

**SECTION 106 OF THE NATIONAL
HISTORIC PRESERVATION ACT
MEMORANDUM OF AGREEMENT**



MEMORANDUM OF AGREEMENT

AMONG THE

FEDERAL HIGHWAY ADMINISTRATION,

the

NATIONAL PARK SERVICE,

the

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,

and the

NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE

PURSUANT TO 36 CFR § 800.6

regarding the

**REPLACEMENT OF BRIDGE 205 CARRYING THE BLUE RIDGE PARKWAY
OVER INTERSTATE 26
BUNCOMBE COUNTY, NORTH CAROLINA
NCDOT TIP ID I-4700b**

WHEREAS, the North Carolina Division of the Federal Highway Administration, (herein "FHWA"), serves as the lead Federal agency for the National Environmental Policy Act (herein "NEPA") and for National Historic Preservation Act (54 U.S.C. 306108); herein "NHPA") Section 106 compliance for the replacement of bridge 205 and carrying the BLRI over I-26 in Buncombe County, NC (I-4700b); and,

WHEREAS, the I-26 widening project includes the demolition of the existing bridge carrying Blue Ridge Parkway (herein "BRP") over I-26 and construction of a bridge on a new alignment to the south (herein "Undertaking"), for which FHWA has designated NPS as the lead Federal agency to fulfill its Federal responsibilities under NHPA Section 106 and the terms of this Memorandum of Agreement; and,

WHEREAS, FHWA, the North Carolina Department of Transportation (herein "NCDOT"), the BRP unit of the National Park Service, as signatories to this Memorandum of Agreement (herein "MOA"), have also drafted the separate Project Memorandum of Agreement (herein "Project MOA") (**Attachment A**) detailing the obligations and responsibilities of each party, including Eastern Federal Lands Highway Division (EFLHD) in relation to the funding, preliminary engineering, environmental compliance, and construction of the Undertaking; and,

WHEREAS, the Undertaking does not qualify as a minor project as outlined in the NCDOT Minor Projects Programmatic Agreement (signed in October 2015) (**Attachment B**) and so the Section 106 Federal Aid Highway Programmatic Agreement (signed in 2000) (**Attachment C**) remains in effect; and,

WHEREAS, the following Tribal Historic Preservation Offices (THPO) were consulted regarding this project: Absentee Shawnee Tribe of Oklahoma, Catawba Indian Nation, Cherokee Nation, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Shawnee Tribe, Tuscarora Nation, and the United Keetoowah Band of Cherokee Indians.

WHEREAS, the Cherokee Nation requested and was granted consulting party status to this project.

WHEREAS, the Area of Potential Effects (herein "APE") has been established in consultation with the State Historic Preservation Officer (herein "SHPO") and other Signatories for the Undertaking within properties eligible or potentially eligible for listing in the National Register of Historic Places (herein "NRHP") were identified; and,

WHEREAS, the BRP bridge carrying the BRP over I-26 is a contributing resource to the BRP which is eligible for listing on the NRHP and a proposed National Historic Landmark historic district; and,

WHEREAS, FHWA, in consultation with the SHPO and other parties to the MOA, and the SHPO concurs, that the Undertaking will result in an adverse effect to BRP under NHPA Section 106, and is the only finding of adverse effect associated with the I-26 widening project on BRP; and,

WHEREAS, NPS notified the ACHP of the Undertaking's adverse effect on historic properties, and has invited, in accordance with 36 CFR § 800.6(a)(1), the ACHP to participate in consultation *and the ACHP declined to participate in the consultation* ; and,

NOW THEREFORE, NPS, FHWA, NCDOT and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

FHWA NC Division shall ensure that the following measures are implemented:

I. Aesthetic Design of the Bridge

In order to reduce asymmetry on the replacement bridge, the sidewalk will extend to the end of the approach slab and have rounded edges and the guardwalls will flair out and transition in height to account for the visual difference of the single sidewalk. The guardwalls will be faced with stone masonry in a manner that will harmonize with the rest of BRP.

Eastern Federal Lands will provide 70 percent and 100 percent construction drawings for the Undertaking to BRP. BRP shall provide their comments to EFLHD staff within 30 calendar days of receipt. EFLHD shall revise drawings and plans to address the BRP comments and provide revised drawings to BRP within 30 calendar days after receiving comments. The revised drawings shall be submitted by BRP to the SHPO. The SHPO shall provide their comments to BRP within 15 calendar days of receipt. Comments provided by the SHPO will be sent to EFLHD by BRP within 5 calendar days to be incorporated into the bridge design. If SHPO does not respond within 15 days, concurrence is assumed.

II. Cultural Landscape and Aesthetics

EFLHD shall design a parking pull-off at milepost 392.1 with access to the Mountains to Sea Trail. The design shall incorporate features that match the visual character of the BRP and are consistent with other parking pull-offs along the motor-road (see Visual Character of the Blue Ridge Parkway, 1997).

EFLHD shall develop a re-vegetation/landscaping plan for the realignment area of the BRP to re-establish native vegetation and provide for a continuous visual experience for the BRP user.

EFLHD shall provide parking pull-off and re-vegetation/landscaping plans to BRP who will provide their comments to EFLHD staff within 30 calendar days of receipt. EFLHD shall revise the plan and design to address BRP comments and provide revised plans to BRP within 30 calendar days after receiving comments. These plans shall be submitted by BRP to the SHPO. The SHPO shall provide their comments to BRP within 15 calendar days of receipt. Comments provided by the SHPO will be sent to EFLHD by BRP within 5 calendar days to be incorporated into the plans. If SHPO does not respond within 15 days, concurrence is assumed.

III. Archival Documentation

Prior to demolition of the existing bridge and any construction activities, Historic American Engineering Record (HAER) Level II documentation of the bridge will be completed by NCDOT.

All documentation activities will be performed or directly supervised by architects, historians, photographers, and/or other professionals meeting the qualification standards in the Secretary of Interior's Professional Qualification Standards (36 CFR 61, Appendix A).

HAER documentation will be submitted by NCDOT to BRP. BRP will within seven days forward to the NPS Southeast Regional Office will provide their comments to BRP and NCDOT within 30 calendar days of receipt. NCDOT shall revise the documentation to address NPS comments and provide revised documentation to BRP within 60 calendar days after receiving comments. BRP shall forward revised documentation to the NPS

Southeast Regional Office who will review for acceptance to the Heritage Documentation Program Collection of the Library of Congress. Upon acceptance of the HAER documentation by the NPS, the BRP shall notify NCDOT so that copies of all documents resulting from the HAER documentation, including pertinent field records, notes, site sketches, superintendent reports, and construction reports shall be provided to the SHPO, the Library of Congress and the permanent collection of BRP. The NCDOT shall provide all said copies to all parties within 45 calendar days of notification of acceptance.

Documentation will include, but is not limited to:

1. The written historical and descriptive data prepared in accordance with outline format guidelines containing:
 - a. A general history of BRP
 - b. A construction history of the bridge including the history of the bridge type
 - c. An architectural description of the resource including alterations
 - d. A description of the site and changes
 - e. Any historical photographs in the supplementary materials section (these may be subject to copyright release if not held by BRP)
 - f. A site plan
2. Reproduction of as built drawings
3. Large-format (4" x 5" or larger negative size) photographs processed for archival permanence in accordance with HABS photographic specifications (www.nps.gov/hdp/standards/photoguidelines.pdf). Views will include:
 - a. At least one view that shows the resource in context.
 - b. One photograph of both faces.
 - c. Photographs of the substructure.
 - d. Views of any detail unique to the resource including railings or date stamps/plaques.
4. At least one color digital photograph of each resource and its setting. The digital format shall meet the NPS NRHP's 75-year permanence standard and higher resolution digital files (www.nps.gov/NR/PUBLICATIONS/bulletins/photopolicy/index.htm).
5. Photo locations keyed to the site plan and included with the "Index to Photographs."

IV. Unanticipated Discoveries

If previously unknown cultural resources are discovered during construction, all work in the immediate vicinity (600 feet) of the discovery shall be halted and BRP Cultural Resources Manager shall be notified immediately. Work shall not resume until the NPS determines the resources have been identified and documented and an appropriate mitigation strategy developed, if necessary, in accordance with pertinent laws and regulations, including the stipulations of the "2008 Programmatic Agreement Among the National Park Service (U.S. Department of the Interior), the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers." THPOs will be consulted in the event cultural resources or human remains are discovered during the project.

V. DISPUTE RESOLUTION

Should any signatory to this MOA object within 30 days to actions or plans for review pursuant to this MOA, or dispute the completion of the terms of this agreement, NPS and FHWA shall consult with the objecting party to resolve the objections. If NPS determines that the objection cannot be resolved, NPS shall forward all documentation relevant to the objection to the ACHP and request the ACHP's comments pursuant to 36 CFR 800.2(b)(2).

FHWA comments provided in response to such a request shall be taken into account by the NPS before NPS reaches a final decision on the dispute. If ACHP does not provide comments regarding the dispute within thirty days after receipt of a request for assistance pursuant to 36 CFR 800.2(b)(2), NPS may implement its proposed resolution or render a decision regarding the dispute.

VI. AMENDMENT

- A. In the event that EFLHD must make substantive changes to the agreed-upon treatments and design plans during implementation of the Undertaking, EFLHD shall notify and request the comments of NPS, NCDOT and the SHPO regarding the modifications to the Undertaking.
- B. Any signatory to this MOA may request that the MOA be amended, whereupon the signatories will consult to develop an amendment.
- C. Any resulting amendments shall be developed and executed among the FHWA, NPS, NCDOT, the SHPO, and the ACHP, when applicable, in the same manner as the original MOA.

VII. TERMINATION

FHWA, NPS, NCDOT, and the SHPO may terminate this MOA by providing 30 days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

VIII. DURATION

This MOA shall expire if its terms are not carried out within one year of receiving a Letter of Acceptance signed by the BRP Superintendent for the completion of the structure and realignment of the BRP, unless the signatories agree in writing to an extension for carrying out its terms.

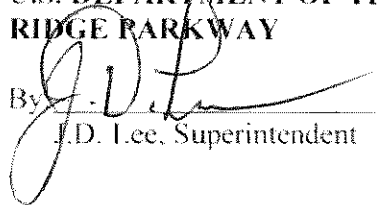
EXECUTION

Execution of this MOA between FHWA, NPS, NCDOT, and SHPO, and implementation of its terms is evidence that NPS has taken into account the effects of this Undertaking on historic properties and afforded the ACIP an opportunity to comment.

**U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY
ADMINISTRATION, NORTH CAROLINA DIVISION**

By:  Date 5/7/18
John Sullivan, PE, Division Administrator

**U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, BLUE
RIDGE PARKWAY**

By:  Date 5/30/18
J.D. Lee, Superintendent

STATE OF NORTH CAROLINA, DEPARTMENT OF TRANSPORTATION

By:  Date 4/4/18
Christopher M. Werner, P.E., Director of Technical Services

NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE

By:  Date 4/23/18
Kevin Cherry, PhD, State Historic Preservation Officer

Memorandum of Agreement

among the

North Carolina
Department of Transportation

the

U.S. Department of the Interior
National Park Service

and the

U.S. Department of Transportation
Federal Highway Administration
North Carolina and Eastern Federal Lands Highway Divisions

for the

Preliminary Design of the
Blue Ridge Parkway Bridge over Interstate 26

in

Buncombe County, NC

PURPOSE

The purpose of this Memorandum of Agreement (Agreement) is to establish the roles, responsibilities, funding, and procedures by which the North Carolina Department of Transportation (NCDOT); the U.S. Department of the Interior, National Park Service (NPS); the U.S. Department of Transportation, Federal Highway Administration's North Carolina Division (FHWA-NC) and Eastern Federal Lands Highway Division (EFLHD), collectively agreed to as the "Parties", will jointly participate in engineering services to complete preliminary design sufficient to obtain NPS Design Advisory Board approval as well as National Environmental Policy Act (NEPA) documentation and National Historic Preservation Act (NHPA) compliance, hereinafter referred to as the "Work", for replacement of the Blue Ridge Parkway Bridge over Interstate 26 (I-26) (hereinafter called the Project) in Buncombe County, NC, as part of the NCDOT's State Transportation Improvement Program (STIP) project I-4700B.

AUTHORITIES

WHEREAS, NCGS 136-18(12) authorizes the NCDOT to enter into this Agreement with the federal government and cooperating agencies to provide funding for the Project and associated Work; and,

WHEREAS, the NPS is authorized to enter into this Agreement pursuant to authority contained in 16 U.S.C. § 1-3 and 31 U.S.C § 1535; and,

WHEREAS, 23 U.S.C. 308(a) authorizes the FHWA to perform engineering and other services in connection with the survey, design, construction, and improvements of highways for other Federal or State cooperating agencies; and,

WHEREAS, the FHWA-NC is the Federal agency with administrative, financial and project implementation, and management oversight of the NCDOT's Federal-aid Highway Program; and,

WHEREAS, the NCDOT and NPS have requested that FHWA provide engineering services for the proposed Project; and,

WHEREAS, the NCDOT proposes to multi-lane widen I-26 from NC 146, Long Shoals Road, (Exit 37) to I-40 in Buncombe County (8.6 miles) under STIP project I-4700B to reduce congestion along the I-26 corridor. Because of the proximity of the existing interior bents to the existing travel lanes, this widening requires the replacement of the Blue Ridge Parkway Bridge over I-26, near Milepost 36, in Buncombe County, NC; and,

WHEREAS, funds for engineering and compliance services will be provided to the EFLHD by the NCDOT for the Work; and,

WHEREAS the NCDOT, NPS and FHWA have agreed to pursue the necessary Work to obtain necessary NEPA documentation and compliance, and before the completion of NEPA the parties will meet to determine the final delivery method for construction of the project; and,

WHEREAS, although this Agreement is subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341(a)(1)), the Parties understand, recognize and agree that the EFLHD is not responsible for any percentage part of the cost of this Work; and,

WHEREAS, 23 U.S.C. §104(f)(3) provides that a State may transfer funds apportioned or allocated under Title 23 to the FHWA to finance a project eligible for assistance under such title; and,

WHEREAS, 23 U.S.C. 132 allows the State to make a deposit or payment to the EFLHD for work performed under an agreement and seek reimbursement for the federal share of the amounts deposited or paid with Federal-aid highway funds.

NOW THEREFORE, the NCDOT, NPS, FHWA-NC, and EFLHD do hereby mutually agree as follows:

ARTICLE I: SCOPE OF WORK (Obligations, Responsibilities, and Funding)

A. The NCDOT agrees to:

1. Assign and designate a point of contact so that all communication regarding the Work will be coordinated and managed through such person; and,
2. Review any documentation provided by the EFLHD; and,
3. Participate in the general coordination of all field reviews, progress meetings, and other Project development activities and milestones as applicable to this Work; and,
4. Provide survey and mapping to EFLHD required for the Work along the Parkway; and,
5. Amend the previously prepared Natural Resources Technical Report (including field investigations and feature delineations) to encompass the expanded study area for the bridge replacement and required roadway approach work; and,
6. Provide the required funding for the Work; and,
7. Incorporate the needs and requirements of the NPS to ensure acceptance and NPS adoption of the NCDOT/FHWA's environmental document for their I-26 widening project including appropriate NPS NEPA documentation and NPS NEPA decision for actions on NPS lands; and,
8. Assist EFLHD with activities necessary to provide the required final environmental clearances and coordination of the Work; and,
9. Prepare Federal easement survey and/or right-of-way plans and legal descriptions (for both Federal and non-Federal lands, as applicable) for any right-of-way or easement for the NCDOT widening of I-26 across NPS Parkway right-of-way boundary;

B. The NPS agrees to:

1. Act as a cooperating agency for preparation of the NCDOT/FHWA NEPA document for the replacement of the Blue Ridge Parkway Bridge over I-26; and,
2. In accordance with the schedule included in Attachment B, provide applicable NPS information and direction (including but not limited to written text) for inclusion in the NEPA document so the NPS can adopt and utilize the NCDOT/FHWA lead NEPA document for issuing a NPS NEPA decision for those project actions on NPS lands as well as be responsible for guiding the decisions associated with improvements and actions on NPS lands, or where NPS interests are involved; and,
3. Assign and designate a project point of contact so that all communication regarding the Work will be coordinated and managed through such person; and,
4. In accordance with the schedule included in Attachment B, perform required archaeological surveys/field investigations along Parkway property within the project study area and upon completion will prepare a Management Summary detailing the results of the investigations. A final report detailing the analysis and findings will be completed by the NPS. NPS will coordinate with NCDOT during this process and supply NCDOT with copies of any summaries, reports, and correspondence to/from the Historic Preservation Office; and
5. Draft and coordinate Section 106, Historic Preservation documentation for NPS, to incorporate requirements of the Historic Preservation Office, for approval of the preferred bridge design immediately after said design is selected; and,
6. Participate in all design field reviews, progress meetings, and other Project development activities and milestones as applicable; and,
7. Approve, in writing, the final design standards for all improvements related to NPS-owned right-of-way; and,
8. Facilitate a Value Analysis (VA) and Choosing by Advantage (CBA) study for the Parkway realignment and final design of the Parkway bridge over I-26, with involvement of all partners and draft a final analysis report for review and approval of NPS, NCDOT and EFLHD; and,
9. Assist EFLHD with activities necessary to provide the required final environmental clearances and coordination for STIP project I-4700B; and,
10. Grant right-of-entry and permits as required to the FHWA, authorized contractors, NCDOT, and other parties as required for the purposes of environmental studies, design, and other Project-related activities;

C. The FHWA-NC agrees to:

1. Be responsible for guiding decisions associated with the Federal-aid Highway Program, or where Federal-aid interests are involved; and,
2. Participate in the project development process as applicable.

D. The EFLHD agrees to:

1. Be the lead agency for and provide for overall coordination of the Work and designate a Project Manager; and,
2. Accept funding from the NCDOT for the Work; and,
3. Coordinate and develop a scope and budget for the Work and obtain NCDOT concurrence; and,
4. Coordinate a schedule to complete the Work with the parties to this Agreement as included in Attachment B, incorporated and made a part of this Agreement as included herein; and,
5. Conduct and assist the NPS and the NCDOT with alternatives development and evaluation for those actions impacting the project design and the use of NPS lands and assist in incorporating applicable recommendations into the NCDOT/FHWA environmental document for the I-4700B STIP project; and,
6. In accordance with the schedule included in Attachment B, conduct necessary geotechnical investigations as part of the Work and supply the investigations to NCDOT for review (including the subsurface inventory report, foundation recommendations with notes, boring plans and boring logs; and,
7. Coordinate and incorporate requirements of NPS, Historic Preservation Office, NCDOT, other applicable federal, state and local agencies, utilities, and interested public and private parties; and,
8. Prepare preliminary 30% bridge replacement design plans (including design assumptions, typical sections, horizontal and vertical alignments, cross sections, slope stakes, and if necessary utility plans for all alternatives), construction schedules, and Estimates and other Project documents sufficient to obtain NPS DAB approval and complete NPS NEPA and NHPA documentation up to and including the Record of Decision; and,
9. Proceed with design (of the preferred alternative) beyond 30% to the maximum extent practical prior to a decision for the final delivery method for construction of the Parkway Bridge; and,

10. Draft a legal right-of-way description, from survey plans provided by NCDOT, for widening and constructing the Parkway Bridge over I-26 (for both Federal and non-Federal lands, as applicable) for any easements or right-of-way between NCDOT and the NPS. The approved document will be filed by all partners; and,
11. In accordance with Attachment A, provide digital design files to the Parties; and,
12. Hold regular meetings with all Parties regarding the status of the Work; and,
13. Allow the Parties to participate in field reviews, onsite inspections, and records reviews and to monitor the Work; and,
14. Provide technical assistance to the NPS as necessary through completion of design of the Parkway bridge in coordination with the NCDOT; and,
15. Maintain records of all actions, contracts and expenditures on the Work in sufficient level of detail to allow identification of the nature of the expenditures made. The FHWA will retain these records for a period of six (6) years after the Project records are closed out to provide complete information in response to an audit of either its own records or of NCDOT's records of the Project; and
16. Promptly initiate design Work close-out and return unexpended funds to all parties as soon as final costs are known.

ARTICLE II: DISBURSEMENT OF FUNDS

- A. Upon execution of this Agreement, the NCDOT will reimburse funds based on the EFLHD's estimated costs as included herein.
- B. All costs associated, directly or indirectly, with any and all Work performed under this Agreement including, but not limited to EFL engineering services and NPS NEPA documentation and compliance shall be paid for by the NCDOT.
- C. The estimated costs for the Work (based on the Scope of Work and Schedule described in Attachments A and B) are as follows:

Activity	Estimated Cost
Estimated EFLHD Engineering Services cost:	\$285,000.00
Estimated NPS NEPA documentation/compliance cost:	\$40,000.00
Contingency:	\$25,000.00
Total Estimated Cost:	\$350,000.00

The costs above are estimated only and will be adjusted during the design process to include the actual costs of such services limited to a maximum of \$350,000.00. Any costs above the

maximum amount must be approved in writing by all Parties in a Supplemental Agreement prior to the work being performed.

- D. It is the understanding and agreement of all Parties that the costs associated with this Work will be paid for entirely by NCDOT in accordance with this Agreement. The funds will be provided by NCDOT in accordance with current EFLHD and NCDOT policies. Nothing in this Agreement will prevent NCDOT from seeking reimbursement for applicable costs for this Work from the FHWA-NC in the future. The schedule for this Project is hereto attached, marked as Attachment A and made a part of this Agreement.
- E. Before any expenses are incurred or funds are expended by EFLHD for the Work, EFLHD and NCDOT will enter into a reimbursable agreement. After execution of the reimbursable agreement, EFLHD will obtain authority to expend reimbursable funds for the completion of the Work. EFLHD will submit monthly invoices to NCDOT which include all necessary documentation as agreed to by the parties to reimburse EFLHD for eligible Work expenditures as outlined in this Agreement. Within 30 days of receipt of the monthly invoices, NCDOT will review and, if acceptable, NCDOT will make payment. The EFLHD will not perform the Work until the reimbursable agreement is executed.
- F. The EFLHD and NPS will execute a separate interagency agreement to reimburse the NPS for NEPA documentation and compliance costs. EFLHD will provide NCDOT copies of NPS billing documentation to support such expenditures for the Work.
- G. If the EFLHD or NPS's costs are anticipated to exceed the funds thus made available to the EFLHD in the reimbursable agreement, the EFLHD will request additional funds in time to have the additional funds in place before funds are exhausted in accordance with Article II.C. All Work will cease until additional funds are received by the EFLHD. If costs are less than anticipated for the Work, the reimbursable agreement will be amended during the closeout process.
- H. EFLHD will maintain separate financial records for this Work and will track and monitor all funds provided to it.
- I. Upon completion of the Work or as soon as the financial records for the Work are closed, the EFLHD will initiate closure of the reimbursable agreement with the NCDOT within 60 days.
- J. This Agreement may be terminated by mutual written consent of all parties with 30 days written notice of the termination to the Points of Contact included herein. This Agreement may also be terminated if either the NEPA process or funding availability requires a change and the Parties are not able to agree to the change. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. Any costs incurred by EFLHD and NPS up to the point of termination will be considered allowable and will be paid for by NCDOT. Costs generated after the termination date will not be allowable. All funds remaining after termination will be returned to the appropriate Parties as included in Article II.I.

ARTICLE III: GENERAL TERMS AND CONDITIONS

- A. This Agreement contains the entire agreement and understanding of the Parties, and may not be amended, modified, or discharged nor may any of its terms be waived except by a Supplemental Agreement in writing signed by all of the Parties.
- B. The failure of a Party to insist in any instance upon strict performance of any of the terms, conditions, or covenants contained, referenced, or incorporated into this Agreement shall not be construed as a waiver or a relinquishment of the Party's rights to the future performance of such terms, conditions, or covenants.
- C. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the Articles, paragraphs, sections, or subsections to which they apply or otherwise affect the interpretation thereof.
- D. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of the Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.
- E. Nothing set out in this Agreement shall constitute a waiver of the Parties' rights to seek any and all damages to the extent authorized by law, nor shall anything in this Agreement limit any defenses that the Parties may have with respect to such claims for damages.
- F. Nothing in this Agreement shall be construed as creating any rights of enforcement by any person or entity that is not a Party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.
- G. This Agreement has been drafted jointly by the Parties hereto. As a result, the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party.
- H. All parties to the Agreement will be afforded the opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation related to this Agreement; and to participate in all meetings and field reviews.
- I. This Agreement is assignable; however, no transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all Parties, which approval shall not be unreasonably withheld.
- J. The Parties accept full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the extent allowed by the law. All claims shall be processed pursuant to applicable governing law.

- K. Any claim filed alleging an injury during the performance of this Agreement, which may be traced to a party, shall be received and processed by the party having responsibility for the particular injury-causing condition, under the law that governs such party.
- L. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any Party to expend funds in excess of available appropriations.
- M. The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Titles VI and VII of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. §2000(d) et. seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.
- N. No member of, or Delegate to, or Resident Commissioner in Congress shall be admitted to any share or part of this Agreement, or to any benefits that may arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.
- O. The Parties will abide by the provisions of 18 U.S.C. §1913 (Lobbying with Appropriated Monies).
- P. Contracts entered into by any Federal Agency pursuant to this Agreement are subject to all laws governing federal procurement and to all regulations and rules promulgated there under, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement.
- Q. Nothing in this Agreement shall be construed as in any way impairing the general powers of the parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.
- R. This Agreement shall be in force and effect and shall remain in effect until the work, including payment, has been completed to the mutual satisfaction of all Parties. This Agreement will terminate when all transfers of funds are completed and all work associated with this Agreement has been approved by the Parties in writing.
- S. The Parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.
- T. It is the policy of the NCDOT not to enter into any agreements with parties that have been debarred by any government agency (Federal or State). By execution of this Agreement, the Parties confirm that their contractors are not excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any

entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

- U. The Parties agree to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation.
- V. The Parties, and all agents, will ensure that all contractors, sub-contractors, or sub-recipients agree to comply with Title 49 CFR Part 32.400, Drug-Free Workplace requirements and/or Federal Acquisition Regulation (FAR) Subpart 23.5, Drug Free Workplace.
- W. By Executive Order 24 and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

ARTICLE IV: KEY OFFICIALS AND CONTACTS

Designated points of contact for the coordination of this project are as follows:

<u>Key Official</u>	<u>Point of Contact</u>
A. For the NCDOT: Mr. Michael L. Holder, PE Chief Engineer North Carolina Department of Transportation Transportation Building 1 S. Wilmington St. Raleigh, NC 27601 Phone: (919) 707-2500 Email: mholder@ncdot.gov	Mr. Richard W. Hancock, PE Project Development Unit Head North Carolina Department of Transportation Transportation Building 1548 Mail Service Center Raleigh, NC 27699-1548 Phone: (919) 707-6000 Email: rwhancock@ncdot.gov
Mr. Rodger Rochelle, PE Administrator of the Technical Services Division North Carolina Department of Transportation Transportation Building 1 S. Wilmington St. Raleigh, NC 27601 Phone: (919) 707-2900 Email: rdrochelle@ncdot.gov	

B. For the NPS:

Mr. Mark H. Woods
Superintendent
Blue Ridge Parkway
U.S. Dept. of the Interior
National Park Service
199 Hemphill Knob Road
Asheville, NC 28803
Phone: (606) 248-1050
Email: mark_woods@nps.gov

Mr. Larry Hultquist
Project Manager DSC-T
Blue Ridge Parkway
U.S. Dept. of the Interior
National Park Service
199 Hemphill Knob Road
Asheville, NC 28803
Phone: (828) 348-3482
Email: larry_hultquist@nps.gov

C. For the FHWA-NC Division:

Mr. John Sullivan, PE
Division Administrator
Federal Highway Administration
North Carolina Division
310 New Bern Avenue, Suite 410
Raleigh, NC 27601
Phone: (919) 747-7000
Email: John.Sullivan@dot.gov

Mr. Michael Batuzich
Environmental Specialist
Federal Highway Administration
North Carolina Division
310 New Bern Avenue, Suite 410
Raleigh, NC 27601
Phone: (919) 747-7033
Email: Michael.Batuzich@dot.gov

D. For the EFLHD:

Ms. Karen Schmidt
Director, Program Administration
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, VA 20166
Phone: (703) 404-6276
Email: Karen.Schmidt@dot.gov

Ms. Yanina Kirtley, PE, PMP
Project Manager
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, VA 20166
Phone: (571) 434-1556
Email: Yanina.Kirtley@dot.gov

ARTICLE V: FUNDING LIMITATIONS

Nothing in this Agreement shall be interpreted to require obligations or payments in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall terminate if funds cease to be available. The NCDOT will immediately notify all parties in writing if funds cease to be available and the Agreement will terminate in accordance with Article II.J.

ARTICLE VI: STANDARDS

EFLHD shall complete the Work (design) in accordance with the current applicable American Association of State Highway Transportation Officials (AASHTO), FHWA, Manual of Uniform Traffic Devices Control (MUTCD) and NCDOT standards and guides in cooperation with NCDOT.

ARTICLE VII: DISPUTE RESOLUTION


Disputes should be resolved at the lowest level possible. The dispute should be clearly defined in writing and understood by all Parties. Any dispute between the Parties that cannot be resolved by the Project points of contact shall be formally presented in writing to the Chief Engineer of NCDOT, the Superintendent of the Blue Ridge Parkway, and the Division Director for EFLHD for review and resolution. Any resolution of the dispute shall be reduced to writing signed by the reviewers.

If the dispute cannot be resolved by the second level of review, then the matter may be presented to the Administrator of the Technical Services Division of the NCDOT, the NPS Regional Director, Southeast Region, and the Administrator of the FHWA.


IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION**

**Approved By the Board of
Transportation:**



Mr. Michael L. Holder, PE Date
Chief Engineer 7/22/15



Date

**U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
BLUE RIDGE PARKWAY**



Mr. Mark H. Woods
Superintendent

6/30/15
Date

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
NORTH CAROLINA DIVISION**

 7/23/15
Mr. John Sullivan, PE Date
Division Administrator

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION**

Karen A. Schmidt 15 JUL 2015

Ms. Karen A. Schmidt Date
Director, Program Administration

ATTACHMENT A
Scope of Work

The Scope of Work and estimated engineering costs under this Memorandum of Agreement are based on, but not limited to, the following activities:

Project Management – Necessary communication and coordination of various preliminary design activities within the EFL, NPS and NCDOT, and manage schedule and budget (12 man-days).

Alignment Alternatives – The projection of at least three alternative horizontal and vertical alignments that satisfy the purpose and need of the project. Develop typical sections, preliminary earthwork, and prepare construction schedules and engineer’s estimates for design alternatives (21 man-days).

Bridges Alternatives – Type size and location drawings for various bridge alternatives including a retrofit/modification of the existing bridge, steel girder bridge alternative, and concrete bridge alternatives based on various alignment alternatives (120 man-days).

Design Visualization – 3D renderings of each alternative alignment and bridge for use as part of Public Meetings, NPS Value Analysis and Design Board approvals (10 man-days).

Geotechnical Analysis – Evaluation of existing geotechnical information, field borings (and appropriate material lab testing) at each abutment/pier location for foundation assessment and preliminary design recommendations (62 man-days).

Environment – Assistance to the NPS to prepare necessary NEPA documentation to meet both NPS and FHWA NEPA requirements. Participation with NPS in necessary activities to complete NEPA compliance; including to fully prepare and analyze NEPA alternatives, and work with NCDOT staff to appropriately coordinate and incorporate NPS documentation into the Draft and Final EIS (77 man-days).

NPS Activities - NPS work necessary to complete the NEPA compliance including coordination with SHPO, Value Analysis (VA) and Choosing by Advantages (CBA) facilitation and documentation, and approval through the NPS Design Advisory Board (\$40,000).

ATTACHMENT B**Work Schedule**

Activity	Estimated Completion
Develop Draft Alignment/Bridge Alternatives for Draft EIS for submittal to NCDOT	<i>Completed</i>
Submit MOA to NPS Solicitor's Office for review	<i>Completed</i>
Distribute Agreement for Signature	June 2015
Coordinate Funds Transfer between NCDOT and EFL	July 2015
Complete Alignment/Bridge Alternatives for NPS Value Analysis	October 2015
NPS Value Analysis	November 2015
Publish Draft EIS (NCDOT)	November 2015
NPS Design Advisory Board Review	November 2015
Prepare Final EIS Documentation for Submittal to NCDOT	February 2016
Publish Final EIS/ROD (NCDOT)	June 2016
NPS Adoption of Final EIS and NPS ROD	July 2016

Memorandum of Agreement

among the

North Carolina
Department of Transportation

the

U.S. Department of the Interior
National Park Service

and the

U.S. Department of Transportation
Federal Highway Administration
North Carolina and Eastern Federal Lands Highway Divisions

for the

Engineering and Design Support for the
Blue Ridge Parkway Bridge over Interstate 26

in

Buncombe County, NC

REASON FOR THIS AMENDMENT

The purpose for this amendment to Memorandum of Agreement DTFH71-15-X-50014 (Agreement) is to increase the scope of services for the design of the Blue Ridge Parkway Bridge over Interstate 26 by Eastern Federal Lands Highway Division and the U.S. Department of the Interior, National Park Service. The following sections in the Agreement have been updated:

- Purpose;
- Authorities;
- Scope of Work (Obligations, Responsibilities, and Funding);
- Disbursement of Funds (including the estimated cost of work);
- Key Officials and Contacts;
- Dispute Resolution
- Attachment A (Scope of Work); and
- Attachment B (Work Schedule).

PURPOSE

The purpose of this Memorandum of Agreement is to establish the roles, responsibilities, funding, and procedures by which the North Carolina Department of Transportation (NCDOT); the U.S. Department of the Interior, National Park Service (NPS); the U.S. Department of Transportation, Federal Highway Administration’s North Carolina Division (FHWA-NC) and Eastern Federal Lands Highway Division (EFLHD), collectively agreed to as the “Parties”, will jointly participate in engineering services to complete preliminary design sufficient to obtain NPS Design Advisory Board approval, National Environmental Policy Act (NEPA) documentation, and National Historic Preservation Act (NHPA) compliance: to complete the design through 100% (also known as “final design,” see Appendix A for details) and provide design support during construction, hereinafter referred to as the “Work”, for replacement of the Blue Ridge Parkway Bridge over Interstate 26 (I-26) (hereinafter called the Project) in Buncombe County, NC, as part of the NCDOT’s State Transportation Improvement Program (STIP) project I-4700B. This Agreement will need to be amended in the future to detail roles and responsibilities during construction.

AUTHORITIES

WHEREAS, NCGS 136-18(12) authorizes the NCDOT to enter into this Agreement with the federal government and cooperating agencies to provide funding for the Project and associated Work; and,

WHEREAS, the NPS is authorized to enter into this Agreement pursuant to authority contained in 16 U.S.C. § 1-3 and 31 U.S.C § 1535; and,

WHEREAS, 23 U.S.C. 308(a) authorizes the FHWA to perform engineering and other services in connection with the survey, design, construction, and improvements of highways for other Federal or State cooperating agencies; and,

WHEREAS, the FHWA-NC is the Federal agency with administrative, financial and project implementation, and management oversight of the NCDOT's Federal-aid Highway Program; and,

WHEREAS, the NCDOT and NPS have requested that EFLHD provide engineering services for the proposed Project; and,

WHEREAS, the NCDOT proposes to multi-lane widen I-26 from NC 146, Long Shoals Road, (Exit 37) to I-40 in Buncombe County (8.6 miles) under STIP project I-4700B to reduce congestion along the I-26 corridor. Because of the proximity of the existing interior bents to the existing travel lanes, this widening requires the replacement of the Blue Ridge Parkway Bridge over I-26, near Milepost 36, in Buncombe County, NC; and,

WHEREAS, funds for engineering, design NEPA documentation, NHPA compliance, and design support services during construction will be provided to the EFLHD by the NCDOT for the Work; and,

WHEREAS the NCDOT, NPS and FHWA have agreed to pursue the Work as follows:

- to obtain necessary NEPA documentation and compliance;
- to determine the final delivery method for construction of the project before the completion of NEPA;
- to identify the preferred roadway and bridge alternative;
- to have EFLHD provide engineering services to design the Project through 100% final design in conjunction with NPS;
- for NPS to provide design and review support for the final EFLHD design;
- to provide design support as appropriate during construction; and
- for EFLHD and the NPS to participate in milestone inspections of the constructed project for acceptance.

WHEREAS, although this Agreement is subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341(a)(1)), the Parties understand, recognize and agree that the EFLHD and the NPS are not responsible for any percentage part of the cost of this Work; and,

WHEREAS, 23 U.S.C. §104(f)(3) provides that a State may transfer funds apportioned or allocated under Title 23 to the FHWA to finance a project eligible for assistance under such title; and,

WHEREAS, 23 U.S.C. 132 allows the State to make a deposit or payment to the EFLHD for work performed under an agreement and seek reimbursement for the federal share of the amounts deposited or paid with Federal-aid highway funds.

NOW THEREFORE, the NCDOT, NPS, FHWA-NC, and EFLHD do hereby mutually agree as follows:

ARTICLE I: SCOPE OF WORK (Obligations, Responsibilities, and Funding)

A. The NCDOT agrees to:

1. Assign and designate a point of contact so that all communication regarding the Work will be coordinated and managed through such person; and,
2. Review any documentation provided by the EFLHD; and,
3. Participate in the general coordination of all field reviews, progress meetings, and other Project development activities and milestones as applicable to this Work; and,
4. Review EFLHD design deliverables and provide comments or other feedback within twenty-one (21) calendar days from the receipt of each deliverable; and,
5. Provide survey and mapping to EFLHD required for the Work along the Parkway; and,
6. Amend the previously prepared Natural Resources Technical Report (including field investigations and feature delineations) to encompass the expanded study area for the bridge replacement and required roadway approach work; and,
7. Provide the required funding for the Work; and,
8. Incorporate the needs and requirements of the NPS to ensure acceptance and NPS adoption of the NCDOT/FHWA's environmental document for their I-26 widening project including appropriate NPS NEPA documentation and NPS NEPA decision for actions on NPS lands; and,
9. Assist EFLHD with activities necessary to provide the required final environmental clearances, the 30% design submittal, 70% design submittal, the 100% design submittal, and coordination of the Work; and,
10. Incorporate the EFLHD-delivered 100% final bridge and approach plans into project I-4700B or other construction delivery vehicle as appropriate. This work may include, but is not limited to, incorporating roadway and bridge plans, specifications, estimates and other project documents for the bridge replacement and approaches in accordance with the latest version of the NCDOT Standard Specifications and project-specific specifications submitted by EFLHD as part of the 100% distribution; and,
11. Prepare draft bid package and distribute to EFLHD and NPS for review and comments; and,
12. Participate in milestone inspections, including the final inspection, with EFLHD and NPS of the constructed project for acceptance; and,

13. Prepare Federal easement survey and/or right-of-way plans and legal descriptions (for both Federal and non-Federal lands, as applicable) for any right-of-way or easement for the NCDOT widening of I-26 across NPS Parkway right-of-way boundary; and,
14. Provide as-built plans, all design calculations, and the bridge load rating once construction is completed to EFLHD and the NPS.

B. The NPS agrees to:

1. Act as a cooperating agency for preparation of the NCDOT/FHWA NEPA document for the replacement of the Blue Ridge Parkway Bridge over I-26; and,
2. In accordance with the schedule included in Attachment B, provide applicable NPS information and direction (including but not limited to written text) for inclusion in the NEPA document so the NPS can adopt and utilize the NCDOT/FHWA lead NEPA document for issuing a NPS NEPA decision for those project actions on NPS lands as well as be responsible for guiding the decisions associated with improvements and actions on NPS lands, or where NPS interests are involved; and,
3. Assign and designate a project point of contact so that all communication regarding the Work will be coordinated and managed through such person; and,
4. In accordance with the schedule included in Attachment B, perform required archaeological surveys/field investigations along Parkway property within the project study area and upon completion will prepare a Management Summary detailing the results of the investigations. A final report detailing the analysis and findings will be completed by the NPS. NPS will coordinate with NCDOT during this process and supply NCDOT with copies of any summaries, reports, and correspondence to/from the Historic Preservation Office; and
5. Draft and coordinate Section 106, Historic Preservation documentation for NPS, to incorporate requirements of the Historic Preservation Office, for approval of the preferred bridge design immediately after said design is selected; and,
6. Participate in all design field reviews, progress meetings, and other Project development activities and milestones as applicable; and,
7. Review EFLHD design deliverables and provide comments or other feedback within twenty-one (21) calendar days from the receipt of each deliverable; and,
8. Review NCDOT draft bid package and provide written approval to ensure compliance with original design intent and environmental documents; and,
9. Approve, in writing, the final design for all improvements related to NPS-owned right-of-way; and,

10. Facilitate a Value Analysis (VA) and Choosing by Advantage (CBA) study for the Parkway realignment and final design of the Parkway bridge over I-26, with involvement of all partners and draft a final analysis report for review and approval of NPS, NCDOT and EFLHD; and,
11. Assist EFLHD with activities necessary to provide the required final environmental clearances and coordination for STIP project I-4700B; and,
12. Grant right-of-entry and permits as required to the FHWA, authorized contractors, NCDOT, and other parties as required for the purposes of environmental studies, design, construction, and other Project-related activities; and,
13. Participate in milestone inspections, including final inspection, of the constructed project for acceptance and provide documentation of milestone acceptance if applicable; and,
14. Provide written acceptance of ownership of the improvements.

C. The FHWA-NC agrees to:

1. Be responsible for guiding decisions associated with the Federal-aid Highway Program, or where Federal-aid interests are involved; and,
2. Participate in the project development process as applicable.

D. The EFLHD agrees to:

1. Be the lead agency for and provide for overall coordination of the Work and designate a Project Manager; and,
2. Accept funding from the NCDOT for the Work; and,
3. Coordinate and develop a scope and budget for the Work and obtain NCDOT concurrence; and,
4. Coordinate a schedule to complete the Work with the parties to this Agreement as included in Attachment B, incorporated and made a part of this Agreement as included herein; and,
5. Conduct and assist the NPS and the NCDOT with alternatives development and evaluation for those actions impacting the project design and the use of NPS lands and assist in incorporating applicable recommendations into the NCDOT/FHWA environmental document for the I-4700B STIP project; and,
6. In accordance with the schedule included in Attachment B, conduct necessary geotechnical investigations as part of the Work and supply the investigations to NCDOT

- for review (including the subsurface inventory report, foundation recommendations with notes, boring plans and boring logs; and,
7. Lead and participate in field review meetings, progress meetings, and other Project development activities and milestones as applicable; and,
 8. Coordinate and incorporate requirements of NPS, Historic Preservation Office, NCDOT, other applicable federal, state and local agencies, utilities, and interested public and private parties; and,
 9. Prepare and submit preliminary 30% bridge replacement design plans (including design assumptions, typical sections, horizontal and vertical alignments, cross sections, slope stakes, and if necessary utility plans for all alternatives), construction schedules, and Estimates and other Project documents sufficient to obtain NPS DAB approval and complete NPS NEPA and NHPA documentation up to and including the Record of Decision to the NPS and NCDOT; and,
 10. Perform supplemental survey, location survey, geotechnical investigations, and other field work necessary to design project through 100%; and,
 11. Prepare and submit conceptual bridge plans, preliminary construction sequencing plans, and preliminary demolition plans; and,
 12. Prepare and submit preliminary 30% roadway and bridge deliverable package, including plans, estimates and other project documents for the bridge replacement and approaches to the NPS and NCDOT (see Attachment A for details); and,
 13. Prepare and submit intermediate 70% roadway and bridge plans, specifications, estimates and other project documents for the bridge replacement and approaches to the NPS and NCDOT (see Attachment A for details); and,
 14. Prepare and submit final 100% signed and sealed roadway and bridge plans, specifications, estimates and other project documents for the bridge replacement and approaches to the NPS and NCDOT (see Attachment A for details); and,
 15. Lead on-site and/or remote comment resolution meetings for the 30%, 70%, and 100% deliverables or as appropriate; and,
 16. Review NCDOT draft bid package to ensure compliance with original design intent and environmental documents; and,
 17. Provide design support during construction on an as-needed basis; and,
 18. Participate in milestone inspections of the constructed project and recommend acceptance of bridge to NPS; and,

19. Draft a legal right-of-way description, from survey plans provided by NCDOT, for widening and constructing the Parkway Bridge over I-26 (for both Federal and non-Federal lands, as applicable) for any easements or right-of-way between NCDOT and the NPS. The approved document will be filed by all partners; and,
20. In accordance with Attachment A, provide digital design files to the Parties; and,
21. Hold regular meetings with all Parties regarding the status of the Work; and,
22. Allow the Parties to participate in field reviews, onsite inspections, and records reviews and to monitor the Work; and,
23. Provide technical assistance to the NPS as necessary through completion of design of the Parkway bridge in coordination with the NCDOT; and,
24. Maintain records of all actions, contracts and expenditures on the Work in sufficient level of detail to allow identification of the nature of the expenditures made. The EFLHD will retain these records for a period of six (6) years after the Project records are closed out to provide complete information in response to an audit of either its own records or of NCDOT's records of the Project; and
25. Promptly initiate design Work close-out and return unexpended funds to all parties as soon as final costs are known.

ARTICLE II: DISBURSEMENT OF FUNDS

- A. Upon execution of this Agreement, the NCDOT will reimburse funds based on the EFLHD's estimated costs as included herein.
- B. All costs associated, directly or indirectly, with any and all Work performed under this Agreement including, but not limited to EFL engineering services and NPS NEPA documentation and compliance shall be paid for by the NCDOT.

- C. The estimated costs for the Work (based on the Scope of Work and Schedule described in Attachments A and B) are as follows:

Activity	Estimated Cost
Original MOA to complete preliminary design sufficient to obtain NPS Design Advisory Board approval, NEPA documentation and NHPA compliance:	\$350,000
Original MOA agreement amount increased on 6/6/17, per Reimbursable Agreement DTFH71-15-X-50030, Amendment No. 2	\$300,000
Estimated additional EFLHD Engineering Services cost to design the project through 100% and provide signed/sealed package:	\$1,350,000
Estimated EFLHD Engineering Services cost for efforts during construction, review/approve shop drawings as appropriate, and participate in final inspection of the project:	\$200,000
Estimated NPS design review cost through 100%, project review during construction, and final inspection of the project:	\$75,000
Total Estimated Cost:	\$2,275,000

The costs above are estimated only and will be adjusted during the design process to include the actual costs of such services limited to a maximum of \$2,275,000. Any costs above the maximum amount must be approved in writing by all Parties in a Supplemental Agreement prior to the work being performed.

- D. It is the understanding and agreement of all Parties that the costs associated with this Work will be paid for entirely by NCDOT in accordance with this Agreement. The funds will be provided by NCDOT in accordance with current EFLHD and NCDOT policies. Nothing in this Agreement will prevent NCDOT from seeking reimbursement for applicable costs for this Work from the FHWA-NC in the future. The schedule for this Project is hereto attached, marked as Attachment A and made a part of this Agreement.
- E. Before any expenses are incurred or funds are expended by EFLHD for the Work, EFLHD and NCDOT will enter into a reimbursable agreement. After execution of the reimbursable agreement, EFLHD will obtain authority to expend reimbursable funds for the completion of the Work. EFLHD will submit monthly invoices to NCDOT which include all necessary documentation as agreed to by the parties to reimburse EFLHD for eligible Work expenditures as outlined in this Agreement. Within 30 days of receipt of the monthly invoices, NCDOT will review and, if acceptable, NCDOT will make payment. The EFLHD will not perform the Work until the reimbursable agreement is executed.
- F. The EFLHD and NPS will execute a separate interagency agreement to provide funding to complete tasks that are performed by NPS per this Agreement. EFLHD will provide NCDOT copies of NPS billing documentation to support such expenditures for the Work.
- G. If the EFLHD or NPS's costs are anticipated to exceed the funds thus made available to the EFLHD in the reimbursable agreement, the EFLHD will request additional funds in time to have the additional funds in place before funds are exhausted in accordance with Article II.C. All

Work will cease until additional funds are received by the EFLHD. If costs are less than anticipated for the Work, the reimbursable agreement will be amended during the closeout process.

- H. EFLHD will maintain separate financial records for this Work and will track and monitor all funds provided to it.
- I. Upon completion of the Work or as soon as the financial records for the Work are closed, the EFLHD will initiate closure of the reimbursable agreement with the NCDOT within 60 days.
- J. This Agreement may be terminated by mutual written consent of all parties with 30 days written notice of the termination to the Points of Contact included herein. This Agreement may also be terminated if either the NEPA process or funding availability requires a change and the Parties are not able to agree to the change. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. Any costs incurred by EFLHD and NPS up to the point of termination will be considered allowable and will be paid for by NCDOT. Costs generated after the termination date will not be allowable. All funds remaining after termination will be returned to the appropriate Parties as included in Article II. Section I.

ARTICLE III: GENERAL TERMS AND CONDITIONS

- A. This Agreement contains the entire agreement and understanding of the Parties, and may not be amended, modified, or discharged nor may any of its terms be waived except by a Supplemental Agreement in writing signed by all of the Parties.
- B. The failure of a Party to insist in any instance upon strict performance of any of the terms, conditions, or covenants contained, referenced, or incorporated into this Agreement shall not be construed as a waiver or a relinquishment of the Party's rights to the future performance of such terms, conditions, or covenants.
- C. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the Articles, paragraphs, sections, or subsections to which they apply or otherwise affect the interpretation thereof.
- D. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of the Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.
- E. Nothing set out in this Agreement shall constitute a waiver of the Parties' rights to seek any and all damages to the extent authorized by law, nor shall anything in this Agreement limit any defenses that the Parties may have with respect to such claims for damages.

- F. Nothing in this Agreement shall be construed as creating any rights of enforcement by any person or entity that is not a Party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.
- G. This Agreement has been drafted jointly by the Parties hereto. As a result, the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party.
- H. All parties to the Agreement will be afforded the opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation related to this Agreement; and to participate in all meetings and field reviews.
- I. This Agreement is assignable; however, no transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all Parties, which approval shall not be unreasonably withheld.
- J. The Parties accept full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the extent allowed by the law. All claims shall be processed pursuant to applicable governing law
- K. Any claim filed alleging an injury during the performance of this Agreement, which may be traced to a party, shall be received and processed by the party having responsibility for the particular injury-causing condition, under the law that governs such party.
- L. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any Party to expend funds in excess of available appropriations.
- M. The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Titles VI and VII of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. §2000(d) et. seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.
- N. No member of, or Delegate to, or Resident Commissioner in Congress shall be admitted to any share or part of this Agreement, or to any benefits that may arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.
- O. The Parties will abide by the provisions of 18 U.S.C. §1913 (Lobbying with Appropriated Monies).

- P. Contracts entered into by any Federal Agency pursuant to this Agreement are subject to all laws governing federal procurement and to all regulations and rules promulgated there under, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement.
- Q. Nothing in this Agreement shall be construed as in any way impairing the general powers of the parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.
- R. This Agreement shall be in force and effect and shall remain in effect until the work, including payment, has been completed to the mutual satisfaction of all Parties. This Agreement will terminate when all transfers of funds are completed and all work associated with this Agreement has been approved by the Parties in writing.
- S. The Parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.
- T. It is the policy of the NCDOT not to enter into any agreements with parties that have been debarred by any government agency (Federal or State). By execution of this Agreement, the Parties confirm that their contractors are not excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.
- U. The Parties agree to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation.
- V. The Parties, and all agents, will ensure that all contractors, sub-contractors, or sub-recipients agree to comply with Title 49 CFR Part 32.400, Drug-Free Workplace requirements and/or Federal Acquisition Regulation (FAR) Subpart 23.5, Drug Free Workplace.
- W. By Executive Order 24 and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

ARTICLE IV: KEY OFFICIALS AND CONTACTS

Designated points of contact for the coordination of this project are as follows:

<u>Key Official</u>	<u>Point of Contact</u>
A. For the NCDOT: Mr. Michael L. Holder, PE Chief Engineer North Carolina Department of Transportation Transportation Building 1 S. Wilmington St. Raleigh, NC 27601 Phone: (919) 707-2500 Email: mholder@ncdot.gov	Mr. Glenn Mumford, PE State Roadway Design Engineer North Carolina Department of Transportation Transportation Building 1582 Mail Service Center Raleigh, NC 27699-1582 Phone: (919) 707-6200 Email: gmumford@ncdot.gov
Mr. Bobby Lewis, PE Chief Operating Officer Interim Administrator of the Technical Services Division North Carolina Department of Transportation Transportation Building 1 S. Wilmington St. Raleigh, NC 27601 Phone: (919) 707-2800 Email: rlewis1@ncdot.gov	
B. For the NPS: Mr. John Slaughter Superintendent Blue Ridge Parkway U.S. Dept. of the Interior National Park Service 199 Hemphill Knob Road Asheville, NC 28803 Phone: Email: john_slaughter@nps.gov	Mr. Andy Otten Project Specialist Denver Service Center Blue Ridge Parkway U.S. Dept. of the Interior National Park Service 199 Hemphill Knob Road Asheville, NC 28803 Phone: (828) 776-0067 Email: Andy_Otten@nps.gov

C. For the FHWA-NC Division:

Mr. John Sullivan, PE
Division Administrator
Federal Highway Administration
North Carolina Division
310 New Bern Avenue, Suite 410
Raleigh, NC 27601
Phone: (919) 747-7000
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Mr. James Martin, PE
Major Projects Engineer
Federal Highway Administration
North Carolina Division
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Raleigh, NC 27601
Phone: (919) 747-7008
Email: James.Martin@dot.gov

D. For the EFLHD:

Mr. Kurt Dowden
Chief of Business Operations
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, VA 20166
Phone: (571) 434-1598
Email: Kurt.Dowden@dot.gov

Mr. Michael Tessitore, PE
Project Manager
Federal Highway Administration
Eastern Federal Lands Highway Division
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Email: michael.tessitore@dot.gov

ARTICLE V: FUNDING LIMITATIONS

Nothing in this Agreement shall be interpreted to require obligations or payments in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall terminate if funds cease to be available. The NCDOT will immediately notify all parties in writing if funds cease to be available and the Agreement will terminate in accordance with Article II.J.

ARTICLE VI: STANDARDS

EFLHD shall complete the Work (design) in accordance with the current applicable American Association of State Highway Transportation Officials (AASHTO), FHWA, Manual of Uniform Traffic Devices Control (MUTCD) and NCDOT standards and guides in cooperation with NCDOT.

ARTICLE VII: DISPUTE RESOLUTION

Disputes should be resolved at the lowest level possible. The dispute should be clearly defined in writing and understood by all Parties. Any dispute between the Parties that cannot be resolved by the Project points of contact shall be formally presented in writing to the Chief Engineer of NCDOT, the

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**U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
BLUE RIDGE PARKWAY**



8/8/17

Mr. John Slaughter
Superintendent

Date

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**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
NORTH CAROLINA DIVISION**



8/4/17

Mr. John Sullivan, PE
Division Administrator

Date

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Interstate 26

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION**

Hally E Bell
for _____ *8/24/2017*
Mr. Kurt Dowden Date
Chief of Business Operations

ATTACHMENT A **Scope of Work**

The Scope of Work and estimated engineering costs under this Memorandum of Agreement are based on, but not limited to, the following activities:

Project Management – Necessary communication and coordination of various preliminary, intermediate, and final design activities within the EFL, NPS and NCDOT, coordination of EFLHD and NPS participation of design and/or construction inspection support during construction, and manage schedule and budget (57 staff-days).

Alignment Alternatives – The projection of at least three alternative horizontal and vertical alignments that satisfy the purpose and need of the project. Develop typical sections, preliminary earthwork, and prepare construction schedules and engineer’s estimates for design alternatives (21 staff-days).

Bridges Alternatives – Type size and location drawings for various bridge alternatives including a retrofit/modification of the existing bridge, steel girder bridge alternative, and concrete bridge alternatives based on various alignment alternatives (120 staff-days).

Design Visualization – 3D renderings of each alternative alignment and bridge for use as part of Public Meetings, NPS Value Analysis and Design Board approvals (10 staff days).

Environment – Assistance to the NPS to prepare necessary NEPA documentation to meet both NPS and FHWA NEPA requirements. Participation with NPS in necessary activities to complete NEPA compliance; including to fully prepare and analyze NEPA alternatives, and work with NCDOT staff to appropriately coordinate and incorporate NPS documentation into the Draft and Final EIS (77 staff-days).

Supplemental Survey – Additional survey to supplement NCDOT provided survey as necessary for final design (37 staff-days).

Geotechnical Analysis – Evaluation of existing geotechnical information, field borings (and appropriate material lab testing) at each abutment/pier location for foundation assessment and design recommendations (136 staff-days).

Bridge and Roadway Approach Design – Design bridge and bridge approaches through the 100% final design. The following deliverables are anticipated:

- **Deliverable #1** – This deliverable includes preliminary/conceptual bridge plans, conceptual construction sequencing plans, and conceptual demolition plans.
- **Deliverable #2** – Preliminary (30%) design submittal. The deliverable will include updated preliminary/conceptual bridge plans, conceptual construction sequencing plans, conceptual demolition plans, a title sheet, survey control sheets, location map(s), typical sections, plan sheets which include horizontal and vertical alignment for the realigned roadway, and a construction estimate as applicable.

- **Deliverable #3** - Intermediate (70%) design submittal. The deliverable will include bridge plan sheets, typical sections, a construction sequencing plan, a demolition plan for the existing bridge, geotechnical information, a title sheet, survey control sheets, location map(s), typical sections, summary of quantities, plan sheets which include horizontal and vertical alignment for the realigned roadway and ancillary drainage design associated with the new roadway alignment (roadside ditches and culverts), erosion control narrative and erosion control plans, temporary traffic control plans for the Parkway, pavement marking and signing plans for the Parkway as appropriate, roadway cross sections, project-specific specifications to supplement NCDOT specifications as appropriate, and an Engineer's Estimate construction cost estimate, as applicable. Design calculations can be provided upon request.
- **Deliverable #4** - Final (100%) design submittal. The deliverable will include updated bridge plan sheets, design calculations, typical sections, a construction sequencing plan, a demolition plan for the existing bridge, geotechnical information, a title sheet, survey control sheets, location map(s), typical sections, summary of quantities, plan sheets which include horizontal and vertical alignment for the realigned roadway and ancillary drainage design associated with the new roadway alignment (roadside ditches and culverts), erosion control narrative and erosion control plans, temporary traffic control plans for the Parkway, pavement marking and signing plans for the Parkway as appropriate, roadway cross sections, project-specific specifications to supplement NCDOT specifications as appropriate, and an Engineer's Estimate construction cost estimate, as applicable.
- **Deliverable #5** – Deliver updated and signed and sealed final (100%) plans to NCDOT for incorporation into project I-4700B or as appropriate. Plans will be signed and sealed with a single global seal intended to cover all disciplines.
- Five 11" x 17" plan set hard copies will be provided with each deliverable. All deliverables will also be provided electronically in PDF format. Microstation CADD files will be provided upon request.

(1,375 staff-days).

Multi-discipline EFLHD Internal Reviews – Geotech, Pavements, Hydraulics, Traffic, Construction, and other relevant EFLHD sections review each distribution concurrently with external partner review periods (105 staff-days).

Field Review Design Coordination Meetings – Travel to site and meet with NPS and NCDOT partners to review and discuss major deliverables (42 staff-days).

Support During Construction – Provide design assistance during construction as appropriate. Review/approve shop drawings as necessary. Inspector services are not included in the estimated cost and will need to be evaluated at a later date (208 staff-days).

Final Inspection – Participate in final inspection of the constructed project and provide recommendation to NPS to accept the bridge (10 staff-days).

NPS Activities - NPS work necessary to complete the NEPA compliance including coordination with SHPO, Value Analysis (VA) and Choosing by Advantages (CBA) facilitation and

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documentation, and approval through the NPS Design Advisory Board. Design reviews of EFLHD and NCDOT design submittals, participate in field reviews, support during construction, participate in final inspection, and final acceptance (\$75,000).

ATTACHMENT B

Work Schedule

Activity	Estimated Completion
Develop draft alignment/bridge alternatives for draft EIS for submittal to NCDOT	<i>Completed</i>
Complete alignment/bridge alternatives for NPS Value Analysis	<i>Completed</i>
NPS Value Analysis and Choosing by Advantage Study	<i>Completed</i>
Complete Archeological Report and updated Natural Resources Technical Report	<i>Completed</i>
Publish draft EIS (NCDOT)	<i>Completed</i>
Submit MOA amendment to NPS solicitor's office for review	August 2017
Distribute agreement for signature	August 2017
Coordinate funds transfer between NCDOT and EFL	August 2017
Distribute updated 30% preliminary bridge plans, construction sequencing, and demolition plans for review and discussion	<i>Completed</i>
NPS Design Advisory Board review and approval	<i>Completed</i>
Distribute 30% preliminary roadway and bridge design package for review	August 2017
30% review and resolution meeting	September 2017
Prepare final EIS documentation for submittal to FHWA-NC	August 2017
Final Section 106 MOA (signed and sent to ACHP)	April 2018
Distribute 70% intermediate roadway and bridge design package for review	April 2018
70% on-site resolution and plan-in-hand review	May 2018
Publish final EIS/ROD (NCDOT)	May 2018
NPS adoption of final EIS and NPS ROD	June 2018
Distribute 100% final roadway and bridge design package for review	November 2018
100% review and resolution meeting	December 2018
Deliver updated and signed and sealed final plans to NCDOT for incorporation into project I-4700B2700B or as appropriate	February 2019

**AMENDED PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,
ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER,
FOR
MINOR TRANSPORTATION PROJECTS IN NORTH CAROLINA**

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

WHEREAS, the Division Administrator, FHWA, is the "Agency Official" responsible for compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 USC 300101 et seq.) and its implementing regulations (36 CFR Part 800, as amended) for Federal Aid Highway Programs; and

WHEREAS, the FHWA and NCDOT desire to streamline consultation for Section 106 of the NHPA on Federally funded and/or permitted minor transportation projects in North Carolina that may affect properties included in or eligible for inclusion in the National Register of Historic Places ("historic properties"); and

WHEREAS, FHWA and NCDOT have consulted with the North Carolina State Historic Preservation Officer (SHPO), including the Office of State Archaeology (OSA), and the Advisory Council on Historic Preservation (ACHP) to develop and execute this Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b) to establish an efficient and effective program alternative for taking into account the effects of minor transportation projects on historic properties in North Carolina and afford the ACHP a reasonable opportunity to comment on undertakings covered by the PA; and

WHEREAS, FHWA, Council, SHPO, and NCDOT executed a PA for Administration of the Federal Aid Highway Program on March 20, 2000 (Federal Aid Highway PA) that allows NCDOT's qualified Cultural Resource Specialists (CR Specialists) to perform the work and consultation with the SHPO described in specific sections of 36 CFR 800.3 through 800.5 on behalf of the FHWA; and

WHEREAS, the Section 106 Federal Aid Highway PA (signed in 2000 and included in Appendix D) remains in force for FHWA undertakings, except for those defined herein as minor transportation projects; and

WHEREAS, the US Army Corps of Engineers (USACE), Tennessee Valley Authority (TVA), United States Forest Service (USFS), United States Coast Guard (USCG), and National Park Service (NPS), may manage Federal lands affected by or be responsible for issuing permits or licenses related to the construction of minor transportation projects by NCDOT, and have been invited to participate in the development of and to be a concurring party to this PA; and

WHEREAS, FHWA notified the Eastern Band of the Cherokee Indians, the Cherokee Nation of Oklahoma, the United Keetoowah Band of Cherokee Indians in Oklahoma, the Catawba Indian Nation, and the Tuscarora Nation, and these tribes have been invited to participate in the development of and to be a concurring party to this PA; and

WHEREAS, the definitions contained in 36 CFR 800.16 shall be used in this PA; and

WHEREAS, NCDOT has a staff of CR Specialists and employs consultants, who meet the professional qualifications defined in the *Secretary of the Interior's Professional Qualifications Standards* at 36 CFR Part 61; and 48 FR 44716 in the fields of archaeology, architectural history, or historical architecture, to carry out NCDOT's historic preservation programs and responsibilities; and

WHEREAS, this PA applies to projects administered directly by NCDOT, not to projects administered by a sub-recipient of federal-aid highway funds, commonly referred to as locally-administered projects (LAP); and

WHEREAS, NCDOT and SHPO agree that NCDOT may use the provisions of this PA to address the applicable requirements of North Carolina General Statute (NCGS) 121-12(a) for minor transportation projects;

NOW THEREFORE, FHWA NCDOT, ACHP, AND SHPO agree that minor transportation projects are defined as Federal or state transportation projects that qualify as Categorical Exclusions and Environmental Assessments under the National Environmental Policy Act (NEPA), as defined in 23 CFR 771, and by the FHWA (NC Division), or the state equivalent (State Environmental Policy Act, SEPA), as defined in NCGS 113A-1 et seq. and 19A NCAC 02F.0102; and

FHWA, NCDOT, ACHP, and SHPO agree that minor transportation projects carried out by NCDOT with Federal-aid funding and/or requiring Federal permits shall be administered in accordance with the following stipulations to ensure that all federal responsibilities under Section 106 of NHPA are implemented; and as agreed to between the NCDOT and SHPO, all state responsibilities under NCGS 121-12(a) are implemented.

STIPULATIONS

FHWA in coordination with NCDOT, will ensure that the following measures are carried out:

I. Purpose and Applicability

- A. This PA sets forth the process by which FHWA, with the assistance of NCDOT, will meet its responsibilities under Section 106 of NHPA for minor transportation projects of the Federal Aid Transportation Program. This PA establishes the basis for NCDOT's internal review of individual minor transportation projects and establishes how FHWA will be involved in any review.
- B. This PA also sets forth, as agreed to between NCDOT and SHPO, procedures for NCDOT compliance with NCGS 121-12(a) for minor transportation projects carried out by NCDOT without any federal involvement, including funding, approvals, or permits.
- C. Projects involving archaeological sites with human skeletal remains and associated grave goods are not covered under this PA.

II. Responsibilities of FHWA, NCDOT, and SHPO

- A. NCDOT will initiate consultation with federally recognized Indian tribes for projects that may affect tribal lands or properties to which a tribe /tribes ascribes traditional cultural and religious significance.
 - 1. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to direct government-to-government consultation with Indian tribes.
 - 2. Notwithstanding any other provision of this PA, FHWA shall honor the request of any federally recognized Indian tribe for direct government-to-government consultation regarding an undertaking covered by this PA.
 - 3. For projects that occur on Tribal lands or may affect a historic property on Tribal lands, FHWA, in coordination with NCDOT, will complete Section 106 review for that project following 36 CFR 800.3 through 800.6 and the project shall be excluded from this PA.
- B. FHWA will require NCDOT to carry out the requirements of this PA or of 36 CFR Part 800, and applicable Council guidelines for all NCDOT's minor transportation projects that receive Federal assistance. FHWA will participate in the process as specified in subsequent stipulations.
- C. NCDOT shall employ personnel and consultants trained and qualified in the fields of archaeology, historic architecture, and architectural history whose duties shall include activities implementing this PA.
 - 1. These personnel/consultants shall meet the *Secretary of the Interior's Professional Qualifications Standards* in the fields of archaeology, architectural history, or historical architecture.
 - 2. NCDOT and SHPO shall provide regular cultural resource management and Section 106 compliance training, as described in Appendix A, for personnel responsible within NCDOT for activities described in this agreement.
 - 3. Consultants employed by NCDOT shall attend training workshops as agreed upon or described in Appendix A.

- D. NCDOT, in consultation with SHPO, FHWA, and ACHP, will maintain a user's manual to aid in the implementation this PA.
1. The user's manual shall include detailed procedures for Section 106 and NCGS 121-12(a) reviews and be titled *NCDOT's Programmatic Agreement Implementation Manual for Minor Transportation Projects (Manual)*.
 2. NCDOT shall distribute updates to the *Manual* throughout all NCDOT Divisions and Units to aid in their education and understanding of the terms and procedures encompassed by this PA.
- E. NCDOT will follow the curation guidelines developed by OSA to ensure long-term preservation of the State's archaeological collections and associated field records. OSA will waive all fees for the curation of archaeological collections that result from NCDOT investigations, when those collections are documented, conserved, and submitted according to OSA's guidelines.
- F. To prevent the risk of harm, and in accordance with NCGS 70-18, FHWA and NCDOT will ensure that the specific locations of archaeological sites are not placed in public documents or otherwise distributed to members of the public. FHWA and NCDOT personnel will be provided this information on a need-to-know basis with the understanding that these locations are privileged information.

III. Guidelines, Standards and Regulations

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

- 36 CFR Part 61: *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*;
- *North Carolina Office of State Archaeology: Guidelines for Preparation of Archaeological Survey Reports* (1988);
- *North Carolina Office of State Archaeology: Archaeological Curation Standards and Guidelines* (1995);
- *North Carolina Historic Preservation Office Survey Manual: Practical Advice for Recording Historic Resources* (2002);
- North Carolina General Statute 121-12 (Archives and History);
- North Carolina General Statute 70-18 (Confidentiality)
- North Carolina Administrative Code T07:04R.0206;
- 23 CFR Part 771.117 FHWA Categorical Exclusions;
- 23 CFR Part 771.119 FHWA Environmental Assessments;
- 23 CFR Part 771.121 FHWA Findings of No Significant Impact;
- 36 CFR Part 800: Protection of Historic Properties;
- 40 CFR 1508 - CEQ - Regulations for Implementing NEPA and
- *North Carolina Department of Transportation: Historic Architecture Group Procedures and Work Products* (2015).

IV. Projects with Little or No Potential to Cause Effects

The project types listed in and meeting the conditions listed in Appendix B by their nature and definition, constitute undertakings that should pose minimal or no effects to historic properties.

- A. Minor transportation projects that comprise the activity/ies listed in Appendix B and, in the best judgment of the NCDOT Project Manager or Engineer, meet all the conditions outlined, shall undergo no further Section 106 review.
- B. Projects, which are certified as meeting the conditions and are exempt from further review, must be documented by the NCDOT project manager or Engineer using the *Programmatic Agreement Screening Checklist (Checklist)* (Appendix C).
 1. The *Checklist* shall be completed for every project or, in some cases, for a batch of similar projects whose actions have little or no potential for significant effects.
 2. A copy of the *Checklist* will be placed in the project file.
 3. The *Checklist* will be distributed to the parties of this PA, upon request.
- C. Other minor actions may be approved as project types in Appendix B, if deemed appropriate by consultation and written agreement of FHWA, NCDOT, and SHPO.

V. Project Review - Minor Transportation Projects

For those projects considered Minor Transportation Projects and not exempt from review under terms of Stipulation IV, the review process shall be:

- A. Initiate Section 106 Process - 36 CFR Part 800.3
NCDOT will initiate the Section 106 process on behalf of FHWA following the procedures in 36 CFR 800.3. NCDOT CR Specialists, including an archaeologist and architectural historian, will:
 1. Define the undertaking.
 2. Identify and invite other consulting parties (as identified in the NEPA or SEPA process, such as local governments and historic property owners) to participate in the consultation.
 3. Initiate consultation with appropriate Indian tribal governments, where applicable.
- B. Identify Historic Properties – 36 CFR 800.4
 1. NCDOT CR Specialists shall determine and document the archaeological and architectural Area of Potential Effects (APE), as defined in 35 CFR 800.16(d).
 2. Based upon the best available background information gathered via a literature and map search, including SHPO files of identified, eligible, or National Register listed historic properties, a NCDOT CR Specialist shall assess the likelihood that unidentified historic properties exist in the APE and shall determine the need for further field survey.
 - a. For those projects for which available information provides a reliable basis for reasonably predicting that there are no unidentified historic properties in either the archaeological or architectural APE, a NCDOT CR Specialist for archaeology and historic structures shall each issue a finding of No Survey Required for the project using the *No Survey Required Form* in Appendix C.
 - i. The *No Survey Required Forms* shall be included in the Categorical Exclusion or Environmental Assessment, as part of the

- NEPA project files. This document serves the consultation requirements under 36 CFR 800.4.
- ii. NCDOT shall provide copies of the completed *No Survey Required Forms* to the SHPO annually.
 - iii. If historic properties are discovered after the NCDOT CR Specialists issue the findings of No Survey Required, reasonable efforts will be made to avoid, minimize, or mitigate adverse effects to such properties per 36 CFR 800.13.
- b. For those projects for which available information does not provide a reliable basis for reasonably predicting that there are no unidentified historic properties in either the archaeological or architectural APE, a NCDOT CR Specialist shall issue a finding of *Survey Required* for the project using the *Survey Required Form* in Appendix C.
- i. NCDOT shall conduct or cause to be conducted a survey to identify historic properties in a manner consistent with the *Manual* and applicable guidelines, standards, and regulations listed in Stipulation III.
 - ii. NCDOT shall provide copies of the completed *Survey Required Forms* to the SHPO annually.
 - iii. Where potential historic properties are identified, a NCDOT CR Specialist shall evaluate their eligibility for listing in the National Register of Historic Places (NRHP) in accordance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* and *National Register Bulletin 15, How to Apply the National Register Criteria for Evaluation*.
 - iv. For those projects which have no National Register-listed or eligible archaeological sites in the APE a NCDOT CR Archaeology Specialist shall document the finding, following the requirements in 36CFR 800.11(d) using the *No National Register of Historic Places Eligible or Listed Archaeological Sites Present Form*, in Appendix C.
 - 1) The *No National Register of Historic Places Eligible or Listed Archaeological Sites Present Form* will be included in the Categorical Exclusion or Environmental Assessment, as part of the appropriate NEPA project files as well the annual report for the PA.
 - v. Where historic property boundaries have not previously been established, a NCDOT CR Specialist shall identify recommended boundaries following standards set forth in *National Register Bulletin 21: Defining Boundaries for National Register Properties*.
 - vi. These determinations of eligibility and proposed boundaries shall be documented in separate eligibility reports for archaeology

and/or historic architecture resources, the content and layout of which will be specified in the *Manual* and applicable guidelines, standards, and regulations listed in Stipulation III.

- 1) Archaeology will provide OSA with the relevant site forms as completed and as a part of the annual report.
 - 2) Historic Architecture eligibility determinations will be sent to the SHPO for review and comment prior to the application of the criteria of effect outlined in Section C, below.
 - 3) If within thirty (30) days of receiving this notification, SHPO/OSA does not object or does not comment, NCDOT may proceed with the project without further review.
- c. For those projects for which available information provides a reliable basis for reasonably predicting that all of the historic properties have been identified and evaluated for National Register eligibility in the APE, and further survey work is not needed, but the effects need to be considered on the National Register-listed or eligible historic properties, a NCDOT CR Architectural Historian shall issue a finding of Effects Required for the project using the *Effects Required Form* in Appendix C and follow the procedures outlined in Section C, below.
- C. Apply the Criteria of Effect – 36 CFR 800.5
- For those undertakings in which there are National Register-listed or eligible historic properties in the APE, a NCDOT CR Specialist shall apply the Criteria of Effects in accordance with 36 CFR Part 800.5 in separate effects processes for archaeology and/or historic architecture resources as outlined below. The result of each process will be documented in writing using the corresponding effects forms provided in Appendix C. Copies of this documentation will be provided to the project's submitter and other consulting parties, as needed.
1. Archaeology:
 - a. No National Register of Historic Places Eligible or Listed Archaeological Sites Affected: For those projects which have no National Register-listed or eligible archaeological sites affected, a NCDOT CR Archaeology Specialist shall document the finding, following the requirements in 36CFR 800.11(d) using the *No National Register of Historic Places Eligible or Listed Archaeological Sites Affected Form*, in Appendix C.
 - i. The NCDOT CR Archaeology Specialist shall notify OSA, the project submitter, and other consulting parties, as needed, of the No National Register of Historic Places Eligible or Listed Archaeological Sites Affected finding for the project using the *No National Register of Historic Places Eligible or Listed Archaeological Sites Affected Form*. This form will be included in the Categorical Exclusion or

Environmental Assessment, as part of the appropriate NEPA project files as well the annual report for the PA.

- ii. If within thirty (30) days of receiving this notification, OSA or another consulting party does not object or does not comment, NCDOT may proceed with the project without further review. If OSA or another consulting party objects to NCDOT's finding, then one of the following shall take place:

- 1) For federal undertakings, the documentation will be submitted to the lead federal agency for consideration. If the federal agency and the objecting party(ies) reach consensus, the process will move forward in accordance with this PA, either to a finding of effect or documenting that no historic properties are affected. If consensus is not achieved, the undertaking will not be developed under this PA, but will proceed in accordance with 36 CFR Part 800.3 through 800.6.
- 2) For state undertakings, with no federal involvement, that do not adversely affect any property listed in the NRHP, NCDOT shall provide a copy of the determination to the SHPO, as staff of the North Carolina Historical Commission. For undertakings that may have an adverse effect on a National Register-listed property, NCDOT shall consult with the SHPO pursuant to the administrative procedures outlined in North Carolina Administrative Code T07:04R.0206.

- b. National Register of Historic Places Eligible or Listed Archaeological Sites Adversely Affected: For those projects which have adverse effects to National Register-listed or eligible archaeological sites NCDOT CR Archaeology Specialist shall document the finding and notify the OSA of the finding of adverse effect by forwarding the *Archaeological Adverse Effect Determination Form* provided in Appendix C.

- i. The *Archaeological Adverse Effect Determination Form* will be included in the Categorical Exclusion or Environmental Assessment, as part of the appropriate NEPA project files.
- ii. The NCDOT CR Archaeology Specialist will meet with OSA staff, lead federal agency (if applicable), and project submitter to discuss the adverse effect of the proposed project on the archaeological site(s).
- iii. If OSA or another consulting party proposes conditions or changes to the project that would result in a determination of No Effect and NCDOT agrees to implement the conditions or changes, the NCDOT CR Archaeology Specialist will document them on the *No National Register of Historic Places Eligible or Listed Archaeological Sites Present or Affected Form*, and no further consultation will be necessary.
- iv. Any conditions or changes to the project agreed to by NCDOT resulting in a determination of No Effect shall be included in the

Categorical Exclusion or Environmental Assessment, as part of the environmental commitments documentation.

- v. If SHPO, the lead federal agency (if applicable), or another consulting party objects to NCDOT's finding of No Effect they shall indicate the reasons for non-concurrence and will consult further to resolve this matter, either by identifying project alternatives that may result in the undertaking having no adverse effect on historic properties or proceeding in accordance with Stipulation X of this PA.

2. Historic Architecture:

- a. No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected: For those projects which have no National Register-listed or eligible historic properties present or affected, a NCDOT CR Historic Architecture Specialist shall document a finding of No Historic Properties Present or Affected for the project, following the requirements in 36CFR 800.11(d) and using the *No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected Form* in Appendix C.
 - i. The *No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected Form* will be included in the Categorical Exclusion or Environmental Assessment, as part of the appropriate NEPA project files.
 - ii. The NCDOT CR Historic Architecture Specialist shall notify SHPO, the project submitter, and other consulting parties, as needed, of the No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected finding for the project using the *No National Register of Historic Places Eligible or Listed Historic Properties Present or Affected Form*.
 - iii. If within thirty (30) days of receiving this notification, SHPO or another consulting party does not object or does not comment, NCDOT may proceed with the project without further review. If SHPO or another consulting party objects to NCDOT's finding, one of the following shall take place:
 - 1) For federal undertakings, the documentation will be submitted to the lead federal agency for consideration. If the federal agency and objecting party(ies) reach consensus, the process will move forward in accordance with this PA, either to a finding of effect or documenting that no historic properties are affected. If consensus is not achieved, the undertaking will not be developed under this PA, but will proceed in accordance with 36 CFR Part 800.3 through 800.6.
 - 2) For state undertakings, with no federal involvement, that do not adversely affect any property listed in the NRHP, NCDOT shall provide a copy of the determination to the SHPO, as staff of the North Carolina Historical Commission. For undertakings that may have an adverse effect on a National

Register-listed property, NCDOT shall consult with the SHPO pursuant to the administrative procedures outlined in North Carolina Administrative Code T07:04R.0206.

- b. No Effect or No Adverse Effects on National Register of Historic Places Eligible or Listed Historic Properties: If the NCDOT CR Historic Architecture Specialist determines that the undertaking will have No Effect or No Adverse Effects on National Register-listed or eligible historic properties, it will meet with SHPO staff, lead federal agency (if applicable), and project submitter to discuss the effects of the proposed project on the historic properties.
- i. The *National Register of Historic Places Eligible or Listed Historic Properties Effects Determination Form* in Appendix C will document the application of the criteria of effect and will contain signatures from NCDOT CR Specialist, SHPO staff, and federal agency with jurisdiction (if applicable).
 - ii. If SHPO or another consulting party proposes conditions or changes to the project that would result in a determination of No Effect or No Adverse Effect, and NCDOT agrees to implement the conditions or changes and will document them on the *National Register of Historic Places Eligible or Listed Historic Properties Effects Determination Form*, and no further consultation will be necessary.
 - iii. Any conditions or changes to the project agreed to by NCDOT resulting in a determination of No Effect or No Adverse Effect shall be included in the Categorical Exclusion or Environmental Assessment, as part of the environmental commitments documentation.
 - iv. If SHPO, lead federal agency (if applicable), or another consulting party objects to NCDOT's finding of No Effect or No Adverse Effect, they shall indicate the reasons for non-concurrence and will consult further to resolve this matter, either by identifying project alternatives that may result in the undertaking having no adverse effect on historic properties or proceeding in accordance with Stipulation X of this PA.
- c. National Register of Historic Places Eligible or Listed Historic Properties Adversely Affected: If the NCDOT CR Historic Architecture Specialist determines that the undertaking will have Adverse Effects on National Register-listed or eligible historic properties, it will meet with SHPO staff, lead federal agency (if applicable), and project submitter to discuss the effects of the proposed project on the historic properties.
- i. The *National Register of Historic Places Eligible or Listed Historic Properties Effects Determination Form* in Appendix C will document the application of the criteria of effect and will contain signatures from NCDOT CR Specialist, SHPO staff, and lead federal agency (if applicable).
 - ii. If SHPO or another consulting party proposes conditions or changes to the project that would result in a determination of No Effect or No

Adverse Effect, and NCDOT agrees to implement the conditions or changes and will document them on the *National Register of Historic Places Eligible or Listed Historic Properties Effects Determination Form*, and no further consultation will be necessary.

D. Adverse Effect – 36 CFR 800.6

For projects that have an Adverse Effect on historic properties, NCDOT will assist the lead federal agency in meeting its 36 CFR 800.6 responsibilities by undertaking the following steps:

1. The NCDOT CR Specialist will continue consultation with SHPO, lead federal agency, and other consulting parties to develop and evaluate alternatives or modifications to the project that could avoid minimize, or mitigate adverse effects on historic properties.
2. If the adverse effect cannot be avoided, then the NCDOT CR Specialist shall prepare a Finding of Adverse Effect for the lead federal agency so that they may notify the Council of the adverse effect finding in accordance with 36 CFR 800.11(e). Both the NCDOT CR Specialists for archaeology and historic architecture will contribute to the preparation of this document.
3. The lead federal agency shall provide all consulting parties the documentation specified in 36CFR 800.11(e), subject to the confidentiality provisions of 36CFR 800.11(c) and the federal agency shall also make this information available to the public.
4. The NCDOT CR Specialist will work with the SHPO, lead federal agency, and other consulting parties to negotiate terms of a Memorandum of Agreement (MOA).

E. Project Re-evaluation

1. If an undertaking changes in scope or APE, both the NCDOT CR Specialist for archaeology and historic architecture shall re-assess the previous findings issued by their respective specialties to determine if the findings remain valid or if additional survey or effects assessment is required.
2. In addition, the NCDOT CR Specialists will review the applicability of this PA to the project to determine if the project continues to qualify for treatment under Stipulations IV and V. If the undertaking no longer qualifies for such treatment, it will not be considered a minor project and will not be reviewed under the terms of this PA.
3. Should SHPO or a member of the public provide new information regarding a project that would alter the re-evaluation determination made above, NCDOT, SHPO, and consulting parties shall consult pursuant to 36 CFR 800.4 through 800.6 and 800.13. Such information shall be provided to NCDOT in a timely manner.

F. Unanticipated Discovery

All unanticipated discoveries made in conjunction with any project covered by this PA shall be treated in accordance with the procedures outlined in 36 CFR 800.13(b).

G. Historic Bridges

NCDOT shall use the findings of the Historic Bridge Inventory (NCDOT, 2004), or any updates thereof, to determine the National Register eligibility of bridges. Bridges considered not eligible for the National Register require no further evaluation unless the prior evaluation was incomplete or changing perceptions of significance after 2015 necessitate re-evaluation.

H. Emergency Situations

From time to time, NCDOT will be required to perform emergency actions in response to an immediate threat to the preservation of human life or property, in which case NCDOT will be allowed an emergency waiver from the review procedures set forth in this PA.

1. The emergency waiver for minor transportation projects shall begin at the time that NCDOT determines that an emergency action is required and will only be applicable if NCDOT reasonably anticipates that the emergency action will be initiated within ten (10) days.
2. In the event of such emergencies, NCDOT CR Specialists shall, within thirty (30) days of the emergency, provide a summary of the emergency undertaking to SHPO and note if and how National Register-listed or eligible properties were affected.
3. If a listed or eligible property was adversely affected by the emergency undertaking, NCDOT shall consult with SHPO and other parties to this PA, as appropriate, to determine if post-emergency mitigation is needed.

VI. Cooperation and Communication

NCDOT and SHPO will continue to share information developed or generated by each agency related to the identification, evaluation, management and treatment of North Carolina's cultural resources.

VII. Annual Review and Monitoring

- A. NCDOT and SHPO shall regularly consult to review implementation of the terms of the PA. NCDOT will maintain a list, sorted by Unit or Division, of all projects covered by this PA for a twelve (12)-month period from July 1 through June 30. NCDOT will provide all parties to this agreement with copies of this list called the *Annual Report on the Programmatic Agreement for Minor Transportation Projects in North Carolina (Annual Report)* by July 31 of each year.
 1. The content and format of the *Annual Report* will be described in the *Manual* for this PA.
 2. The FHWA, SHPO and other concurring parties (as requested) will review the *Annual Report* and assess the implementation of the PA for the year under review.
 3. If deemed appropriate by any signatory to this PA, NCDOT will notify the parties that they will meet to discuss and resolve any issues raised as a result of the review.
- B. FHWA, Council, and SHPO may monitor activities carried out pursuant to this PA. NCDOT shall cooperate with these parties in carrying out their monitoring efforts.

- C. The federal agency(ies), who have signed this PA, are responsible for ensuring that its terms are fulfilled. Should a federal agency and/or SHPO determine that a Unit or Division of NCDOT is not consistently complying with the provisions of this PA, it shall notify NCDOT managers, who will address the problem and report to all the parties of this PA on the corrective monitoring and/or coaching undertaken.

VIII. Amendment

- A. Any of the primary signatories of this PA may request that it be amended, whereupon the parties will consult to consider such an amendment. An amendment to the PA will go into effect upon the written concurrence of the FHWA, SHPO, NCDOT and Council.
- B. The forms and *Manual* referenced in Appendix C may be revised with the written concurrence of the Parties to this PA.
- C. If a party invited to concur in this PA has not accepted by the time it is filed with the Council, they may become a concurring party for the duration of this PA upon the written concurrence of the primary signatories. Such action will not require an amendment to this PA.

IX. Termination

Any party of the primary signatories of this PA may terminate it by providing written notice of thirty (30) calendar days to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination. In the event of termination, FHWA will comply with 36 CFR Part 800.4 through 36 CFR Part 800.6 with regard to individual undertakings covered by this PA.

X. Dispute Resolution

- A. Should SHPO or another consulting party on an individual undertaking subject to review under this PA, object within thirty (30) days to any plans or documentation provided for review pursuant to this agreement, the federal agency with jurisdiction shall consult with the objecting party(ies) to resolve the objection. If the federal agency determines that the objection cannot be resolved, it shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:
 1. Provide the federal agency with recommendations which the federal agency will take into account in reaching a final decision regarding the dispute, or
 2. Notify the federal agency that it will comment pursuant to 36 CFR Section 800.7(c) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the federal agency in accordance with 36 CFR Section 800.7(c)(4) with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute and FHWA's responsibility to carry out all the actions under this agreement that are not the subject of the dispute will remain unchanged.

- B. Any member of the public, any agency or organization may request the Council review of section 106 compliance for an individual undertaking in accordance with 36 CFR Part 800.9(a).
- C. For projects with no federal involvement, state law requires that state undertakings be reviewed under NCGS 121-12(a). Should SHPO or another consulting party on an individual undertaking subject to review under this PA, object within thirty (30) days to any plans or documentation provided for review pursuant to this agreement, NCDOT shall consult with SHPO as staff of the North Carolina Historical Commission as per the administrative procedures outlined in North Carolina Administrative Code T07:04R.0206.


XI. Duration

This PA shall continue in full force and effect until June 30, 2020. During the six (6) month period prior to this date, the signatory parties will consult to consider an extension or amendment of the PA. No extension or amendment will be effective unless the primary signatories to the PA agree in writing.

Execution and implementation of this PA evidences that FHWA, in cooperation with NCDOT, has satisfied its responsibilities under Section 106 of NHPA for all individual undertakings of minor transportation projects covered under this PA.

AGREE:


Federal Highway Administration



John F. Sullivan, III, P.E.
Division Administrator

9/22/2015
Date

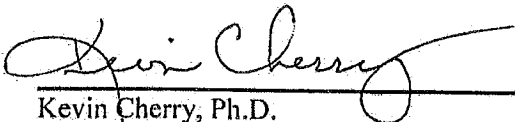
North Carolina Department of Transportation



Nicholas J. Tennyson
Secretary

9/15/2015
Date

State Historic Preservation Office



Kevin Cherry, Ph.D.
North Carolina State Historic Preservation Officer

9/21/2015
Date

Advisory Council on Historic Preservation



John M. Fowler
Executive Director

10/22/15
Date

PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
FOR ADMINISTRATION OF THE FEDERAL AID HIGHWAY PROGRAM

WHEREAS, the Federal Highway Administration (FHWA) provides funding for various highway projects administered throughout the state of North Carolina by the North Carolina Department of Transportation (NCDOT) as authorized by 23 USC 771; and

WHEREAS, the Division Administrator, FHWA, is the "Agency Official" responsible for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.) and its implementing regulations (36 CFR Part 800, as amended); and

WHEREAS, FHWA has determined that implementation of the federal aid highway program may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places, and has consulted with the North Carolina State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR § 800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act; and

WHEREAS, the NCDOT employs qualified professional staff and consultants capable of completing many of the steps of the Section 106 review process on behalf of FHWA, and has a considerable record of successful compliance with Section 106; and

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

WHEREAS, the definitions contained in 36 CFR § 800.16 are appropriate to define the terms used in this agreement;

NOW, THEREFORE, the FHWA, the SHPO, the Council, and the NCDOT agree that the program shall be implemented in accordance with the following stipulations in order to take into the account the effect of its individual undertakings on historic properties.

Stipulations

The FHWA will ensure that the following measures are carried out:

1. NCDOT, using staff and /or consultants meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), will independently perform the work and consultation described in specific sections of 36 CFR § 800.3 - 800.5 on behalf of FHWA as follows with the exception of conducting consultation with Indian tribes or Tribal Historic Preservation Officers (THPO):

36 CFR § 800.3

- (1) Establish undertaking
- (2) Coordinate with other reviews
- (3) Identify the appropriate SHPO and/or THPO
- (4) Plan to involve the public
- (5) Identify other consulting parties
- (6) Expediting consultation

36 CFR § 800.4

- (1) Determine scope of identification
- (2) Identify historic properties
- (3) Evaluate historic significance
- (4) Results of identification and evaluation

36 CFR § 800.5

- (1) Apply criteria of adverse effect
- (2) Finding of no adverse effect
- (3) Consulting party review
- (4) Results of assessment

2. In recognition of the unique government-to-government relationship between the Federal government and Indian tribes, FHWA shall take the lead in identifying and establishing consultation with the appropriate THPO or Tribal representatives consistent with 36 CFR § 800.3 (c)-(f). If the tribe is agreeable, further consultation may be conducted among the tribe and NCDOT.
3. If consultation with the SHPO/THPO and other consulting parties results in agreement on a finding of "no adverse effect", NCDOT will prepare documentation in support of the finding as described in 36 CFR § 800.11(e) and forward it to the FHWA. FHWA concurrence in the finding will be sufficient to conclude Section 106 consultation without further review by the Council.
4. If consultation results in a finding of "adverse effect" or if no agreement can be reached, work required to conclude the Section 106 consultation process will be completed by the FHWA as described in 36 CFR § 800.6.

Written documentation will be prepared by NCDOT for use by the FHWA.

5. NCDOT will notify FHWA when a project falls beyond the routine Section 106 process as defined in 36 CFR § 800.3 - 800.6. Using information prepared by NCDOT, FHWA will then take appropriate actions to comply with special provisions of 36 CFR Part 800, especially as they apply to instances involving the protection of National Historic Landmarks (36 CFR § 800.10), post-review discoveries (36 CFR § 800.13), emergency situations (36 CFR § 800.12), and situations calling for program alternatives (36 CFR § 800.14).

ADMINISTRATIVE STIPULATIONS

6. This agreement applies to all projects that are administered through the NCDOT and funded or authorized by the FHWA.
7. It is the intent of the FHWA to become actively involved in the resolution of disagreements pertinent to findings eligibility and effects should they arise. Initially, FHWA will mediate between the NCDOT and SHPO to seek a solution. Disputes regarding eligibility of a property shall be resolved pursuant to 36 CFR § 800.4(c)(2). NCDOT and/or its consultants may prepare documentation in accordance with 36 CFR Part 63 for transmittal by the FHWA to the Keeper of the National Register for this purpose. In order to resolve questions of effect, NCDOT and/or its consultants will prepare documentation in accordance with the provisions of 36 CFR § 800.11(e) for transmittal by the FHWA to the Council for comment pursuant to 36 CFR § 800.6(c)(3).
8. All historic preservation work carried out pursuant to this agreement will be preformed by or under the direct supervision of a person or persons meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), for the disciplines required to complete the necessary work.
9. The FHWA, the SHPO, or the Council may monitor any activities carried out pursuant to this agreement, and the Council will review such activity if so requested. NCDOT will cooperate with the FHWA, the SHPO and the Council in carrying out these monitoring and review responsibilities.
10. Any party to this agreement may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR § 800.14(b) to consider such an amendment.
11. Any party to this agreement may terminate it by providing thirty days written notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreements on amendments or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR § 800.3 through 800.6 with respect to the individual undertakings covered in this agreement.
12. In the event the FHWA or NCDOT cannot carry out the terms of this agreement, the FHWA will comply with 36 CFR § 800.3 through 800.6.

Execution of this Programmatic Agreement by FHWA, NCSHPO, the Council, and the NCDOT and implementation of its terms by FHWA evidence that the FHWA has afforded the Council an opportunity to comment on the Federal Aid Highway Program for North Carolina and that FHWA has taken into account the effects of the program on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

Nicholas L. Graf DATE: 2/14/00
Nicholas L. Graf, Division Administrator

NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER

Jeffrey W. Crow DATE: 2/1/00
Jeffrey W. Crow, State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler DATE: 3/26/00
John M. Fowler, Executive Director

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

L.A. Sanderson DATE: 12-2-99
L. A. Sanderson, State Highway Administrator



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, North Carolina 28803



H30

August 3, 2015

Renee Gledhill-Earley
State Historic Preservation Office
4617 Mail Service Center
Raleigh, NC 27699-4617

ER 01-8333

DRAFT letter -
* LGH/BJJ 8-18-15

Due 8/14/15

Dear Ms Gledhill-Earley:

Due 9/10/15 #

In compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, we are writing to you concerning an archeological survey of the proposed limits of disturbance associated with replacement of the bridge over I-26.

An archeological survey of the Area of Potential Effect (APE) was conducted by the Blue Ridge Parkway archeologist Steven Kidd on July 21, 2015. His report (attached) resulted in a determination that no archeological sites were present within the APE.

It is the determination of the National Park Service that this project will have no adverse effect on cultural resources or sites eligible or potentially eligible for listing in the National Register of Historic Places. If you concur with this determination, please sign on the line provided below and return this letter to us. If we have not received this response within 30 days, as provided by 36 CFR 800.5(b) and (c), then we will consider our responsibilities under Section 106 of the National Historic Preservation Act, as amended, and 36 CFR Part 800 to be completed.

Sincerely,

Steven Kidd
Cultural Resource Program Manager/Archeologist

I concur (X)

I do not concur ()

Renee Gledhill-Earley, EPC

NC State Historic Preservation Office

9.3.15

Date

AUG 07 2015



North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office

Ramona M. Bartos, Administrator

Governor Pat McCrory
Secretary Susan Kluttz

Office of Archives and History
Deputy Secretary Kevin Cherry

March 28, 2016

Beth Byrd, Acting Cultural Resources Specialist
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, NC 28803

beth_byrd@nps.gov

Re: Demolition and Replacement of Blue Ridge Parkway Bridge over I-26, Buncombe County,
ER 01-8333

Dear Ms. Byrd:

Thank you for your letter of March 8, 2016, concerning the above-referenced undertaking, which will adversely affect the National Register-eligible Blue Ridge Parkway and is part of a larger project to improve I-26 from NC 225 to NC 280 (I-4400 & I-4700). We understand that this portion of that project is to be considered separately and have a separate Section 106 consultation due to the involvement and cooperation of the National Park Service (NPS), Eastern Federal Lands Highway Division Office (FHWA), and the North Carolina Department of Transportation (NCDOT).

Since representatives of the State Historic Preservation Office (HPO) were unable to attend the December 2015 Value Analysis/Choosing by Advantages workshop, we appreciate the information provided in your letter. It helps answer questions that were raised at an informal meeting between staff of NCDOT and HPO.

We now understand the reasoning behind the decisions to not use suicide fencing on the new bridge and to reject the arched girder design. However, we do not agree with the proposal to install a sidewalk on only the west side of the bridge. Or, to use a five foot (5') sidewalk on the west side and a two to three foot (2 – 3') sidewalk on the east side of the bridge. While we very much support pedestrian safety, we also believe that symmetry is an important element in the design of the new bridge and believe that this is supported by the statement on page 34 of the "Draft Value Analysis Study - REPLACEMENT OF BLUE RIDGE PARKWAY BRIDGE OVER INTERSTATE 26, Federal Project Number–NC_ST_BLRI_I26_NEPA, January 2016."

Design recommendation – The Caltrans Type 80 rail is the recommended bridge railing design. The final design should adjust the railing heights on both sides of the bridge to account for the superelevation and *to maintain a balanced appearance for users approaching the bridge*. However, the design adjustments must maintain the crash ratings.

Having consulted with the Blue Ridge Parkway for more than thirty years on bridges, guard walls and rails, overlooks, and other historic structures, I personally understand that these elements are part of what makes the Parkway unique, that they have evolved over decades, and warrant our time and effort to ensure that any new element be compatible and complimentary to the whole. Thus, I look forward to continuing our conversation and consultation on the project as a whole and this issue in particular.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-807-6579 or environmental.review@ncdcr.gov. In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,



for Ramona M. Bartos

cc: Mary Pope Furr, NCDOT, mfurr@ncdot.gov
Jennifer Harris, HNTB/NC, jhharris@HNTB.com



North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office

Ramona M. Bartos, Administrator

Governor Pat McCrory
Secretary Susan Kluttz

Office of Archives and History
Deputy Secretary Kevin Cherry

September 27, 2016

John McDade
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, NC 28803

john_mcdade@nps.gov

RE: Replacement of Blue Ridge Parkway Bridge over I-26, Buncombe County, ER 01-8333

Dear Mr. McDade:

Thank you for your September 1, 2016, letter concerning the above-referenced undertaking and providing a link to recent visualizations. The visualizations appear to reflect the design items, which we discussed with the Blue Ridge Parkway and North Carolina Department of Transportation, and agreed appear to be compatible with the historic character of the Parkway. As the parties know we consider the Blue Ridge Parkway eligible for listing in the National Register of Historic Places at the national level of significance.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-807-6579 or environmental.review@ncdcr.gov. In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,

A handwritten signature in blue ink that reads "Renee Gledhill-Earley".

for Ramona M. Bartos

cc: Mary Pope Furr, NCDOT

mfurr@ncdot.gov



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, North Carolina 28803



H30

August 3, 2015

Renee Gledhill-Earley
State Historic Preservation Office
4617 Mail Service Center
Raleigh, NC 27699-4617

ER 01-8333

DRAFT letter -
* LGH/BJJ 8-18-15

Due 8/14/15

Dear Ms Gledhill-Earley:

Due 9/10/15 #

In compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, we are writing to you concerning an archeological survey of the proposed limits of disturbance associated with replacement of the bridge over I-26.

An archeological survey of the Area of Potential Effect (APE) was conducted by the Blue Ridge Parkway archeologist Steven Kidd on July 21, 2015. His report (attached) resulted in a determination that no archeological sites were present within the APE.

It is the determination of the National Park Service that this project will have no adverse effect on cultural resources or sites eligible or potentially eligible for listing in the National Register of Historic Places. If you concur with this determination, please sign on the line provided below and return this letter to us. If we have not received this response within 30 days, as provided by 36 CFR 800.5(b) and (c), then we will consider our responsibilities under Section 106 of the National Historic Preservation Act, as amended, and 36 CFR Part 800 to be completed.

Sincerely,

Steven Kidd
Cultural Resource Program Manager/Archeologist

I concur (X)

I do not concur ()

Renee Gledhill-Earley, EPC

NC State Historic Preservation Office

9.3.15

Date

AUG 07 2015



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE

Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, North Carolina 28803

H30
PIN 16296

March 8, 2016

Renee Gledhill-Earley
State Historic Preservation Office
4617 Mail Service Center
Raleigh, NC 27699-4617

Dear Ms. Gledhill-Earley:

In compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (54 U.S.C. 306108), the National Park Service (NPS) is writing to consult with your office on the proposed demolition and replacement of the bridge along the Blue Ridge Parkway (Parkway) over Interstate 26 in Buncombe County (ER 01-8333). The NPS is cooperating with the North Carolina Department of Transportation (NCDOT) and the Eastern Federal Lands Highway Division Office (FHWA) on Section 106 compliance and the design of the replacement bridge. Consultation began early in project planning and on August 3, 2015, NPS submitted an archeological survey of the Area of Potential Effect (APE) and found *no archeological sites* on Blue Ridge Parkway property. Your office concurred with this finding on September 3, 2015. The NPS also finds that the demolition of the existing bridge is an *adverse effect* since the Parkway (roadway) is a contributing resource to the proposed National Historic Landmark historic district.

Since that time, the NPS, NCDOT, and FHWA conducted a Value Analysis/Choosing By Advantages (VA/CBA) workshop and the draft study from that meeting is available along with the draft Section 4(f) evaluation. We understand from correspondence with NCDOT and FHWA that your office provided comments on these studies and suggested sidewalks be provided on both sides of the new bridge. The NPS would like to offer additional comments related to features of the bridge design meant to minimize the adverse effect, knowing that additional mitigation will be necessary.

Specific comments:

- Any suicide fencing would not be required by the Blue Ridge Parkway. The unique visual character of the designed landscape is our preeminent concern and no bridges along the 469-mile route have tall suicide fences. The proposed 42' concrete railing identified in the VA/CBA study is preferred due to compatibility with other examples along the Parkway and meets pedestrian safety requirements. The issue of suicide fencing for such an elevated bridge was discussed during the VA/CBA workshop and dismissed.

- The arched girder design was dismissed during the VA/CBA workshop due to construction restraints. The footers of this bridge design would not have allowed the necessary width needed to add additional lanes to I-26 at this location. The arched design would require a retrofit to the existing bridge deck, mandating full replacement of the bridge deck in twenty years, causing excessive life cycle costs. There is no design precedent on the Parkway for a steel arched bridge, which encouraged the group to dismiss this option at the workshop.
- The preferred design of a 5' raised sidewalk on the west side of the bridge would accommodate current safety standards for pedestrians using the Mountain to Sea Trail (MST) as it crosses the I-26 Bridge. The elevated sidewalk would provide a measure of additional safety by reducing the conflict between bicycles and pedestrians. To further increase safety, the MST would be realigned along the abandoned section of Parkway at the northern approach to the bridge and would remain aligned at the existing location from the southern approach to the bridge. To preserve symmetrical design a raised 2 to 3 foot walk could be included on the east side of the bridge. All bridges on the Blue Ridge Parkway have raised walks on one or both side of the bridge and are integral to the bridge parapet wall.

We look forward to working with your office, NCDOT and FHWA as this project continues. If you have any questions, please contact Beth Byrd, Acting Cultural Resource Specialist at the Blue Ridge Parkway at (404) 507-5793 or beth_byrd@nps.gov.

Sincerely,



Beth Byrd
Acting Cultural Resource Specialist

Attachment: Draft Value Analysis workshop report

CC:

Mary Pope Furr, NCDOT
Larry Hulquist, DSC- Blue Ridge Parkway
Suzette Molling, Blue Ridge Parkway
Jack VanDop, FHWA
Jennifer Harris, HNTB North Carolina
Lisa Landers, FHWA



United States Department of the Interior



NATIONAL PARK SERVICE
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, North Carolina 28803

IN REPLY REFER

H30

JUN 06 2016

Renee Gledhill-Earley
State Historic Preservation Office
4617 Mail Service Center
Raleigh, NC 27699-4617

Dear Ms. Gledhill-Earley:

Thank you for your letter received March 28, 2016, regarding the replacement Blue Ridge Parkway (Parkway) Bridge over I-26. The National Park Service (NPS) understands the need for a balanced appearance in addition to pedestrian safety on the new proposed bridge. While we agree that symmetry is an important element in the design of the new bridge, we would like to discuss outstanding concerns and work with your office, North Carolina Department of Transportation (NCDOT), and Eastern Federal Lands Highway Division (EFLHD) to accomplish a design that maintains a balanced visual appearance for users approaching the bridge.

The Value Analysis recommended a 5-foot wide raised concrete walkway be installed on Parkway right (west side), or low super-elevation side of the new bridge to counterbalance the curved alignment. On this side of the bridge, the new walkway would align with the Mountains to Sea Trail (MST) approach from the south side of the bridge. On the north approach of the new bridge, the MST would be realigned along the abandoned section of Parkway, and the crossing of the MST would be relocated (from Parkway right to left) further from the bridge to a straighter alignment of the Parkway, which would make this trail crossing safer for hikers. Varying options have been proposed by EFLHD Bridge Engineers for the walkway crossing of the new I-26 Bridge. The impacts of having a 5-foot wide raised concrete walkway installed on both sides of the bridge are discussed in the following analysis.

Cost and Safety Impacts to a Symmetrical Walkway Design

- A walking surface, on at least one side of the bridge at grade level to the road surface, and separated only by a white stripe from the travel surface, has been proposed. Blue Ridge Parkway and Federal Highway Safety and Bridge Engineers assessed this design to be particularly unsafe in that it would result in errant vehicle conflict between bicyclists, pedestrians and motorists. The new I-26 Bridge will have a curved alignment with limited sight distances, which makes this design particularly unsafe. The Linn Cove Viaduct is a curved bridge with widened lanes and no raised walking surfaces on either side. The Blue Ridge Parkway does not allow pedestrians to walk on the bridge because of the particular unsafe conditions. The I-26 Bridge differs from Linn Cove Viaduct due to the fact that the MST is aligned across this bridge, which invites hikers/pedestrians to routinely cross the bridge.

- EFLHD Safety Engineers and park staff suggest that having a walkway on both sides of the bridge could encourage a very unsafe pedestrian crossing of the bridge that is within a curved alignment. All the bridges in the Asheville corridor along the Parkway have a raised concrete surface on both sides of the bridge; however, these bridges have a straight alignment. The raised concrete surfaces adjoining the bridge rail are approximately 2.5 to 3 feet wide and are not intended to be pedestrian walk surfaces.
- Federal Highway Bridge and Safety Engineers have stated that because of the curved alignment of the I-26 Bridge and considering its limited sight distances, a minimum 5-foot raised walking surface would be needed to meet pedestrian safety requirements at the Parkway design speed limit of 45 MPH. A narrower walking surface would require reduced speed limits to less than 45 MPH or a revised bridge alignment. In addition, EFLHD Bridge Engineers recommend a minimum 5-foot width for at least one walkway to meet ADAAG handicap access codes. Although meeting this requirement may not be necessary currently, it may be necessary in the future.
- A 5- foot wide raised concrete walkway on both sides of the bridge would widen the bridge deck surface by 15 percent with a construction cost increase of 2.1 million dollars.
- The Value Analysis study for the new I-26 Bridge considered varying walkway design and trail realignment options and determined the minimal impact to the MST would be to preserve its present alignment on the south side of the bridge. It was determined there would be minimal impact to the MST to realign it along the abandoned alignment of the Parkway, to insure a safer trail crossing from Parkway right to left, as it presently does on the north side of the bridge. This trail realignment would move the trail crossing to a more ideal location than the existing trail crossing by improving sight distance away from the bridge.

In conclusion, the new I-26 Bridge is designed to be offset from the existing bridge so that the existing bridge can remain in place as the new bridge is being constructed. The new bridge will itself have a curve alignment to realign the Parkway motor road away from the existing bridge and to resolve a tight radius curve along the Parkway south of the bridge. Considering the curved alignment of the new bridge, Federal Highway Bridge and Safety Engineers have stated that a 5-foot wide raised walkway, aligned along the low side of the bridge super-elevation, provides the maximum pedestrian safety, meanwhile addressing the need to provide access for the MST and balancing the visual experience of driving along the Parkway. It is the low or west side of the new bridge that the existing Mountains-to-Sea Trail will be follow, also making that side the ideal location for the walkway.

We would like to discuss your comments about symmetry in the context of these safety and access concerns. We hope that NCDOT will address any cost concerns and together we can continue consultation on this project to minimize adverse effects.

Sincerely,



Mark Woods
Superintendent



United States Department of the Interior



NATIONAL PARK SERVICE
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, North Carolina 28803

IN REPLY REFER

L7617
PIN 16296

JUN 28 2016

Ms. Jennifer Harris
Mr. Bill Barrett
North Carolina, Department of Transportation
1548 Mail Service Center
Raleigh, NC 27699-1548

Dear Mr. Barrett and Ms. Harris:

The Section 4(f) documentation for the new Blue Ridge Parkway Bridge over I-26 describes impacts to the Mountains to Sea Trail (MST) as follows. Within the project area, the MST intersects the Blue Ridge Parkway at three locations (Posts with directional arrows and the MST logo mark these locations) (see Figure 2).

- 1) The realigned Blue Ridge Parkway would shift approximately 70 feet south in the location of the trail crossing at Milepost 392.1. This shift would require minor improvements to the trail at the relocated crossing, including installation of wayfinding markers; however, the trail would remain on the existing alignment.
- 2) At Milepost 391.9, the Blue Ridge Parkway realignment would be located approximately at the same location as the motor road currently; however, minor improvements to adjust the grade may be required at the trail head to tie into the improved motor road. The MST would be relocated to the proposed new Blue Ridge Parkway Bridge to cross I-26.
- 3) The realigned Blue Ridge Parkway would shift approximately 110 feet south in the location of the trail intersection at Milepost 391.7 on the east side of the bridge through a steep cut section. This shift would require minor improvements to the trail at the relocated crossing, including the resetting of wayfinding markers; however, the trail would remain on the existing alignment. Though some minor work is anticipated at the relocated motor road intersections, including but not limited to grading and the resetting of wayfinding signs, the trail would remain on the existing alignment – except as it crosses I-26 on the replacement Blue Ridge Parkway Bridge. This work would be minor in nature and would not alter any

features that contribute to the MST's recreational use and/or aesthetic qualities. The initial clearing activity associated with project construction would be of short duration and during a time of low probable usage (i.e., winter). Therefore, the minimal direct use of the MST constitutes a *de minimis* use under Section 4(f).

The Blue Ridge Parkway has sent a letter to the North Carolina State Historic Preservation Office stating that Blue Ridge Parkway supports the design of a single walk crossing on the low or west side of the bridge. With this decision, the Blue Ridge Parkway agrees that the minimal direct use of the MST does constitute a *de minimis* use under Section 4(f).

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. Woods". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark H. Woods
Superintendent

cc:

NPS:

SERO-Anita Barnett, Beth Byrd

BLRI-Mike Molling, Suzette Molling, Larry Hultquist, Andy Otten, Craig Yow

NCDOT:

Mitch Batuzich, Undrea Major, John Williams, Kristina Solberg

FHWA;

Jack VanDop, Lisa Landers, Allan Teikari, Yanina Kirtley, Hratch Pakhchanian



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, North Carolina 28803

H30
PIN 16296

September 1, 2016

Renee Gledhill-Earley
State Historic Preservation Office
4617 Mail Service Center
Raleigh, NC 27699-4617

Dear Ms. Gledhill-Earley:

In compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (54 U.S.C. 306108), the National Park Service (NPS) is writing to consult with your office on the proposed demolition and replacement of the bridge along the Blue Ridge Parkway (Parkway) over Interstate 26 in Buncombe County (ER 01-8333). As the project moves forward we wanted to solicit a formal response regarding a few key elements of the design to ensure we are on the same page.

The most recent visualizations for the bridge are available at the following link: <https://we.tl/mNYocEMf1c>. You can download the files from this link until September 8. If you are unable to download the files before this date please let me know. I apologize the files were too large to send via email.

You will note the plan calls for a sidewalk on one side with no ramp. The plan also calls for stone guardwalls on both sides of the approaches to the bridge. Due to software limitations the visuals show the top course of stones on the guardwalls of equal thickness. The NPS has sent NCDOT specifications for class B masonry that will harmonize with other stonework on the Parkway, and they have agreed to complete the work in such a manner.

Please let us know if you have any issues with the proposed design at this time.

Best regards,

John McDade
Cultural Resource Manager

CC:

Mary Pope Furr, NCDOT
Larry Hulquist, DSC- Blue Ridge Parkway
Suzette Molling, Blue Ridge Parkway
Jack VanDop, FHWA
Jennifer Harris, HNTB North Carolina
Lisa Landers, FHWA
Mike Molling, Blue Ridge Parkway

Kat Bukowy

To: McDade, John; John Otten; jdmartin4@ncdot.gov; Dawn Leonard; Adam Archual
Subject: RE: [EXTERNAL] Proposed I-26 Widening Project Buncombe County, North Carolina (ACHPConnect Log Number: 12267)

----- Forwarded message -----

From: e106 <e106@achp.gov>

Date: Thu, Nov 15, 2018 at 11:40 AM

Subject: [EXTERNAL] Proposed I-26 Widening Project Buncombe County, North Carolina (ACHPConnect Log Number: 12267)

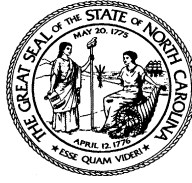
To: john_mcdade@nps.gov <john_mcdade@nps.gov>

Cc: Christopher Wilson <cwilson@achp.gov>, Mandy Ranslow <mranslow@achp.gov>, Sarah Stokely <sstokely@achp.gov>

On October 9, 2018, the Advisory Council on Historic Preservation (ACHP) received a copy of the executed Section 106 agreement document (Agreement) for the referenced undertaking. In accordance with 36 CFR 800.6(b)(1)(iv) of the ACHP's regulations, the ACHP acknowledges receipt of the Agreement.

The filing of the Agreement and implementation of its terms fulfills the requirements of Section 106 of the National Historic Preservation Act and the ACHP's regulations.

We appreciate receiving a copy of this Agreement for our records. Please ensure that all consulting parties are provided a copy of the executed Agreement in accordance with 36 CFR 800.6(c)(9). If you have any questions or require additional assistance, please contact Mandy Ranslow at (202) 517- 0218 or by e-mail at mranslow@achp.gov and reference the ACHPConnect Log Number above.



North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office

Ramona M. Bartos, Administrator

Governor Roy Cooper
Secretary Susi H. Hamilton

Office of Archives and History
Deputy Secretary Kevin Cherry

December 13, 2018

John McDade
Blue Ridge Parkway
199 Hemphill Knob Road
Asheville, NC 28803

john_mcdade@nps.gov

Re: 95% Plans for I-26 from NC 225 to NC 280, I-4400 & I-4700,
Buncombe and Henderson Counties, ER 01-8333

Dear Mr. McDade:

Thank you for your December 3, 2018, email providing a link to the 95% plans for the above-referenced undertaking per the mitigation measures included in the Memorandum of Agreement for the project. We have reviewed the plans and find that they are in accord with the design details covered by the agreement. We look forward to receiving notification of start of construction for this much anticipated new bridge.

The above comments are made pursuant to Section 106 and 110 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or environmental.review@ncdcr.gov. In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,

Renee Gledhill-Earley

for Ramona M. Bartos

cc: Mary Pope Furr, NCDOT, mfurr@ncdot.gov