PROGRAMMATIC AGREEMENT

AMONG

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,

THE FEDERAL HIGHWAY ADMINISTRATION,

THE DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

AND

THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE

REGARDING

IMPLEMENTATION OF THE FEDERAL AID HIGHWAY PROGRAM

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

WHEREAS, FHWA has consulted with the Advisory Council on Historic Preservation (Council) and the District of Columbia State Historic Preservation Office (DC SHPO) pursuant to 36 CFR Part 800, the regulations that implement Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

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

WHEREAS, in accordance with 36 CFR 800.14(b)(1)(i), FHWA, Council, DDOT and DCSHPO agree that certain actions carried out through the Federal-Aid Highway Program will have similar and repetitive effects on historic properties and that those effects will not be adverse;

NOW, THEREFORE, FHWA, Council, DDOT and DCSHPO agree that the Federal Aid Highway Program shall be administered in accordance with the following stipulations.

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

1. Purpose and Responsibilities

A. This Programmatic Agreement (Agreement) sets forth the process by which FHWA, with the assistance of DDOT, shall fulfill its responsibilities under Section 106 of the National Historic Preservation Act (NHPA) for the Federal Aid Highway Program. Furthermore, this Agreement establishes the basis for DDOT internal review of certain activities which, because they are the types of activities that are unlikely to cause adverse effects to historic properties, are exempted from review by the DC SHPO and Council.

B. FHWA Responsibilities. In compliance with its responsibilities under the NHPA, and as a condition of its award to DDOT of any assistance under the Federal-Aid Highway Program, FHWA shall ensure that DDOT carries out the requirements of this Agreement.

C. DDOT Responsibilities. Pursuant to this Agreement, DDOT will prepare an Annual Review Report for submittal to the DC SHPO, Council, and FHWA that covers the calendar year. DDOT shall ensure that the Annual Review Report is submitted to the agencies referenced. This report will include summary information on projects that do not require a review by the DC SHPO as designated under this Agreement. The report will include an assessment of the effectiveness of the Agreement, discuss concerns with the Agreement, and include recommendations for any proposed changes to it.

2. Projects Exempted from Review

The following types of undertakings are activities in which DDOT routinely utilizes Federal Aid Highway Program funds. These undertakings generally do not adversely affect historic properties, provided they are limited to activities that are not part of a larger project. Absent extraordinary circumstances, these types of activities shall not require further consultation with the DC SHPO or the Council:

A. Roadway surface replacement, reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking where there will be no expansion, provided these activities occur within curb to curb with no change in materials or the character/design of the cross section.

B. Bridge reconstruction and rehabilitation which does not include roadway widening or modification of existing piers and abutments, but which may include

bridge repairs, deck replacement or repair, railing repair, painting and other maintenance work, excluding historic bridges or bridges more than 40 years old.

C. Replacement or extension of culverts and other drainage structures with waterway openings of 100 square feet (9.3 square meters) or less and which *do not* extend beyond previous construction limits.

D. Installation of new lighting, signals, and other traffic control devices, and replacement or repair of lighting, signals, and traffic control devices where the existing units were installed less than 50 years ago.

E. Installation of new lighting, signals, and other traffic control devices, and replacement or repair of lighting, signals, and traffic control devices in historic districts where DDOT historic district street light policy is used.

F. Installation, replacement, or repair of safety appurtenances such as guardrails, barriers, glare screens, and energy attenuators, except on National Register listed or previously determined eligible bridges, properties, or districts.

G. Temporary construction fencing, including salvage yards, provided no grading or other landscaping is involved.

H. Replacement in kind of landscaping within the DDOT Right of Way and on fillslopes and backslopes only.

I. Repair or replacement in kind of curbs, gutters, and catch basins.

J. Repair or replacement in kind of sidewalks and access ramps.

K. Signs, signal installation, or modification and surface improvements to existing railway/transit crossings.

L. Emergency structural repairs to maintain the structural integrity of a bridge, unless the bridge is listed on or determined eligible for listing on the National Register.

M. Placement of fill material on the side of slopes of intersection crossroads and accesses for purposes of flattening these slopes to meet safety criteria, provided that no topsoil is removed beyond the area of previous horizontal and vertical disturbance.

N. Hazardous waste removal and disposal from within an area previously disturbed by vertical and horizontal construction activities, which constitutes a public hazard and which requires immediate removal.

O. Placement of riprap materials within an area previously disturbed by vertical and horizontal construction activities to prevent erosion of waterways and bridge piers, excluding historic bridges.

P. Routine roadway, roadside, and drainage system maintenance activities necessary to preserve existing infrastructure and maintain roadway safety, drainage conveyance, and storm water treatment in previously disturbed areas.

3. Projects Not Exempted From Review

The FHWA, with the assistance of DDOT, shall carry out the process outlined in 36 CFR 800 for all Federal Aid Highway Program projects not exempted from review under Stipulation 2 of this Agreement.

4. Review and Monitoring

The Annual Review Report shall be provided to the DC SHPO, Council, and FHWA by May 1, 2009 and annually thereafter on or before May 1st. The DC SHPO, FHWA, and Council will provide any review comments on the Annual Report, including recommendations for modifications to the Agreement, to DDOT within 30 days of receipt of the report. If requested by any signatory to this Agreement, DDOT will invite the signatories to a meeting to discuss and resolve any issues resulting from the review.

FHWA, the Council and the DC SHPO may monitor activities carried out pursuant to this Agreement, and the Council will review such activities if so requested. FHWA and DDOT shall cooperate with these parties in carrying out their monitoring and review responsibilities.

5. Terminate, Modify, Amend

Any party to this Agreement may terminate it for any reason by providing thirty (30) days written notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, FHWA shall conduct individual project review pursuant to 36 CFR Part 800.

Any party to this Agreement may request that it be amended at any time, whereupon the parties will consult with each other to consider such amendment.

6. Duration

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

Execution of this Agreement and implementation of its terms evidences that FHWA has taken into account the effects of its undertakings on historic properties and afforded the Council an opportunity to comment.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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

Date 8/28/08

FEDERAL HIGHWAY ADMINISTRATION

Mark Kehrli
Division Administrator
Federal Highway Administration

Date 8/25/08

DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER

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

Date 8/20/08

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

Frank Seales, Jr
Interim Director
District Department of Transportation

Date 8/19/08