

**FIRST AMENDED PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE ALASKA STATE HISTORIC PRESERVATION OFFICER,
AND THE ALASKA DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
REGARDING IMPLEMENTATION OF SECTION 106
OF THE NATIONAL HISTORIC PRESERVATION ACT
FOR THE FEDERAL-AID HIGHWAY PROGRAM IN ALASKA**

WHEREAS, the Federal Highway Administration (FHWA), under authority of 23 U.S.C. 101 et seq., implements the Federal-Aid Highway Program (FAHP) in the State of Alaska by funding and approving State and locally sponsored transportation undertakings (also referred to as projects), that are administered by the Alaska Department of Transportation and Public Facilities (DOT&PF); and

WHEREAS, DOT&PF administers FAHP undertakings throughout the State of Alaska as authorized by Title 23 U.S.C. 302 and Title 17 of the Alaska Administrative Code (17 AAC); and

WHEREAS, Title 23 United States Code Section 327 (23 USC § 327) allows the United States Department of Transportation (USDOT) Secretary, acting through the FHWA, to assign responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA) and other federal environmental laws to a State Department of Transportation through a memorandum of understanding (MOU); and

WHEREAS, the FHWA has assigned to the DOT&PF the responsibility for project-level environmental reviews on certain FAHP Categorical Exclusions, Environmental Assessments, and Environmental Impact Statements in accordance with 23 U.S.C. 327 (NEPA Assignment Program) as outlined in a 2017 *Memorandum of Understanding Between the Federal Highway Administration and the Alaska Department of Transportation and Public Facilities Concerning the State of Alaska's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. 327* (NEPA Assignment MOU) and this assignment is expected to continue under subsequent NEPA Assignment MOU renewals; and

WHEREAS, pursuant to the NEPA Assignment MOU, DOT&PF has assumed the FHWA's responsibilities under Section 106 of the National Historic Preservation Act of 1966, as amended (54 USC 306108) (NHPA), and the associated implementing regulations at 36 CFR Part 800 with the exception of certain undertakings for which FHWA has retained the federal role as designated in the MOU; and

WHEREAS, this Programmatic Agreement (Agreement) applies to all FAHP undertakings [NEPA Assignment Program and non-NEPA Assignment Program (the Programs)]; and

WHEREAS, the FHWA and the DOT&PF have determined that implementation of the FAHP in Alaska may result in effects upon properties included in or eligible for inclusion in the National

Register of Historic Places (NRHP) (36 CFR Part 60), hereafter referred to as historic properties; and

WHEREAS, on October 14, 2014, the FHWA, the Alaska State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP) and the DOT&PF entered into a Programmatic Agreement (2014 Agreement) regarding the implementation of Section 106 of the NHPA to set forth a streamlined review process for considering the effects of undertakings under Section 106 for the FAHP, and to allow the DOT&PF to carry out certain Section 106 process actions on behalf of the FHWA for non-assigned program undertakings; and

WHEREAS, in development of the 2014 Agreement the FHWA invited consultation with potentially affected federally recognized Tribes as defined in the 77 Federal Register 47868-47873 (August 10, 2012 notice), regional and village corporations as defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), local governments, certified local governments, and local historic preservation groups, and had taken any comments received into account; and

WHEREAS, at that time, the DOT&PF was operating under a previous MOU with the FHWA that assigned the FHWA's NEPA and other federal environmental law responsibilities to the DOT&PF for certain FAHP projects processed as categorical exclusions; a program authorized under 23 USC 326 and known as the "6004 Program"; and

WHEREAS, the DOT&PF is now operating under the NEPA Assignment MOU authorized under 23 USC 327; and

WHEREAS, this Agreement amends the 2014 Agreement to account for the change in assignment programs; and

WHEREAS, this Agreement does not supersede other existing agreements currently in use by the FHWA, the DOT&PF, the SHPO, and the ACHP; other existing agreements remain in force and are separate from this Agreement;

WHEREAS, the FHWA Alaska Division Administrator is the agency official responsible for ensuring that the FAHP in Alaska complies with Section 106 of the NHPA, and codified at its implementing regulations, 36 CFR 800, for non-NEPA Assignment Program undertakings; and

WHEREAS, the DOT&PF is deemed to be the federal agency for all FAHP NEPA Assignment Program undertakings it has assumed, and has established the Statewide Environmental Program Manager at DOT&PF as the agency official responsible for ensuring that the FHWA undertakings assigned to DOT&PF under the NEPA Assignment MOU and this Agreement comply with Section 106 of the NHPA; and

WHEREAS, the FHWA recognizes that it has a unique legal relationship with federally-recognized Indian Tribes (Tribes) established in the Constitution of the United States, treaties, statutes, and court decisions, and, therefore, consultation with an Indian Tribe must recognize the government-to-government relationship between the federal government and the Tribes; and

WHEREAS, the FHWA retains responsibility for government-to-government consultation with Tribes when FHWA's participation has been so requested by the Tribes; and

WHEREAS, this Agreement shall not apply to undertakings that occur on or affect tribal lands, which are all lands within the exterior boundaries of any Indian reservation, and all dependent Indian communities (36 CFR 800.16(x)); for such undertakings the FHWA shall follow the procedures in 36 CFR 800; and

WHEREAS, the Alaska Department of Natural Resources, Office of History and Archaeology (OHA) under SHPO's direction maintains the Alaska Heritage Resources Survey (AHRS) a restricted statewide inventory of Alaska's reported historic, prehistoric, and archaeological resources under the authority of AS 41.35.070(a); and

WHEREAS, the purpose of the AHRS is to assist with the resource identification and evaluation efforts for research, planning, protection, and development, and the AHRS is available to DOT&PF and FHWA staff via web access; and

WHEREAS, the DOT&PF maintains professional staff meeting the professional qualifications standards established by the Secretary of the Interior (as defined in 36 CFR 61) in the Statewide Environmental Office (SEO) and the regional offices; and

WHEREAS, cooperating federal agencies that recognize the FHWA or DOT&PF as the lead federal agency for an undertaking may fulfill their Section 106 obligations by adopting the process carried out by FHWA or DOT&PF as allowed under 36 CFR 800.2(a)(2); and

NOW, THEREFORE, the FHWA, the SHPO, the ACHP, and the DOT&PF, as signatory parties to this amended Agreement, agree that the FAHP in Alaska shall be carried out in accordance with the following stipulations in order to take into account the effects of the Programs on historic properties in Alaska and that these stipulations shall govern compliance of the FAHP with Section 106 of the NHPA until this Agreement expires or is terminated.

STIPULATIONS

The FHWA and the DOT&PF shall ensure that the following measures are carried out:

I. APPLICABILITY AND SCOPE

- A. Streamlined Project Review: Through this Agreement, the FHWA and the DOT&PF establish Programmatic Allowances (Allowances) through two tiers – Tier 1 and Tier 2 – of streamlined review for certain undertakings (Stipulation V *Streamlined Project Review*). These undertakings are processed by DOT&PF and do not require further consultation under Section 106.
- B. Delegation of FHWA non-NEPA Assignment Program authorities to DOT&PF: The DOT&PF is authorized to carry out the Delegated Section 106 Process (Appendix D

Delegated Section 106 Process) for all undertakings that do not meet the established criteria for the streamlined review process as defined for the Tier 1 and Tier 2 projects.

II. PROFESSIONAL QUALIFICATIONS STANDARDS

- A. The DOT&PF commits to employing professional staff meeting the Professional Qualifications Standards established by the Secretary of the Interior (48 FR 44738-44739) in the SEO and the regional offices. The DOT&PF staff who possess professional qualifications are referred to in this Agreement as a professionally qualified individual (PQI).
- B. When the PQI responsible for the review of an undertaking requires cultural resource expertise outside of his/her area of specialty, the PQI will consult with another PQI having that area of expertise, or request the assistance of SHPO staff.
- C. In accordance with 36 CFR 800.2 (a)(3), Section 106 documentation may be prepared by a consultant (or a local agency professional) who meets the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) in the appropriate field (Stipulation IX.A *Documentation*). Consultant responsibilities do not include formally approving Section 106 documents on behalf of the DOT&PF, making official agency findings, signing consultation letters, or otherwise functioning as an agency official for the purposes of Section 106. The consultant may seek technical assistance and guidance from the SHPO.

III. RESPONSIBILITIES

The following section identifies the responsibilities of the FHWA, the DOT&PF, and the SHPO in complying with the terms of this Agreement. These responsibilities are listed in more detail in the Stipulation IX *Administrative Stipulations*. Under the NEPA Assignment Program, the DOT&PF is deemed a federal agency and has responsibility for conducting the Section 106 process for the undertakings it has assumed under the NEPA Assignment MOU. For all other FAHP undertakings, the DOT&PF will be acting under the authority delegated by the FHWA in this Agreement.

- A. The FHWA Responsibilities
 1. On all FAHP projects, the FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with federally recognized Tribes currently defined in the 77 Federal Register 47868-47873 (August 10, 2012 notice) and as updated. Notwithstanding any other provision of this stipulation, the FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement. The FHWA may re-assume the Section 106 responsibility for a project from DOT&PF under limited circumstances, defined in the NEPA Assignment MOU. In particular, the FHWA may re-assume Section 106 responsibility for a project if tribal consultation is not adequately resolved. Should this occur, the FHWA will notify all consulting parties for the project.

2. For FAHP undertakings that are not assigned under the NEPA Assignment Program, the FHWA is the federal agency responsible for ensuring that the FAHP in Alaska complies with Section 106 review for all undertakings with the potential to affect historic properties prior to approving the expenditure of any federal funds on the undertaking or the issuance of any license or permits. On such projects, the FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out for compliance with Section 106 of the NHPA. The FHWA Alaska Division Administrator or the FHWA Environmental Program Manager may inquire as to the status of any such undertaking at any point in the Section 106 process, and at their discretion may directly participate. Should the FHWA choose to directly participate in the consultation for an undertaking, it may either carry out consultation in accordance with the procedures in this Agreement or follow procedures in 36 CFR 800.3-800.6.
3. Review of NEPA Assignment Program undertakings: For NEPA Assignment Program undertakings, the FHWA may conduct interviews, review any project records, or conduct any other review it deems appropriate as part of its monitoring responsibilities under the terms of the NEPA Assignment MOU.

B. The DOT&PF Responsibilities

1. The DOT&PF is responsible and liable for all NEPA Assignment Program undertakings it has assumed, since under the NEPA Assignment MOU it has been deemed the responsible federal agency. For all non-NEPA Assignment undertakings, the DOT&PF is acting under the authority delegated by the FHWA in this Agreement. The DOT&PF will provide notice to the SHPO, whether it is consulting on behalf of the FHWA or has assumed FHWA responsibility under the NEPA Assignment Program. Except on such occasions when the FHWA elects to consult directly with the SHPO or the ACHP for non-NEPA Assignment Program undertakings, all Section 106 consultation with the SHPO and determinations and findings made under this Agreement will be performed or approved by a PQI. The PQI may consult, or seek advice or technical assistance, at any time with the SHPO on any undertaking.
2. In this Agreement, a reference to "PQI" should be interpreted to indicate that such responsibilities can be fulfilled either by SEO PQI or Regional PQI. Should a Regional PQI not be available for processing documentation and consultation, another Regional PQI or SEO PQI will conduct the review.
3. The SEO PQI and the Statewide Environmental Program Manager will be responsible for the Stipulation IX.D *Reporting Requirements*, and will monitor the Stipulation V *Streamlined Project Review* tracking. The Regional PQI and the Regional Environmental Manager (REM) process FAHP undertakings within their respective regions and have project level responsibilities to ensure that the terms of this Agreement are carried out in the regional offices.
4. As further defined in Appendix D *Delegated Section 106 Process*, the SEO PQI will participate in reviews of findings of adverse effect (36 CFR 800.5), and participate in consultations on resolutions of adverse effect (36 CFR 800.6), and resolutions of dispute (36 CFR 800.5(c)(2)). The SEO PQI has the discretion to participate in the consultations as needed.

5. For resolutions of adverse effect (36 CFR 800.6), the DOT&PF Regional Directors will have signature authority on the Memorandum of Agreement (MOA) or Programmatic Agreement (PA) document for regional FAHP undertakings. For projects where the SEO takes the lead environmental processing role, the DOT&PF Chief Engineer will have signature authority on the MOA or PA document for FAHP undertakings.
6. The PQI staff and the Statewide Environmental Program Manager are included in the DOT&PF Cultural Resources Team (CRT). The CRT promotes compliance of the DOT&PF Section 106 review process, works to develop consistent protocol among the regional offices, and monitors the DOT&PF Section 106 program. The Regional PQIs will be responsible for project tracking, while the SEO will be responsible for the monitoring and reporting requirements of this Agreement in accordance with Stipulation IX.D *Reporting Requirements*.
7. The SEO will pursue funding through the Statewide Transportation Improvements Program (STIP) to help support SHPO priorities: maintenance and continued development of the AHRS, the OHA cultural resources liaison position for the DOT&PF, and Section 106 planning studies for transportation corridors.

C. The SHPO Responsibilities

1. The SHPO will advise and assist the FHWA and the DOT&PF in carrying out responsibilities under this Agreement. The SHPO also offers technical assistance and guidance to the FHWA, the DOT&PF, and other parties.
2. The OHA cultural resources liaison position, under the direction of the SHPO, will provide technical assistance. This liaison will provide counsel as requested by the DOT&PF to aid the PQI review and approval of Tier 1 and Tier 2 projects and the delegated Section 106 process for individual undertakings.
3. As identified under Administrative Stipulation IX.C-D *Review and Evaluation of this Agreement and Reporting Requirements*, the SHPO will review and monitor activities carried out pursuant to this Agreement, which include the reviews of the Tier 1 and Tier 2 Project Tracking and the Annual Monitoring Report, and participation in the annual meeting to evaluate the terms and activities of this Agreement.

D. Cooperating Federal Agencies

1. Cooperating Federal agencies who recognize DOT&PF or FHWA as the lead agency for an undertaking and notify DOT&PF and SHPO in writing may fulfill their obligations under Section 106 of the NHPA according to 36 CFR 800.2(a)(2), provided that DOT&PF follows the requirements of this Agreement and the cooperating Federal agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by DOT&PF.

IV. CONSULTATION WITH THE TRIBES

- A. The FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with federally recognized Tribes currently defined in the 77 Federal Register 47868-47873 (August 10, 2012 notice) and as updated. Notwithstanding any other provision of this stipulation, the

FHWA shall honor the request of any Tribe for further government-to-government consultation regarding an undertaking covered by this Agreement. The FHWA shall conduct the government-to-government consultation, and, if the Tribe agrees, involve DOT&PF in that consultation process.

- B. Undertakings processed in accordance with Stipulation V *Streamlined Project Review* (the Programmatic Allowances defined in Appendix B) will generally not involve further tribal consultation. Those projects have been determined through the consultation review of this Agreement to have low potential to affect historic properties and will not require further Section 106 review. However, should tribal concerns or public controversy related to historic preservation be identified (Tier 2 Allowances, General Conditions), the DOT&PF will conduct the delegated Section 106 process for the entire undertaking in accordance with 36 CFR 800.3-800.6, pursuant to Appendix D *Delegated Section 106 Process*.
- C. For those undertakings processed in accordance with Appendix D *Delegated Section 106 Process*
 - 1. The DOT&PF will contact the Tribes early in an undertaking's development by letter using the most current agreed upon process between the FHWA and the DOT&PF. Follow up consultations with the Tribes will be conducted by either the DOT&PF or the FHWA, in accordance with the wishes of the Tribes.
 - 2. The DOT&PF on behalf of the FHWA will ensure that consultation with the Tribes is initiated early in the planning process using currently approved letter templates to identify places of traditional religious and cultural importance to Tribes and to allow adequate time for their consideration. However, upon receipt of a written request from any Tribe or officially designated representative of a Tribe to consult with the FHWA in lieu of the DOT&PF, the FHWA will consult with that Tribe for the particular undertaking.
 - 3. The DOT&PF will ensure that consultation continues with the Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking. If a Tribe objects to a determination of NRHP eligibility, a finding of effect, or a resolution of adverse effect, the FHWA will enter the consultation process at the request of the Tribe.

V. STREAMLINED PROJECT REVIEW

Programmatic Allowances are identified under this Agreement as types of projects that have been determined to have low potential to affect historic properties if implemented as specified in Appendix B Programmatic Allowances. These projects will not require further Section 106 review or consultation. The PQI will screen projects to verify whether the project is on either of the Tier 1 or Tier 2 Allowances lists and meets specified criteria. If the PQI determines that any portion of a project's scope of work does not conform to the Tier 1 or Tier 2 lists, the DOT&PF shall conduct a delegated Section 106 process for the entire project in accordance with Appendix D *Delegated Section 106 Process*.

- A. Programmatic Allowances (Allowances): Appendix B defines the lists of Allowances. The Allowances consist of two tiers – Tier 1 and Tier 2. Review and processing will be accomplished through a PQI. The PQIs are encouraged to consult with the SHPO cultural resources liaison, for technical assistance and guidance.
1. Tier 1 Allowances: When a project is determined by a PQI to qualify as a Tier 1 Allowance, the project is documented to the file using the Streamlined Project Review form (Appendix C).
 2. Tier 2 Allowances:
 - a. These projects will result in limited changes to existing conditions.
 - b. The project must consist entirely of Allowances found on the Tier 2 list, or a combination of the Tier 1 and Tier 2 lists, to qualify for this review process.
 - c. These projects have agreed upon criteria that must be met to qualify, including conditions noted for specific Allowances and General Conditions.
 - d. When a project is determined by a PQI to qualify as a Tier 2 Allowance, the project is documented to the project file using the Streamlined Project Review form.
- B. For Regional Office projects, the PQI will provide a copy of the Streamlined Project Review form to the REM and the SEO PQI. For Statewide Office projects, the SEO PQI will document review of the project in the applicable project files and if the project is in a specific region provide a copy to the Regional PQI. Administrative Stipulation IX.D *Review and Evaluation of this Agreement and Reporting Requirements*, provides for the tracking of Tier 1 and Tier 2 undertakings.

VI. EMERGENCY SITUATIONS

Flexibility for emergency situations is addressed at 36 CFR 800.12. For the purposes of this Agreement, emergency projects are occurrences that require emergency highway system/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/facilities; 3) protect remaining highway facilities; or 4) restore essential traffic. For Alaska road emergencies, the FHWA and the DOT&PF follow the FHWA Emergency Relief Manual for Federal-Aid Highways. The procedures to take historic properties into account will be:

- A. The PQI will determine if the emergency repair qualifies for Stipulation V *Streamlined Project Review*.
- B. Initial Emergency Responses: These are repairs to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities initiated within thirty (30) days of the triggering emergency situation. A formal emergency or disaster declaration is not required to implement this process.
 1. If the PQI determines that an emergency repair does not qualify for Streamlined Project Review, the DOT&PF will notify the SHPO, the FHWA, any Tribe that may attach religious and cultural significance to historic properties in the area, and other consulting parties within forty-eight (48) hours of the emergency or as soon as

conditions permit. The SHPO will respond to an emergency notice within five (5) days of notification.

2. An additional notification of the emergency repairs will be provided to the consulting parties following damage assessment of the site. The notice will be clearly and prominently marked as an emergency notification, and will include an explanation of how the action meets the requirements for emergency as defined herein. The notice will also include a brief description of the eligibility and/or significance of the known resource(s) involved, the effects of the emergency repair on the resource(s), and the anticipated time frame available for comment.

C. Follow-up Permanent Repairs: These are repairs undertaken after the occurrence of an emergency situation to restore the highway to its pre-emergency condition. These undertakings, which sometimes utilize emergency funding, are intended to provide additional repair work and generally do not commence until after the initial emergency response is completed. When these follow-up repair undertakings do not qualify for Streamlined Project Review, the DOT&PF will comply with the delegated Section 106 process (Appendix D).

VII. DISCOVERIES

A. Planning for Discoveries

When the DOT&PF's identification efforts in accordance with 36 CFR 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking or the PQI recommends archaeological monitoring due a high potential for discovery the DOT&PF will include a plan for discovery and/or monitoring. Procedures for Archaeological Monitoring are provided in Appendix F.

B. Post-Review Discoveries

1. If previously unidentified cultural resources, or unanticipated effects, are discovered during construction of the project, that portion of the project will stop immediately, in accordance with *DOT&PF Standard Specification Section 107-1.01 and 1.02 Legal Relations and Responsibility to Public: Laws to be Observed; Permits, Licenses, and Taxes; and Section 107-1.07 Archaeological or Historical Discoveries* (Appendix G). No further project construction activities in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
2. The DOT&PF will consult with the SHPO, the Tribes, (and the FHWA for non-NEPA Assignment Program undertakings) as appropriate, pursuant to the discovery plan procedures to record, document, and evaluate the 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.
3. If neither the SHPO nor a Tribe objects to the DOT&PF's plan for addressing the discovery, within seventy-two (72) hours of being contacted, the DOT&PF will carry out the requirements of 36 CFR 800.13 for post-review discoveries and the ACHP does not need to be notified. If there is an objection, DOT&PF shall take into account

the recommendations of the objecting party in accordance with 36 CFR 800.13(b)(3).

VIII. PROCEDURES FOR DISCOVERY OF HUMAN REMAINS

Any time human remains are encountered, that portion of the work affecting the discovery will stop immediately and the DOT&PF will immediately take steps to secure and protect the discovery location, and proceed in accordance with the *Procedures and Laws Pertaining to the Discovery of Human Remains* provided in Appendix H.

IX. ADMINISTRATIVE STIPULATIONS

A. Documentation

1. All documentation that supports determinations and findings made under this Agreement will be consistent with 36 CFR 800.11, and will follow the *OHA Standards and Guidelines for Investigating and Reporting Archaeological and Historical Properties in Alaska (Historic Preservation Series #11)* and the Secretary of the Interior's Standards and Guidelines for reports (48 FR 44734-44737), and with applicable guidelines and procedures of land-managing agencies that may be affected by the undertaking.
2. Documentation prepared by consultants (or local agency professionals) in support of any determinations and findings will be submitted to the DOT&PF for review and approval by a PQI. The professional qualifications of the consultant (or local agency professional) are to correspond with the resources being evaluated. When the PQI responsible for the review of an undertaking requires cultural resource expertise outside of his/her area of specialty, the PQI will consult with another PQI having that area of expertise, and/or request the assistance of the SHPO cultural resources liaison, to identify the appropriate SHPO staff having that area of expertise. The PQI will submit all project related documentation to the SHPO. The DOT&PF will not transmit to the FHWA or the SHPO any documentation unless it has been reviewed and approved by a PQI.
3. All reports required under this Agreement, other than the actual project records maintained at the regional offices, will be kept on file at the DOT&PF SEO and made available to consulting parties and the public as stipulated by the Agreement, consistent with applicable confidentiality requirements (as described in 36 CFR 800.11(c)).

B. Training

Periodic training on Section 106 compliance and on this Agreement is needed to maintain an understanding of the requirements of each. Required training for the PQI is: *Implementation of the Alaska 106 PA* (a training session to be developed by DOT&PF), *Beyond Compliance: Historic Preservation in Transportation Project Development* or a substitute Section 106 Basics course, an advanced Section 106 course on writing agreement documents, and the OHA AHRS database training, as made available in Alaska. Appendix E provides the details of this training and the DOT&PF, the FHWA, and the SHPO staff required to receive the training under the provisions of this Agreement.

C. Review and Evaluation of this Agreement

1. Upon request, signatory parties to this Agreement may review project files or request records from project files to determine if the appropriate review and processing procedures were applied in making decisions and determinations, and that project review and compliance documentation is complete. Copies of requested project documentation will be provided by the DOT&PF (i.e., the DOT&PF regional or SEO office responsible for the processing and development of the project).
2. The SEO will coordinate an annual meeting among the DOT&PF, the FHWA, and the SHPO, to be held by the end of March, to evaluate the Agreement and to suggest any revisions to its provisions based on the review of the Annual Program Review and Monitoring Report draft (Stipulation IX.D.2.a *Annual Program Review and Monitoring Report*). Thirty (30) calendar days prior to any such meetings, the ACHP will be notified and may participate at its discretion.

D. Reporting Requirements

The DOT&PF will provide information and documentation on the undertakings carried out pursuant to this Agreement to the FHWA, the SHPO, and the ACHP for their review. This information will be provided in two forms:

1. Tiers 1 and 2 Project Tracking
 - a. On a semiannual basis, the SEO PQI will compile a statewide tracking list of the Tier 1 and Tier 2 undertakings that were processed during the previous six (6) month period (October 1 – March 31 and April 1 – September 30). The list will be based on tracking information provided by the Regional PQIs, with a breakout according to NEPA Assignment and non-NEPA Assignment Program undertakings. The Statewide Environmental Program Manager will submit the tracking information to the FHWA and the SHPO by the end of the following month (submitted by April 30 and October 31).
 - b. Project Tracking will be made available to the public on the DOT&PF SEO website.
2. Annual Program Review and Monitoring Report
 - a. The SEO will conduct an annual program review and prepare a monitoring report on the undertakings carried out under this Agreement for the previous federal fiscal year. The Statewide Environmental Program Manager will make this information available to the FHWA, the SHPO, and the ACHP in the form of an Annual Report. The SEO will prepare the first Annual Monitoring Report following completion of the first federal fiscal year under this Agreement.
 - b. The report will provide program observations, conclusions, and recommendations. The report will include a complete list of undertakings processed under the Agreement the previous year, including categories of programmatic allowances and any resolutions of adverse effects. The report may also document accomplishments, public objections, post-review discoveries, identification of issues, and provide recommendations for improving the implementation of the Agreement. The reporting will assist the signatories in the evaluation of the implementation and effectiveness of the Agreement.

- c. Annual Monitoring Report development will proceed according to the following timelines:
 - i. The DOT&PF Statewide Environmental Program Manager will submit the Draft Annual Monitoring Report to the FHWA, ACHP, and the SHPO for review no later than January 31.
 - ii. The FHWA, ACHP, and the SHPO will provide any comments to the DOT&PF no later than two (2) weeks prior to the annual meeting, required to occur by the end of March. The DOT&PF will address the comments and resubmit the final report by May 15. The FHWA will provide written approval of the Final Annual Monitoring Report by June 15.
 - iii. After receipt of written approval, the DOT&PF Statewide Environmental Program Manager will forward the Final Annual Monitoring Report to the FHWA, the SHPO, and the ACHP by June 30.
- d. Annual Monitoring Reports will be required thereafter until this Agreement is terminated or expires.
- e. Annual Monitoring Reports will be made available to the public on the DOT&PF SEO website.

E. Resolving Objections to Implementation of this Agreement

- 1. Should any signatory party object in writing to the DOT&PF or the FHWA regarding the manner in which the terms of this Agreement are carried out, the party who received the objection will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. The FHWA will honor the request of any signatory party to participate in the objection consultation and will take any comments provided by such parties into account. The FHWA will establish a reasonable time frame for objection consultations.
- 2. If the objection is resolved through consultation, the FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
- 3. If after initiating objection consultation, the FHWA determines that the objection cannot be resolved through consultation, the FHWA, in consultation with all signatory parties, shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including the FHWA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - a. Advise the FHWA that the ACHP concurs in the FHWA's proposed response to the objection, whereupon the FHWA will respond to the objection accordingly; or
 - b. Provide the FHWA with recommendations, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - c. Should the ACHP not exercise one of the foregoing options within thirty (30) calendar days after receipt of all pertinent documentation, the FHWA may assume the ACHP's concurrence in its proposed response to the objection.
- 4. The FHWA shall take into account all of the ACHP recommendation or comment and all comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection.

5. The FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
6. The FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the process with this Stipulation has been followed.

F. Amendment

1. Agreement: Any signatory party to this Agreement may at any time propose amendments to the body of the Agreement, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties. Amendments go into effect on the date of the last signature
2. Agreement Appendices: The FHWA, the DOT&PF, and the SHPO may agree to amend the appendices to this Agreement through consultation without requiring amendment to the body of the Agreement, unless the FHWA, the DOT&PF, and the SHPO through such consultation decide otherwise.
 - a. With the exception of Appendix D *Delegated Section 106 Process*, amendments to the appendices are allowed with written approval of the FHWA, the DOT&PF, and the SHPO. Any amendments to Appendix D will also include written approval from the ACHP.
 - b. If the FHWA, the DOT&PF, and the SHPO agree to amend an appendix, the DOT&PF will obtain the written concurrences on the amendment, and will append the written concurrences to the Agreement. The DOT&PF shall notify all signatory parties of the amendment within thirty (30) calendar days of the amendment approval date. Appendix I has been reserved to log amendments, which will be provided to all signatory parties of the Agreement following each amendment. The Appendix C – *Screening Form* may be amended via email concurrence from the FHWA, the DOT&PF, and the SHPO. DOT&PF will ensure the most current versions of appendices are posted on the DOT&PF historic properties website.

G. Termination

1. Any signatory party may terminate this agreement. If any signatory party proposes termination of this Agreement, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no less than thirty (30) calendar days to seek alternatives to termination.
2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
3. Should this Agreement be terminated, the FHWA (or the DOT&PF for NEPA Assignment Program projects) shall carry out the requirements of 36 CFR 800.3-800.6 for individual projects.

H. Confidentiality

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of the NHPA. Section 304 allows the FHWA (or the DOT&PF for NEPA Assignment Program projects) to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the DOT&PF 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 signatory parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

I. Duration of Agreement


1. This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect unless it is terminated prior to that time.
2. Beginning with the ninth (9th) annual review (pursuant to Stipulation IX.C *Review and Evaluation of this Agreement* and thereafter, provided there are no objections from the signatory parties during the annual meeting, the terms of the Agreement will automatically be extended each year for one (1) year. If any signatory party objects to extending the Agreement, or proposes amendments, the DOT&PF will consult with the parties to consider amendments or other actions to renew the Agreement.

Execution and implementation of this agreement evidence that the FHWA and the DOT&PF, when it is acting as the Federal agency, have afforded the ACHP a reasonable opportunity to comment on the FAHP Program in Alaska and its individual undertakings, that the FHWA and the DOT&PF have taken into account the effects of the FAHP Program and its individual undertakings on historic properties, and that the FHWA and the DOT&PF have complied with Section 106 of the NHPA and 36 CFR 800 for the FAHP Program and its individual undertakings.

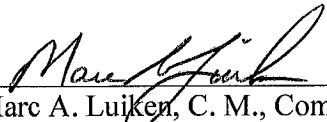
FEDERAL HIGHWAY ADMINISTRATION

By:  Date: 10-26-17
Sandra A. Garcia-Aline, Division Administrator, Alaska Division


ALASKA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 10-27-17
Judith E. Bittner, State Historic Preservation Officer

ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

By:  Date: 20 Oct 2017
Marc A. Luiken, C. M., Commissioner

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 11/1/17
John M. Fowler, Executive Director