36 CFR 800 for the Program and its individual undertakings; and that FHWA is acting on the Corps' behalf as the lead Federal agency to fulfill both FHWA and the Corps' collective responsibilities under Section 106 of the NHPA for all FHWA undertakings in the State of South Carolina that require Corps authorization pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 and 403).

Signatories:

Federal Highway Administration

By: 
Emily O. Lawton, Division Administrator

Date: 9/27/17

Recommended By: 
U.S. Army Corps of Engineers, Charleston District

Date: 9/27/17

FOR THE DISTRICT ENGINEER


By: 
Travis Hughes, Regulatory Division Chief

Date: 9/29/17

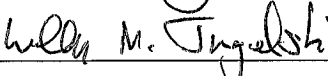
Recommended By: 

Date: 9/29/17

South Carolina Department of Transportation

By: 
Chad C. Long, Environmental Services Office, Director

Date: 9-21-17

Recommended By: 

Date: 9-21-17

South Carolina State Historic Preservation Officer

By: 
Dr. Eric Emerson, State Historic Preservation Officer

Date: 9-25-17

Recommended By: 

Date: 9-25-17

Advisory Council on Historic Preservation

By: 
John M. Fowler, Executive Director

Date: 10/6/17