

**PROGRAMMATIC AGREEMENT  
AMONG THE FEDERAL HIGHWAY  
ADMINISTRATION,  
THE RHODE ISLAND STATE HISTORIC  
PRESERVATION OFFICER, THE ADVISORY  
COUNCIL ON HISTORIC PRESERVATION, THE  
JOHN H. CHAFEE BLACKSTONE RIVER VALLEY  
NATIONAL HERITAGE CORRIDOR, AND THE  
RHODE ISLAND DEPARTMENT OF  
TRANSPORTATION  
REGARDING THE FEDERAL AID HIGHWAY PROGRAM IN  
RHODE ISLAND**

**WHEREAS**, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. § 101 et seq., implements the Federal-aid Highway Program (the Program) in the State of Rhode Island (the State) by funding and approving State and locally sponsored transportation projects that are administered by the Rhode Island Department of Transportation (RIDOT);

**WHEREAS**, the Rhode Island FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Program in the State complies with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended on August 5, 2004 (the NHPA);

**WHEREAS**, RIDOT administers Federal-aid projects throughout the State as authorized by Title 23 U.S.C 302;

**WHEREAS**, the responsibilities of the Rhode Island State Historic Preservation Officer (SHPO) under Section 106 of the NHPA ("Section 106") 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 the time frames detailed in 36 C.F.R. § 800 unless otherwise specified in this Programmatic Agreement (Agreement);

**WHEREAS**, historic properties are also contributing cultural resources of the John H. Chafee Blackstone River Valley National Heritage Corridor, established by Congressional Legislation (Public Law 99-647, November 10, 1986) and subject to federal action review by the Blackstone River Valley National Heritage Corridor, Incorporated (BHC) per Section 9 of Public Law 99-647;

**WHEREAS**, FHWA has consulted with Federally recognized Indian Tribes (individually, each a Tribe or Tribal Nation and collectively, Tribes or Tribal Nations) with ancestral lands in the State about this Agreement, have requested their comments, and has taken any comments received into account. These Tribes are listed in Appendix A;

**WHEREAS**, any project involving tribal lands as defined in 36 C.F.R. §

800.16(x), or any project that may affect a property identified by a Tribe as possessing traditional religious and cultural significance, shall not be governed by this Agreement, but shall be reviewed by FHWA in accordance with 36 C.F.R. § 800;

**WHEREAS**, pursuant to the consultation conducted under 36 C.F.R. § 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 the State and for affording the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on undertakings covered by this Agreement;

**WHEREAS**, FHWA has notified Federal and State agencies about this Agreement, has requested their comments, provided opportunity to discuss comments directly with FHWA, and has taken any comments received into account;

**WHEREAS**, RIDOT has notified historic preservation organizations, historical societies, and the public about this Agreement, has requested their comments, provided opportunity to discuss comments directly with RIDOT, and has taken any comments received into account;

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

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

**WHEREAS**, RIDOT will utilize this Agreement to meet the Section 106 requirements for Program-funded Local Public Agency (LPA) transportation projects;

**WHEREAS**, RIDOT has a staff of Cultural Resources Specialists and employs cultural resources consultants, all of whom meet the professional qualifications defined in the Secretary of the Interior's Professional Qualifications Standards at 36 C.F.R. § 61 and 48 FR 44716 in the fields of archaeology, architectural history, or historical architecture, to carry out RIDOT's historic preservation programs and responsibilities and are capable of completing many of the steps of the Section 106 review process on behalf of FHWA;

**WHEREAS**, the definitions contained in 36 C.F.R. § 800.16 shall be used in this Agreement;

**NOW, THEREFORE**, FHWA, the SHPO, ACHP, BHC, and RIDOT agree that the Program in the State shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in the State and that these stipulations shall govern compliance of the Program with Section 106 until this Agreement expires or is terminated, whichever occurs first.

## **STIPULATIONS**

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

## **I. APPLICABILITY AND SCOPE**

- A. The Agreement sets forth the process by which FHWA, with the assistance of RIDOT, will meet its responsibilities pursuant to Section 106 and Section 110 of the NHPA (54 U.S.C. § 306102 and 54 U.S.C. § 306108).
- B. The objective of this Agreement is to make more efficient the methods by which FHWA and RIDOT 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) carries out its Section 106 responsibilities.
- C. Through this Agreement, FHWA authorizes RIDOT to initiate and, in many cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106.
- D. FHWA retains the responsibility to consult with Tribes as required under 36 C.F.R. § 800, as amended.
- E. This Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in 36 C.F.R. § 800.16(x). For such undertakings, FHWA shall follow the procedures in 36 C.F.R. § 800.
- F. Cooperating Federal Agencies that recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106, pursuant to 36 C.F.R. § 800.2(a)(2), provided that FHWA and RIDOT follow the requirements of the Agreement and the cooperating Federal Agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and RIDOT.

## **II. RESPONSIBILITIES**

The following section identifies the responsibilities of FHWA, RIDOT, BHC, the SHPO, and ACHP in complying with the terms of this Agreement.

- A. FHWA Responsibilities
  - 1. Consistent with the requirements of 36 C.F.R. § 800.2(a), 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 RIDOT. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out by RIDOT 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 C.F.R. §800.16(m).

3. FHWA provides a Section 106 Tutorial that can assist parties in understanding the fundamental requirements of Section 106. This tutorial is available at any time. More extensive and interactive training can be requested by the parties herein.
4. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XII of this Agreement.

#### B. RIDOT Responsibilities

1. RIDOT, using staff and/or consultants meeting the Secretary of the Interior's professional qualifications standards (48 Fed. Reg. 44716), will independently perform the work and consultation described in 36 C.F.R. § 800.3 – § 800.5 (including any succeeding revisions to the regulations) on behalf of FHWA. Assignment of these responsibilities is based on adequate and appropriate performance by RIDOT as evaluated in monitoring by FHWA pursuant to Stipulation IX.A of this Agreement. These responsibilities include carrying out the following requirements:
  - a. 36 C.F.R. § 800.3(a). Determine whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
  - b. 36 C.F.R. § 800.3(c) and (d). Determine whether the undertaking may occur on or has the potential to affect historic properties on tribal lands.
  - c. 36 C.F.R. § 800.3(e). Solicit public comment and involvement.
  - d. 36 C.F.R. § 800.3(f). Identify additional consulting parties who should be invited to participate in the undertakings covered by the Agreement.
  - e. 36 C.F.R. § 800.4(a) and (b). Determine and document, in consultation with the SHPO, the scope of identification efforts and level of effort, including the undertaking's area of potential effects (APE) as defined in 36 C.F.R. § 800.16(d).
  - f. 36 C.F.R. § 800.4. In consultation with the SHPO and any Tribes that might attach religious and cultural significance to properties within the APE, identify properties within the APE included in or eligible for listing in the National Register of Historic Places (NRHP).
  - g. 36 C.F.R. § 800.5(a)(1). Determine whether historic properties may be affected by an undertaking by applying the criteria of adverse effect in consultation with the SHPO/Tribal Historic Preservation Officer (THPO) and any Tribe that attaches religious and cultural significance to identified historic properties.
  - h. 36 C.F.R. § 800.6. In consultation with FHWA, the SHPO, the ACHP (if it has chosen to participate), and any other consulting parties, including Tribes, RIDOT will address any adverse effects through the development, circulation, and execution of a memorandum of agreement (MOA) or programmatic agreement, as appropriate.
  - i. Provide FHWA copies of all correspondence sent out on its behalf (e.g., letters to the SHPO or Tribes).

2. RIDOT shall continue to share information with the SHPO as they develop or generate data and processes related to the identification, evaluation, management, and treatment of the State's cultural resources.
3. RIDOT agrees to continue to work with SHPO on the development of the Rhode Island Geographical Information System – Historical and Archaeological Resource Management System (HARMS).
4. RIDOT will continue to have all of its archaeological collections and associated documentation temporarily curated at the Public Archaeology Laboratory, Inc.'s (PAL) archaeological curation facility, which is located at 26 Main Street, Pawtucket, RI. The repository has been verified by the SHPO to meet state archaeological curation standards in accordance with SHPO's Performance Standards-Part 6 (Archaeological Collections Management) and also meets federal standards in accordance with 36 CFR § 79. RIDOT does not presently nor will it in the future curate any Native American human remains or any artifacts that are considered Native American ceremonial objects. If any Native American human remains or ceremonial objects are discovered, then they will be properly processed according to all federal laws.
5. RIDOT will continue to seek new locations and partnerships to establish an archaeological curation facility. Any new facility will meet the state archeological curation standards in accordance with the SHPO's Performance Standards-Part 6 (Archeological Collections Management). The facility will also meet the federal standards in accordance with 36 CFR § 79. Until such time that a facility is operational, RIDOT will continue to have its archeological collections stored and curated at PAL's facility in Pawtucket, RI.

#### C. SHPO Responsibilities

1. The SHPO, pursuant to Section 106 and 36 C.F.R. § 800, will advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and respond to Federal agencies' requests within the time frames detailed in 36 C.F.R. § 800 unless otherwise specified in this Agreement.
2. The SHPO and SHPO office staff shall continue to share information with RIDOT as they develop or generate data and processes related to the identification, evaluation, management, and treatment of the State's cultural resources.
3. SHPO agrees to continue to work with RIDOT on the development of the Rhode Island Geographical Information System – Historical and Archaeological Resource Management System (HARMS).

#### D. BHC Responsibilities

1. BHC is the successor of the former federal commission and the management entity for the Blackstone River Valley National Heritage Corridor. As such, BHC will participate as a consulting party in review of projects that affect the Blackstone River Valley National Historical Park.

#### E. ACHP Responsibilities

1. ACHP will be notified of findings of adverse effect by the applicable Lead Federal Agency and will be invited to participate in resolving the adverse effect of an undertaking in accordance to 36 C.F.R. § 800.6(a)(1).
2. ACHP will participate, in accordance with Stipulation XII, in the resolution of disputes that may occur through the implementation of this Agreement.

### III. PROJECT REVIEW

- A. Projects with no potential to cause effects on historic properties, pursuant to 36 CFR § 800.3(a)(1), are defined as those actions that by their nature, will not result in effects to historic properties. FHWA defines these actions as non-construction related activities. For example, purchasing equipment, planning, and design all fall under this portion of the regulation and do not require any further obligations under Section 106. All construction related actions with a federal nexus must comply with 36 CFR § 800.4 – § 800.6. Questions about applicability of 36 CFR § 800.3(a)(1) should be referred to the FHWA Federal Preservation Officer.
- B. **Excepted Projects:** Undertakings that, by their nature and definition, constitute activities that pose little/minimal potential to affect historic properties. Any project identified during the early coordination process by a Tribe as a project of concern will require tribal coordination and is no longer considered excepted.
  1. Project reviews:
    - a. Transportation undertakings that comprise any of the excepted projects listed in Appendix B and, in the best judgement of the RIDOT Cultural Resources Unit, meet all the conditions outlined in Appendix B shall undergo no further Section 106 review.
    - b. Excepted Projects:
      - Will be reviewed in their entirety
      - Will be limited to the activity(ies) and conditions specified in Appendix B
      - Will not be part of a larger undertaking
      - Will be on an existing transportation facility
      - Will not be segmented by activity or subject to differential review procedures
    - c. Undertakings certified as an Excepted Project will be documented by the RIDOT Cultural Resources Unit. RIDOT will maintain that

documentation in its project files.

- d. RIDOT may add additional activities to, or remove activities from, Appendix B pursuant to the amendment process provided in Stipulation XIII of this Agreement.

C. Review of Transportation Undertakings: For those transportation undertakings that are not an Excepted Project, the review process shall be completed by RIDOT Cultural Resources Unit and/or by qualified cultural resources consultants under the supervision of RIDOT Cultural Resources Unit.

1. No Historic Properties Affected. If, after completion of the requirements of 36 C.F.R. § 800.3 through § 800.4(c), RIDOT determines that either there are no historic properties within the APE, then RIDOT shall document a finding of no historic properties affected, and make the documentation available for public inspection. Unless a consulting party has raised a dispute pursuant to Stipulation XII, RIDOT may consider the Section 106 review process concluded.
2. If there are potential historic properties identified within the APE:
  - a. RIDOT will apply the National Register of Historic Places (NRHP) Evaluation Criteria in coordination with the SHPO and any other consulting parties, as appropriate, to assess the need for any additional investigation and determine National Register eligibility in accordance with 36 C.F.R. § 800.4. If there are no historic properties affected, RIDOT shall document a finding of no historic properties affected, provide such documentation to consulting parties, if any, and make the documentation available for public inspection. Unless a signatory party has raised a dispute pursuant to Stipulation XII, RIDOT may consider Section 106 review process concluded.
  - b. For projects that have the potential for impacting sites of religious significance to a Tribe or identified properties within the APE that may be of interest to the Tribes, FHWA will initiate coordination with the appropriate Tribes. If coordination reveals that no such properties or sites will be impacted, RIDOT shall document a finding of no historic properties affected, provide such documentation to consulting parties, if any, and make the documentation available for public inspection. Unless a signatory party has raised a dispute pursuant to Stipulation XII, RIDOT may consider Section 106 review process concluded.
3. For those undertakings where historic properties may be affected, RIDOT shall apply the Criteria of adverse effect in accordance with 36 C.F.R. § 800.5. If RIDOT determines that the effect of the undertaking will not be adverse, RIDOT will propose a finding of no adverse effect and will provide documentation of its finding to the SHPO and any other consulting parties, as appropriate. If, within thirty (30) days of receipt of this documentation from RIDOT, the SHPO or any another consulting

party does not object or comment on the documentation, RIDOT may assume concurrence and proceed with the project. In situations when properties of tribal significance are involved, FHWA and RIDOT will provide documentation of its finding to the THPO and/or Tribes. If the THPO and/or Tribes do not object within thirty (30) days of receiving this documentation RIDOT may proceed with the project, with FHWA concurrence.

4. RIDOT will request the written concurrence of the SHPO opinion and FHWA concurrence on findings of no historic properties affected and no adverse effect when necessary and for all projects for which an Environmental Assessment and Environmental Impact Statement is prepared.
5. For all undertakings in which adverse effects to historic properties cannot be avoided after all attempts to avoid and minimize have been taken and concurrence from SHPO has been obtained, RIDOT will notify FHWA. FHWA will notify ACHP of the finding of adverse effect and consult with the SHPO, Tribes, and other consulting parties in order to resolve adverse effects and conclude the Section 106 process in accordance with 36 C.F.R. § 800.6.
6. For undertakings requiring preparation of a Memorandum of Agreement (MOA), after all the steps in 36 C.F.R. § 800.5 and § 800.6 have been followed, RIDOT will prepare a draft MOA or subsequent drafts for circulation to FHWA, the SHPO, Tribes (when properties of Tribal significance are involved), and any other consulting parties. FHWA, the SHPO, Tribes and any other consulting parties will have forty-five (45) calendar days from the receipt of the draft MOA to respond to the draft. Upon conclusion of the 45-day period, RIDOT will consider all comments and proposed changes it has received and circulate a final version of the MOA for signature. Note, these timeframes may be subject to alteration based on individual project undertakings and in consultation with consulting parties.

#### **IV. CONSULTATION WITH TRIBES**

Consultation is the timely, mutual, meaningful, and interactive process of collaboration between the Tribes, FHWA, RIDOT, and the SHPO regarding historic properties of Tribal significance that may be affected by an undertaking.

- A. FHWA shall take the lead in identifying and establishing consultation with Tribes consistent with the requirements of 36 C.F.R. §800.2(c)(2) and 36 C.F.R. § 800.3(c)-(f). RIDOT may provide project-specific information to coordinate with Tribes, but FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes.
- B. In accordance with 36 C.F.R. § 800.3(f)(2), any Tribes that might attach

religious and cultural significance to historic properties in the APE shall be identified by RIDOT.

- C. Coordination with the Tribes will be initiated early in the project planning process and/or early in the design process to identify culturally significant historic properties, confidentiality, or other concerns and to allow adequate time for coordination.
- D. FHWA and RIDOT shall ensure that coordination continues with Tribes throughout the Section 106 review process as prescribed by this Agreement whenever Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.

## **V. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC**

### **A. Additional Consulting Parties**

- 1. In consultation with SHPO, RIDOT will identify and invite individuals and organizations with a demonstrated interest in an undertaking to be consulting parties. Any land-managing agency whose land may be affected by an undertaking shall be invited by RIDOT 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 RIDOT and FHWA in consultation with the SHPO.

### **B. Public Involvement**

- 1. Consistent with current state and federal laws and regulations and RIDOT policy, FHWA and RIDOT shall, through the opportunities afforded by RIDOT project development process, seek and consider the views of the public, including municipalities and other interest groups. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and RIDOT's environmental compliance procedures. RIDOT's Public Involvement Plan provides guidance for identifying, informing, and involving the public. Public outreach will be conducted in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, and the relationship of the federal involvement to the undertaking.
- 2. RIDOT 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.

## **VI. POST-REVIEW DISCOVERIES**

- A. Planning for Subsequent Discoveries. When RIDOT's identification efforts

indicate that historic properties are likely to be discovered during implementation of an undertaking, RIDOT shall include in any environmental document, contract, and specifications 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 C.F.R. § 800.4, § 800.5, § 800.6.

**B. Late Discoveries:**

1. If previously unidentified archaeological or historic properties, or unanticipated effects are discovered during construction, that portion of the project will stop immediately.
2. No further construction in the area of discovery will proceed until the requirements of 36 C.F.R. § 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
3. RIDOT will consult with the 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 any Tribe files an objection within 72 hours of the receipt of RIDOT's plan for addressing the discovery, RIDOT may carry out the requirements of 36 C.F.R. § 800.13 on behalf of FHWA and is not required to notify the ACHP.

**VII. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS**

- A. In the event that human remains are identified prior to, during, or after project construction, RIDOT will develop a treatment plan in consultation with FHWA and the SHPO. The ACHP has developed a policy statement on Burial Sites, Human Remains, and Funerary Objects (see [ACHP's Burial Policy](#)). If it is determined that the human remains are Native American, RIDOT and FHWA will consult with the Tribes prior to the development or execution of a project-specific treatment plan or follow the Inadvertent Finds of Human Remains process in Attachment A. Further, if there are questions about whether the human remains are Native American, FHWA and RIDOT must consult with the Tribes and the SHPO and obtain their input on that determination.
- B. Rhode Island General Laws Title 23, Chapter 18 authorizes City and Town Councils to prescribe standards regulating historic cemeteries to prevent any construction or excavation that might cause deterioration of or damage to any cemetery or burial ground, or to any structures or gravesites located in any cemetery or burial ground or any historic cemetery. RIGL 23-18-11.2 further specifies that in the absence of a local

ordinance establishing standards, regulations adopted by the RIHPHC shall govern. The RIHPHC's "Rules and Regulations Pertaining to Registration and Protection of Historic Cemeteries" is available on request and may be downloaded from [www.preservation.ri.gov](http://www.preservation.ri.gov). In addition, the treatment of inadvertent finds of archaeological artifacts/deposits during construction will be consistent with and follow the Protocol for Inadvertent Finds of Archaeological Artifacts/Deposits During Construction in Attachment A.

## **VIII. EMERGENCY SITUATIONS**

For the purposes of this Agreement, emergencies are defined consistent with 36 C.F.R. § 800.12 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 or declarations made by federal, state, or local agencies. RIDOT may take immediate remedial action without waiting for comment if such action is necessary to prevent further escalation of the emergency by the circumstances causing it.
- B. If the emergency repair project could affect historic properties, RIDOT's Cultural Resources Unit shall notify the SHPO, FHWA, and Tribes within 48 hours, when feasible. If possible, the SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected shall be given at least seventy-two (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, RIDOT will comply with the procedures in Stipulation VIII 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, RIDOT will comply with the procedures in Stipulation III, and in the event any human remains are exposed, Stipulation VII.
- E. Any written notification of an emergency provided to the SHPO or the Tribes shall be clearly and prominently identified 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.

## **IX. MONITORING AND REPORTING**

- A. FHWA, the SHPO, and ACHP may review activities carried out pursuant to this Agreement. When necessary, FHWA will establish an annual review meeting with all signatories to evaluate this Agreement. RIDOT will cooperate with FHWA, the SHPO and the ACHP in carrying out any requested monitoring and review responsibilities. RIDOT may conduct periodic reviews of Appendix B to determine if there are any needed additions, subtractions, or changes. When necessary and warranted, any proposed amendment to Appendix B will be made pursuant to the process provided in Stipulation XIII of this Agreement.
- B. RIDOT shall prepare a written report annually on a fiscal year basis. The report will provide a description of the number and types of projects that were reviewed during the fiscal year and full documentation of a randomly drawn sample of RIDOT projects that utilized Appendix B. The report will also describe accomplishments/successes achieved over the course of the year as well as suggestions for improvements. RIDOT shall submit the annual reports to FHWA, the SHPO, ACHP, and all other invited signatories and concurring parties no later than October 31 of each year until either the Agreement expires pursuant to Stipulation XV or is terminated pursuant to Stipulation XIV, whichever occurs first.

## **X. PROFESSIONAL QUALIFICATIONS STANDARDS**

- A. Actions prescribed by this Agreement that involve the identification, evaluation, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such 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 Fed. Reg. 44738-44739). However, nothing in this stipulation may be interpreted to preclude FHWA or RIDOT 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 supervision of a person who does meet the standards.
- B. Tribal monitoring, on or off tribal lands, will be conducted by individuals qualified and approved by the Tribal Nation, and are not required to meet the standards defined in Stipulation X(A). FHWA and RIDOT will defer to the Tribal Nation to determine how individuals from the Tribal Nation will be designated as a monitor.

## **XI. CONFIDENTIALITY**

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provision of Section 304 of the NHPA. This statute allows RIDOT to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if RIDOT 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 above noted requirements.

## **XII. DISPUTE RESOLUTION**

- A. Should any signatory or Tribe or consulting party object in writing to FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. FHWA shall establish a reasonable time frame for such consultations.
- B. Should any signatory or Tribe or consulting party object to a RIDOT or FHWA determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.
- C. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
- D. If, after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the ACHP and all other signatory parties, including FHWA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
  1. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
  2. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or

3. Notify FHWA that the objection will be referred for comment pursuant to 36 C.F.R. § 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 C.F.R. § 800.7(c)(4).
- E. Should ACHP not exercise one of the foregoing options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
- F. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
- G. FHWA shall provide all other signatory parties with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
- H. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
- I. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party, that signatory party shall immediately notify FHWA and the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection and take all comments into account in reaching its decision. Within fifteen (15) days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

### **XIII. AMENDMENT**

- A. Any signatory party may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement, including all Appendices, 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.

- C. Each Attachment may be amended by RIDOT, on its own behalf or on behalf of another signatory. RIDOT shall notify the signatories of its intent to amend the Attachment(s) and shall provide a draft of the updated Attachment(s) to all signatory parties for review. If no other signatory party objects in writing within thirty (30) days of receipt of the proposed amended Attachment(s), RIDOT shall date and sign the amended Attachment(s) and provide copies to the other signatory parties; such amendment shall go into effect on the date RIDOT transmits the amended copies to the signatory parties.

#### **XIV. TERMINATION**

- A. If any signatory party proposes termination of this Agreement, that signatory party shall notify the other signatories in writing, explain the reasons for proposing the termination, and consult with the other signatories for no more than 30 days to seek alternatives to termination.
- B. Should such consultation result in an agreement amongst the signatory party proposing termination and the signatories on an alternative to termination, the Agreement shall be amended pursuant to Stipulation XIII to incorporate the agreed upon terms.
- C. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the signatories in writing. The effective date of such termination is when all signatories have been notified in writing of the termination of this Agreement.
- D. Should this Agreement be terminated, FHWA shall carry out the requirements of 36 C.F.R. § 800 for individual undertakings.
- E. Beginning with the effective date of the 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 C.F.R. §§ 800.4-800.6.

#### **XV. DURATION OF AGREEMENT**

This Agreement shall remain in effect for a period of five (5) years after the date it takes effect unless it is terminated pursuant to Stipulation XIV prior to that time. RIDOT shall provide written notification to the signatory parties regarding extension of this Agreement at least six (6) months prior to the conclusion of the five-year period. If there are no objections from the signatory parties, the term of

the Agreement will be extended for an additional five (5) years by amendment. If any signatory party objects to extending the Agreement, or proposes amendments to the Agreement, RIDOT will consult with the signatory 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 RIDOT and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in the State; 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 and 36 C.F.R. § 800 for the Program and its individual undertakings.

## **XVI. EXECUTION**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall be deemed to be one and the same instrument.

## **XVII. EFFECTIVE DATE OF AGREEMENT**

This agreement shall become effective upon the date of the final signature affixed hereto.

Signatory

**Federal Highway Administration**

By:

Date:

\_\_\_\_\_  
Derek W. Torrey, Division Administrator

\_\_\_\_\_

Signatory

**Rhode Island State Historic Preservation Officer**

By: \_\_\_\_\_  
Jeffrey Emidy, State Historic Preservation Officer

Date: \_\_\_\_\_

Signatory

**Advisory Council on Historic Preservation**

By: \_\_\_\_\_  
Reid Nelson, Executive Director

Date: \_\_\_\_\_

Signatory

**Rhode Island Department of Transportation**

By: \_\_\_\_\_  
Peter J. Alviti, Director

\_\_\_\_\_  
Date:

Signatory

**John H. Chafee Blackstone River Valley National Heritage Corridor**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Devon Kurtz

**TRIBAL SIGNATURE PAGES:**

FHWA invited all Tribes listed in Appendix A to participate in the consultation to develop this Agreement and to enter into this Agreement as a Concurring Party. FHWA will incorporate additional executed signature pages by Tribal Concurring Parties into this Agreement in the order they are received by FHWA.

Concurring Party

**Narragansett Indian Tribal Historic Preservation Office**

By: \_\_\_\_\_  
(Name and title)

Date: \_\_\_\_\_

Concurring Party

**Wampanoag Tribe of Gay Head/Aquinnah**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Name and title)

Concurring Party

**Mashantucket Pequot**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Name and title)

Concurring Party

**Mashpee-Wampanoag**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Name and title)

## APPENDIX A

### Tribes Consulted with on this Programmatic Agreement

There are four Federally recognized tribes that were consulted with on this Agreement.

Narragansett Indian Tribe

Wampanoag Tribe of Gay Head/Aquinnah

Mashantucket Pequot

Mashpee-Wampanoag

## **APPENDIX B**

### **Excepted Projects**

Appendix B consists of projects that by their nature and definition constitute activities that pose little/minimal potential to affect historic properties.

**Any project identified during the Early Coordination process by a Tribe as a project of concern will require coordination with the Tribe and is no longer considered excepted.**

The following project types are excepted as long as there is no other work included in the project:

#### **Highway<sup>1</sup>**

1. Roadway, ramp and parking lot surface replacement, overlays, shoulder treatments, pavement repairs including joint repairs, patching, milling, reclamation, grooving, and crack sealing, seal coating, pavement grinding, and pavement marking where there will be no expansion of wearing surface or geometric changes (except for reductions in pavement area).
2. All work between a highway and an adjacent frontage road, unless the area between is undisturbed.
3. Routine roadway and roadside maintenance activities necessary to preserve existing infrastructure and maintain roadway safety, in previously disturbed areas, except when in or abutting a National Register-listed or eligible historic district or historic property.
4. Addition of auxiliary lanes when required for traffic separation, such as truck lanes, bike lanes, bus lanes, or for lane changing between adjacent interchanges, when no additional pavement is required.
5. Construction of turning lanes and pockets, auxiliary lanes, (e.g., truck climbing, acceleration and deceleration lanes) ramps, parking areas, and shoulder widening where only placement of fill material is involved, or within an area previously disturbed by vertical and horizontal construction activities, except when in or abutting a National Register-listed or eligible historic district or historic property.
6. Activities within the existing disturbed median, including installation of new or replacement of median barriers or guardrails.
7. Placement of fill material on the side 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.

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<sup>1</sup> On all roadways with the exception of Bellevue Avenue in the City of Newport and Veterans Memorial Parkway in the City of East Providence; Bellevue Avenue and Veterans Memorial Parkway in their entirety are historic roadways that are listed in the National Register of Historic Places.

8. Repair or replacement in kind of curb, berm, gutter and sidewalk on the same location, modifications to existing sidewalks and curb ramps to satisfy the Americans with Disabilities Act, installation of traffic islands within existing paved roadway; work occurs in previously disturbed ground.
9. Construction of new sidewalk in previously disturbed ground, except when in or abutting a National Register-listed or eligible historic district or historic property.
10. Installation, replacement, or repair of safety appurtenances such as guardrails (including soil removal to install millings beneath guardrail), barriers, glare screens, and energy attenuators; work occurs in previously disturbed ground.
11. Placement of temporary barriers, not to exceed three (3) years.
12. Noise barrier installation: work occurs in previously disturbed ground, except when in or abutting a National Register-listed or eligible historic district or historic property.
13. Repair and in-kind replacement of fencing.
14. Installation and replacement of lighting utilizing an augured hole for the foundation where the contract does not disturb existing sub-grade and the original ground remains.
15. Drainage repairs:
  - a. repair and in-kind replacement of existing pipe, inlets and outfalls to the same line and same/higher grade.
  - b. repair and in-kind replacement of structures, frames, grates, covers and corbels in the same location with minor adjustments to accommodate final grade.
  - c. cleaning drainage swales, basins, structures and channels to restore original line and grade.
  - d. reestablishment of existing ditches to original width or construction of new ditches in previously disturbed ground, except when in or abutting a National Register-listed or eligible historic district or historic property.
  - e. improvements, including installation of new or replacement, rehabilitation and cleaning activities associated with existing drains, dikes, headwalls and storm sewers.

## **Bridge<sup>2</sup>**

16. Emergency structural repairs to maintain the structural integrity and safety of a bridge or culvert, including repairs or upgrades to existing bridge railings or parapets, placement of fences or RR barriers.
17. Bridge and other structural repairs, including minor bridge rehabilitation or bridge preservation activities, and repairs to bridge abutments, wingwalls, and piers.
18. All work to be done on bridges and culverts of the National Highway System (NHS), those on non-NHS state highways and municipally-owned structures, and all construction is confined to existing locations.
19. Rehabilitation or replacement of bridges on existing alignment, when the rehabilitation

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<sup>2</sup> These bridge activities apply to all work on bridges and culverts that have been evaluated by RIDOT's 2016 Historic Bridge Inventory and have been determined to be neither listed, eligible nor potentially eligible for listing in the National Register of Historic Places.

- or replacement is on the existing alignment.
20. Placement of riprap within an area previously disturbed by vertical and horizontal construction activities, to prevent erosion of waterways and bridge piers, except when in or abutting a National Register-listed or eligible historic district or historic property.
  21. In-kind replacement of culverts, provided replacement is confined to existing locations, no temporary bridge or culvert is required, and no approach work is undertaken. In-kind replacement shall mean construction of a new facility substantially the same in size and footprint.
  22. Cleaning, sweeping, and washing; high-pressure washing will not use abrasives that would damage the substrate.
  23. Bridge painting, provided that the painting does not alter the existing paint color and appearance.
  24. Deck joint repair and replacement.
  25. Concrete patching and sealing, including application of concrete protective sealants and anti-graffiti coatings; provided that the patching and sealing matches/does not alter the existing concrete color and appearance.
  26. Installation of shoring, bearing replacement and temporary shoring within existing bridge footprint.
  27. Placement of temporary barriers, provided that temporary barriers that will be in place longer than 12 months are reviewed by CRU.
  28. Removal and replacement of bridge deck asphalt wearing surfaces.
  29. Installation or replacement of bridge deck waterproofing membranes.
  30. Diamond grinding of concrete bridge decks.
  31. Scupper and drain cleaning, repair, and in-kind replacement.

## **Traffic**

32. Traffic signals:<sup>3</sup>
  - a. repair and installation of pedestrian buttons on existing poles.
  - b. repair and replacement of signal controls and signal control cabinets on existing foundations.
  - c. repair, replacement and installation of loop detectors (or other types of sensors), cameras, radio systems and associated conduit and hardware.
  - d. repair, replacement and installation of signal heads on existing span poles, mast arms and wires.
33. Installation and replacement of pavement markings exclusive of curb painting, with the exception of Route 114 (Hope Street) in the Town of Bristol; Hope Street in its entirety is an historic road and is listed in the National Register of Historic Places.
34. Curb painting, where such painting does not detract from historic properties.
35. Installation or replacement of existing traffic signs, signage and lighting mounted to bridges, signposts and signpost foundations to a maximum diameter of 36" and a

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<sup>3</sup> Where the existing units were installed less than 50 years ago, and any excavation work does not take place in undisturbed soil.

maximum depth of 48".

36. Installation or upgrade of directional, regulatory, advisory, informational, and street signs.
37. Placement of temporary traffic barriers and signs that do not involve excavation or disturbance of existing soil, provided that the temporary traffic barriers and signs that are to be in place longer than 12 months are reviewed by CRU.
38. Repair, replacement, and installation of variable message signs.

## **Other**

39. New landscaping (to include native planting when possible) within highway right-of-way and on State-owned or Municipally-owned property, not including regrading.
40. Maintenance of existing landscaping, native growth, and water supply reservoirs. This includes the treatment, maintenance, and replacement of all vegetative material, native or planted, on State-owned or Municipally-owned property, including highway right-of-way, building sites, watering, fertilizing, weed control by hand, chemical, or mechanical means, tree trimming and tree removal, or vegetation removal.
41. Streetscape improvements including benches, decorative lighting, textured crosswalks, transit shelters, and plants installed in above ground planters where the contract does not disturb existing sub-grade and the original ground remains, except when in or abutting a National Register-listed or eligible historic district or historic property.
42. Control and removal of outdoor advertising.
43. Purchase of scenic easements, open space or abandoned rail corridors where no construction activity is planned. Any construction related activity resulting from the purchase will require an archaeological survey be conducted.
44. Abandonment, removal, upgrading, or reconstruction of railroad grade crossings or grade crossing protection and warning signs and devices.
45. Resurfacing and rehabilitation of existing railroad crossings, tracks/rail beds, approaches, and other associated facilities.
46. Railway crossing striping and signage, replacement and/or new or existing signal installation (and associated wiring and/or electronics) and/or new or existing gates or modification and surface improvement.
47. Addition or replacement of devices such as glare screen, safety barriers, guideposts, markers, safety cables, ladders, lighting, hoists, etc.
48. Safety, recreational and educational activities for pedestrians and bicyclists; installation of bicycle racks and kiosks/signage; construction/maintenance of pedestrian and recreational facilities, except when in or abutting a National Register-listed or eligible historic district or historic property.
49. Addition/maintenance of non-motorized trails to separate such use from motorized traffic where the contract does not disturb the existing sub-soil (i.e. walking, biking, and bridle trails).
50. Maintenance and improvements to existing Park and Ride lots, roadside rest areas,

truck weigh stations, as well as RIDOT maintenance, storage (including salt storage), and office facilities where no new right-of-way is acquired.

51. Fencing, including salvage yards, provided no grading or other landscaping is involved.
52. Alterations to existing non-historic buildings, construction of new buildings and bus shelters, except when in or abutting a National Register-listed or eligible historic district or historic property.
53. Transfer, sale, use agreement, lease or easements of state right-of-way that does not contain any National or State Register-listed, eligible or potentially eligible historic properties and proof has been provided to the SHPO office that there is no potential for archaeological resources.
54. Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, stream flows, springs, waterholes, and maintenance/stabilization of river/stream channels and embankments (clearing of debris/placement of soil and riprap) to protect infrastructure, property, fish and wildlife resources.
55. 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.
56. Emergency repairs under 23 U.S.C. 125.
57. Utility relocation, installation and maintenance activities.
58. Repairs to existing or installation of new docks piers and pilings.
59. Minor changes to previously permitted projects where those changes fall under the exempt activity category as described in types 1 through 59.

## **ATTACHMENT A**

### **Inadvertent Finds of Human Remains or Suspicious Bones Found During Construction**

The treatment of any human remains encountered during the Project will be handled in accordance with the Rhode Island State Cemeteries Act (RIGL 23-18) and by the RIHPHC's (2012) Rules and Regulations Pertaining to Registration and Protection of Historic Cemeteries. The ACHP has also developed a policy statement on Burial Sites, Human Remains, and Funerary Objects (see [ACHP's Burial Policy](#)).

At all times human remains must be treated with the utmost dignity and respect. Human remains and/or associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed. The procedures that will be followed if human remains are discovered during Project construction are as follows:

1. If onsite personnel identify human remains or possible human remains, all construction work in the immediate vicinity of the site that could affect the integrity of the remains will cease. The remains will not be touched, moved, or further disturbed. The resident engineer will direct a Stop Work order to the contractor's foreman and take measures to ensure site security.
2. The resident engineer will record the exact location of the find, its time of discovery, and will immediately contact the RIDOT CRU.
3. The RIDOT CRU or its cultural resource consultant will notify the Office of the Chief Medical Examiner (OCME) and local law enforcement. If the OCME determines the remains are more than 100 years old, the OCME will notify the RIHPHC. The RIHPHC will determine if the remains are Native American and if so, will notify the appropriate Tribal Historic Preservation Office (THPO) if they are not present on-site.
4. The RIDOT, RIHPHC, and the THPO (as necessary), will discuss whether there are prudent and feasible alternatives to protect the remains. The results of this consultation will be made in writing.
5. In all cases, due care, and consultation will be taken in the excavation and subsequent transport and storage of the remains to ensure their security and respectful treatment.

### **Inadvertent Finds of Archaeological Artifacts/Deposits During Construction**

The following procedures will be adhered to in the event of a potential discovery of archaeological remains during construction.

1. If suspected artifacts or archaeological features are uncovered during a construction activity, that activity shall immediately be halted in proximity to the discovery until it can be determined whether that materials are cultural and, if so, whether they represent a potentially significant

site.

2. If a possible site is discovered, the contractor will immediately notify the resident engineer of the potential discovery. Notification will include the specific construction area (e.g., location/address, intersection, spoil pile, etc.) where the potential site is located. The resident engineer will direct a Stop Work order to the Contractor's site foreman, flag or fence off the archaeological discovery location, and direct the Contractor to take measures to ensure site security. The Contractor will not restart work in the area of the find until the resident engineer has granted clearance.

3. The resident engineer will record the exact location of the find, its time of discovery, and will immediately contact the RIDOT CRU. The RIDOT CRU in consultation with the RIHPHC, and the THPO will determine if the site is a potentially significant archaeological resource. If the reported find is determined not be a potentially significant archaeological resource, the resident engineer will notify the Contractor's Work Foreman to resume work.

4. If the reported find is determined to be a significant site, the RIDOT CRU, RIHPHC, and THPO, will survey the site as necessary in accordance with RIHPHC standards and guidelines. Since the area is likely to have already been partially disturbed by construction activities, the objective of any cultural resource investigations will be to evaluate data quickly so that notifications are made, and consultation can proceed. If on-site archaeological investigations are required, the resident engineer will inform the construction contractor. No construction work at the site that could affect the artifacts will be performed until the archaeological fieldwork is complete. The site will be flagged as being off-limits for work but will not be identified as an archaeological site per se in order to protect the resources.

5. If the resource is determined to be a significant archaeological resource and it is threatened by further construction, the RIDOT CRU in consultation with the RIHPHC, and, as appropriate, the THPO, will develop a site mitigation plan.

6. The duration of any work stoppages will be contingent upon the significance of the identified archaeological resource(s) and consultation with RIDOT CRU, RIHPHC, and other appropriate parties to determine the appropriate measures to avoid, minimize, or mitigate any adverse effects to the site.

7. Once site is clearance is received by the RIHPHC, the RIDOT's chief inspector will notify the construction contractor that work may proceed.