

**PROGRAMMATIC AGREEMENT
BETWEEN THE
NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY,
OFFICE OF RECOVERY AND RESILIENCY, AND
THE STATE HISTORIC PRESERVATION OFFICER
FOR
THE USE OF U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY AND
COMMUNITY DEVELOPMENT BLOCK GRANT – MITIGATION FUNDS**

WHEREAS, The U.S. Department of Housing and Urban Development (“HUD”) has allocated Community Development Block Grant – Disaster Recovery funds (“CDBG-DR”) to the State of North Carolina (the “State”) under the Continuing Appropriations Acts of 2017 (Public Law 114-254) to assist recovery from Hurricane Matthew (FEMA DR-4285-NC), and

WHEREAS, HUD has allocated Community Development Block Grant – Mitigation funds (“CDBG-MIT”) to the State under the Further Additional Supplement Appropriations for Disaster Relief Requirements Act of 2018 (Public Law 115-123) to assist recovery, and

WHEREAS, HUD has allocated CDBG-DR funds to the State under the Supplemental Appropriations for Disaster Relief Act of 2018 (Public Law 115-254) to assist recovery from Hurricane Florence (FEMA DR-4393-NC), and

WHEREAS, HUD has unique statutory authority to delegate its environmental compliance responsibilities promulgated under 24 C.F.R. § 58 to state, local, and tribal governments including obligations under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108), as amended, and codified in its implementing regulations, "Protection of Historic Properties" 36 C.F.R. § 800, as amended (August 5, 2004); and

WHEREAS, the North Carolina Office of Recovery and Resiliency (“NCORR”) has assumed the role of Responsible Entity (“RE”) for the State and will make assistance, including CDBG-DR funds for Homeowner Recovery, Small Rental, Supportive Housing and Services, Public Housing Restoration, Small Business Recovery, Economic Development, Infrastructure, Resiliency, Public Facilities, Community Recovery, Strategic Buyout, and Resilient Affordable Housing Development (the “Programs”), available to the Counties, its citizens, federally recognized tribes and other entities in accordance with the State’s Approved Action Plan and Updates for Hurricane Matthew and for Hurricane Florence; and

WHEREAS, NCORR has determined that implementation of the Programs will result in Undertakings [as defined in 36 C.F.R. § 800.16(y)] that may affect historic properties listed in or eligible for listing in the National Register of Historic Places (“NRHP”) and has consulted with the North Carolina State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) in accordance with 36 C.F.R. § 800.14(b) of the regulations implementing Section 106 of the NHPA; and

WHEREAS, NCORR has invited the following federally recognized Indian tribes with Tribal lands in North Carolina and/or that may attach religious and cultural significance to properties in North Carolina to consult on this Agreement and has requested their comments; these being the Catawba Indian Nation, Eastern Band of Cherokee Indians, Monacan Indian Nation, Muscogee (Creek) Nation, Nansmond Indian Tribe, Cherokee Nation, United Keetoowah Band of the Cherokee Indians, and Tuscarora Nation; and

WHEREAS, the following federally recognized Indian tribes have participated in consultation on this Agreement, and NCORR has taken any comments received into account; these being the Catawba Indian Nation and the Muscogee (Creek) Nation; and

WHEREAS, NCORR acknowledge that Indian tribes possess special expertise in assessing the NRHP eligibility of properties with tribal religious and cultural significance pursuant to 36 C.F.R. § 800.4(c)(1); and

WHEREAS, NCORR will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by undertakings reviewed under the terms of this Agreement; and

WHEREAS, for any undertaking involving tribal lands as defined in 36 C.F.R. § 800.16(x), or any undertaking that may affect a property identified by a federally recognized Indian tribe as possessing traditional religious and cultural significance, NCORR shall conduct government-to-government consultation with such tribes for the undertaking; and

WHEREAS, given the magnitude of North Carolina's recovery efforts and the immediate need for governmental assistance, NCORR and SHPO have decided to utilize this Programmatic Agreement ("PA" or "Agreement") to cover assistance provided by NCORR under the grants for Hurricanes Matthew and Florence; and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b), NCORR has notified the ACHP and invited the ACHP to participate in the development of this Agreement and the ACHP has decided not to participate and sign this Agreement; and

WHEREAS, in a letter dated October 21, 2020, the ACHP stated that Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of their regulations does not apply to this undertaking. They further stated that the consultation will likely raise questions that would benefit from ACHP's technical assistance and requested to be included in all future communications and correspondence for this Agreement; and

NOW THEREFORE, NCORR and SHPO, collectively referred to as signatories, agree that Undertakings funded by the CDBG-DR and CDBG-MIT programs shall be implemented in accordance with the following stipulations to consider the effects of the Undertakings on historic properties.

STIPULATIONS

To the extent of its legal authority, and in coordination with other Signatories, NCORR shall ensure that the following measures are implemented:

I. Roles and Responsibilities of the Signatories

A. North Carolina Office of Recovery and Resiliency (NCORR)

1. NCORR shall use State, Tribal, Subrecipient, or contractor staff whose qualifications meet the Secretary of the Interior's *Professional Qualifications Standards* (*Secretary's Professional Qualifications*) set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended (*Qualified Staff*), in applying Tier II Programmatic Allowances listed in Appendix B, completing identification and evaluation of historic properties, and making determinations of effects. NCORR shall review any NRHP eligibility determination and make its own findings of effect resulting from the performance of these activities prior to submitting such determinations to the SHPO and consulting Tribe(s) and or other consulting parties.

NCORR acknowledges that Tribes possess special expertise in assessing the NRHP eligibility of properties with religious and cultural significance to them. Tribal leaders, and as appropriate, their representatives, shall decide who meets qualifications/standards as defined by their Tribes for review of Undertakings affecting properties with religious and cultural significance to them.

NCORR alone shall conduct all Section 106 consultation with Tribe(s). In accordance with 36 C.F.R. § 800.2(c)(4), NCORR may authorize the Recipient(s), or a Subrecipient through the Recipient(s), to initiate the Section 106 process with the SHPO and other consulting parties, assist in identifying other consulting parties with a demonstrated interest in the Undertaking, and prepare any necessary analyses and documentation, but NCORR shall remain responsible for determinations of NRHP eligibility and findings of effect recommended by the authorized party. NCORR shall follow the process set forth in Stipulation I.A.1, NCORR Roles and Responsibilities, and notify the SHPO in writing when a Recipient has been authorized to initiate consultation on NCORR's behalf.

2. When authorizing the release of funds for individual Undertakings requiring grant conditions pursuant to this Agreement, NCORR shall inform the Recipient(s) of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to any Subrecipient. NCORR shall work in partnership with the Recipient(s) to provide Subrecipients with guidance on in-kind repair pursuant to *The Secretary of the Interior's Standards for the Treatment of Historic Properties 2017* (*Secretary's Treatment Standards*), 36 C.F.R. § 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties.

3. NCORR shall provide the other Signatories with an annual report for the previous calendar year by June 30th of each year that this Agreement is in effect. This annual report will summarize the actions taken to implement the terms of this Agreement, statistics on Undertakings reviewed, and recommend any actions or revisions to be considered, including updates to the appendices.
4. NCORR shall confer annually and as necessary with the other Signatories within sixty (60) days after issuance of the annual report, to review the report or discuss issues and concerns in greater detail. NCORR will provide a 30-day comment and discussion period within this 60-day timeframe.
5. NCORR shall ensure that all documentation resulting from Undertakings reviewed pursuant to this Agreement is consistent with applicable SHPO and Tribal guidelines and the confidentiality provisions of 54 U.S.C. § 307103 and 36 C.F.R. § 800.11(c) and N.C.G.S. § 70-18.
6. NCORR shall ensure that their Recipients understand and acknowledge conditions and potential requirements that may be placed upon Undertakings as a result of Section 106 consultation and the provisions of this Agreement.
7. NCORR shall ensure that their Recipients understand that failure to comply with any project-specific conditions that have been placed on their grants could jeopardize NCORR funding and potentially result in the recovery of grant funds.
8. NCORR, when notified of any proposed change to the approved scope of work, shall direct their Recipient not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
9. NCORR shall ensure that its Recipients are made aware that in the event of an unexpected discovery involving an Undertaking that has affected previously unidentified historic property or human remains, or affected a known historic property in an unanticipated manner, the Recipient will comply with Stipulation VI. Unanticipated Discoveries and Treatment of Human Remains.
10. NCORR shall ensure that in its agreements, any scope of work involving ground disturbance, and resultant contracts to execute said work, provide for the protection of and notification protocols for unexpected discoveries or unexpected effects to historic properties and human remains.

B. State Historic Preservation Officer (SHPO)

1. SHPO shall review NCORR's determination of the Areas of Potential Effects (APE), NRHP eligibility determinations, and NCORR's effect findings and respond within thirty (30) days of receipt.

2. Upon request, the SHPO shall provide NCORR with available information about historic properties (such as access to online systems or site files, GIS data, survey information, geographic areas of concern, FEMA DOEs and Section 106 reviews). Such data sharing may be memorialized in a separate agreement. Only *Qualified Staff* or designee(s) shall be afforded access to protected historic property information.
3. The NCORR if needed may identify staff or consultants to assist SHPO staff with their CDBG-DR Section 106 responsibilities, and identify, in coordination with SHPO, those activities within the Section 106 review process that NCORR may perform for specific Undertakings as agreed in writing with SHPO.
4. As requested, SHPO staff shall be reasonably available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation with SHPO has occurred verbally, NCORR shall provide a written summary via e-mail or regular mail to SHPO, including any decisions that were reached. Only written communication by SHPO or other consulting parties will be considered as an official response to consultations and are subject to the 30-day response timeframe set forth in 36 C.F.R. § 800.3(c)(4).
5. The SHPO may assist NCORR or local jurisdictions in the State of North Carolina with advance planning efforts to consider historic properties in the context of homeland security considerations, including disaster preparedness, response, recovery, and mitigation programs for which NCORR funding may be requested.
6. The SHPO shall coordinate with NCORR, to identify consulting parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.
7. The SHPO shall participate in the 30-day comment and discussion period subsequent to the issuance of the annual report; this period will be convened by NCORR to review the effectiveness of this Agreement in accordance with Stipulation I.A.4.

C. Tribal Historic Preservation Officer (THPO)

1. For a federally-recognized tribe that has assumed the responsibilities of the SHPO for Section 106 on tribal lands under section 101(d)(2), the THPO appointed or designated in accordance with the act is the official representative for the purposes of Section 106. NCORR shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.
2. Stipulations for roles and responsibilities in regards to consultation with the THPO will follow those listed in Stipulations Section I.B.

II. Initial Review

A. Programmatic Allowances

1. NCORR staff shall determine if an Undertaking conforms to one or more allowances in Appendix A of this Agreement. NCORR staff may apply First Tier allowances whether or not they meet professional historic preservation qualification standards, while only staff meeting the applicable Secretary of the Interior (SOI) Professional Qualifications Standards (*Qualified Staff*) may apply Second Tier allowances. It is noted that aforementioned environmental staff applying the Tier I allowances will be working in concert with and under the supervision of *Qualified Staff*. NCORR shall complete the Section 106 review process by documenting in the project file the determination that a project meets either Tier I or Tier II allowances without SHPO review, notification, and/or concurrence.
2. If NCORR *Qualified Staff* determines any portion of an Undertaking's scope of work does not conform to one or more allowances listed in Appendix A, NCORR *Qualified Staff* shall conduct standard Section 106 review, for the entire Undertaking in accordance with Stipulation II.B, Standard Project Review and following the appropriate submission process.
3. NCORR can revise allowances and new allowances may be added for any of the CDBG DR programs listed in this Agreement in accordance with Stipulation VIII, Amendments.

B. Standard Project Review

For Undertakings not exempt from further Section 106 review due to the use of a Programmatic Allowance, NCORR shall ensure that the following standard Section 106 project review steps are implemented. In the interest of streamlining, NCORR may combine some or all of these steps during consultation in accordance with 36 C.F.R. § 800.3(g).

1. Consulting Parties: NCORR shall consider all written requests of individuals and organizations to participate as consulting parties, and consult with the SHPO and consulting Tribe(s) to identify any other parties that meet the criteria to be consulting parties and invite them to participate in the Section 106 process. NCORR may invite others to participate as consulting parties as the Section 106 consultation proceeds; these parties may include State-recognized Tribes designated by the North Carolina Commission of Indian Affairs when relevant to the specific undertaking. NCORR shall invite any individual or organization that will assume a specific role or responsibility outlined in a Memorandum of Agreement (MOA) or Programmatic Agreement to participate as an invited Signatory to the agreement.
 - a. NCORR will submit a consultation letter to all relevant consulting parties in accordance with this Agreement.

b. Consulting parties will have thirty (30) calendar days to respond.

2. Area of Potential Effects:

a. For standing structures not adjacent to or located within the boundaries of a NRHP listed or eligible district, the Area of Potential Effects (“APE”) includes the individual structure and its components when the proposed Undertaking is limited to its repair, rehabilitation, restoration, replacement, or reconstruction as defined in 36 C.F.R. § 68.2.

b. For all other Undertakings, *Qualified Staff* shall determine the APE, make a determination, and initiate consultation with the SHPO and consulting Tribe(s). NCORR may consider information provided by other parties, such as local governments and the public, when establishing the APE.

3. Identification and Evaluation: *Qualified Staff* shall determine if the APE contains historic properties, including properties of religious and cultural significance to Tribe(s), and subsequently make a determination in regard to the undertaking’s effects on any identified historic properties. This assessment of the APE may include the review of documentation provided by the Recipient(s) or Subrecipient in coordination with the SHPO and consulting Tribe(s). Identification and Evaluation of archaeological resources shall be carried out in accord with “Identification and Evaluation Process for Archaeological Resources” Appendix C.

a. Level of Effort: NCORR shall make a reasonable and good faith effort to identify historic properties in accordance with 36 C.F.R. § 800.4(b)(1). NCORR may consult with the SHPO to determine the level of effort and methodology necessary to identify and evaluate a variety of historic property types.

For properties of religious and cultural significance to federally recognized Tribe(s), NCORR shall consult with the appropriate Tribe(s) to determine geographical areas containing the properties that may be affected by an Undertaking and determine the necessary level of effort to identify and evaluate or avoid effects to such historic properties. NCORR will initiate consultation with affected federally-recognized Tribes, and if deemed appropriate notify and work with State-recognized tribes, per Stipulation Section II.B.1 of this Agreement.

b. National Historic Landmarks: When NCORR identifies an Undertaking with the potential to affect an NHL, NCORR shall contact the NHL Program Manager of the NPS Southeast Regional Office in addition to the SHPO, consulting Tribe(s), and other consulting parties as previously outlined in section I.A.2 of this Agreement. The purpose of this notification is to ensure early coordination for the Undertaking.

c. Determinations of Eligibility: NCORR shall review or determine NRHP eligibility based on identification and evaluation efforts, and consult with the SHPO and

consulting Tribe(s) regarding these determinations as defined in 36 C.F.R. § 800.4(c). Should the SHPO or consulting Tribe(s) disagree with the determination of eligibility, NCORR shall either:

- i. Elect to consult further with the objecting party until the objection is resolved; or
 - ii. Treat the property as eligible for the NRHP; or
 - iii. Obtain a determination of eligibility from the Keeper of the NRHP in accordance with 36 C.F.R. § 63.2(d)-(e) and 36 C.F.R. § 800.4(c)(2).
 - iv. Forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of section 36 C.F.R. § 800.4.
4. Findings of No Historic Properties Affected: NCORR shall make a finding of “no historic properties affected” under the following circumstances:
- a. If no historic properties are present in the APE; or
 - b. The Undertaking is designed to avoid effects to historic properties, including NRHP-listed or eligible properties of religious and cultural significance to consulting Tribe(s).
 - c. NCORR shall notify the SHPO, consulting Tribe(s), and any other consulting parties of this finding and provide supporting documentation in accordance with 36 C.F.R. § 800.11(d). Unless the SHPO or consulting Tribe(s), objects to the finding within the applicable timeframe outlined in Stipulation I.B.1., the Section 106 review of the Undertaking will have concluded.
 - d. If the SHPO, consulting Tribe(s), objects to a finding of “no historic properties affected,” NCORR shall consult with the objecting party to resolve the disagreement.
 - i. If the objection is resolved, NCORR may either proceed with the Undertaking in accordance with the resolution or reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation II.B.5, Application of the Criteria of Adverse Effect, below.
 - ii. If NCORR is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review NCORR’s finding in accordance with 36 C.F.R. § 800.4(d)(1)(iv)(A) through 36 C.F.R. § 800.4(d)(1)(iv)(C). NCORR shall consider the ACHP’s recommendation in making its final determination. If NCORR’s final determination is to reaffirm its “no historic properties affected” finding, the

Section 106 review of the Undertaking will have concluded. Otherwise, NCORR will proceed to Stipulation II.B.5, below.

5. Application of the Criteria of Adverse Effect: If NCORR finds an Undertaking may affect historic properties in the APE, including those of religious and cultural significance to Tribe(s), NCORR shall apply the criteria of adverse effect to historic properties within the APE(s), taking into account the views of the consulting parties and the public concerning effects in accordance with 36 C.F.R. § 800.5(a).
 - a. If NCORR determines that an Undertaking does not meet the adverse effect criteria, NCORR shall propose a finding of “no adverse effect” in accordance with 36 C.F.R. § 800.5(b).
 - i. NCORR shall notify the SHPO, consulting Tribe(s), and all other consulting parties of its finding and provide supporting documentation pursuant to 36 C.F.R. § 800.11(e).
 - ii. Unless a consulting party objects within the thirty (30) day timeframe outlined in Stipulation I.B.1, NCORR will proceed with its “no adverse effect” determination and conclude the Section 106 review.
 - iii. If a consulting party objects to a finding of “no adverse effect,” NCORR will consult with the objecting party to resolve the disagreement.
 - 1) If the objection is resolved, NCORR shall proceed with the Undertaking in accordance with the resolution, or,
 - 2) If the objection cannot be resolved, NCORR shall request that the ACHP review the findings in accordance with 36 C.F.R. § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. NCORR shall consider the ACHP’s comments in making its final determination.
 - b. If NCORR finds the Undertaking may adversely affect historic properties, NCORR shall request through the Recipient(s) that the Subrecipient revise the scope of work to substantially conform to the Secretary of the Interior’s *Standards and Guidelines for Rehabilitation* for standing structures, or avoid or minimize adverse effects for NRHP-listed or eligible archaeological properties.
 - i. If the Subrecipient modifies the scope of work to avoid the adverse effect(s), NCORR shall notify the SHPO, consulting Tribe(s), and all other consulting parties, and provide supporting documentation. Unless a consulting party makes a timely objection in accordance with the applicable timeframe outlined in Stipulation VI.A. Dispute Resolution, NCORR shall proceed with its “no adverse effect” determination, including any conditions, and conclude the Section 106 review.

- ii. If an Undertaking is not modified to avoid the adverse effect(s), NCORR shall initiate consultation to resolve the adverse effect(s) in accordance with Stipulation I.B.6., Resolution of Adverse Effects.
6. Resolution of Adverse Effects: If NCORR determines that an Undertaking may adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with the SHPO; Recipient(s); Subrecipient; consulting Tribe(s); the ACHP, if participating; and other consulting parties, by one of the following methods depending upon the severity of the adverse effect(s) as well as determination of the historic property's significance on a local, state, or national level.
- a. Memorandum of Agreement: NCORR shall provide the ACHP with an adverse effect notice in accordance with 36 C.F.R. § 800.6(a)(1) if it has not already provided such. In consultation with the SHPO, consulting Tribe(s), and other consulting parties, including the ACHP, if participating, NCORR shall develop an MOA, in accordance with 36 C.F.R. § 800.6(c) to agree upon treatment measures to avoid, minimize, or mitigate adverse effects on historic properties. The MOA may also include treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of the Treatment Measures listed in Appendix B.
 - b. Programmatic Agreement: Should the execution of an MOA be inappropriate given the similar nature of effects on historic properties, the inability to determine effects prior to approval of an Undertaking, or where other circumstances warrant, NCORR, shall consult with the SHPO, consulting Tribe(s), the ACHP, if participating, and any other consulting parties, to develop a Programmatic Agreement in accordance with 36 C.F.R. § 800.14(b). NCORR shall consult with the above-referenced parties to identify programmatic conditions or treatment measures to govern the resolution of potential or anticipated adverse effects from certain complex project situations for an Undertaking or for multiple but similar Undertakings proposed by a single Subrecipient.
 - c. NCORR, in consultation with SHPO; the ACHP, if participating; consulting Tribe(s); and other consulting parties may identify a specific Treatment Measure, or combination of Treatment Measures outlined in Appendix B, with the intent of expediting resolution of adverse effects.
 - d. When NCORR determines an Undertaking will adversely affect an NHL, NCORR shall notify and invite the Secretary of the Interior and ACHP to participate in consultation in accordance with 36 C.F.R. § 800.10.
 - e. If an adverse effect cannot be avoided, NCORR's *Qualified Staff* will consult with SHPO, the project applicant and any consulting parties for the undertaking to resolve the adverse effect, pursuant to 36 C.F.R. § 800.6.

- i. The agency official shall notify the ACHP of the adverse effect finding by providing the documentation specified in § 800.11(e).
 - ii. If implementation of one or more of the Standard Treatment Measures found in Appendix B will resolve the adverse effect, an MOA will be developed among the parties for implementation of those measures.
 - iii. If none of the Standard Treatment Measures found in Appendix B will resolve the adverse effect, the parties shall consult to develop Alternative Mitigation Measures and develop an MOA that incorporates those measures for resolving the adverse effect
7. NCORR's Qualified Staff; SHPO; the ACHP, if participating; and the consulting parties, including Indian tribes under 36 C.F.R. § 800.2(c)(3), will seek ways to avoid, minimize, or mitigate the adverse effects through establishment of an MOA pursuant to 36 C.F.R. § 800.6(b)(2). NCORR shall assist, to the extent agreed upon in the MOA, with implementation of the mitigation measures, including monitoring and documentation of the completion of the agreed upon measures.
8. Objections: Should any Signatory or consulting party object within the timeframes established by this Agreement to any plans, specifications, or actions taken pursuant to resolving an adverse effect, NCORR shall consult further with the objecting party to seek resolution. If NCORR determines the objection cannot be resolved, NCORR shall address the objection in accordance with Stipulation VI. Dispute Resolution.

III. Consultation with Tribes

- A.** NCORR shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with federally recognized Tribes. Notwithstanding any other provision of this stipulation, NCORR shall honor the request of any Tribe to coordinate and advise regarding an undertaking covered by this Agreement.
- B.** In accordance with 36 C.F.R. § 800.3(f)(2), any federally recognized Tribes that might attach religious and cultural significance to historic properties in the APE shall be identified and invited by NCORR to be consulting parties.
- C.** NCORR shall ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
- D.** NCORR shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
- E.** NCORR will make every effort to consult with federally recognized Tribes that have expressed an interest in the APE of an NCORR Undertaking when appropriate. Additionally, NCORR will notify State-recognized Tribes that have expressed an interest in the APE of an NCORR Undertaking when appropriate.

IV. Consultation with Certified Local Governments and Public Involvement

- A.** In the event a county or local government within the designated Counties is a Certified Local Government (CLG) with a local preservation commission, NCORR shall confer with the CLG's commission. In working to resolve adverse effects under Stipulation Section II.B.6 of this Agreement, NCORR's *Qualified Staff* may consult with a CLG and SHPO to explore how a project might be revised to avoid any impacts per 36 C.F.R. § 800.
- B.** NCORR's Qualified Staff will consult with SHPO and the County or local government within the process outlined at 36 C.F.R. § 800.6 to resolve any adverse effects to historic properties within the CLG's jurisdiction.
- C.** In the event an adverse effect to an historic property cannot be avoided, NCORR shall make information available to the public, including the documentation specified in 36 C.F.R. § 800.11(e), subject to the confidentiality provisions of 36 C.F.R. § 800.11(c). NCORR shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. NCORR will use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. However, if a Tribe requests information not to be released to the public, NCORR will abide by this request under 36 C. F. R. § 800.6(a)(5).

V. Timeframe and Communication

- A.** All time designations shall be in calendar days unless otherwise stipulated. If any Signatory does not object to NCORR's finding or determination related to an Undertaking within the agreed upon timeframe, NCORR may complete the Section 106 review and document in the project file.

VI. Dispute Resolution

Should any signatory or consulting party to this Agreement or member of the public object at any time to any actions proposed for resolving adverse effects, or the manner in which the terms of this Agreement are implemented, NCORR shall consult with such party to resolve the objection. If NCORR determines that such objection cannot be resolved, NCORR will:

- A.** Forward all documentation relevant to the dispute, including the NCORR's proposed resolution, to ACHP. The ACHP shall provide NCORR with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NCORR shall prepare a written response that takes into account any timely advice or comments regarding the dispute from ACHP, signatories, and consulting parties, and provide them with a copy of this written response. NCORR will then proceed according to its final decision.

- B.** If ACHP does not provide its advice regarding the dispute within the thirty (30) day period, NCORR may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NCORR shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties to the Agreement and provide them and ACHP with a copy of such written response.
- C.** NCORR's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.
- D.** Any member of the public, any agency or organization may request the ACHP review of Section 106 compliance for an individual undertaking in accordance with 36 C.F.R. § 800.9(a).

VII. Unanticipated Discoveries and Treatment of Human Remains

If, during implementation of any Undertakings carried out by NCORR, its Recipients or Subrecipients and covered by this PA, a previously unidentified historic property is encountered, or a previously identified historic property is affected in an unanticipated manner, NCORR will consult with the other parties to this PA. NCORR will ensure that all work shall cease in the discovery area until the previously unidentified historic property or unanticipated effect can be evaluated, and an appropriate treatment plan developed. If human remains are discovered, consultation shall proceed as outlined in Stipulation VII.A below.

A. Treatment of Human Remains and Funerary Objects

1. NCORR shall immediately notify local law enforcement, the county medical examiner, and the North Carolina State Archaeologist (State Archaeologist) should any human remains and/or associated funerary objects be encountered by any activity covered by this PA. In the event of such discovery, the medical examiner will determine whether the remains are subject to the provisions of North Carolina General Statute 130A-383 and will contact the State Archaeologist if they are not. Work in the area will not resume without authorization of either the county medical examiner or the State Archaeologist.
2. NCORR, in consultation with the SHPO and State Archaeologist, shall ensure that the treatment of any discovered human remains and associated funerary objects complies with all applicable state and federal laws, particularly North Carolina General Statute 70, Article 3 ("The Unmarked Human Burial and Human Skeletal Remains Protection Act"). Should human remains be encountered during historic property investigations or construction activities, all ground disturbing activities within 25 feet of the discovery shall cease immediately. The remains will be treated with respect to the deceased, and be protected from the time of discovery from further construction activities, pending consultation to resolve treatment of such remains.
3. NCORR, in consultation with the other parties to this PA, shall ensure that those remains and artifacts are treated in a manner consistent with the Advisory Council

on Historic Preservation's "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (2007). When feasible, human remains shall be preserved in place without further investigation. In determining what is "feasible," weight shall be given to preservation in place.

4. The State Archaeologist shall consult with the Executive Director of the North Carolina Commission of Indian Affairs regarding the treatment and disposition of the remains, as required by the Unmarked Human Burial and Human Skeletal Remains Protection Act.
5. The discovery and treatment of human remains and graves, other than those reasonably identified as Native American, shall require application of North Carolina General Statute 70-33.

VIII. Amendments

1. Any of the signatories of this Agreement may request that it be amended, whereupon the parties will consult to consider such an amendment. An amendment to the Agreement will go into effect upon the written concurrence of the NCORR and SHPO.
2. Any forms developed to implement this Agreement may be revised with the written concurrence of the Parties to this Agreement, which may result in an amendment if agreed to by all Parties.
3. If a party invited to concur in this Agreement has not accepted by the time the Agreement is filed with the ACHP, that party may become a concurring party for the duration of this Agreement upon the written concurrence of the signatories. Such action can be accomplished through signature of the Agreement and will not require an amendment to this Agreement.

IX. Termination

Any signatory to this Agreement may terminate it by providing 30 calendar days notice in writing to the other signatories, provided that the signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

If any signatory to this Agreement determines that a term will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

In the event of termination, NCORR will comply with 36 C.F.R. § 800.3 through 36 C.F.R. § 800.6 regarding individual undertakings.

X. Duration

This Agreement shall continue in full force and effect until November 1, 2025. During the six (6) month period prior that event, the signatories will consult to consider an extension or amendment of the Agreement. No extension or amendment will be effective unless the signatories to this Agreement concur in writing.

Execution and implementation of this Agreement evidences that, NCORR, in cooperation with SHPO, has satisfied its responsibilities under Section I06 of NHPA for all Undertakings under this Agreement.

AGREED:

North Carolina Department of Public Safety, Office of Recovery and Resiliency

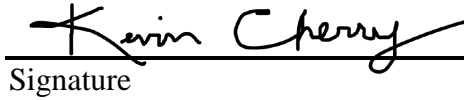

Signature

Ryan Flynn
Printed Name

Chief of Staff
Title

11/24/20
Date

North Carolina State Historic Preservation Officer


Signature

Kevin Cherry
Printed Name

North Carolina State Historic Preservation Officer
Title

11-25-2020
Date

**TRIBES PARTICIPATING IN THE PROGRAMMATIC AGREEMENT BETWEEN
THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, OFFICE OF
RECOVERY AND RESILIENCY
AND
THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER
FOR THE REVIEW OF HUD-FUNDED ACTIVITIES
SUBJECT TO 24 C.F.R. PARTS 50 & 58
IN THE STATE OF NORTH CAROLINA**

Catawba Indian Nation

Dr. Wenonah G. Haire, Tribal Historic Preservation Officer

Date

**TRIBES PARTICIPATING IN THE PROGRAMMATIC AGREEMENT BETWEEN
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FOR THE REVIEW OF HUD-FUNDED ACTIVITIES
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Cherokee Nation

Elizabeth Toombs, Tribal Historic Preservation Officer

Date

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IN THE STATE OF NORTH CAROLINA**

Eastern Band of Cherokee Indians

Russell Townsend, Tribal Historic Preservation Officer

Date

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IN THE STATE OF NORTH CAROLINA**

Monacan Indian Nation

Kenneth Branham, Chief

Date

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IN THE STATE OF NORTH CAROLINA**

Muscogee (Creek) Nation

Corain Lowe-Zepada, Tribal Historic Preservation Officer

Date

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IN THE STATE OF NORTH CAROLINA**

Nansemond Indian Tribe

Samuel M. Bass, Chief

Date

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IN THE STATE OF NORTH CAROLINA**

Tuscarora Nation

Leo Henry, Chief

Date

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IN THE STATE OF NORTH CAROLINA**

United Keetoowah Band of Cherokee Indians

Whitney Warrior, Tribal Historic Preservation Director

Date

Appendices

Appendix A – Activities Categorically Excluded from Review – Programmatic Allowances

Appendix B – Standard Treatment Measures

Appendix C – Identification and Evaluation Process for Archaeological Resources

APPENDIX A

Activities Categorically Excluded from Review “Programmatic Allowances”

This list of Programmatic Allowances enumerates NCORR-funded activities that based on NCORR’s experience, have no or minimal effect on historic properties and will not require review by the SHPO.

The Programmatic Allowances consist of two tiers: First Tier and Second Tier. Staff may apply First Tier allowances whether or not they meet professional historic preservation qualification standards, this aforementioned staff working in concert with SOI qualified. However, only staff meeting the applicable Secretary of the Interior (SOI) Professional Qualifications Standards (*Qualified Staff*) may apply Second Tier allowances.

When referenced in the Programmatic Allowances, the phrase “in-kind” shall mean the repair work being performed is of the same or a similar material, and the result shall match all physical and visual aspects, including form, color, and workmanship. The “in-kind repair” provided for in both First and Second Tier allowances should be limited to existing architectural features and physical components of buildings and structures.

When referenced in the Programmatic Allowances, the phrase “within the existing footprint” refers to any location in three-dimensional space. This includes depth considerations, which the original structure, feature, facility, utility, etc. occupied.

When referenced in the Programmatic Allowances, the phrase “previously disturbed soils” refers to soils that are not likely to possess intact and distinct soil horizons and, therefore, have the reduced likelihood of possessing historic properties located within their original depositional contexts in the area and depth to be excavated. *Qualified Staff* will assess if previously disturbed soils exist in cooperation with the Office of State Archaeology (OSA).

I. First Tier Allowances

- A. GROUND DISTURBING ACTIVITIES AND SITE MODIFICATION**, when proposed activities described below substantially conform to the existing footprint (surface area and depth of disturbance will be largely within the same location), including the area where the activity is staged.

1. Debris Removal

- a. Debris removal and collection, which includes the removal of uprooted trees, limbs, and branches from public rights of way and public areas as well as the transport and disposal of such waste to existing licensed waste facilities or landfills. These activities also include the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts). However, the creation of new or temporary access roads is

excluded from this allowance.

- b. Removal of debris from private property, provided buildings are not affected, ground disturbance is minimal, and in-ground elements such as driveways, walkways, or swimming pools are left in place.
 - c. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
 - d. Sediment removal from man-made drainage facilities (e.g., retention/detention basins, ponds, ditches, and canals) to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site. This allowance does not apply to historic canals or canal structures.
 - e. Dewatering flooded developed areas by pumping.
 - f. Removal of automobiles, trucks, aircraft, motorized agricultural/construction equipment, or other motorized vehicles designed for transport.
2. Temporary Structures and Housing (Individual Assistance Program)
- a. Installation and removal of temporary structures for use as school classrooms, offices, or temporary shelters for essential public service agencies, such as police, fire, rescue and medical care. Additionally, temporary housing for disaster personnel and survivors is included at the following types of locations:
 - i. Single units on private residential sites, provided all utilities are installed above ground and tie into pre-existing utility lines.
 - ii. Existing RV/ mobile home parks and campgrounds with pre-existing utility hookups.
 - iii. Paved areas, such as parking lots and paved areas located at such facilities as conference centers, shopping malls, airports, industrial port facilities, business parks, and military bases provided all utilities are installed above-ground and tie into existing utility lines.
 - iv. Sites previously cleared and prepared for planned construction (e.g. land being developed for public housing, office buildings, city parks, ball fields, schools, etc.), provided all utilities are installed above-ground and tie into pre-existing utility lines.
 - v. Areas previously filled to depths of at least six feet so that subsurface utilities can be installed.
3. Temporary removable barrier/bollards
- a. Installation of temporary removable barrier/bollards.

- b. In-kind repairs, installation, or replacement, and minor upgrades/mitigation of bollards and associated protective barriers.
- 4. Borrow Material
 - a. Borrow material if taken from a commercial source; alternatively, a stock tank, berm, dug-outs, or reclaimed ditch provided the original ground is not impacted by the removal method.

B. BUILDINGS AND STRUCTURES

1. Repair or retrofit of buildings and structures less than 45 years old, that are not NRHP listed.
2. Repair or replacement of building contents including furniture, movable partition, computers, cabinetry, supplies equipment, and any other moveable items within buildings less than 45 years old.
3. Removal of water, muck, mud, sand, sewage, or debris by physical or mechanical means within buildings and structures less than 45 years old, that are not NRHP listed.
4. Installation of exterior security features and early warning devices on existing light poles or other permanent utilities.
5. For mobile homes, also referenced as Manufactured Housing Units (MHUs), regardless of age, undertakings (removal and replacement, rehabilitation, and/or elevation) involving these structures will not require SHPO consultation and/or concurrence if no ground disturbance is associated with the undertaking. These undertakings will be documented and provided to SHPO as part of the annual report. However, the relocation of, or the new construction of foundations for, MHUs will be considered to involve ground disturbance and will be subject to consultation with SHPO and other pertinent consulting parties.

C. TRANSPORTATION FACILITIES, when proposed activities substantially conform to the existing footprint, including any staging areas.

1. Roads and Roadways
 - a. Paving and repair of roads to pre-disaster geometric design standards and conditions using in-kind materials; features include shoulders, medians, clearances, curbs, and side slopes. This allowance does not include improvement to existing roadways and appurtenances.
 - b. Repairs or replacements of metal and concrete culverts, no greater than 42" in diameter with no headwalls, or concrete headwalls when culverts are returned to pre-disaster size and location. This allowance does not allow for upgrades.

- c. Repairs to road slips and landslides that do not require grading of soils on the up-hill side of the slip.
 - d. Re-establishment, armoring or upgrading of existing roadway ditches within public rights-of-way.
 - e. In-kind repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.
 - f. Installation and removal of temporary traffic control devices, including pre-formed concrete barriers and fencings.
 - g. In-kind repair or replacement of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. In the case of guardrails, the addition of safety end treatments is permitted.
2. Airports
- a. In-kind repair or replacement of existing runway surfaces and features (e.g., asphalt, concrete, gravel, and dirt) and associated air transportation safety components and systems (e.g., lighting bars, beacons, signage and weather sensors).
3. Rail Systems
- a. In-kind repair or replacement of safety components.
 - b. In-kind repair or replacement of existing track system and passenger loading areas.

II. Second Tier Allowances

A. GROUND DISTURBING ACTIVITIES AND SITE WORK, when proposed activities described below substantially conform within the existing footprint (surface area and depth of disturbance will be largely within the same location) or are performed in previously disturbed soils; also including the area where the activity is staged.

- 1. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems
 - a. In-kind repair, replacement, or reinforcement of footings, foundations, retaining walls, slopes, and slope stabilization systems (e.g., rip-rap, gabion baskets, crib walls, soldier pile, and lag walls) if related ground disturbing activities are within the boundary of previously disturbed soils.
 - b. Installation of perimeter drainage (e.g., French drains) in previously disturbed soils.
- 2. Recreation and Landscaping

- a. In-kind repair, replacement, or minor upgrades within existing footprint of recreational facilities and features (e.g. constructed playground areas, fire pits, gazebos, dump stations and utility hook-ups, swimming pools, athletic fields and signage, batting cages, basketball courts, swing sets, pathways, and simple wooden/wire stream crossings).
 - b. In-kind repair, replacements, and minor upgrades to landscaping elements (e.g., fencing, free standing walls, paving, planters, irrigation systems, lighting elements, signs, flag poles, ramps, and steps), within the existing footprint of previously disturbed soils.
3. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers
- c. In-kind repair, replacement or minor upgrades to existing piers, docks, boardwalks, boat ramps and dune crossovers within the existing footprint of previously disturbed soils.
4. Cemeteries
- a. Removal of woody debris such as branches and limbs, from cemeteries, provided heavy equipment and other machinery are not operated or staged on areas containing marked or unmarked human remains.
 - d. In-kind repair of historic gravestones, monuments, fences, and other associated cemetery components.
5. Rootballs
- a. Replacing a rootball into the cavity, with addition of culturally-sterile fill dirt if needed, and grinding the stump in place, unless in or within 25 feet of a cemetery, historic district, historic battleground, or previously recoded archaeological site or archaeologically sensitive area.

B. BUILDINGS AND STRUCTURES

1. Interior Work: Floors, Walls, Stairs, Ceilings and Trim
- a. In-kind repair or replacement of floors, walls, stairs, ceilings, or trim. The allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster or any other character defining interior feature of a NRHP-listed or eligible resource that may require highly specialized study or skills for the purpose of repair or replacement.
 - b. Interior painting of previously painted, non-decorative surfaces as described above.

- c. Interior cleaning of surfaces for mold remediation and mold removal, which include the use of a weak solution of household bleach and water, and carpet cleaning. The allowance applies to interior finishes, including plaster and wallboard, provided the cleaning is restricted to damaged areas and does not affect adjacent materials.
- d. Non-destructive or concealed testing for hazardous materials (e.g., lead paint and asbestos) or for the assessment of hidden damages.
- e. Replacement of damaged vinyl composition tile (VCT) flooring (including floor tile containing asbestos) with contemporary VCT flooring of a similar dimension and thickness, and a similar texture or pattern.
- f. Replacement of commercial-grade carpet with VCT in basements or lowest stories, except where carpet covered wooden flooring.
- g. Use of portable dehumidification systems for mold remediation provided no changes are made to character-defining features.
- h. Abatement of lead and asbestos in unfinished basements or historically unfinished upper floors and attics.

2. Building Contents

- a. Repair or replacement of building contents including furniture, movable partitions, computers, cabinetry, supplies, and equipment and any other moveable items which are not character-defining features of a historic property.

3. Utilities and Mechanical, Electrical, and Security Systems

- a. In-kind repair, replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, and air conditioning), electrical, and plumbing systems. This allowance does not provide for the installation of new exposed ductwork.
- b. Elevation of heating, ventilation, air conditioning system (HVAC), or mechanical equipment, provided it is placed or located where it is not visible from the public right-of-way.
- c. Installation or replacement of interior fire detection, fire suppression, or security alarm systems. The allowance does not apply to surface-mounted wiring, conduits, piping, etc., unless previously existing. Additionally, the installation of the system hardware shall not damage or cause the removal of character-defining architectural features and shall be easily removed. New fire detection systems with exposed electric conduit are allowed in unfinished basements and historically-unfinished upper floors, and attics.

- d. Installation of communication and surveillance security systems, (e.g. cameras, closed-circuit television, alarm systems, or public address systems) provided the installation of the system hardware does not damage or cause the removal of character-defining architectural features, can be easily removed, and is installed so that it has minimal impact on historic character. New wiring should be run sub-surface to the greatest extent possible or where exposed, should be enclosed in conduit that is painted to match the existing surface.
 - e. Installation of building access security devices (e.g. card readers, enhanced locks, door alarms, or security scanners such as metal detectors), provided the device (s) does not damage or cause the removal of character-defining architectural features and can be removed without impacts to significant architectural features. New wiring should be run sub-surface to the greatest extent possible or where exposed, should be enclosed in conduit that is painted to match the existing surface.
 - f. New exposed ductwork, air handler units, or electric conduit in unfinished basements, historically-unfinished upper floors, or attics.
 - g. In-kind repair, replacement, or limited upgrading of escalators, elevators, or other mechanical conveyance systems.
 - h. Installation of exterior security features and early warning devices on exiting light poles or other permanent utilities. New wiring should be run sub-surface to the greatest extent possible or, where exposed, should be enclosed in conduit that is painted to match the existing surface.
 - i. In-kind repair, replacement, or limited upgrading of small-scale electronic equipment attached to, or situated near, a structure such as antennas, dishes, speakers, lighting, control boxes, etc. New wiring should be run sub-surface to the greatest extent possible or, where exposed, should be enclosed in conduit that is painted to match the existing surface.
4. Windows and Doors
- a. In-kind repair of damaged or severely deteriorated windows and window frames, shutters, storm shutters, doors and door frames, and associated hardware, such that the profiles, elevations, details and materials match those of the originals. Whenever possible original materials should be retained for future information, repair or reuse.
 - b. In-kind replacement of window panes. Clear plate, double, laminated, or triple insulating glazing can be used, provided it does not alter the existing window material, tint, form, muntin profiles, or number of divided lights. This allowance does not apply to the replacement of decorative glass.

- c. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non-character-defining spaces with metal blast resistant doors and frames.
 - d. Installation of security bars over windows on rear elevations.
 - e. Installation or application of safety or security window film on window panes, provided it does not result in altering the existing tint or appearance of the pane. This allowance does not apply to the application of film on decorative glass.
5. Exterior Walls, Cornices, Porches, and Foundations
- a. In-kind repainting of surfaces, provided destructive surface preparation treatments are not used (e.g. water blasting, sandblasting, power sanding or chemical cleaning).
 - b. In-kind repair of walls, porches, foundations, columns, cornices, siding, balustrades, stairs, dormers, brackets, trim, or their ancillary components. In-kind replacement of severely deteriorated, missing or lost features, provided the replacement pieces match the original in detail and material. Any ground disturbance will be limited to previously disturbed soils.
 - c. In-kind repair or replacement of signs or awnings.
 - d. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage.
 - e. Anchoring of walls to floor systems; provided the anchors are embedded and concealed from exterior view.
 - f. In-kind repair of concrete or masonry walls, columns, parapets, chimneys, or cornices. Limited, in-kind replacement of damaged components including comparable brick and mortar that matches the color, strength, content, rake, and joint width.
 - g. Bracing or reinforcing of walls, chimneys, or fireplaces, provided the bracing or reinforcing are concealed from exterior view or reversible.
 - h. Strengthening of foundations or the addition of foundation bolts, provided the visible new work is in-kind, including mortar that matches the color, content, strength, rake, and joint width where occurring.
 - i. Repairs to or in-kind replacement of elements of curtain wall assemblies or exterior cladding that is hung on the building structure, usually from floor to floor, and when the color, size reflectivity, materials, and visual patterns are unaltered.

6. Roofing

- a. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character-defining features.
- b. In-kind repair, replacement, or strengthening of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components.
- c. Repairs to flat-roof cladding, including changes in roofing materials, where the repairs are not highly visible from the ground level.

7. Weatherproofing and Insulation

- a. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
- b. In-kind repair or replacement of insulation systems, provided the existing interior plaster, woodwork, exterior siding, or exterior architectural detail is unaltered.

8. Structural Retrofits

- a. The installation of the following retrofits/upgrades, provided such upgrades are not visible on the exterior: attic bracing; cross bracing on pier and post foundations; fasteners; collar ties; gussets; tie downs; strapping or anchoring of mechanical, electrical, and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first-floor joists, above top-floor ceiling rafters, or on roofs; and automatic gas shut off valves. In masonry structures, bolts will be required to be installed through the mortar and not the stone or brick, as applicable.
- b. Replacement, repair, or installation of lightning rods.
- c. Earthquake bracing used on portable equipment and shelving in schools and other public facilities.
- d. Activities related to flood proofing and minor upgrades on secondary facades. A secondary façade does not face a public thoroughfare, mews or court and does not possess historically significant architectural features. Minor upgrades include replacement of exterior utilitarian, non-character-defining doors or windows with new doors or windows, the addition of new elements (e.g. storm panels or flood panels) to exterior doors or windows, or the installation of metal grating at basement window wells.

9. Americans with Disabilities Act (ADA) Compliance

- a. Installation of grab bars or other minor interior modifications.

10. Safe Rooms

- a. Installation of individual safe rooms within the property limits of a residence where installation occurs within the existing building or structure or in previously disturbed soils.

11. Elevation, Demolition, and Reconstruction

- a. Activities related to the elevation, demolition, or reconstruction of buildings or structures less than forty-five (45) years of age. The proposed activities shall substantially conform to the existing footprint or are performed in previously disturbed soils, including any staging area. The buildings or structures shall not be located within or adjacent to a NRHP-listed or eligible historic district.

C. TRANSPORTATION FACILITIES, when proposed activities substantially conform to the existing footprint or are performed in previously disturbed soils, including the area where the activity is staged.

1. Roads and Roadways

- a. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance permits minor improvement to meet current code and standards. This allowance permits hazard mitigation measures, such as those designed to harden exposed surfaces, which includes the application of gravel armoring to side slopes and ditches.
- b. In-kind repair to historic paving materials for roads or walkways.
- c. In-kind repair, replacement, or minor upgrade of culvert systems, arches beneath roads or within associated drainage systems. This allowance includes the provision of headwalls, riprap, and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided the work substantially conforms to the existing footprint. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair where the masonry construction matches the color, content, strength, rake, and joint width where occurring.
- d. In-kind repair or replacement of road lighting systems, including period lighting fixture styles.
- e. In-kind repair or replacement of road appurtenances (e.g. curbs, berms, fences, parking lots, storm drains, catch basins, fire hydrants, sidewalks, traffic signs, and parking meters).

- f. Installation of speed bumps or enhanced curbs. This allowance does not apply to any work in historic districts listed or eligible for listing in the NRHP.
- g. Stabilization of hazardous slopes within transportation rights-of-way. Stabilization methods include the installation of retaining walls and systems (e.g. gabion baskets, crib walls, soldier pile and lag walls). Work will not exceed the limits of the previously disturbed rights-of-way and will not take place within the APE of any historic property listed or eligible for listing in the NRHP.
- h. Temporary emergency repairs of existing roads that do not require grading and are confined within the existing public rights-of-way.

2. Bridges

- a. Installation of a temporary (Bailey-type) bridge over an existing structure or at a previously disturbed location, such as a former bridge location, to allow passage of emergency vehicles.
- b. In-kind repair or replacement of bridges and bridge components (e.g. abutments, wing walls, piers, decks, and fenders) in previously disturbed soils.

C. UTILITIES, COMMUNICATIONS SYSTEMS AND TOWERS, when proposed activities substantially conform to the existing footprint or are performed in previously disturbed soils, including the area where the activity is staged.

1. General

- a. In-kind repair, replacement, minor upgrading, small-scale realignment, or elevation of utilities, associated features and structures within previously disturbed soils of rights-of-way or utility corridors.
- b. Installation of new utilities or associated features within existing rights-of-way except when in close proximity to previously recorded archaeological sites or within view sheds of historic districts eligible for or listed in the NRHP.
- c. Directional boring of new/replacement service line and related appurtenances involving boring or slit trenches within previously disturbed soils of rights-of-way or utility corridors.
- d. In-kind repair, replacement, or minor upgrade of water towers provided activities occur within previously disturbed soils. Ground-level facilities may be added or expanded in previously disturbed areas. This allowance does not apply to masonry water towers.

- e. Temporary storage of supplies and equipment (e.g. poles, cable spools, pedestals, etc.) where no ground disturbance will occur. This allowance does not include the construction of temporary access routes.

2. Generators and Utilities

- a. In-kind repair, replacement, minor upgrades, elevation, or installation of generators, HVAC systems, and similar equipment provided activities occur within previously disturbed soils and any roof mounted equipment is not visible from the ground level.
- b. In-kind repair of metal, wooden, cement, brick, or concrete masonry utilitarian structures to house or protect utilities (e.g. pump house and electrical transformer houses) and related elements (e.g. oil tanks and exposed pipelines), except when located within a historic district.
- c. Underground cable replacements of any length when the replacement cable is placed within three feet of the same trench as an existing or failed cable.
- d. Replacement of power poles in existing locations is allowed including increase in the pole diameter. Relocation or construction of new poles are allowed in: (1) urban or suburban settings between the edge of roadway and the sidewalk, (2) rural settings along roadway shoulders, and (3) in off-road alignment settings in the existing utility right-of-way.
- e. New construction of a single pole overhead line is permissible when the auguring, pole placement, and line placement is conducted from within the previously disturbed public or private right-of-way.
- f. Replacement or relocation of previously installed solar panels on the roofs of building less than 45 years of age.
- g. Directional boring for replacement lines and related appurtenances within the existing footprint, where ground disturbance would involve less than 10 square foot excavation units for placement of directional boring equipment. These units would be placed in areas for directional drill to begin and end or where needed to complete boring.

3. Communication Equipment/Systems and Towers

- a. Acquisition, installation, or operation of communication or security equipment/systems that use existing distribution systems, facilities, or existing infrastructure rights-of-way.

- b. The collocation of communication and security equipment on existing towers and buildings/structures less than forty-five (45) years in age, provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
- c. Enhancement, repair, or replacement of existing communication towers and antenna structures, provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
- d. Installation of new temporary (not to exceed twelve (12) months) communications towers and antenna structures, provided the work does not require modification of buildings/structures forty-five (45) years of age or older, and occurs within previously disturbed soils.
- e. Installation of new communication towers, less than two-hundred (200) feet tall, in previously developed urban complexes when the work does not require modification of buildings/structures forty-five (45) years of age or older, occurs within previously disturbed soils, and is not within one-thousand (1,000) feet of the boundaries of a historic property.

D. WATER RESOURCE MANAGEMENT AND CONTROLS, when proposed activities substantially conform to the existing footprint or performed in previously disturbed soils, including the area where the activity is staged.

1. Canal Systems

- a. In-kind repair or replacement to canal systems and associated elements. This allowance does not apply to historic canals or canal structures.

2. Dams, Levees, Locks, and Floodwalls

- a. In-kind repair of dams, levees, locks, floodwalls and related features (e.g. spillways, tide gates, and fuse plugs) provided the work occurs in previously disturbed soils.

3. Bulkheads, Breakwaters, Seawalls, Revetments, and Berms

- a. In-kind repair or replacement of breakwaters, seawalls, bulkheads, berms, jetties, sand dunes, and revetments, provided the work occurs within the existing footprint.

4. Fish Hatcheries

- a. In-kind repair or replacement of fish hatcheries and fish ladders.

5. Waste-Water Treatment Lagoon Systems

- a. In-kind repair, replacement, or minor upgrades of waste-water treatment lagoon systems.
6. Outfall Systems
- a. In-kind repair, replacement, or minor upgrades to outfall pipes along beaches or inland waterways.

APPENDIX B

Standard Treatment Measures

When avoidance or minimization of adverse effects is not appropriate, the following Treatment Measures are suggested for the resolution of adverse effects for historic properties:

If Undertakings may or will result in adverse effects, NCORR, SHPO, the Recipient/Subrecipient, consulting Tribe(s), and ACHP (Council), if participating, may develop a mitigation plan that includes one or more of the following Treatment Measures, depending on the nature of historic properties affected and the severity of adverse effects. This Appendix may be amended in accordance with Stipulation VIII. A of this Agreement, Amendments.

- A. Recordation: NCORR will consult with the SHPO to determine the level and format of recordation required for the affected property(s). NCORR shall ensure that the recordation is submitted to the SHPO for review and approval prior to project implementation. This recordation may include, but is not is not necessarily limited to, one or more of the following components:

1. Digital Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a digital photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The digital photography package will meet the standards cited in the SHPO policy and guidelines provided in the North Carolina Department of Natural and Cultural Resources *Digital Photography Policy* **or subsequent revisions, accessible online at: <https://www.ncdcr.gov/about/history/division-historical-resources/state-historic-preservation-office/architectural-20>**.

The digital photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. However, interior photographs will only be subject to this if a request for access is approved by the property owner or lessee. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.

- a. The digital photography package shall include printed color copies of the digital photographs (on appropriate paper, per *SHPO Photographic Policy*), a CD/DVD of the digital photographs, a completed state architectural inventory form, and a written site history of the historic property.

- b. The designated responsible party shall submit the digital photography package to the SHPO and consulting Tribe(s) if applicable, for review and approval. Once approved by the SHPO, and consulting Tribe(s) if applicable, the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive, or library for permanent retention.
2. Large Format Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a large format photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
 - a. The large format photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. However, interior photographs will only be subject to this if a request for access is approved by the property owner or lessee. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
 - b. The large format film photography package shall include one (1) full set of 4 x 5 or 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5 x 7-inch negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.
 - c. The designated responsible party shall submit the large format film photography package to the SHPO and consulting Tribe(s) for review and approval. Once approved by the SHPO, and consulting Tribe(s), the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive, or library for permanent retention.

B. Public Interpretation

Prior to project implementation, NCORR and the Subrecipient shall work with the SHPO, consulting Tribe(s) and ACHP, if participating, to design an educational interpretive plan. The plan may include signs, displays, educational pamphlets, websites, workshops and other similar mechanisms to educate the public on historic properties within the local community, state, or region. Once an interpretive plan has been agreed to by the parties, SHPO, and consulting Tribe(s) if applicable, and the designated responsible party shall continue to consult throughout implementation of the plan until all agreed upon actions have been completed by the designated responsible party.

C. Historical Context Statements and Narratives

Prior to project implementation, NCORR and the Subrecipient shall work with the SHPO, consulting Tribe(s), and ACHP, if participating, to determine the topic and framework of a historic context statement or narrative the designated responsible party shall be responsible for completing. The statement or narrative may focus on an individual property, a historic district, a set of related properties, or relevant themes as identified in the statewide preservation plan. Once the topic of the historic context statement or narrative has been agreed to, the designated responsible party shall continue to coordinate with the SHPO and consulting Tribe(s) through the drafting of the document and delivery of a final product. The designated responsible party shall use staff or contractors that meet the *Secretary of the Interior's Professional Qualifications (Secretary's Professional Qualifications)* for the appropriate discipline.

D. Oral History Documentation

Prior to project implementation, NCORR and the Subrecipient shall work with the SHPO, consulting Tribe(s), and ACHP, if participating, to identify oral history documentation needs and agree upon a topic and list of interview candidates. Once the parameters of the oral history project have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO, and consulting Tribe(s), through the data collection, drafting of the document, and delivery of a final product. The designated responsible party shall use staff or contractors that meet the *Secretary's Professional Qualifications* for the appropriate discipline.

E. Historic Property Inventory

Prior to project implementation, NCORR and the Subrecipient shall work with the SHPO, consulting Tribe(s), and ACHP, if participating, to establish the appropriate level of effort to accomplish a historic property inventory. Efforts may be directed toward the resurvey of previously designated historic properties or districts which have undergone change or lack sufficient documentation, or the survey of new historic properties or districts that lack formal designation. Once the boundaries of the survey area have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO, and consulting Tribe(s), through the data collection process. The designated responsible party shall use SHPO, and consulting Tribe(s), standards for the survey of historic properties and SHPO, and consulting Tribe(s), forms as appropriate. The designated responsible party shall prepare a draft inventory report, according to SHPO, and consulting Tribe(s), templates and guidelines, and work with the SHPO, and consulting Tribe(s), until a final property inventory is approved. The designated responsible party shall use staff or contractors that meet the *Secretary's Professional Qualifications* for the appropriate discipline.

F. National Register of Historic Places and National Historic Landmark Nominations

Prior to project implementation, NCORR and the Subrecipient shall work with the SHPO, and consulting Tribe(s), and ACHP, if participating, to identify the individual properties that would benefit from a completed NRHP or NHL nomination form. Once the parties have agreed to a property, the designated responsible party shall continue to coordinate

with the SHPO, and consulting Tribe(s) through the drafting of the nomination form. SHPO, and consulting Tribe(s), shall provide adequate guidance to the designated responsible party during the preparation of the nomination form. The designated responsible party shall follow the procedures outlined in *Practical Advice for Preparing National Register Nominations in North Carolina* accessed online at: <https://www.ncdcr.gov/about/history/division-historical-resources/state-historic-preservation-office/architectural-7>. The designated responsible party shall use staff or contractors that meet the *Secretary's Professional Qualifications* for the appropriate discipline.

G. Geo-References of Historic Maps and Aerial Photographs

Prior to project implementation, NCORR and the Subrecipient shall work with the SHPO, consulting Tribe(s), and ACHP, if participating, to identify the historic maps or aerial photographs for scanning and geo-referencing. Once a list of maps or aerial photographs has been agreed upon, the designated responsible party shall continue to coordinate with the SHPO or consulting Tribes through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to the SHPO, and consulting Tribe(s), for review. The SHPO, and consulting Tribe(s), shall have final approval on the quality of the documentation provided by the designated responsible party. The final deliverable produced by the designated responsible party shall include a paper copy of each scanned image, a geo-referenced copy of each scanned image, and the metadata relating to both the original creation of the paper maps and the digitization process.

H. Data Recovery for Archaeological Resources

If Undertakings will result in adverse effects to archaeological resources, NCORR, OSA, NDPS, the Subrecipient, consulting Tribe(s), and ACHP, if participating, may develop a treatment measure plan that includes a research design for a Phase III Data Recovery/Mitigation or Treatment Reports. Given the individual nature of each archaeological site, data recovery methodology and reporting requirements will depend on the nature of historic properties affected and the severity of adverse effects. All work will conform to the North Carolina Office of State Archaeology's "*Archaeological Investigation Standards and Guidelines*" accessed online at: <https://archaeology.ncdcr.gov/programs/forms>.

APPENDIX C

Identification and Evaluation Process for Archaeological Resources

This Appendix may be amended in accordance with Stipulation VIII. A of this Agreement.

- A. **Qualifications:** Individuals seeking to do background research at an OSA facility must meet or be under the supervision of an individual who meets the *Secretary of the Interior's Professional Qualification Standards for Archaeology* as described in 36 C.F.R. § 61.
- B. **Area of Potential Effects:** According to 36 C.F.R. § 800.16(d), the APE for a project is “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties.” In the case of archaeological sites, the APE is often the maximum area of potential ground disturbing activities associated with a project. The APE as originally defined for a project may change if it is re-designed.
- C. **Background Research:** Prior to the fieldwork phase of a project, background research is to be conducted in consultation with the OSA. Access to archaeological site files, reports, and related documents is provided to qualified professional archaeologists and authorized representatives of federal, state, or local agencies and institutions whose purpose is to effect planning decisions regarding archaeological resources. Persons having access to site files will be expected to maintain the confidentiality of site location information in accordance with North Carolina General Statute 70-18.
- D. **Fieldwork Activities:** Fieldwork, if necessary, will be limited to monitoring, reconnaissance survey, and identification and assessment survey (Phase I), as defined in the North Carolina Office of State Archaeology’s “*Archaeological Investigation Standards and Guidelines*”. When a site’s NRHP eligibility cannot be fully assessed at the survey level, the site may need to be further evaluated with test unit excavations (Phase II).
- E. **Undertakings in Cemeteries and Grave Sites:** According to North Carolina General Statute 65, Article 12, a cemetery is “a tract of land used for burial of multiple graves.” Cemeteries containing interments greater than 50 years of age should receive a trinomial site number. If the cemetery is associated with other historic site elements, or is located within a prehistoric site, both a completed OSA Site Form and a Cemetery Form should be submitted. Otherwise only a cemetery form is necessary. Given the possibility for unmarked graves in historic cemeteries, even burial locations with a single above-ground marker should be recorded as cemeteries.
- F. **Inadvertent Discovery of Human Remains:**
 - 1. If human skeletal remains are encountered during archaeological investigations, the provisions of North Carolina General Statute Chapter 70, Article 3 apply. The State Archaeologist should be contacted immediately. Investigations can resume after contact has been made and the consultation process has been initiated. The Principal Investigator shall notify the State Archaeologist as to the cultural and biological

characteristics of the remains as soon as such determination has been made. Consultation between the State Archaeologist and the Principal Investigator will determine where the remains will be held after excavation.

2. If the skeletal remains are determined to be Native American, consultation will be undertaken between the State Archaeologist and the Executive Director of the North Carolina Commission of Indian Affairs. If the skeletal remains are not Native American, the State Archaeologist will publish notice of the discovery in an effort to determine next of kin.

G. Curation: If occurring, curation will follow OSA guidelines as described in the North Carolina Office of State Archaeology's "*Archaeological Investigation Standards and Guidelines*", with all materials – including artifacts, floral and faunal remains, and sediment samples, along with related documentation such as original field notes, maps, photographs, artifact inventory lists, and analysis forms – being permanently curated in an approved archaeological repository, preferably in the state of North Carolina. If artifacts are curated with the Office of State Archaeology Research Center (OSARC), a deed of gift form should be signed by the property owner on which the archaeological investigation is undertaken at the time of the fieldwork. If no curation is to occur, it should be noted that the artifacts were returned at the request of the landowner.

H. Reports: Reports will follow OSA guidelines as described in the *North Carolina Office of State Archaeology's Archaeological Investigation Standards and Guidelines*.