PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE COLORADO STATE HISTORIC PRESERVATION OFFICER, AND THE COLORADO DEPARTMENT OF TRANSPORTATION REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT, AS IT PERTAINS TO THE ADMINISTRATION OF THE FEDERAL-AID HIGHWAY PROGRAM IN COLORADO

WHEREAS, the Federal Highway Administration (FHWA) is the "Agency Official" responsible for compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 United States Code [U.S.C.] 470s) and the implementing regulations 36 Code of Federal Regulations (CFR) 800; and

WHEREAS, the Colorado Department of Transportation (CDOT) administers federal aid highway projects throughout the state of Colorado;

WHEREAS, the responsibilities of the Colorado State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR 800 are to advise, assist, review and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

WHEREAS, FHWA has determined that implementation of the federal aid program (Program) in Colorado may have an effect upon properties included on or eligible for inclusion on the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the Colorado SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b); and

WHEREAS, FHWA, CDOT, the ACHP and the SHPO executed a Programmatic Agreement regarding compliance with Section 106 of the National Historic Preservation Act as it pertains to the Administration of the Federal-Aid Highway Program in Colorado on May 6, 2010; and

WHEREAS, this amended Programmatic Agreement (Agreement) supersedes the 2010 Agreement and replaces it in full; and

WHEREAS, in developing the original Agreement, FHWA solicited the participation of Colorado Preservation Incorporated, the Mountain/Plains Regional Office of the National Trust for Historic Preservation, the Colorado Council of Professional Archaeologists, the Colorado Municipal League, Colorado Counties Incorporated, and forty-two federally-recognized Native American tribes (as listed in Attachment 5) pursuant to 800.14(b)(2)(i); and

WHEREAS, pursuant to the consultation conducted under 36 CRF 800.14(b), the signatories have developed this amended Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Colorado and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, CDOT has participated in the consultation to develop this amendment and is a signatory to the Agreement; and

WHEREAS, this Agreement and its amendment replaces the previous Memorandum of Understanding between SHPO and CDOT Regarding Section 106 and State Register Act Procedures (March 14, 1996), the Programmatic Agreement among FHWA, Council, SHPO, and CDOT Regarding Minor Highway Improvement Projects (February 15, 1991), the Memorandum of Understanding Between the Colorado Department of Highways, the Colorado State Historic Preservation Officer Regarding Cultural Resource Investigations (January 3, 1989), and the Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, and the Colorado State Historic Preservation Officer Regarding Management and Preservation of Colorado Historic Bridges (July 16, 2003).

NOW THEREFORE, FHWA, SHPO, ACHP and CDOT agree that the review of FHWA undertakings in the State of Colorado shall be administered according to the following stipulations.

STIPULATIONS

I. Applicability

A. This agreement shall apply to all FHWA undertakings administered under its Program in Colorado for which FHWA is the lead agency, including transportation enhancement projects, and all actions that require a federal approval or permit, whether or not federal funds have been committed to the action. This agreement shall not apply to undertakings that occur on or affect tribal lands as defined in 36 CFR 800.16(x). Unless otherwise noted, tribal lands are all Indian owned lands within the exterior boundaries of any Indian reservation. For such undertakings, FHWA shall follow the procedures in 36 CFR 800.

II. General Requirements

A. Delegation. FHWA has the responsibility for ensuring compliance with Section 106 of the NHPA and 36 CFR 800. By this agreement, however, FHWA authorizes CDOT to initiate, facilitate, and in most cases, conclude consultation with the SHPO and consulting parties for purposes of compliance with Section 106 of the NHPA. This authority cannot be delegated to project sponsors, consultants, or any other party. FHWA remains responsible for all Section 106 determinations made pursuant to this Agreement.

B. Professional Qualifications Standards. All actions prescribed in this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons meeting the Secretary of the Interior's Professional Qualification Standards as published in 36 CFR 61. Consultants working on projects on behalf of FHWA and CDOT must also meet these standards. The only actions exempt from this requirement are those related to review of projects as outlined in Attachment 6 of this agreement.

C. Definitions

1. For the purposes of this agreement, the definitions provided in 36 CFR 800.16(a) through (z) shall apply.
2. There are three classes of action defined in the Council on Environmental Quality regulations (40 CFR 1500) that implement the National Environmental Policy Act (NEPA): Categorical Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS).

III. Initiation of Section 106 Process

For all FHWA undertakings reviewed pursuant to this agreement, FHWA and CDOT shall observe the following requirements:

A. Identification of Consulting Parties:

1. As early as possible in the Section 106 process and in accordance with 36 CFR 800.2(c)(3 and 5) and 800.3(f), CDOT shall identify Native American tribes (Tribes), Certified Local Governments (CLG), Historic Preservation Commissions (HPC), and other parties with a demonstrated interest that might want to participate in the Section 106 process for the project. When a CLG or HPC is not in place, CDOT will contact the City or County in which the project is located to determine the appropriate consulting party. A list of these parties shall be provided to SHPO for review and suggested additions. CDOT shall contact the Mountains/Plains Office of the National Trust for Historic Preservation and Colorado Preservation Inc., and solicit their participation in the Section 106 process as appropriate.[1]
2. Initiation of consultation with federally recognized Tribes will be undertaken by FHWA (see Stipulation III (B) below).
3. If the scope of the undertaking requires Section 106 consultation, CDOT shall send to all other potential consulting parties a letter that includes the project description, a description of efforts to identify historic properties, and an invitation to participate in the Section 106 process. Parties who provide a written response indicating a demonstrated interest in the project shall be included as official consulting parties.[2]
4. CDOT shall submit the written comments of the Tribes, CLG, HPC, or other consulting parties, if provided, to the SHPO.

B. Consultation with Native American Tribes:

1. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with federally recognized Tribes. However, FHWA has delegated facilitation of day-to-day tasks related to tribal consultation to CDOT. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement.
2. If the scope of the undertaking requires Section 106 consultation, and in accordance with 36 CFR 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the APE shall be identified by CDOT and invited by FHWA to be consulting parties.[3]
3. CDOT 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.
4. CDOT shall ensure that consultation with Tribes continues 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.

C. Public Involvement:

1. CDOT shall seek and consider the views of the public in a manner that is consistent with 36 CFR 800.2(d)(1-2), 800.3(e), 800.8, and 800.11(c) (1 and 3). In most cases, CDOT

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[1] Typically, when projects are documented by an EA or EIS, CDOT follows this protocol.
[2] See Footnote #1.
[3] Typically, Tribal Consultation is conducted only when projects are documented by an EA or EIS.

will rely on its process for identifying consulting parties as outlined in Stipulation III (A) of this Agreement to find groups and individuals at the local level who can represent the larger public interest in historic properties issues. Pursuant to 36 CFR 800.8, CDOT will also use the NEPA process to involve the public in review of projects involving historic properties issues, provided the NEPA documentation includes sufficient information. As appropriate, additional public involvement may be warranted to consult with the public and/or consulting parties (including federally recognized Native American Indian tribes) to resolve project effects on historic properties.

D. Establishing the Area of Potential Effects (APE)

CDOT shall follow the procedures in 36 CFR 800.4(a) to determine and document the project APE as defined in 36 CFR 800.16(d) and as outlined in Attachment 1, which summarizes CDOT practices regarding delineation and consultation on APE.

1. For large or complex projects, CDOT shall consult with SHPO staff and present a proposed APE boundary for the project. Following this consultation, CDOT shall send a map, graphic, and/or written description of the APE to SHPO requesting comments on the boundary.[4]
2. For smaller scale projects, a separate meeting with SHPO to discuss APE is not necessary. In lieu of a meeting, a detailed justification for and map of the APE boundary shall be included along with the survey report and other Section 106 documentation for the project.[5]
3. CDOT shall afford identified consulting parties an opportunity to comment on the APE for all projects.
4. CDOT shall consider requests by SHPO or consulting parties to expand or adjust APE boundaries but reserves the right to determine the appropriate boundary for the undertaking.

E. Exempted Categories.

1. Pursuant to 36 CFR 800.3(a)(1), if CDOT determines that an undertaking is a type of activity that does not have the potential to affect historic properties, then the Section 106 process is complete and no consultation with SHPO is required. CDOT has identified in Attachment 2, Screened Undertakings, a list of project types whose effects to historic properties are foreseeable, likely to be minimal or not adverse, or will have no effect at all.
2. Any undertakings that meet the screening requirements will be documented in the project file and will cite this stipulation of the Agreement along with the project number, and a description of the activity or project type listed in Attachment 2. These findings will be included in the Section 106 Tracking Report prepared pursuant to XIII (B) of this Agreement.
3. Attachment 6 (Section 106 Exempted Undertakings) contains a list of project types that do not require Section 106 review by CDOT cultural resources staff because they have little or no potential to affect historic properties. Only designated environmental staff in the CDOT Regions may review specific undertakings to determine if they meet the criteria outlined in Attachment 6. In cases where designated CDOT environmental staff determines that the undertakings meet the requirements outlined in Attachment 6, a formal review by CDOT cultural resources staff will not be required.
4. Any undertakings that meet the requirements outlined in Attachment 6 will be documented in the CDOT Region project file and copied to appropriate headquarters or

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[4] Typically, when projects are documented by an EA or EIS, CDOT follows this protocol.

[5] Typically, when projects are documented by a CE, CDOT follows this protocol.

region CDOT cultural resources staff. The documentation will cite the stipulation of this Agreement along with the project number and a description of the activity or project type listed in Attachment 6. These undertakings will be documented in a tracking report pursuant to XIII (B) of this Agreement.

IV. Identification and Evaluation of Historic Properties

A. Project Specific Evaluations

1. **Identification of Historic Properties**. In accordance with 36 CFR 800.4(a)(2-4) and 36 CFR 800.4(b), CDOT shall identify historic properties that may be located within an undertaking's APE. CDOT shall determine the appropriate scope and type of identification efforts based on the magnitude of the project, the nature and extent of its potential effects on historic properties, and the likely nature of historic properties within the project area. CDOT shall consult formally or informally with SHPO to determine the level of effort to identify historic properties and associated survey methodology.
    i. Previously Documented Properties:
        a. Properties Determined Eligible. If the property has been determined eligible within the past five years or is listed on the NRHP, CDOT may rely on the previous determination without review by the SHPO unless alterations to the property's integrity warrant reevaluation. If the property has been determined eligible or was listed on the NRHP and it has been over five years since the property was initially recorded, CDOT shall conduct a reevaluation of the property and provide appropriate documentation to SHPO and the consulting parties. Properties that are eligible or listed on the State Register of Historic Places (SRHP), shall be evaluated for eligibility to the NRHP.
        b. Properties Determined Not Eligible. If the property has been determined officially not eligible, CDOT may rely on the previous determination without review by SHPO unless alterations to the property's integrity warrant reevaluation. In instances where a property was less than 50 years old when it was determined not eligible, but is now more than 50 years old, CDOT will complete a re-visitation form for that property.
        c. Properties that have been documented as field eligible or field not eligible will be evaluated for eligibility to the NRHP.

B. Newly Identified Properties

For all newly-identified properties that will be intensively surveyed within the APE, CDOT shall apply the National Register Criteria (36 CFR 60.4). CDOT shall make an eligibility determination pursuant to 36 CFR 800.4(c) and shall provide the appropriate documentation to SHPO and the consulting parties for review and comment.

C. Linear Resources:

Because linear resources (e.g., irrigation ditches and canal systems, storm sewers, functioning and abandoned railroad grades, exposed and subsurface trolley systems, abandoned road segments, functioning highways, and trails) present unique challenges with regard to identification and evaluation, CDOT has developed guidelines as outlined in Attachment 3 of this Agreement. CDOT shall evaluate linear resources in accordance with those guidelines.

D. Historic Bridge Inventories

1. In accordance with the Highway Bridge and Rehabilitation Program (23 USC 144(c)(2)), CDOT shall conduct historic bridge inventories to identify and evaluate highway bridges

in Colorado for National Register eligibility. The scope of these studies shall vary, but typically will address structures owned by CDOT, a specific chronological period in the state's bridge development, and may result in the completion of a Multiple Property Documentation Form that includes a historic context, registration requirements, and property types associated with bridges in the study. CDOT shall consult with SHPO regarding the appropriate time frame between studies, the scope and methodology for bridge inventories, and shall submit bridge inventories for SHPO review and concurrence. Once the results of the historic bridge inventories have been accepted by SHPO, the following consultation protocol shall be followed:

i. Non-Eligible Bridges: For projects involving bridges in past and future historic bridge inventories determined not eligible in consultation with SHPO, CDOT can proceed without SHPO consultation and concurrence. CDOT shall not be required to re-evaluate structures determined not eligible as part of previous historic bridge inventories. CDOT history staff shall document these internal project clearances in a written memorandum and shall include these in the Section 106 Tracking Report outlined in Stipulation XIII(B) of this Agreement.

ii. Eligible or Listed Bridges: Projects involving bridges determined listed or eligible to the NRHP in past and future historic bridge inventories shall be treated in accordance with 36 CFR 800 and shall require consultation with SHPO and appropriate consulting parties, except for certain types of activities as outlined in Attachment 2, Screened Undertakings (Bridges). Projects involving the activities outlined in Attachment 2 shall be evaluated and approved by the CDOT history staff per the guidelines in Attachment 2. CDOT history staff shall include these projects in the Section 106 Tracking Report outlined in Stipulation XIII(B) of this Agreement.

iii. Consultation with local governments and organizations: CDOT shall notify the appropriate local governments, local historical societies or commissions, or other preservation organizations of replacement projects for bridges over 50 years of age that have been determined eligible in statewide bridge inventories.

E. **Interstate Highway Exemption.** The ACHP's "Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System" went into effect on March 10, 2005. This exemption releases all Federal Agencies from the Section 106 requirement for taking into account the effects of their undertakings on the Interstate System, with the exception of a limited number of individual elements associated with the system. The exceptions within the State of Colorado are listed in Attachment 4 of this Agreement. For all other elements of the Interstate System, Section 106 consultation is not necessary. Per the Exemption, CDOT will only conduct Section 106 reviews on the properties identified as exceptions to the exemption.

F. **Program Comment Post 1945-Concrete and Steel Bridge**
The ACHP's "Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges" went into effect November 2, 2012. The Program Comment relieves all federal agencies from the Section 106 requirement to consider effects to undertakings on common bridges and culverts constructed of concrete and steel after 1945. These common bridge types are listed in **Attachment 7** of this agreement.

The Program Comment applies to undertakings that involve applications by State transportation agencies or local governments for federal permits, approvals, or assistance that will result in the alteration, replacement, or demolition of one or more of the common bridges or culverts. The Program Comment also applies to common bridges regardless of ownership, except those located on tribal lands.

The Program Comment does not exempt the federal agency from completing Section 106 evaluations for undertakings that involve historic properties *other than* the common bridge types identified by CDOT. The Program Comment does not apply if the federal agency determines that a common bridge in question meets any of the following considerations:

1. Listed or previously determined eligible for the NRHP or located adjacent to or within a National Register listed or eligible historic district, including linear historic districts such as parkways, historic roads, or canals.
2. Includes spans of the following types: arch bridge, truss bridge, bridge with movable spans, suspension bridges, cable-stayed bridges, or covered bridges.
3. Has been identified in consultation with SHPO as having exceptional significance for association with an event or individual; being a very early or particularly important example of its type in a State or in the nation and/or having distinctive engineering or architectural features that depart from standard designs. FHWA and CDOT have determined that there are no exceptional bridges as defined by the Program Comment and have notified the US Department of Transportation Federal Preservation Officer.

G. Consultation with SHPO

1. Projects that involve properties less than 50 years of age do not require review by the SHPO, unless the property has the potential to qualify for eligibility under National Register Criteria Consideration G as set out in National Register Bulletin #15, *How to Apply the National Register Criteria for Evaluation*.
2. Projects involving properties that have been determined not eligible for the NRHP or SRHP within a five year period prior to the initiation of the project, as appropriate, do not require consultation with the SHPO. This includes properties evaluated by CDOT as well as other state and federal agencies (e.g. those listed in the COMPASS database). This assumes that the eligibility determination has been concurred with by SHPO.
3. Projects that have met the criteria of screened projects as outlined in Attachment 2 and that have been determined exempt from Section 106 review as outlined in Attachment 6 of this agreement do not require consultation with the SHPO.
4. When an archeological survey for an undertaking identifies no archaeological resources, or where only isolated finds are identified, a report will be submitted to the SHPO for information purposes only. In these cases, no consultation with SHPO or the consulting parties is necessary provided the undertaking has been reviewed by the CDOT Senior Staff Archaeologist.
5. In cases where an archeological investigation for an undertaking identifies archaeological resources other than isolated finds, CDOT shall consult with the SHPO and consulting parties as outlined in 36 CFR 800.4.

V. Findings of Effect

A. Finding of No Historic Properties Affected. If CDOT finds that there are no historic properties present, or there are historic properties present but the undertaking will have no effect on them as defined in 36 CFR 800.16(i), CDOT shall make a finding of "no historic properties affected" and provide supporting documentation to SHPO and the consulting parties as set forth in 36 CFR 800.11(d). CDOT shall request SHPO concurrence on the finding and request comments from the consulting parties on these findings. CDOT may consult with SHPO formally or informally regarding the application of the criteria. A record of these findings shall be included in the Section 106 Tracking Report prepared pursuant to Stipulation XIII(B) of this Agreement.

B. **Finding of No Adverse Effect.** For any undertaking that includes NRHP listed or eligible properties within an APE that will not be adversely affected by an undertaking, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), CDOT shall make a formal finding of "no adverse effect." CDOT shall submit to SHPO and the consulting parties this finding along with the appropriate supporting documentation. CDOT shall request SHPO concurrence as well as comments from the consulting parties on these findings. CDOT shall consult with SHPO formally or informally regarding the application of the criteria. A record of these findings shall be included in the Section 106 Tracking Report prepared pursuant to Stipulation XIII(B) of this Agreement.

C. **Finding of Adverse Effect**. For any undertaking that includes NRHP listed or eligible properties that will be adversely affected as defined by 36 CFR 800.5(a), CDOT shall make a formal finding of "adverse effect." CDOT shall submit to SHPO and the consulting parties this finding along with the appropriate supporting documentation. CDOT shall request SHPO concurrence and comments from the consulting parties on these findings. CDOT shall consult with SHPO formally or informally regarding the application of the criteria. A record of these findings shall be included in the Section 106 Tracking Report prepared pursuant to Stipulation XIII(B) of this Agreement.

D. **Effects to National Historic Landmark Districts.**
   1. Per 36 CFR 800.10(a) and as required by Section 110(f) of the NHPA (16 U.S.C. 470), when an undertaking may directly and adversely affect an NHL, CDOT shall, to the extent possible, undertake such planning and actions as may be necessary to minimize harm to the NHL and shall afford the ACHP a reasonable opportunity to comment on the undertaking.
   2. CDOT shall request the ACHP to participate in any consultation to resolve adverse effects on NHL.
   3. Per 36 CFR 800.10(c), CDOT shall notify the Secretary of the Interior of any consultation involving an NHL and invite the Secretary to participate in the consultation where there may be an adverse effect.

E. **Resolution of Adverse Effects.**
   1. Pursuant to 36 CFR 800.6(a), CDOT shall provide to SHPO, FHWA, the Council, and consulting parties copies of documentation for findings of adverse effect. The ACHP has 15 days to respond to the agency submittal. CDOT shall consult with SHPO, FHWA, the ACHP (if participating in consultation) and consulting parties on measures to avoid, minimize, or mitigate the adverse effect.
   2. If FHWA, CDOT, SHPO and the ACHP (if participating in consultation) agree on measures to resolve the adverse effect, they shall execute a Memorandum of Agreement (MOA) in accordance with 36 CFR 800.6(c). When the ACHP elects not to participate, CDOT shall provide a copy of the executed MOA to the ACHP pursuant to 36 CFR 800.6(c).
   3. If there is failure to resolve adverse effects or FHWA is unable to execute the MOA pursuant to 36 CFR 800.6(c), FHWA will request the ACHP comment in accordance with 36 CFR 800.7.
   4. Mitigation Measures. In addition to working to avoid and minimize effects, CDOT will make an effort to consider a variety of creative mitigation options to address adverse effects to historic properties. These options could include, but are not limited to: archival documentation; educational outreach, interpretive mitigation such as brochures, signage, displays, and developing historic contexts; and other methods of supporting historic preservation efforts, such as funding local preservation projects

including surveys and interpretive signage. For bridge replacement projects involving adverse effects to metal truss structures, CDOT will implement its Adopt-a-Bridge program, which advertises truss bridges and solicits proposals for adaptive re-use of these structures.

VI. Treatment of Native American Human Remains and Related Cultural Items

A. **Treatment on Non-Federal Lands.** Native American human remains and any associated funerary objects, sacred objects, or objects of cultural patrimony encountered during archaeological surveys or excavations within a project APE or exposed during construction activities shall be treated pursuant to the unmarked human graves provision of the Colorado Historical, Prehistorical, and Archaeological Resources Act of 1973, as amended (CRS 24-80-1301ff).

B. **Treatment on Federal Lands.** Human remains encountered within a project APE on federal land will be subject to the conditions set forth in the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3002). FHWA does not have any NAGPRA responsibilities because it neither owns lands in the State of Colorado nor acts as a museum as defined in NAGPRA. In such cases, the federal agency with jurisdiction over the property will act as lead agency with regard to meeting NAGPRA obligations.

VII. Documentation Requirements

A. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR 800.11 and unless otherwise agreed upon, shall be in accordance with the Colorado Office of Archaeology and Historic Preservation's *Colorado Cultural Resource Survey Manual, Guidelines for Identification: History and Archaeology* and its subsequent editions and revisions. CDOT shall complete the appropriate Colorado Office of Archaeology and Historic Preservation (OAHP) site forms to record resources.

B. Depending on the scope of the project and nature of resources in the APE, CDOT and SHPO shall consult on the use of alternative documentation efforts, including, but not limited to, reconnaissance-level survey, use of abbreviated site forms, site visits, photography, and tabular formats.

C. For projects that involve more than 50 properties, CDOT shall provide SHPO with an electronic table or spreadsheet of resources for use in their review.

D. Documentation, including APE boundaries and eligibility and effects recommendations, prepared by local agencies or consultants in support of findings shall be submitted to CDOT for review and approval. CDOT shall submit all documentation cited herein to SHPO, consulting parties, and when necessary, FHWA. Consultants shall not transmit findings directly to SHPO staff.

E. All documentation prepared under this Agreement shall be kept on file at CDOT and made available to consulting parties and the public as stipulated in this Agreement, consistent with applicable confidentiality requirements.

VIII. Communication with SHPO

A. **Formal Contacts.** Requests requiring a response from SHPO shall be submitted in writing. Submittals may be scanned and sent electronically or faxed to expedite receipt of the materials, but the hard copy version of these materials shall be forwarded to SHPO. SHPO concurrence letters may also be received electronically, followed by the hard copy version. All formal contacts shall be accompanied by a signed letter from CDOT.

B. Informal Contacts. Informal contact with SHPO may include telephone conversations, meetings, and electronic mail.

C. Review Time Frames

1. Pursuant to 36 CFR 800.4 and 800.5, SHPO and the consulting parties have 30 calendar days from receipt of the hard copy materials to review all requests from CDOT. If the SHPO does not respond within 30 calendar days, CDOT may assume the SHPO has no comments and proceed to the next step in the process.
2. CDOT shall notify SHPO in advance when larger project submittals or multiple project submittals are expected. Depending on the scale of a project(s), CDOT and SHPO may negotiate an extended review time frame for the SHPO review.
3. CDOT may submit requests for eligibility and effects concurrently. Unless otherwise arranged, the review time frame for those submittals is 30 calendar days from receipt of the submittal.
4. When SHPO requests additional information that will assist in completing review of eligibility and effects, and CDOT has provided that information in a timely manner, SHPO shall complete their review within the original 30-day period. When this is not possible, CDOT and SHPO shall negotiate a revised review time frame.

IX. Coordination with the National Environmental Policy Act (NEPA)

A. Pursuant to 36 CFR 800.8(c), CDOT may use the NEPA process and associated documentation for Section 106 purposes provided the following requirements are met:

1. CDOT shall notify SHPO and the ACHP of its intent to use the NEPA process in lieu of Section 106 as early as possible in the NEPA process and definitely before any NEPA documents have been released for review by the public.
2. CDOT shall determine whether a full or partial document substitution is appropriate.
   i. For a full document substitution, CDOT shall use the NEPA document to address all elements of the Section 106 process, including APE consultation, and eligibility and effects determinations. If there are adverse effect determinations, a separate MOA may be executed. If the NEPA document is an EIS, resolution of adverse effects may be completed via the Record of Decision (ROD).
   ii. For a partial substitution, select elements of the Section 106 process shall be included in the NEPA document as determined by FHWA and CDOT, in consultation with SHPO. CDOT shall provide to SHPO, the ACHP (where appropriate), and consulting parties the NEPA documentation (EA, EIS) along with a cover letter requesting comments and/or concurrence on the Section 106 determinations outlined in the designated historic preservation chapter of the document.

B. In instances where FHWA and CDOT have determined that a Tier I NEPA evaluation is necessary, CDOT and SHPO shall consult to determine the level of effort necessary to initiate and conduct Section 106 consultation for the project.

X. Phased Approach to Identification, Evaluation, and Findings of Effect

Pursuant to 36 CFR 800.4(b)(2) and 800.5(a)(3), FHWA, in consultation with CDOT, may approve the phased identification, evaluation, and application of the criteria of adverse effect for undertakings covered by the Agreement. Upon FHWA approval, and as specific aspects or locations of an alternative are refined or access gained, CDOT shall proceed with the identification and evaluation of historic properties

and with application of the criteria of adverse effect in accordance with applicable provisions of this Agreement.

XI. Post-Review Discoveries

If previously unidentified historic properties, or unanticipated effects, are discovered after CDOT has completed its review under this Agreement, no further construction in the area of the discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied. CDOT shall consult with SHPO and appropriate consulting parties to record, document and evaluate National Register of Historic Places eligibility of the property and the project's effect on the eligible property. CDOT will also consult with any consulting Indian tribes that may ascribe traditional cultural and religious significance to affected historic properties. If neither the SHPO, consulting parties, nor consulting tribes submit any objection to CDOT's plan for addressing the discovery within 48 hours, CDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the ACHP need only be notified in the event there is an adverse effect.

XII. Emergency Situations

CDOT may follow the procedures in this section for disasters and emergencies declared by the President, a resident tribal government, or the Governor of the State; or for emergency situations identified by FHWA and CDOT in accordance with established FHWA policies and procedures.

Section 101(d)(6)(B) of the NHPA requires that FHWA consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement cannot be waived unless FHWA and/or CDOT has entered into an agreement to that effect with the Indian tribe in accordance with 36 CFR 800.2(c)(2)(ii)(E).

Projects identified as emergency situations as defined in this section cannot be cleared based on the terms of Attachment 6: Section 106 Exempted Undertakings and must be reviewed by CDOT cultural resources staff.

CDOT has defined the following categories of emergency responses:

A. **Emergency activities implemented within 30 days after the occurrence of a disaster or emergency event.** Emergency repairs are those actions during and immediately following a disaster that restore essential traffic, minimize the extent of damage, or protect the remaining facilities. Included are temporary and interim repairs designed to stabilize highway facilities and related features until permanent repairs can be made. These actions may require work outside the established highway right of way.

    1. CDOT shall notify the SHPO and any Indian Tribe that may attach religious and cultural significance to historic properties likely to be affected. Notification will be in writing or electronic mail (when appropriate) and shall be provided to SHPO within 2 business days of the disaster declaration. The notification will be clearly identified as an emergency situation and shall include an explanation of how the action meets the requirements for an emergency and will request comments within 7 calendar days of receipt of the notification. The notification shall also include a brief description of the emergency, anticipated repairs or operations, and information regarding resources if known. If time does not permit prior notification, CDOT may notify SHPO and Tribes after the fact, as soon as time allows.

2. Should the SHPO and other parties fail to comment within 7 calendar days, CDOT may proceed with the action based on available information.

3. If CDOT determines that the emergency situation does not permit 7 calendar days for comment, CDOT shall notify the SHPO and the Indian Tribes and invite comments within the time available.

4. If the SHPO, FHWA, or consulting tribe(s) object to CDOT's proposal to conduct an expedited review, to the documentation provided, or to proposed treatment measures, CDOT will consult with the objecting party and attempt to resolve the dispute. If the dispute is not resolved, FHWA will request ACHP's advice in accordance with 36 CFR 800.2(b)(2). ACHP will advise FHWA within 7 calendar days of receipt of the request, unless FHWA determines the nature of the emergency action warrants a shorter review time period.

5. These findings will be included in the Section 106 Tracking Report prepared pursuant to XIII(B) of this Agreement.

B. **Permanent repair and restoration of highway facilities that are needed as a result of an emergency or disaster**. This includes activities required to restore the damaged resource or facility to its original condition that is beyond the scope of the emergency repair.

1. Activities that fit this category will comply with the procedures in Stipulations III to V of this Agreement or 36 CFR 800.

2. In these situations, CDOT may request an expedited review by SHPO and consulting parties when the Section 106 review is initiated.

3. These findings will be included in the Section 106 Tracking Report prepared pursuant to Agreement.

C. **Immediate Rescue and Salvage Operations conducted to preserve life or property**. These activities are exempt from Section 106 and this PA, as stipulated in 36 CFR 800.12(d). Immediate rescue and salvage operations are defined as being carried out to preserve life or property and occurring within the first 10 calendar days of a declared disaster or emergency. Examples of exempt operations are included in **Attachment 8** of this agreement.

1. FHWA and CDOT shall notify the SHPO if more time is needed to complete immediate rescue and salvage operations. A response from SHPO or the tribes is not required on a proposed extension.

2. The ten day review period can be extended two consecutive times following the procedure stipulated above for up to 30 days. For any proposed extension following the completion of the second extension (30 days), FHWA and CDOT must consult with SHPO.

3. To the extent possible, a summary of the types of activities will be included in the Section 106 Tracking Report prepared pursuant to XIII(B) of this Agreement.

XIII. Administrative Provisions

A. **Dispute Resolution**. Should any signatory party object in writing to CDOT or FHWA regarding the manner in which the terms of this Agreement are carried out, CDOT shall immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the dispute. If CDOT determines that such objection(s) cannot be resolved, it shall request FHWA's assistance in resolving the objection. If FHWA determines that the objection remains unresolved, FHWA will:

1. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise FHWA on the resolution of the objection within 30 days. Any comment provided by ACHP, and all comments from the parties to this Agreement, shall be taken into account by FHWA in reaching a final decision regarding the dispute.
2. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate information, FHWA may render a decision regarding the dispute. In reaching its decision, FHWA will take into account all comments regarding the dispute from the parties to this Agreement.
3. FHWA and CDOT's responsibility to carry out all other actions subject to the terms of this Agreement are not subject to the dispute remain unchanged. FHWA will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. FHWA's decision will be final.
4. When requested by any consulting party or member of the public, the ACHP may consider FHWA's findings under this PA. The provisions of 36 CFR 800.9(a) on public requests to the ACHP will apply.

B. **Section 106 Tracking Report.**

1. CDOT shall generate a written report that includes, but is not limited to, summaries in tabular form identifying all undertakings and specifying project codes, names, locations, and types, and all findings pursuant to 36 CFR 800 that were processed by CDOT for the calendar year under review pursuant to this Agreement. The report may also contain a narrative description of accomplishments, trends, concerns, recommendations, etc. regarding any aspect of this Agreement.
2. CDOT shall prepare a report of these findings annually following execution of this Agreement. The initial report shall be prepared following completion of the first full calendar year under this Agreement. CDOT shall submit the report for each calendar year to FHWA, SHPO, and the ACHP no later than March 31 of the following year unless the signatory parties agree to amend the reporting schedule.
3. Memoranda of Agreement (MOA) Reporting Requirements. Unless otherwise specified, reporting requirements shall not be required for individual project MOAs, but rather status of the MOA activities shall be included in the Annual Report described in this stipulation. CDOT and SHPO shall consult on whether there are project circumstances that warrant separate reporting requirements for individual MOAs.
4. Section 106 Screened and Exempted Undertakings Reporting Requirements. CDOT cultural resources staff shall develop a standardized tracking system and internal data collection system to document undertakings that meet the requirements outlined in Attachments 2 and 6. These undertakings shall be included in the Annual Report described in this stipulation.

C. **Evaluation of the Programmatic Agreement**.

1. Once this Agreement is executed, CDOT, FHWA and SHPO shall meet by June 30th of the calendar year to evaluate its effectiveness and if warranted, suggest revisions to its

stipulations. Prior to these meetings, CDOT, on behalf of FHWA, will notify the ACHP and it may participate at its discretion. This notification may be done informally (e.g. via e-mail).

D. Amendments

1. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. An amendment is effective when it is signed by all signatories to this agreement.
2. Attachments to this Agreement may be individually amended through consultation among the signatory parties without executing a formal amendment. Proposed changes to the attachments may be adopted when CDOT obtains the written consent of the signatory parties to this Agreement, and the revised attachment is transmitted to each signatory.

E. Termination.

1. Any party to this Agreement may terminate it by providing 30 days written notice to other parties, provided that the parties will consult during the period before termination to seek agreement on amendments or other actions that would avoid termination.
2. Should consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement. Should consultations fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
3. In the event of termination, FHWA shall either consult in accordance with 36 CFR 800.14(b) to develop a new Agreement, or comply with 36 CFR Part 800 for individual undertakings.
4. Beginning with the date of termination, FWHA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.

F. Duration of Agreement. This Agreement shall remain in effect for a period of 10 years after the date it takes effect, unless it is terminated prior to that time. Thereafter, provided there are no objections from the signatory parties, the terms of the Agreement will automatically be extended each year for one year. The extension of the Agreement will be reviewed as part of the annual evaluation of the Programmatic Agreement. If any party objects to extending the Agreement, or proposes amendments, the parties will work together to consider amendments or other actions to avoid termination.

G. Effective Date. This Agreement will take effect following execution by FHWA, SHPO, ACHP and CDOT. Additional attachments or amendments to this Agreement shall take effect on the dates they are fully executed by FHWA, SHPO, ACHP and CDOT.

Execution and implementation of this Programmatic Agreement evidences that FHWA has afforded the ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Colorado, that FHWA has taken into account the effects of the Program and its individual undertakings on historic properties, and that FHWA has complied with Section 106 of the NHPA and 36 CFR 800 for the Program and its individual undertakings.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By: _____ 6/17/2014
John M. Cater, Colorado Division Administrator — Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ 6/25/14
John M. Fowler, Executive Director — Date

COLORADO STATE HISTORIC PRESERVATION OFFICER

By: _____ 6/9/14
Edward Nichols, SHPO — Date

COLORADO DEPARTMENT OF TRANSPORTATION

By: _____ 21 May 2014
Don Hunt, Executive Director — Date

Attachment 1
Guidelines for Consultation on and Delineation of Area of Potential Effects

In accordance with Stipulation III(D) of this Agreement, CDOT, under the authority of FHWA, will establish an Area of Potential Effects (APE) for undertakings covered by this Agreement. The CDOT cultural resources staff (historians and archaeologists) is responsible for describing and establishing an APE and will review any maps or plans that define or redefine an APE.

When the guidelines below are followed, separate consultation with the SHPO regarding APE for minor projects will typically not be necessary. Consultation with the SHPO will always be necessary for large and complex undertakings, when there are issues of access for inventory and evaluation, when there are concerns over delineating whole properties, or when there is public controversy such as potential for litigation, concerns expressed by outside parties, or issues related to Native American consultation.

Elements of the APE

As defined in 36 CFR 800.16(d), an APE is "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." The APE boundary is based on the scale and nature of an undertaking and may vary depending on effects caused by the undertaking. Effects to be considered may include, but are not limited to, physical damage or destruction of all or part of a property; physical alterations; moving or realigning a historic property; isolating a property from its setting; change in the visual or audible setting; vibrations; and change in access or use. An APE delineates the boundaries within which it can be reasonably expected that a proposed undertaking has the potential to directly or indirectly affect historic properties, should any be present.

Direct Effects

Depending on the scope of the undertaking and resources in the project area, the APE may be the highway right of way itself, or may extend well beyond the right of way. The APE should include all temporary construction easements, such as slope and drainage easements, storm water detention basins, off-site biological mitigation sites requiring ground disturbance, mandatory borrow and disposal sites, and any permanent easements for maintenance or other purposes. It should also include project-related activity areas such as utility relocations, access roads, equipment storage areas, wetland mitigation or water quality measures, or conservation or scenic easements. The APE should include all direct right-of-way acquisitions, whether they include a full property take or a partial or "sliver" take.

Indirect Effects

An APE should also address indirect effects when warranted. Indirect effects may extend beyond the right of way to encompass the introduction of visual or audible elements; vibrations from construction activities; or change in access or use. Delineation of an APE to include indirect effects must be considered carefully, particularly for potential audible and visual effects, taking into account proximity and use of adjoining properties, the surrounding topography, and other aspects of a property's setting.

1. Noise: When considering potential noise effects, there must be a reasonable basis for predicting an effect based on an increase over existing noise level. Noise effects should be considered when a project would result in a new through lane or a substantial change in vertical or horizontal alignment. When noise levels are predicted to increase an amount that is perceptible to the human ear, or if the introduction of audible elements has the potential to diminish the integrity of a property's significant historic qualities, the APE boundary may need to be expanded to include the affected properties.

2. Visual: Highways on new alignments, multi-level structures, and elevated roadways are considered to have potential for visual effects if they could be out of character with or intrude upon a historic property or isolate it from its setting. Mitigation measures such as retaining walls and noise walls may also create visual effects to historic properties. Projects or improvement or expansion of existing transportation facilities that will not substantially deviate from existing alignment or profiles are not expected to involve visual impacts. If circumstances indicate potential for visual effects, consultation with the SHPO may be warranted.

APE for Archaeological vs. Built Environment

A single APE is established for each project. However, different levels of inventory and/or effort within an APE may be established for archaeological resources and properties in the built environment:

1. For archaeological properties, an APE is typically established based on an undertaking's potential for direct effects from ground-disturbing activities. On occasion, archaeological sites may also have qualities that could be affected indirectly.

2. Buildings, structures, objects, districts, traditional cultural properties and cultural landscapes are more likely to be subject to indirect as well as direct effects, and therefore an APE for the built and cultural environment is usually broader than an archaeological APE in order to include the potential for such effects. For instance, the first row of properties beyond the road right of way may be subject to such effects and thus included in an indirect APE when warranted.

While an APE will generally encompass entire properties, physical intrusion such as testing of archaeological sites must be focused on areas subject to reasonably foreseeable effects of the undertaking and should be guided by a project-or site-specific research design. Areas of an archaeological site that are unlikely to be affected by an undertaking will not be tested unless compelling reasons to conduct such testing are provided.

Delineating the APE Boundary

In delineating an APE, consideration must always be given to an undertaking's potential effects on a historic property as a whole. If any part of a property may be affected, the APE will generally encompass the entire property including the reasonably anticipated or known boundaries of archaeological sites. However, it is rarely necessary to extend an APE to include entire large districts or landscapes, large rural parcels, extensive functional systems, or long linear features if potential effects on the whole would clearly be negligible. In cases when a fraction of a larger district or linear resource is included in the APE, effort will be made to understand the nature of the entire property outside the APE boundary.

The guiding principle on delineating an APE is that it should be commensurate with, and provide for, an appropriate level of effort to take into account an undertaking's potential for effects on historic properties.

General Guidelines

- In instances where an entire row of properties shall be directly affected and/or acquired as part of a project, the APE may be expanded to include the next row of properties.

- Where preliminary research indicates there are no known or potentially historic properties along the project area, the APE boundary may be contracted closer to the right of way.

- In determining APE boundaries that account for noise effects, CDOT may use information from noise studies to determine the expected degree of noise impacts associated with the project.

In order to encourage consideration of historic properties early in the planning and design of an undertaking, CDOT may identify a larger study area for use in conducting preliminary identification of historic properties until an APE can be delineated. A study area should encompass all land that could potentially be included in the final APE. Establishing a study area is especially relevant to those undertakings subject to a phased identification and evaluation process.

Changes to the APE
All APE boundaries are considered dynamic. Whenever an undertaking is revised (e.g., design changes, utility relocation, additional off-site mitigation areas), the CDOT historians and/or archaeologists will determine if the changes require modifying the APE. If an APE proves to be inadequate, CDOT is responsible for informing SHPO and consulting parties in a timely manner of needed changes. The APE shall be revised commensurate with the nature and scope of the changed potential effects.

Documenting Properties within an APE
It is not necessary to document every property within the APE. A combination of reconnaissance-level and intensive-level survey may be used to document properties within the APE boundary. Consultation with SHPO on survey methodology may be necessary to determine level of survey effort within an established APE.

Consultation on APE Boundaries
CDOT seeks SHPO and consulting party comments on the APE boundary, but does not request SHPO concurrence. CDOT takes into account SHPO and consulting party comments regarding the APE boundary, but makes the ultimate determination regarding the appropriate boundary for the undertaking.

Attachment 2
Screened Undertakings

Screened undertakings are those actions whose effects to historic properties are foreseeable, likely to be minimal or not adverse, or that will have no effect at all, but following appropriate screening, may be determined exempt from further review or consultation under this Agreement because they have been determined to result in a finding of *no historic properties affected* as defined in 36 CFR 800.

The CDOT cultural resources staff is responsible for screening individual undertakings that are included within the classes of screened undertakings listed below to determine if those individual undertakings require further consideration, or if they may be determined exempt from further review or consultation under the terms of this Agreement, as prescribed in Stipulation III (D).

The undertaking will not qualify as a screened undertaking if it is located within an officially eligible or listed historic district or national historic landmark district. Exceptions to this are noted below in Types of Screened Undertakings.

All features of the undertaking, including the identification of mandatory storage, disposal, or borrow areas, construction easements, and right-of-way acquisitions must be identified prior to the screening process. If additional features are added to a screened undertaking, the undertaking must be rescreened.

This Attachment applies only when the federal undertaking is limited exclusively to one or more of the project activities listed below. Additional Section 106 review will be required, following the steps outlined in Stipulation IV of the Agreement, if the CDOT cultural resources staff determines that the undertaking has the potential to affect historic properties. In addition, undertakings that include multiple activities cannot be evaluated under separate review processes (i.e., a single undertaking cannot be segmented so that part of the project is reviewed by SHPO and another part is cleared as a Screened Undertaking).

There are some project types identified below that also appear in Attachment 6, Section 106 Exempted Undertakings. When an undertaking does not meet the criteria for an exempt undertaking as defined in Attachment 6, it will be submitted to the CDOT cultural resources staff to determine if it meets the criteria for a Screened Undertaking or requires additional review.

For the purposes of this Attachment, all projects listed below fall under two categories:

1) They will occur within existing local road or highway right of way and no easements or additional right of way will be necessary; or

2) They require minor easements or additional right of way, but CDOT historians/archaeologists have determined that there are no historic properties in the project area.

For both categories, CDOT historians and archaeologists will conduct one or more of the internal review procedures listed below to determine if there are potential historic properties. Except in the cases noted below, if, during preliminary review, any of these project types occur within an officially eligible or listed historic district or national historic landmark district, a Section 106 review will be required.

Internal Review Process

The internal review process for the undertakings listed below may include one or more of the following procedures. The review process is not limited to these procedures, nor are all these procedures required for all undertakings. The level of review should be appropriate to the specific complexity, scale and location of the undertaking:

1. Literature and/or file search in OAHP records and/or COMPASS database to identify documented properties in the project area.

2. Consultation with Native American tribes who may attach religious or cultural significance to properties within the project area, as appropriate for the scope of the undertaking.

3. Site visit of project area, or windshield survey performed using satellite imagery or CDOT's Online Transportation Information System (OTIS).

4. Review of project plans.

5. Consultation with local historical societies, or knowledgeable informants, as appropriate for the scope of the undertaking.

6. Review of relevant records (i.e., aerial photos, historic maps, right of way plans, county assessor parcel data).

7. Determine whether there are officially eligible or listed historic districts or National Historic Landmark Districts in the project area.

8. Assess the likelihood that unidentified properties exist in the project area.

Based on the outcome of the screening process, CDOT may determine that individual undertakings are screened from further review when there is no potential to affect historic properties.

Documentation of Internal Review and Project Clearance

Upon determining that the undertaking meets the requirements of the Screened Undertakings and that the Internal Review Process has been met, CDOT cultural resources staff shall prepare a written memo to the appropriate CDOT Region Planning and Environmental Manager or environmental project manager that includes the following information:

- The internal review processes undertaken including the date the work was conducted
- A finding of *no historic properties affected,* and
- References to the project and the relevant section of this Agreement,

This written memo constitutes the documentation necessary to complete the Section 106 process for screened undertakings determined exempt from further review, and no further review or consultation will be necessary. A list of the projects cleared via the screening process shall be included in the Section 106 Tracking Report described in Stipulation XIII(B) of this Agreement.

Types of Screened Undertakings

I. ENHANCEMENTS

A. CURB, GUTTER, and SIDEWALK

1. Installation, replacement, or repair of curb, gutter, and sidewalk improvements.

B. STREETSCAPES

1. Streetscape improvements including installation of benches, garbage receptacles, signage, lighting, landscaping, and pavers. Design of streetscape elements will vary according to project location and setting.

C. AMERICANS WITH DISABILITIES ACT (ADA)-COMPLIANT FEATURES

1. Installation of ADA-compliant features along local roadways or highways. Features may include pedestrian crosswalk bulbs and ramps.

D. BICYCLE, RECREATIONAL, PEDESTRIAN TRAILS

1. Construction of bicycle, recreational, and pedestrian trails that may require easements or minor right of way acquisitions in areas where CDOT cultural resources staff has determined there are no historic properties.

2. Installation of bicycle sharing stations. Includes installation of concrete pads to securely mount bicycle stations, station installation near existing concrete infrastructure, and associated electrical connections to existing buildings. Applies to stations installed in and out of right-of-way where no historic properties will be affected.

E. BUS STOP IMPROVEMENTS

1. Installation of bus shelters, bike racks, benches, trash cans, and other improvements, including landscaping, curb and gutter work, and concrete work at bus stop locations. Within historic district boundaries, includes installation of improvements within non-contributing or disturbed areas or when it involves replacement of existing bus stops within the district if the bus stop is within the current footprint only. Outside of historic districts, includes improvements outside the existing disturbed area

II. ROADWAY

A. GUARDRAILS

1. Installation, replacement, and repair of guardrail and right of way fencing.

B. LIGHTING AND SIGNALIZATION

1. Installation of lighting or signals at intersections. Lighting and signal design may vary.

C. REHABILITATION OR MINOR WIDENING OF STRUCTURES OVER HISTORIC LINEAR FEATURES

1. Rehabilitation or widening of no more than twenty (20) feet of bridges, box culverts, and grade separations where there are no direct alterations to the historic linear feature (e.g., irrigation canal, railroad) that extends beneath.

D. OVERLAY AND SEALCOATS

1. Pavement resurfacing, reconstruction that extends beyond the existing roadway prism (i.e., the area that represents the roadway including the extent of pavement and shoulders) placement of sealcoats and chipseals, and crack filling.

E. SHOULDER WORK

1. Addition of paved or gravel shoulders. Typical shoulder width is 4 feet.

2. Paving existing gravel shoulders.

3. Flattening paved shoulders.

4. Addition of bicycle lanes or pedestrian walkways along the local road or highway.

5. Installation of rumble strips on existing pavement.

F. INTERSECTION IMPROVEMENTS

1. Addition of turn lanes and auxiliary lanes that may require a minor amount of right of way (a total of twenty feet or less).

2. Installation of roundabouts that may require a minor amount of right of way.

3. Minor modification of interchanges and realignments of on/off ramps.

4. Road widening (e.g., adding lanes, adding paved shoulders) where less than twenty (20) feet of right-of-way (no more than ten (10) feet on either side) is required.

5. Minor changes in road alignment within local road or highway right of way.

G. SAFETY IMPROVEMENTS AND HAZARD REMOVAL

1. Repairs to the roadway (e.g., sink holes, pot holes, ruts).

2. Patching, lighting replacement, and other minor repairs to highway tunnels. Applies to both NRHP eligible and non-eligible tunnels.

3. Removal of objects on roadways, traffic accident clean-up, hazardous waste removal, and fire control.

4. Installation or replacement of wildlife fencing, wildlife escape ramps, and wildlife detection lighting in and outside of existing ROW.

5. Installation or replacement of glare screens, median barriers, safety barriers, guide posts, markers, signs, and safety cables in the highway median.

6. Replacement of roadway expansion joints.

H. CHAIN CONTROL AREAS, PARK AND RIDE LOTS, AND MAINTENANCE PULL OUTS

1. Construction or improvements to rest areas, truck weigh stations, park and ride lots, and other highway- related maintenance, storage, and office facilities.

I. SIGNS AND SURVEILLANCE

1. Installation of freeway surveillance or ramp metering equipment.

2. Installation, repair, or replacement of traffic control systems or devices utilizing existing infrastructure, including cameras, traffic signals, hazard identification beacons, or variable message signs (VMS) or signals.

3. Maintenance, repair, or replacement of, damaged or downed highway signs, at their existing locations. Applies to existing signage in eligible historic district boundaries that is being replaced in-kind with signs of similar design and scale.

4. Replacement of outdated highway signs that do not meet current reflectivity standards. Applies to historic districts when the replacement signage is similar in location, design, and dimension to existing signage.

III. CULVERTS AND DITCHES

A. DRAINAGE IMPROVEMENTS

1. Repair, rehabilitation, and replacement of minor drainage features within the highway right-of-way, including corrugated metal pipes, intake/outtake features, drainage ditches, and rundowns.

2. Repair, rehabilitation, and replacement of minor drainage structures not yet 50 years old, including concrete box culverts and stone or concrete culvert headwalls.

3. Storm damage repairs, such as culvert clearing or repair, disposal or stockpile locations, shoulder reconstruction, or slide or debris removal.

4. Repair and rehabilitation activities (e.g., debris removal, patching, stabilization) that will not affect the appearance, or alter structural elements (e.g., wingwalls, guardrail, headwalls) of culverts. Applies to both NRHP eligible and non-eligible culverts.

IV. BRIDGES

A. REPAIRS AND REHABILITATION

1. Bridge deck rehabilitation and stabilization. Applies to both NRHP eligible and non-eligible bridges.

2. Removal, replacement, or installation of utilities and conduits that do not require modifications to the bridge structure. Applies to both NRHP eligible and non-eligible bridges.

3. Substructure alterations where the work is confined to the bridge. Applies only to bridges that are not yet 50 years old or have been determined not eligible for the NRHP.

4. Pothole patching, painting, concrete sealants, expansion joint replacement, bearing replacement, and other maintenance activities that will not affect the appearance of the structure or alter significant structural elements. Applies to both NRHP eligible and non-eligible bridges.

5. In-kind repairs to abutments, piers, girders, and other structural elements where no excavation is proposed. Applies only to bridges not yet 50 years of age or determined not eligible for the NRHP.

V. Utilities

A. INSTALLATION or RELOCATION OF UTILITIES AND FIBER OPTIC LINES Including Intelligent Transportation Systems (ITS) infrastructure

1. Installation, replacement, or repair of utilities, conduits, fiber optic cables, and pull boxes, and driver communication systems or traffic systems. Work may involve drilling, trenching, or directional boring using laser technology to connect conduit beneath the ground, and installation of vehicle messaging systems or traffic signal systems. In urban areas, sidewalk panels, medians, and landscaping may need to be disturbed but will be restored to original pre-construction appearance. In places where drilling, trenching, or boring extends beneath linear resources (e.g., irrigation canals, railroad grades, remains of railroad berms), those resources will not be disturbed.

2. In-kind replacement of pull boxes will not require Section 106 review. Section 106 review will only be required if the project includes the installation of pull boxes within an officially eligible or listed historic district in areas that did not previously have pull boxes. In-kind replacement of pull boxes within historic districts will not require Section 106 review.

3. Installation and improvements to Intelligent Transportation Systems (ITS). Includes installation and improvements to infrastructure such as Travel Time Indicators (TTI) on existing infrastructure and improvements to existing node buildings and rooms within office buildings or maintenance yards. New node buildings installed within right of way or in areas that do not have the potential to affect historic properties will not require Section 106 review.

VI. Railroads

A. IMPROVEMENT OF RAILROAD CROSSINGS

1. Minor alterations or widening of existing railroad crossings where the alignment of the highway intersects the alignment of a railroad at grade. Includes in-kind replacement of

existing railroad ties, concrete crossing materials, signage, signals, and warning devices. Applies to both NRHP eligible and non-eligible railroad grades.

2. Replacement or installation of new crossing gates and signing within the existing right-of-way or roadway easement.

3. Removal of railroad grade crossing materials on previously abandoned railroads.

4. Roadway resurfacing that intersects existing railroad crossings where work is limited to re-paving only. Applies to both NRHP eligible and non-eligible railroad resources and where crossing material is already in place. Also applies to railroad resources in historic districts where crossing material is already in place and is being replaced with in-kind materials.

VII. Miscellaneous

A. TESTING AND DRILLING

1. Testing or conducting drill samples within the highway right-of-way.

2. Conducting preliminary engineering tests, such as seismic, geologic, or hazardous materials testing that may require trenching or ground boring in and outside of the highway right-of-way.

B. ROCKFALL MITIGATION

1. Installation of rockfall containment systems (e.g., draped wire mesh, netting, fencing, attenuator systems) along cliff faces or hillsides within or adjacent to the highway right-of-way. Some rock scaling may be necessary to prepare the cliff face for the installation of netting.

C. NOISE BARRIERS

1. Installation of noise walls, noise barriers, and vegetation berms associated with highway project mitigation. Design of the noise barriers will vary depending on project location and setting.

D. CDOT-OWNED PROPERTY

1. Additions or alterations to existing CDOT-owned buildings, such as work on or in office or equipment buildings, maintenance facilities, warehouses, roadside rests, minor transit facilities, weigh and inspection stations, toll facilities, or state-owned rentals.

2. Disposal or transfer of vacant parcels that do not contain resources or structures more than 50 years of age, are not within historic districts, and have limited archaeological potential. Also includes properties that are 50 years or older but have been determined officially not eligible.

E. TEMPORARY DETOURS

1. Construction of temporary traffic detours associated with bridge replacements, safety projects, and emergency projects (e.g., sinkholes, wash-outs) within highway rights-of-way. Applies to the built environment only, as the potential for archaeological resources may be a concern on a project-by-project basis.

Attachment 3
Guidelines for Identification, Documentation, and Evaluation of Linear Resources

Linear resources include irrigation ditches and canal systems, storm sewers, functioning and abandoned railroad grades, exposed and subsurface trolley systems, abandoned road segments, functioning highways, and trails. Linear resources present unique challenges with regard to identification and documentation because in most cases the segment evaluated for a given undertaking represents only a small section of a much larger resource that extends well outside the project area. Sometimes resources such as railroads and irrigation canals stretch through several counties, and the level of effort to document the entire resource is outside of the scope of work for a single undertaking.

In order to provide a consistent approach to the identification, documentation, and evaluation of linear resources, CDOT has developed the following set of general guidelines and practices. These guidelines reflect CDOT's typical treatment of linear resources and should be evaluated for applicability on a project-by-project basis.

Identification/Documentation

- In cases where the linear resource is too extensive to field survey in its entirety, archival research may be completed to determine significance. If it is outside the project scope to evaluate the entire ditch in the field and there is not enough archival documentation, CDOT will make an assumption regarding eligibility.

- The entire length of the linear resource is not typically surveyed in the field; however, when the resource is a reasonable length (e.g., under 3 miles) and is accessible, CDOT cultural resources staff may document the entire resource and make a determination of eligibility.

- Based on project scope, location, and the nature of the resource, CDOT cultural resources staff will document a segment length sufficient to evaluate the physical condition and integrity of the resource as it extends beyond the immediate project area and to determine if the segment supports or does not support the overall eligibility of the entire linear resource. For example, in cases where a bridge over an irrigation ditch is being replaced, staff will look at the resource on either side of the bridge crossing and evaluate that area as part of the overall segment, rather than limiting the evaluation to the segment of ditch within the existing bridge footprint.

- For significantly long linear resources, a combination of field survey and archival research may be used to determine eligibility. CDOT may consult with SHPO to determine the level of effort necessary to make a determination of eligibility using these methods.

- Subsurface linear resources (e.g., trolley systems, storm sewers) where there are no exposed segments or remnants may be documented through the use of archival information to determine the route and significance of the resource.

- Natural drainages, drainage ditches, and remnant irrigation ditches where there is information indicating that the overall ditch no longer exists, are typically not documented in the field by CDOT cultural resources staff. Sufficient research is conducted to determine the nature of these resources before making this determination.

- CDOT cultural resources staff may evaluate irrigation ditches and canal systems as historic districts when research indicates that this approach is appropriate.

- CDOT cultural resources staff shall document and evaluate lateral ditches and consult with SHPO on eligibility, but in most cases lateral ditches lack significance.

Evaluating Effects

- When evaluating effects to contiguous linear resources, the effect determination applies to the *entire* resource and not the segment in the project area. The segment is evaluated to determine if it supports the significance of the overall resource and to determine the effect to the overall resource.

- When a linear segment lacks integrity and does not support the overall significance of the entire resource, but is being impacted by a project, an effect determination for the entire resource is still necessary.

Attachment 4
Colorado Exceptions to the Advisory Council on Historic Preservation
Interstate Highway Exemption

In Colorado, the final list of nationally and exceptionally significant features of the Federal Interstate Highway System includes the following resources:

Glenwood Canyon (I-70 MP 118.5-130.3)
Eisenhower-Johnson Memorial Tunnels (I-70 MP 213.7)
Vail Pass (I-70 MP 180-195.2)
Genesee Park Interchange (I-70 MP 253.5)
Twin Tunnels (I-70 MP 242.2)
Arkansas River Bridge (I-25 MP 97.6)
Speer Boulevard Underpasses (I-25 MP 211.5)
23rd Avenue Underpass (I-25 211.2)

When projects have the potential to affect these properties, the Section 106 review process is required.

Attachment 5
Federally Recognized Native American Tribes

1. Apache Tribe of Oklahoma
2. Cheyenne & Arapaho Tribes of Oklahoma
3. Cheyenne River Sioux Tribe
4. Comanche Nation of Oklahoma
5. Crow Creek Sioux Tribe
6. Fort Sill Apache Tribe
7. Hopi Tribe
8. Jicarilla Apache Tribe
9. Kiowa Tribe of Oklahoma
10. Mescalero Apache Tribe
11. Navajo Nation
12. Northern Arapaho Tribe
13. Northern Cheyenne Tribe
14. Oglala Sioux Tribe
15. Pawnee Nation of Oklahoma
16. Pueblo of Acoma
17. Pueblo of Cochiti
18. Pueblo of Isleta
19. Pueblo of Jemez
20. Pueblo of Laguna
21. Pueblo of Nambe
22. Pueblo of Picuris
23. Pueblo of Pojoaque
24. Pueblo of San Felipe
25. Pueblo of San Ildefonso
26. Pueblo of San Juan (Ohkay Owingeh)
27. Pueblo of Sandia
28. Pueblo of Santa Ana
29. Pueblo of Santa Clara
30. Pueblo of Santo Domingo
31. Pueblo of Taos
32. Pueblo of Tesuque
33. Pueblo of Ysleta del Sur
34. Pueblo of Zia
35. Pueblo of Zuni
36. Rosebud Sioux Tribe
37. Southern Ute Indian Tribe
38. Standing Rock Sioux Tribe
39. Three Affiliated Tribes (Arikara, Hidatsa, Mandan)
40. Ute Indian Tribe (Ute Tribe of the Uintah and Ouray Reservation; "Northern Ute")
41. Ute Mountain Ute Tribe
42. Wichita and Affiliated Tribes

Attachment 6
Section 106 Exempted Undertakings

Undertakings exempt from Section 106 review by CDOT cultural resources staff are actions that have no potential to affect historic properties and have met the requirements outlined in this attachment.

Only designated environmental staff in the CDOT Regions may determine whether an undertaking meets the requirements of this Attachment and requires no additional review by CDOT cultural resources staff. Designated environmental staff is limited to Region Environmental and Planning Managers (RPEM) and Environmental Managers tasked with coordinating Section 106 compliance with CDOT cultural resources staff and who are familiar with the Section 106 process. CDOT cultural resources staff will identify and approve the list of designated staff for each region. This list will be updated when there are staffing changes in the regions.

An undertaking will not qualify as exempt from review by CDOT cultural resources staff if it is located within a field eligible, officially eligible or listed historic district or national historic landmark district. A list of these districts has been provided to the designated environmental staff in each region. If, during the review process, the designated CDOT environmental staff finds that the project is within a district, CDOT cultural resources staff will be notified to evaluate the project under Section 106. The list of districts will be updated on an annual basis to ensure that any newly-identified districts are added.

An undertaking will not qualify as exempt from review by CDOT cultural resources staff if there are requirements for temporary or permanent easements or right-of-way (ROW). In cases where easements or ROW are necessary, CDOT cultural resources staff will be contacted to evaluate the project under Section 106.

Any undertaking as identified in Attachment 6 that does not meet the criteria and is sent to CDOT cultural resources staff for review will be evaluated to determine if it meets the criteria for a Screened Undertaking as defined in Attachment 2.

Any undertakings identified as emergency situations as defined in Stipulation XII of this agreement cannot be cleared based on the terms of Attachment 6 and must be reviewed by CDOT cultural resources staff.

FHWA and CDOT cultural resources staff will review the use and application of Attachment 6 by specified regional environmental staff after a trial period of one year after the PA amendment is executed. If FHWA and CDOT cultural resources staff determine that regional staff has not followed internal procedures for its use, Attachment 6 may be terminated for use by that region.

Documentation and Reporting of Section 106 Exempt Undertakings

A written memo to the CDOT Region project file that references the project and the relevant section of this agreement is sufficient to document that the project qualifies as exempt from Section 106 review by CDOT cultural resources staff. A copy of this memo will be sent to CDOT cultural resources staff. A list of the projects determined exempt from Section 106 shall be included in the Section 106 Tracking Report described in Stipulation XII (B) of this Agreement.

Types of Exempted Undertakings

This Attachment applies only when the federal undertaking is limited exclusively to one or more of the activities listed below. For the purposes of this Attachment, all projects listed in this attachment must meet two basic criteria which are listed below. If a project type does not require contact with CDOT cultural resources staff under any circumstances, this is noted.

1. Project occurs within the existing local road or highway right-of-way and no easements or additional right-of-way will be necessary; and

2. Project is not within a field eligible, officially eligible, or listed historic district, or national landmark district indicated on the district list provided to the regions.

The following activities are exempted undertakings provided they meet the two basic criteria noted above:

I. ENHANCEMENTS

A. CURB, GUTTER, and SIDEWALK

1. Replacement or repair of existing curb, gutter, or sidewalk. Does not include installation of new curb, gutter, and sidewalk.

B. BICYCLE, RECREATIONAL, PEDESTRIAN TRAILS

1. Installation, repair and maintenance of structural components (i.e., additional racks, shelter, etc.) to existing bicycle stations within existing disturbed area. Does not include installation of concrete pads or electrical connections.

C. BUS STOP IMPROVEMENTS

1. Installation, repair and maintenance of structural components (i.e., bus shelters, bike racks, benches, trash cans, and other improvements) at existing bus stop locations.

II. ROADWAY

A. LIGHTING AND SIGNALIZATION

1. Installation of lighting or signals at intersections. Lighting and signal design may vary.

B. OVERLAY AND SEALCOATS

1. Pavement reconstruction, resurfacing, placement of sealcoats and chipseals, and/or crack filling within the existing highway right of way.

C. SHOULDER WORK

1. Paving existing gravel shoulders.

2. Flattening paved shoulders.

3. Repaving shoulders.

4. Installation of rumble strips on existing pavement.

5. Addition of bicycle lanes or pedestrian walkways on local roads or highways.

D. SAFETY IMPROVEMENTS AND HAZARD REMOVAL

1. Repairs to the roadway (e.g., sink holes, pot holes, ruts). In cases where sinkholes are located in areas where historic mining or railroad features are present and could be the cause of the sinkhole, CDOT Cultural Resources Staff will be contacted.

2. Removal of objects on roadways, traffic accident clean-up, hazardous waste removal, and fire control.

3. Installation or replacement of glare screens, median barriers, safety barriers, and safety cables in the highway median.

4. Installation or replacement of guide posts, markers, signs, right of way fencing, wildlife fencing, wildlife escape ramps, and wildlife detection lighting.

5. Roadway striping.

6. Replacement of roadway expansion joints.

E. SIGNS AND SURVEILLANCE

1. Maintenance, repair or replacement of traffic control systems or devices utilizing existing infrastructure, including cameras, traffic signals, hazard identification beacons, or variable message signs (VMS) or signals at their existing locations.

2. Maintenance, repair or replacement of highway signs, at their existing locations.

3. Replacement of outdated highway signs that do not meet current reflectivity standards.

III. MISCELLANEOUS

A. EQUIPMENT PURCHASE

1. Purchase of materials and equipment. Subsequent installation of the materials and equipment will be evaluated according to the applicable sections of this agreement. This applies within and outside eligible historic district boundaries and does not require review by CDOT cultural resource staff.

Attachment 7
Common Bridge Types

Provided none of the criteria outlined in Stipulation IV. F of this agreement apply, the following bridge types fall within the scope of the Advisory Council on Historic Preservation's "Program Comment issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges":

A) Reinforced concrete slab bridges
   (i) Reinforced concrete pre cast-in place slabs
   (ii) Reinforced concrete pre-cast slabs
   (iii) Pre-stressed concrete slabs

B) Reinforced concrete beam and girder bridges
   (i) Reinforced concrete Tee Beams
   (ii) Reinforced concrete channel beams
   (iii) Pre-stressed concrete I-beams and Bulb Tees
   (iv) Pre-stressed concrete box beams

C) Steel Multi-Beam or Multi-Girder bridges
   (i) Steel-rolled multi-beams
   (ii) Steel fabricated (built-up) girders

D) Culverts and reinforced concrete boxes
   (i) Reinforced concrete boxes
   (ii) Concrete box culverts
   (iii) Concrete pipe culverts
   (iv) Steel pipe culverts

Attachment 8
Examples of Exempt and Non-Exempt Emergency Actions

This attachment was developed to identify emergency actions considered exempt from Section 106 as outlined in Stipulation XII. C of this agreement. This attachment also includes examples of activities that would *not* be considered exempt. Depending on the type of emergency or natural disaster there could be other specific actions not listed here that are considered exempt. All exempt actions must be related to immediate preservation of life and property.

I. Exempt actions are associated with immediate preservation of life and property. Some examples include:

A. Replacement of collapsed bridges in an active evacuation route.

B. Removal of debris or portions of buildings and other structures (bridges, culverts) to reach trapped persons.

C. Establishing emergency detours.

D. Removing slides or debris.

E. Regrading roadway embankments and surfaces.

F. Restoring access to reach communities disconnected by flood, rockfall, wildfire, etc.

II. Non-Exempt activities include actions that are not associated with immediate preservation of life or property. Some examples include:

A. Cleanup activities after flood, tornado, wildfire, rockfall, etc.

B. Repair of buildings and structures, including bridges and roadways, that have been damaged by a disaster but are not endangering people or property.

C. Construction of permanent facilities associated with a natural disaster, including culverts, bridges, or new highway alignments.