AMENDED
PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION AND
THE MARYLAND STATE HISTORIC PRESERVATION OFFICER
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR THE FEDERAL-AID HIGHWAY PROGRAM IN THE STATE OF MARYLAND INCLUDING MINOR HIGHWAY PROJECTS

WHEREAS, the Maryland Division of the Federal Highway Administration (FHWA) administers the Federal-Aid Highway Program) in Maryland authorized by 23 U.S.C. 101 et seq. through the Maryland Department of Transportation State Highway Administration (MDOT SHA) (23 U.S.C. 315);

WHEREAS, the FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Federal-Aid Highway Program in the state of Maryland 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;

WHEREAS, FHWA has determined that the Federal-Aid Highway Program may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP);

WHEREAS, FHWA has determined that certain types of minor highway projects typically have no effect upon historic properties included in or eligible for inclusion in the NRHP and has consulted with the Maryland State Historic Preservation Officer (MD SHPO) and the Advisory Council on Historic Preservation (ACHP) in accordance with 36 CFR § 800.14(b) of the regulations implementing Section 106, and this Agreement is adopted pursuant to those regulations.

WHEREAS, the MDOT SHA participated in the consultation and has been invited to be a signatory to this Programmatic Agreement (PA); and

WHEREAS, FHWA has provided a draft of this agreement to and invited the participation of the following tribal nations : Absentee Shawnee Tribe, Cayuga Nation, Delaware Nation, Delaware Tribe, Eastern Shawnee Tribe, Oneida Indian Nation, Oneida Tribe of Indians of Wisconsin, Onondaga Nation, Pamunkey Indian Tribe, Seneca-Cayuga Nation, Seneca Nation of Indians, Shawnee Tribe, St. Regis Mohawk, Stockbridge-Munsee Community Band of Mohican Indians, Tonowanda Seneca Nation, and the Tuscarora Nation; and

WHEREAS, the Delaware Nation and the Delaware Tribe have provided comments on the draft agreement and FHWA has invited them to concur in the agreement; and

WHEREAS, FHWA has provided a draft of this agreement to and invited the participation of all county, Certified Local Governments in Maryland, and Maryland Certified Heritage Areas, and MDOT SHA offered the public an opportunity to participate in this agreement via an announcement on MDOT SHA's website; and

WHEREAS, the MDOT SHA administers state funded highway projects as defined in Section 2-103.1 of the Transportation Article and the MDOT SHA and the MD SHPO also agree that the fulfillment of the terms of this PA as applicable to state funded projects will satisfy the MDOT SHA's responsibilities under the requirements of the Maryland Historical Trust Act of 1985, as amended, State Finance and Procurement Article §§ 5A-325 and 5A-326 of the Annotated Code of Maryland (Act); and

WHEREAS, FHWA, MD SHPO, ACHP, and MDOT SHA entered into a Programmatic Agreement regarding MDOT SHA's Historic Highway Bridges (HHBPA) in Maryland on July 19, 2013, establishing a Section 106 review process for approximately 160 NRHP-eligible highway bridges; and

WHEREAS, the MDOT SHA has a staff of cultural resources specialists and contracts with consultant firms who meet the Secretary of the Interior's Professional Qualifications Standards published in 48 FR 44738-44739 in the fields of archaeology, architectural history, and history, to carry out its historic preservation programs and responsibilities; and,

WHEREAS, the FHWA, ACHP, MD SHPO, and MDOT SHA originally executed a Programmatic Agreement (PA) for Minor Highway Projects on July 26, 1993 and subsequently amended it on February 22, 2001 and June 30, 2008; and

WHEREAS the parties to the original and amended agreements have consulted and agreed to amend the PA, pursuant to Stipulation J of the original agreement and Stipulation IX of the amended agreements, and this agreement herein supersedes the earlier PAs;

NOW, THEREFORE, the FHWA, ACHP, MD SHPO, and MDOT SHA agree that Federal-Aid Highway Program in Maryland 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 Maryland and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

STIPULATIONS

FHWA, with the assistance of MDOT SHA, will ensure that the following measures are carried out:

I. Purpose and Applicability

A. This PA sets forth the process by which the FHWA will meet its responsibilities under Section 106 of the NHPA, with the assistance of the MDOT SHA, for highway projects of the Federal-Aid Highway Program in Maryland. This PA establishes the basis for the MDOT SHA's internal review of individual projects and establishes how the FHWA and the MD SHPO will be involved in any review.

B. This agreement may apply to undertakings for projects involving other Federal agencies where FHWA has assumed Lead Agency responsibility under Section 106.

C. This agreement does not apply to Federal-Aid Highway programs where MDOT SHA serves a primarily administrative role, as a grantor of funds, or is otherwise indirectly involved with an undertaking, such as local public agency programs and projects, where another entity is the primary project proponent.

II. Responsibilities

A. FHWA Responsibilities In compliance with its responsibilities under NHPA and as a condition of its award of any assistance for undertakings that may affect historic properties under the Federal-Aid Highway Program, the FHWA shall require the MDOT SHA to carry out certain requirements of 36 CFR Part 800, consistent with applicable ACHP standards and guidelines.

1. FHWA delegates MDOT SHA the responsibility to establish the undertaking and initiate Section 106 review and consultation process in accordance with this Agreement.
2. FHWA shall ensure that federally recognized Indian Tribes are identified and consulted in accordance with the requirements of Section 101(d)(6) of the NHPA and 36 CFR Part 800. This Agreement recognizes the guidance titled "Limitations on the Delegation of Authority by Federal Agencies to Initiate Tribal Consultation under Section 106 of the National Historic Preservation Act" published by ACHP on July 1, 2011. Nothing in this Agreement abrogates FHWA's responsibility for government-to-government consultation with federally recognized Indian Tribes at their request. 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 MDOT SHA, FHWA shall consult with that Indian tribe for the particular undertaking or program.
3. Upon notification by the MDOT SHA that a project may result in an adverse effect to historic properties, FHWA will ensure the Section 106 review process is completed, including notification of ACHP, in accordance with 36 CFR 800.6(a).

B. MDOT SHA Responsibilities

1. MDOT SHA will determine and document the Area of Potential Effect(s) (APE), identify consulting parties, including federally recognized Indian Tribes that may ascribe religious and cultural significance to properties in a project's APE pursuant to 36 CFR 800.3(f)(2), and local governments with jurisdiction; identify Historic Properties and Prepare Documentation, and Assess Effects to Historic Properties in consultation with MD SHPO, consulting parties, and in accordance with the principles and processes described at 36 CFR § 800.3 – 6..
2. When MDOT SHA determines an undertaking will have an adverse effect on historic properties, it will notify the FHWA and initiate further consultation with MD SHPO and identified consulting parties to resolve the adverse effects in accordance with 36 CFR § 800.6, including alternatives to avoid, minimize, or mitigate adverse effects to historic properties resulting from the undertaking. Such alternatives or mitigation will be documented in a Section 106 Memorandum of Agreement or Programmatic Agreement executed by FHWA, MDOT SHA, MD SHPO, and ACHP if participating in consultation.
3. MDOT SHA shall immediately notify FHWA of any request for government-to-government consultation conveyed by a federally recognized Indian tribe.The MDOT SHA shall employ professionals meeting Professional Qualifications Standards established by the Secretary of Interior in the fields of history, archaeology and architectural history. These MDOT SHA cultural resources professionals shall oversee project review for MDOT SHA and perform all actions where "MDOT SHA" is specified in this agreement.

C. MDOT SHA and FHWA shall withhold from disclosure to the public information about the location, character, or ownership of historic properties in accordance with the requirements and limitations of Section 304 of the NHPA.

III. Guidelines, Standards and Regulations

Guidelines, standards and regulations relevant to this PA and its purposes include:

- 36 CFR Part 800: Protection of Historic Properties (2004); and
- *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation: Identification* (1983);
- *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole 1994);
- *Standards and Guidelines for Architectural and Historical Investigations in Maryland* (Maryland Historical Trust 2000).

It is the intention of the signatories to interpret this agreement to incorporate any subsequent standards or revisions of standards promulgated by the Secretary of Interior, ACHP, or MD SHPO as then in force during the course of this Agreement. The signatories also intend this agreement to be construed in accordance with the National Historic Preservation Act in matters of interpretation.

IV. Projects with No Potential to Cause Effects (Appendix 1 Projects)

A. Project types: The signatories to this PA agree that the projects limited to the activities listed in Appendix 1 by their nature and definition, constitute undertakings that have no potential to cause effects to historic properties [pursuant to 36 CFR § 800.3(a)(1)]. Therefore, projects limited to the activities listed in Appendix 1 are categorically exempt from further review, provided the projects are limited to the activities listed and not part of a larger undertaking. Qualified MDOT SHA cultural resources professionals will determine whether a particular project meets the exemption categories listed in Appendix 1. Other types of minor actions may be exempted from review as having no potential to cause effects if deemed appropriate through consultation and mutual agreement between the MDOT SHA and MD SHPO. MDOT SHA shall notify FHWA and ACHP of additions to Appendix 1 as they are added. The MDOT SHA shall maintain a list of all such categories and actions approved by this process and update Appendix 1 as part of the annual audit report to the MD SHPO under Stipulation VIII. Updates to Appendix 1 shall become effective immediately upon mutual agreement between MDOT SHA and MD SHPO. Additions to or modifications of Appendix 1 do not require amendment of this Agreement.

B. Notification and Coordination: For projects which are limited to the activities listed in Appendix 1, the MDOT SHA shall document its finding that the action is exempt from further review and maintain the documentation in its files. Projects reviewed under Appendix 1 will be documented with information that includes at a minimum, the project name, route/limits, county, inclusion of federal funds, a description of the proposed work, and the qualified cultural resources staff reviewing the action. The MDOT SHA shall document all projects exempted from additional review under Appendix 1 in its annual report to the MD SHPO, as specified in Stipulation XI. The MDOT SHA will provide project review documentation to the MD SHPO for particular actions upon request. Beyond the documentation noted above, the MDOT SHA is

not required to take any further action in the Section 106 process for projects exempt from review.

V. Minor Highway Projects (Appendix 2 Activities)

A. Project Types: For the purposes of this agreement, "Minor Highway Projects" are broadly defined as those projects with limited areas of potential effects unlikely to contain historic properties (with the exception of previously evaluated historic bridges as noted in Stipulation VI), occur largely at grade within existing rights-of-way or within minimal new rights-of-way, do not introduce new structural or visual elements, and do not require substantial ground disturbance or occur within previously disturbed soils, and are therefore unlikely to affect historic properties. MDOT SHA will review and document minor highway projects without further review by the FHWA or MD SHPO, provided the projects are:

- limited to the activities listed
- not part of a larger undertaking
- MDOT SHA bases its review upon information adequate to identify properties and assess projects' effects on historic properties, as specified in Stipulation V. B and consistent with 36 CFR Part 800;
- MDOT SHA decisions are based on the guidelines, standards and regulations identified in Stipulation III;
- MDOT SHA consults with the MD SHPO pursuant to 36 CFR § 800.4(c) prior to making determinations of eligibility of properties for the NRHP
- MDOT SHA finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them.

Additional project types and actions may be classified as minor highway activities and if deemed appropriate through consultation and mutual agreement between the MDOT SHA and MD SHPO may be added to Appendix 2. MDOT SHA shall notify FHWA and the ACHP of additions to Appendix 2 as they are added. The MDOT SHA shall maintain a list of all such activities and actions approved by this process and update Appendix 2 as part of the annual audit report to the MD SHPO and FHWA under Stipulation XI. Updates to Appendix 2 shall become effective immediately upon mutual agreement between MDOT SHA and MD SHPO. Additions to or modifications of Appendix 2 do not require amendment of this Agreement.

B. **MDOT SHA Review Process**

1. **Internal Review**: For undertakings limited to activities listed in Appendix 2, qualified MDOT SHA cultural resources professionals will implement the following internal review process, as appropriate to the project:

- determine the APE;

- review existing information (including but not limited to MDOT SHA's GIS Cultural Resources Database, MD SHPO's databases, street view imagery, State Department of Assessment and Taxation, etc.) on inventoried properties in the APE;

- assess the likelihood that unidentified properties exist in the APE;

- determine the degree of existing disturbance within the APE, performing a field inspection where warranted;

- conduct a field survey in conformance with the applicable standards in Stipulation III, where warranted;

- determine whether historic properties are in the APE; and

- determine whether the undertaking will result in no historic properties affected, as defined in 36 CFR Part 800.4(d)(1).

2. **Eligibility Evaluations and Assessments of Effect:** The MDOT SHA will consult with the MD SHPO pursuant to 36 CFR 800.4(c) prior to making any determination of eligibility of properties for the NRHP. If MDOT SHA's internal review suggests that a project may affect historic properties, the MDOT SHA will seek coordination on the project in accordance with stipulation VII of this agreement, 36 CFR § 800.4 through 36 CFR § 800.6 and in consultation with the MD SHPO.

3. **Notification and Coordination with MD SHPO:** For projects that meet the criteria included in Stipulation V.A and do not include properties within the APE, the MDOT SHA shall document and file the finding in accordance with Stipulation V.B.5. The MDOT SHA **may** request written concurrence from the MD SHPO on a determination of no historic properties affected for any project defined under this PA. The MDOT SHA shall notify the MD SHPO of its use of the Appendix 2 and provide a list of all projects limited to the activities defined in Appendix 2 that were reviewed under the provisions of Stipulation V in its annual report to the MD SHPO, as specified in Stipulation XI. The MDOT SHA does not need to provide the MD SHPO with copies of the Appendix 2 documentation, unless the MD SHPO specifically requests a copy of the documentation for a particular action.

4. **Notification and Coordination with other Parties:** MDOT SHA will provide for public and local government notification by providing an electronic quarterly report of all projects reviewed under the provisions of this stipulation to local governments, the interested public, or other parties upon request. MDOT SHA will notify local government contacts of the ability to subscribe to the report through direct e-mail and will provide for any member of the public to subscribe to the quarterly report through MDOT SHA's website. MDOT SHA will provide documentation of project review as appropriate upon request. In the event of an objection from the public or a consulting party to use of Appendix 2 in project review, MDOT SHA will provide a copy of the documentation to the MD SHPO and consult with all relevant parties to resolve the issue or handle the review under the standard 36 CFR 800 process.

5. **Documentation:** For all undertakings reviewed under this PA, the MDOT SHA will maintain records, including Appendix 1 and 2 documentation, photographs and field notes. MDOT SHA will make the documentation accessible, consistent with MDOT SHA and

FHWA's records retention schedules. Pertinent records for each project covered under this PA should include:

- a description of the project and its APE;
- the location of the project area on USGS 7.5 minute topographic maps and/or project mapping; or on mapping generated from the MDOT SHA Geographic Information System (GIS) at a scale of 1:90,000 or less for project location and 1:24,000 or less for cultural resources information;
- the type, extent, and degree of existing disturbance within the APE;
- the assessment by qualified MDOT SHA staff of the potential for properties within the APE, including justification, a listing of inventoried properties, and new or updated Maryland Inventory of Historic Properties forms, as warranted;
- justification for the determination of no effect or no historic properties affected (as appropriate); and
- associated notes and correspondence

VI. Historic Bridge Projects (HHBPA)

Undertakings that may incidentally include Eligible Historic Bridges and Non-Priority Historic Level Bridges (listed in HHBPA Attachments B and C) within their APE may be reviewed by MDOT SHA under the provisions of Stipulation V of this Agreement provided the other provisions of Stipulation V are met and the primary purpose of the undertaking is not maintenance or modification of the bridge or bridges.

VII. Project Reviews – All Other Undertakings

MDOT SHA, FHWA and the MD SHPO shall complete review of all remaining undertakings, with the exception of those that meet the provisions in Stipulations IV and V, in accordance with 36 CFR Part 800 and the NHPA where applicable. MDOT SHA may initiate and carry out the steps of the process on behalf of FHWA as described in Stipulation II.

VIII. Post-Review Undertaking Changes

For projects that have completed review under Stipulations IV, V, VI, or VII of this agreement, MDOT SHA shall review proposed changes for effects to historic properties. Provided the change in scope is limited to the types of activities described in Appendix 1 and/or Appendix 2, MDOT SHA will document the change in a format consistent with the requirements of Stipulation V. B. 5. Should the proposed change result in potential new effects to historic properties, MDOT SHA will consult in accordance with Stipulation VII.

IX. Post Review Discoveries Including Human Remains

For all projects requiring ground disturbing activities, whether documented through exemptions under Appendix 2 or reviewed under Stipulation VII of this agreement, MDOT SHA will require use of an Inadvertent Discovery Plan (IDP) during construction. The IDP is included as Appendix 3 of this agreement and document the process by which MDOT SHA will make notifications and consult in the event of discovery of archaeological human remains, potential historic properties, or inadvertent adverse effects to historic properties (including damage to known archaeological sites) resulting from construction. MDOT SHA may make minor non-procedural modifications (such as inclusion/correction of contact or project information) to the IDP without requiring amendment of this Agreement. Project-specific IDPs may be developed for individual projects reviewed under Stipulation VII where the standard format is not desirable.

X. 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, MDOT SHA shall notify MD SHPO, the FHWA, federally recognized Indian Tribes that may attach significance to properties likely to be affected, and other appropriate parties as soon as is practicable. MDOT

SHA will consult with MD SHPO and any federally recognized Indian Tribe or Tribes that may attach religious and cultural significance to historic properties that may be affected, on the nature of the emergency and any available options to avoid or minimize effects to historic properties. MDOT SHA will make a reasonable and good faith effort to provide for sufficient response time, but the comment period may be accelerated depending on the nature of the emergency.

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, MDOT SHA will comply with the procedures in Stipulation VII of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.

D. When sufficient lead time prior to implementing repairs is possible, MDOT SHA will comply with the procedures in Stipulation VII.

E. Written notification of an emergency action shall be provided to MD 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/or anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

F. Should the emergency action subsequently be defined to meet the requirements described in Stipulations IV or V, MDOT SHA will notify MD SHPO that review was completed under these provisions and provide the associated documentation upon request.

XI. Review and Monitoring

MDOT SHA and the MD SHPO will consult regularly to review implementation of the terms of the PA, including at a minimum one annual meeting with FHWA in attendance. The MDOT SHA shall maintain a list of all its Appendix 1 and 2 projects covered under the PA for a 12-month period from January 1 through December 31. The MDOT SHA shall provide the MD SHPO and FHWA with a copy of this list called the *Appendix 1 and 2 Report* by January 31 of each following year. The MD SHPO will review the *Appendix 1 and 2 Report* and assess the implementation of the PA for the year under review. If deemed appropriate by the MD SHPO or MDOT SHA, both parties shall meet to discuss and resolve any issues raised as a result of the review.

The FHWA, ACHP and MD SHPO may monitor activities carried out pursuant to this PA. The MDOT SHA will cooperate with these parties in carrying out their monitoring efforts.

XII. Dispute Resolution

Should any signatory object to any documentation submitted or actions taken pursuant to this PA, the FHWA will ensure that the MDOT SHA consults with the objecting party to resolve the objection, provided the objection is raised within 30 days of the action under dispute. If the objection cannot be resolved, the FHWA will comply in accordance with 36 CFR § 800.3 through 36 CFR § 800.6, or follow Stipulations XIII and XIV of this Agreement. FHWA's responsibility to comply with the stipulations of this PA for all other projects and actions that are not the subject of the dispute will remain unchanged.

When requested by any consulting party, the ACHP will consider FHWA's findings under this PA. The provisions of 36 CFR § 800.9(a) on public requests to the ACHP will apply.

XIII. Amendment

Any party to this PA may request that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.14 to consider such an amendment. This PA may be amended only upon written concurrence of all signatory parties.

XIV. Termination

Any signatory to this PA may terminate it by providing 30 calendar days' notice in writing to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR § 800.3 through 36 CFR § 800.6 with regard to individual undertakings covered by this PA.

XV. Duration

This PA shall continue in full force and effect until September 1, 2027. At any time in the six-month period prior to this date, the signatory parties shall consult to consider an extension or amendment of the PA. No extension or amendment will be effective unless all parties to the PA have agreed to it in writing by amending the PA.

Execution and implementation of this agreement evidence that FHWA has delegated certain Section 106 responsibilities to MDOT SHA, and has afforded ACHP a reasonable opportunity to comment on the Federal-Aid Highway Program and its individual undertakings in Maryland; 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.

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: 11/29/17
Gregory Murrill, Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: 12/19/17
John Fowler, Executive Director

MARYLAND STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: 10.30.17
Elizabeth Hughes, State Historic Preservation Officer

MARYLAND STATE HIGHWAY ADMINISTRATION

By: _____ Date: 11/15
Gregory Slater, Administrator, MDOT SHA

APPENDIX 1

APPENDIX 1: Projects with No Potential to Cause Effects to Historic Properties. Qualified MDOT SHA cultural resources professionals will determine whether a particular project meets the following exemption categories.

1. Mowing, seeding/reseeding, planting of annual and perennial flowers, in-kind replacement of trees and shrubs, and other ground cover maintenance activities;

2. installation or replacement/repair of fixed static signs, interconnection devices, surveillance cameras, closed circuit TV, co-location of antennae, and other minor incident and traffic management devices (not including variable message signs), accessible pedestrian signals, railroad warning devices, and improved rail crossing surfaces;

3. in-kind replacement, reconstruction, ADA retrofit or ordinary repair or modification of existing lighting, guardrails, modern fencing, traffic and pedestrian signals, curbs and gutters, sidewalks and ramps, variable message signs or other similar structures;

4. activities that do not involve construction or ground disturbance, such as preliminary engineering, training, technical studies, non-invasive inspections, and educational programs;

5. overlay, milling, grooving, repairing, striping, or resurfacing of existing ramp, roadway, parking lot, or similar surfaces where there will be no expansion of wearing surface; or addition of rumble strips, pavement markings (normal and raised), bus pads, bumper stops, bike racks, and snow and ice detectors to the same;

6. routine bridge and structure maintenance and repair actions, including and limited to: cleaning of the bridge; in-kind painting of bridge; in-kind replacement of bridge decking and expansion joints and compression seals; deck overlay with the same or similar materials; overlay of existing approach roads for all bridges, where there will be no expansion of the wearing surface; cleaning scuppers or other drainage conveyances; modifications of expansion joints; deck patching with in-kind material; repair of guardrails which are already attached to parapets; in-kind replacement or repair of existing modern fencing; in-kind replacement or repair of steel beam plates and/or bridge bearings; placement of grout bags; repair of cracks in superstructure and substructure with mortar; in-kind replacement of rip rap, steel caps, protective jackets, and dolphins; and other similar routine actions;

7. any bridge remedial activity to an existing concrete box culvert; or concrete rigid frame small structure, or pipe and the length of the small structure is less than 20 feet, so long as the remedial work is aesthetically and functionally in-kind and in the same footprint (no new elements or expansion);

8. routine cleaning, maintenance and repair of existing drainage, stormwater management, and water quality facilities and devices, not including projects that seek to expand or extend such facilities, and retrofitting or redesign of existing drainage facilities limited to installation of traversable grates and conversion of drop inlets to traversable designs;

9. removal of salt, contaminated soil and materials from median and shoulder; and

10. Routine building maintenance and infrastructure upgrades and maintenance of MDOT SHA owned facilities where no new ground disturbance is involved. Such projects

activities may include, but are not limited to: mechanical, electrical and plumbing system upgrades including HV AC systems, fire protection/suppression systems, surveillance systems and in-kind septic systems; building upgrades including replacement of interior/exterior doors, replacement of garage doors, replacement of windows, replacement of gutters and roof alterations/replacement; replacement of restroom and kitchen fixtures; cleaning and painting including the debris removal and the removal of graffiti; and the replacement of hydraulic lifts (may include removal of contaminated soil under the lift) and other indoor industrial machinery.

11. Debris removal at MDOT SHA-owned facilities provided the efforts do not involve stabilization, excavation, or alterations to bridge structures.

APPENDIX 2

APPENDIX 2: Minor Highway Projects. Qualified MDOT SHA cultural resources professionals will determine whether a particular project meets the following exemption categories:

1. minor bridge and small structure rehabilitation, deck replacement, bridge rails, or substructure alterations where the work is confined to the bridge itself, and
    a) bridges are no older than 50 years at the date of MDOT SHA's project review, or
    b) the bridge has been determined ineligible for the National Register of Historic Places;

2. construction of bicycle and pedestrian lanes, paths and facilities and amenities;

3. landscaping not specified in Appendix 1;

4. water quality activities including but not limited to: stream stabilization and restoration (including removal of natural waterway obstructing debris or sediment), and installation of stormwater management facilities, bioretention facilities, infiltration trenches, and fish weirs;

5. construction of or improvements to rest areas, truck weigh stations, park and ride lots, composting facilities, and other highway related maintenance, storage, and office facilities,

6. modernization of an existing highway by widening less than a travel lane or adding lanes, provided such widening does not extend beyond the limits of existing improved right-of-way;

7. correcting substandard roadway geometrics and intersections (i.e., spot improvements and roundabouts), provided such corrections do not extend beyond the limits of existing improved right-of-way;

8. minor safety related drainage improvements, including but not limited to: installation, replacement or removal of culverts and headwalls; installation, replacement and extensions of pipes; addition of pipe end sections; and installation, replacement, or repairs of storm drains and inlets;

9. fencing installation and repair, including safety fencing on bridges;

10. repair or construction of erosion control and protection measures including but not limited to: slope stabilization, slide repair, rip rap, or retaining walls;

11. noise barrier installation;

12. installation of new lighting, traffic barriers, guardrails, traffic signals, curbs, gutters, sidewalks, hazard identification beacons, and variable message signs;

13. the disposal of excess properties that do not contain structures more than 50 years of age, or have previously been determined not eligible, are not within an historic district, and

have no previously determined NRHP eligible archaeological resources and/or limited potential to contain NRHP eligible archaeological resources;

14. installation, repair, or replacement of underground cable not specified in Appendix 1;

15. reforestation activities;

16. wetland mitigation and/or enhancement activities; and

17. Invasive Preliminary Engineering activities:
    a) Soil Borings/Investigations
    b) Utility Test Pitting/Identification
    c) Geotechnical Investigations
    d) Field Surveys for Preliminary Engineering and Right of Way plat development

    Should these Preliminary Engineering activities be linked with or result in a subsequent defined undertaking requiring additional consultation, MDOT SHA will include documentation of the preliminary review in any subsequent consultation.

18. Sidewalk Retrofit activities when the following conditions are met:
    a) project area does not contain NRHP listed or eligible structures, districts, or archaeological resources and has limited potential to contain NRHP eligible archaeological resources; and
    b) activities will not impact existing historic streetscape materials and/or features (such as brick walkways, stone curbs, markers, mounting blocks, etc.).

    Work items may include placement of concrete sidewalks and/or replacement of existing concrete sidewalks; curb ramp placement and replacement; concrete curb and gutter placement and replacement; concrete and asphalt entrances and/or driveways; and upgrading existing pedestrian signals to accessible pedestrian signals. Existing sidewalks may be widened from three feet to five feet to meet ADA requirements.

APPENDIX 3
Inadvertent Discovery Plan

Approval and funding of this project has been conditioned on review of effects to historic properties under Section 106 of the National Historic Preservation Act and/or Maryland State Statute. As a condition of this approval, in the event of inadvertent discovery of previously unknown and potentially significant archaeological resources, or unforeseen effects to historic properties, the following procedure must be implemented.

A. **Unanticipated Impacts to Standing Structure Historic Properties:** if the undertaking causes unanticipated impacts to any National Register eligible, listed, or contributing buildings, sites, structures, or objects of the built environment, the contractor must notify the engineer and immediately cease any activity causing ongoing damage until consultation occurs. The MDOT SHA shall, in consultation with the MD SHPO, determine if adverse effects have occurred to the property/properties and develop a plan for the protection of the historic property, and minimization or mitigation of impacts. If mitigation is identified, MDOT SHA and MD SHPO will execute a Memorandum of Agreement or amend an existing Memorandum of Agreement for the project to record the identified mitigation. MDOT SHA may hold its contractor liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.

B. **Unanticipated Damage to Known Archaeological Resources:** if unauthorized excavation occurs outside the approved limits of disturbance or other approved boundaries designed to protect archaeological resources and thereby causes impacts to known, NRHP-eligible archaeological resources, MDOT SHA will require its contractor to cease any activity causing ongoing damage until consultation occurs. MDOT SHA shall conduct a damage assessment consistent with the model used for such assessments under the Archaeological Resources Protection Act (https://www.nps.gov/archeology/pubs/techbr/tchBrf20.pdf). MDOT SHA will use the results of the assessment in consultation with the MD SHPO to determine if the resource has been adversely affected and determine appropriate mitigation. If the resource is of known or suspected Native American affiliation, MDOT SHA and/or FHWA shall consult with federally recognized Indian Tribes as appropriate. If mitigation is identified, MDOT SHA and MD SHPO will execute a Memorandum of Agreement or amend an existing Memorandum of Agreement for the project to record the identified mitigation. MDOT SHA may hold its contractor liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.

C. **Unanticipated Discovery of Human Remains:** Should any burials, interments, or human remains (hereafter, "Remains") be encountered during construction, all applicable construction work in the vicinity of the Remains will be immediately stopped to prevent damage to the Remains, or to any additional Remains that might be present in the vicinity. A minimum 100-foot buffer around identified remains should be established free of disturbance, to be adjusted as appropriate for the site conditions. Construction may occur outside the buffer unless evidence of additional remains is found. Human remains will at all times be treated respectfully and access and visibility limited to the site of discovery to authorized personnel only. Pursuant to State of Maryland Criminal Code § 10-402, the State's Attorney must authorize movement or removal of any remains until determined to be archaeological. If the remains are determined to be archaeological, MDOT SHA and MD SHPO will consult to determine treatment of the remains and any other necessary treatment such as work needed to define extent of remains in the most expeditious manner feasible. If the remains are determined archaeological and suspected to be of Native American origin, MDOT SHA, MD SHPO and FHWA (as appropriate) shall provide

notification within 24 hours or as soon as practicable. MDOT SHA and/or FHWA will consult with affected federally recognized Indian Tribes, the Maryland Commission on Indian Affairs and relevant Maryland Indian groups as appropriate regarding treatment of the remains. MDOT SHA will accommodate tribal cultural preferences to the extent practicable during such an event.

In consultation with the MD SHPO, Federally Recognized Indian Tribes, and FHWA as appropriate, the MDOT SHA shall develop a plan for the treatment or disposition of the Remains. The MDOT SHA shall implement the provisions of the agreed Treatment Plan.

Should the remains be associated with, or constitute an intact archaeological resource, provision **D** below is also applicable.

D. Unanticipated Discovery of Archaeological Resources: If previously unidentified archaeological features, artifacts, or other materials (hereafter, "Resources") are discovered during construction, all ground-disturbing work in the vicinity of the Resource shall be temporarily suspended or modified to prevent further damage to the Resource, and provide a reasonable buffer for extent of the resource that may not be exposed.

The MDOT SHA archaeologist shall perform a preliminary inspection to identify the Resource and evaluate its NRHP eligibility. Following this inspection, construction may resume in the vicinity of but outside the boundary of the archaeological Resource as defined by the MDOT SHA archaeologist. If the feature is potentially eligible for the NRHP, MDOT SHA will consult with MD SHPO on an eligibility determination and, if determined eligible for the National Register, every effort shall be made to minimize impacts through redesign or modification of construction methods. If the resource is of known or suspected Native American affiliation, MDOT SHA and/or FHWA shall consult with federally recognized Indian Tribes as appropriate.

In consultation with the MD SHPO, the MDOT SHA archaeologist shall develop a plan for the treatment of any resource determined eligible. SHA shall describe actions proposed to avoid, minimize, or mitigate adverse effects, and request the MD SHPO and tribal comments as appropriate within two (2) working days.

MDOT SHA shall then implement the provisions of the agreed Plan.