

PROGRAMMATIC AGREEMENT

AMONG

**THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NEW MEXICO DEPARTMENT OF TRANSPORTATION,
AND THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICER
REGARDING**

REHABILITATION, MANAGEMENT AND PRESERVATION OF HISTORIC BRIDGES IN NEW MEXICO

WHEREAS, Congress has mandated that highway bridges be evaluated, and where found substandard, be rehabilitated or replaced and has provided funding for these purposes, to insure the safety of the traveling public (through the Highway Bridge Replacement and Rehabilitation Program); and

WHEREAS, the Federal Highway Administration (FHWA) proposes to make Federal funding available to the New Mexico Department of Transportation (NMDOT) for its ongoing program to construct and rehabilitate bridges (undertaking) within the state of New Mexico (the Area of Potential Effects), and has invited the NMDOT to be a signatory to this Agreement; and

WHEREAS, Congress declares it to be in the national interest to encourage the rehabilitation, reuse, and preservation of bridges significant in history, architecture, engineering, and culture; and

WHEREAS, the FHWA and NMDOT have consulted with the SHPO on the "Historic Bridges in New Mexico: An Updated Guide for Evaluation," *NMDOT Technical Series 2014-1* (NMDOT Evaluation Guide), which presents a methodology to evaluate all pre-1964 bridges in New Mexico for listing on the National Register of Historic Places (NRHP), and the New Mexico State Historic Preservation Officer (SHPO) has concurred with the methodology and evaluations for the bridges listed in the report on June 13, 2014 (HPD Log# 99232).

WHEREAS, the FHWA has determined that the construction and improvement of highways and bridges may have an effect on bridges that are listed in or eligible for listing on the NRHP, and has consulted with the Advisory Council on Historic Preservation (ACHP) and the SHPO to develop this Agreement pursuant to 36 CFR § 800.14(b) to fulfill its Section 106 responsibilities of the National Historic Preservation Act (54 U.S.C. 306108); and

NOW, THEREFORE, the FHWA, NMDOT, SHPO, and ACHP agree that all undertakings of historic bridges shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic bridges in New Mexico.

This Agreement applies exclusively to undertakings that involve bridges. When the bridge is part of a larger road construction project and/or other historic properties in addition to the bridge may be affected, consultation shall be conducted under the *Second Amended Programmatic Agreement among the*

Federal Highway Department of Transportation, the Advisory Council on Historic Preservation, and the New Mexico State Historic Preservation Officer Regarding Implementation of the Federal-Aid Highway Program in New Mexico (Amended PA).

STIPULATION

FHWA shall ensure that the following measures are carried out:

1. The FHWA authorizes NMDOT to initiate consultation with SHPO and others as described below, but remains legally responsible for all findings and determinations made under this Agreement.
2. **Early Public Notification.** NMDOT shall inform local governments, Indian tribes, other potential consulting parties, and the public of all undertakings that have the potential to affect historic bridges, through the project development and National Environmental Policy Act (NEPA) public involvement process. These procedures shall ensure that projects with historic bridges include public involvement notification that is widely disseminated around the project area, and that sufficient opportunities are afforded for public input and comment.
3. **Previous Bridge Eligibility Determinations for NMDOT-owned Historic Bridges:** all NMDOT-owned bridges built in 1964 and before have been evaluated for NRHP eligibility by the FHWA, NMDOT and SHPO (HPD Log# 99232, signed June 13, 2014) and are listed in Appendices A, B and C.
4. **Eligibility Determinations for non-NMDOT-owned Historic Bridges:** FHWA funding may be provided to rehabilitate or replace bridges in New Mexico owned by cities, counties or other agencies. The FHWA, in consultation with the owner, and the SHPO shall evaluate the bridge using the Evaluation Guide. Appendix D provides information useful in completing eligibility determinations for these bridges. Bridges have been or may be evaluated as:
 - a. *Individually eligible or listed on the NRHP:* these bridges have been shown to be associated with Criterion A or Criterion C of the National Register Criteria for Evaluation for historical association and/or technological significance;
 - b. *Contributing resources to eligible or listed NRHP sites, structures or districts:* bridges that are not individually eligible may be determined to contribute to the qualities of significance of eligible roads and highways, as part of a historic district or multiple property nomination to the NRHP;
 - c. *Not Eligible for the NRHP:* bridges dating from 1964 and older that lack significant historical associations, are not considered to be significant examples of structural types, or have been subjected to alterations that negatively impacted the design integrity of the bridge;
 - d. *Unknown or Unevaluated Eligibility for the NRHP:* all bridges that receive FHWA funding for rehabilitation or replacement shall be evaluated using the NMDOT Evaluation Guide; and
 - e. All treatment of non-NMDOT bridges that use FHWA funding shall follow the standards set forth in Stipulation 9, below.
5. **Changes in Bridge Eligibility:** The 2014 list of NMDOT historic bridge eligibility determinations found in Appendices A, B, and C (from HPD Log# 99232, signed June 13, 2014) shall be the baseline for all NMDOT historic bridge evaluations. In very rare cases, the passage

of time, changing perceptions of significance, or incomplete prior evaluations or new information may require the FHWA or NMDOT to reevaluate properties previously determined eligible or ineligible. The FHWA and NMDOT in consultation with SHPO shall apply the NRHP criteria (36 CFR Part 63) and take into consideration the NMDOT Evaluation Guide when evaluating or reevaluating the eligibility of bridges.

6. **Alternatives Examined to Minimize Effects:** NMDOT shall initiate Section 106 consultation early in the project planning and development process for all undertakings involving historic bridges. When considering the replacement of a historic bridge, NMDOT shall consider a wide range of alternatives, beginning with the no-build alternative and proceeding through a full range of options. The consideration of alternatives shall include at least the following:
 - a. The no-build alternative
 - b. Rehabilitation/upgrading the existing bridge for continued vehicular use
 - c. Reducing traffic volumes on the existing bridge
 - d. Bypassing and preserving the existing bridge in place
 - e. Relocating the existing bridge to another site
 - f. Disposal of the historic bridge

In evaluating these alternatives, FHWA and NMDOT will give preference to those alternatives that preserve a bridge in place, including the possibility of obtaining design exceptions from standards set forth by the American Association of State Highway and Transportation Officials (AASHTO). FHWA and NMDOT shall, in good faith, explore all preservation alternatives prior to deciding to demolish a bridge.

7. **Section 106 Consultation:** FHWA, with the assistance of NMDOT, shall consult with SHPO and other consulting parties, if appropriate, on proposed FHWA projects involving bridges in New Mexico. This consultation shall consist of the following:
 - a. *Eligible and Listed Bridges:*
 1. NMDOT cultural resource staff shall write a letter to the SHPO and other consulting parties, if participating in the consultation, describing the proposed project and request concurrence on NRHP eligibility of the bridge, potential effects to the bridge, and proposed mitigation. The correspondence shall include documentation analyzing alternatives to altering or replacing the bridge, including no action, rehabilitation, moving the new bridge to another location, or building a parallel bridge next to the historic bridge.
 2. Consulting parties shall respond within thirty (30) calendar days of receipt of the NMDOT letter regarding the determination of eligibility and effect, and, if applicable, proposed mitigation.
 3. The SHPO shall respond within twenty-one (21) calendar days of receipt of the NMDOT letter regarding the determination of eligibility and effect, and, if applicable, proposed mitigation.
 4. In the event that there is an adverse effect finding, the NMDOT cultural resource staff shall complete the Section 106 coordination with SHPO and the ACHP, including the following steps:
 - i. Draft and send the documentation with the determination of Adverse Effect to the ACHP (under 36 CFR 800.6(a)(i)).
 - ii. Consult with the SHPO and ACHP, if participating, to determine the steps to involve consulting parties and the public.


- iii. Consult to develop and finalize a Memorandum of Agreement (MOA) that outlines the mitigation measures for the historic bridge.
 - iv. Carry out the mitigation stipulations as described in the MOA.
 - b. *Not-Eligible Bridges.* If the undertaking only affects an ineligible bridge, consultation with SHPO is not required. FHWA and NMDOT will document a No Historic Properties Affected finding and submit the finding to SHPO monthly, batched separately from monthly submittals under the Amended PA. The submittal shall identify that the finding was made under this Agreement, the bridge number, and if the bridge is demolished, a NMCRIS Information Abstract Form and updated Historic Cultural Properties Inventory form.
 - c. *Unevaluated or Reevaluated Bridges.* All bridge lacking previous determinations of eligibility must be evaluated. Evaluations or reevaluations shall be made through consultation with SHPO and other consulting parties, if involved in the consultation, to establish determinations of eligibility and will then follow the process in 6.a. or 6.b., as appropriate.
- 8. **Resolution of Adverse Effects:** if all of the Alternatives in Stipulation 5 have been examined and a project results in adverse effects to an Eligible or Listed bridge through the Section 106 process, NMDOT shall implement one or more of the following procedures as part of a Memorandum of Agreement to mitigate or lessen the impact of adverse effects:
 - a. *Recordation:* recordation will be scaled to the level of significance of each bridge assessed:
 - 1. Bridges with a local level of significance will be documented to HAER Documentation Level III. Photographs with a standard format camera will be acceptable, as long as prints and negatives are archival, and meet the most current standards of this for the NPS. At least three (3) copies of this documentation will be prepared; one for SHPO and two for local archival repositories.
 - 2. Bridges with a state level of significance (see Appendix A) will be documented to HAER Documentation Level II. Photographs with a standard format camera will be acceptable, as long as prints and negatives are archival, and meet the most current standards of this for the NPS. NMDOT will consult with HAER to determine if they wish to be a recipient of the Level II materials, and if so, if large format photographic materials are required. In addition, at least three copies of the documentation will be prepared; one for SHPO and two for local archival repositories.
 - 3. Bridges with a national level of significance will be documented to HAER Documentation Level I, with large format photographic negative and prints required, submitted in archival formats, meeting the most current NPS standards. In addition to materials prepared for HAER, at least three copies of the documentation will be prepared; one for SHPO and two for local archival repositories.
 - b. *Interpretation/Education:* when appropriate and applicable, NMDOT will provide educational and interpretive information on the history and engineering of significant bridges to the general public.
- 9. **Post-Review Discoveries:** if an undertaking affects a previously unidentified property that may be eligible for inclusion in the National Register, or affects a known historic property in an

unanticipated manner, FHWA shall take all reasonable measures to avoid or minimize harm to the property until it concludes consultation with the SHPO interested Indian tribes and other consulting parties and, if applicable, the Tribal Historic Preservation Officer (THPO). FHWA may assume that the property is eligible for purposes of this Agreement, and notify the SHPO, THPO, or affected tribe at the earliest possible time, and consult to develop actions that will take the effects of the undertaking into account, including notification of any known time constraints. FHWA shall develop written recommendations that reflect consultation with the SHPO, THPO, or affected tribe, and if applicable, modify the scope of work as necessary to implement these recommendations.

10. **Emergencies:** Should an emergency situation occur which represents an imminent threat to public health or safety, or creates a hazardous condition, the FHWA immediately shall notify the SHPO and the ACHP of the condition which has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the SHPO or the ACHP desire to provide technical assistance to the FHWA and NMDOT, they shall submit comments within seven (7) calendar days from notification, if the nature of the emergency or hazardous condition allows for such coordination. Where possible, emergency measures shall be undertaken in a manner that does not foreclose future preservation or restoration. Permanent repairs to historic bridges beyond the scope of emergency repairs are not authorized by this stipulation. This stipulation does not apply to undertakings that will be implemented 30 days after the disaster or emergency.
11. **Resolving objections:** should any signatory to this Agreement object in writing to FHWA regarding any action carried out or proposed, with respect to the implementation of this Agreement, FHWA shall consult with the objecting party. If after initiating such consultation FHWA determines that the objection cannot be resolved through consultation, it shall forward all relevant documentation to the ACHP, including FHWA's proposed response to the objection.
 - a. If the ACHP does not provide its advice regarding the objection within thirty (30) calendar days, the FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FHWA shall prepare a written response that takes into account any timely comments regarding the objection signatories and provide them and the ACHP with a copy of such written response.
 - b. If an objection to any stipulation or manner of implementation in this Agreement be raised by a member of the public at any time, FHWA shall take the objection into account and consult as needed with the objecting party, ACHP, and SHPO, to address the objection.
12. **Amendment:** this Agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.
13. **Termination:** if any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment agreement, per the stipulations listed above. If within thirty (30) calendar days or another time period agreed to by all signatories, an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories. Once the Agreement is terminated the FHWA shall comply with 36CFR800.3 through 36CFR800.7, with regard to individual undertakings covered by this Agreement.

14. **Failure to carry out Agreement:** in the event FHWA does not carry out the terms of this Agreement or if the ACHP determines under 36CFR800.14(b)(2)(v) that the terms of this Agreement are not being carried out, FHWA shall comply with 36CFR800.3 through 36CFR800.7 with regard to individual undertakings by this Agreement.
15. **Duration:** this Agreement shall become effective upon execution by FHWA, SHPO, and ACHP, and will remain in effect until 2025.


Execution and implementation of this Agreement evidences that the FHWA and NMDOT have outlined a procedure for completing its Section 106 responsibilities for undertakings involving bridges using the Federal-aid Highway Program in New Mexico.



J. Don Martinez
Division Administrator, FHWA, New Mexico Division

2/17/15


Date



Tom Church
Cabinet Secretary, New Mexico Dept. of Transportation

2/20/15

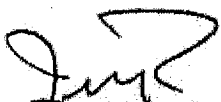
Date



for John M. Fowler
Executive Director, Advisory Council on Historic Preservation

3/16/15

Date



Or Jeff Pappas
New Mexico State Historic Preservation Officer

2/27/15

Date