

**PROGRAMMATIC AGREEMENT AS AMENDED  
BETWEEN THE  
NORTH CAROLINA 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 FUNDS  
FOR HURRICANE MATTHEW**

**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 Act of 2017 (Public Law 114-254) to assist recovery in the following fifty North Carolina counties:

Anson	Craven	Harnett	Moore	Richmond
Beaufort	Cumberland	Hertford	Nash	Robeson
Bertie	Currituck	Hoke	New Hanover	Sampson
Bladen	Dare	Hyde	Northampton	Scotland
Brunswick	Duplin	Johnston	Onslow	Tyrrell
Camden	Edgecombe	Jones	Pamlico	Wake
Carteret	Franklin	Lee	Pasquotank	Warren
Chatham	Gates	Lenoir	Pender	Washington
Chowan	Greene	Martin	Perquimans	Wayne
Columbus	Halifax	Montgomery	Pitt	Wilson

(“The Counties”) most impacted and declared a major disaster due to Hurricane Matthew; and

**WHEREAS**, HUD has unique statutory authority to delegate its environmental compliance responsibilities promulgated under 24 CFR 58 to state, local, and tribal governments including obligations under Section 106 of the National Historic Preservation Act of 1966 (recodified as 54 U.S.C. 300101 *et seq.*, the “Act”) and the Advisory Council on Historic Preservation’s (“ACHP”) implementing regulations at 36 CFR Part 800; and

**WHEREAS**, the North Carolina Department of Commerce (“DOC”) together with the North Carolina Division of Emergency Management (“NCEM”) entered into a Programmatic Agreement (“PA”), and with consultation with the State Historic Preservation Officer (“SHPO” or “HPO”), served as Responsible Entity (“RE”) and, upon information and belief, effectuated the required steps for proper completion of the PA; and

**WHEREAS**, October 16, 2018, the North Carolina General Assembly passed the Disaster Recovery Act of 2018 (S.L. 2018-136) that created the North Carolina Department of Public Safety, Office of Recovery and Resiliency (“NCORR”); and

**WHEREAS**, DOC and NCEM assigned the role of RE, effective July 1, 2019; and

**WHEREAS**, NCORR assumed the role of Grantee for the State for administration of CDBG-DR funds for Homeowner Recovery, Small Rental Repair, Multi-Family Rental Housing, Supportive Housing and Services, Public Housing Restoration, Small Business Recovery, Economic Development, Infrastructure, Resiliency, Public Facilities and Community Recovery (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 (Appendix E); and

**WHEREAS**, NCORR has chosen to administer the environmental review requirements under 24 CFR Part 58.18 and each of the Counties, affected by Hurricane Matthew, will assume the role of RE for their allotment of CDBG-DR funding; and

**WHEREAS**, NCORR has determined that implementation of the Programs will result in Undertakings (as defined in 36 CFR Part 800.16(y)) that may affect historic properties listed in or eligible for listing in the National Register of Historic Places (NRHP); and

**WHEREAS**, NCORR has consulted with SHPO pursuant to the Act and the ACHP's regulations; and

**WHEREAS**, given the magnitude of North Carolina's recovery efforts and the immediate need for governmental assistance, NCORR and the SHPO have determined that the development and implementation of a Programmatic Agreement (PA) for the use of the Programs will provide the most timely and cost-effective means for, NCORR and SHPO to address the unmet recovery needs of the Counties and the citizens of North Carolina affected by Hurricane Matthew and have invited the ACHP to participate in and be a party to this PA; and

**WHEREAS**, after the efforts of DOC and NCEM to request signature from ACHP, the ACHP declined the invitation to the original PA; and

**WHEREAS**, DOC, NCEM, and SHPO conferred with the Counties to determine if they wish to be concurring parties to this PA; and

**WHEREAS**, a County, as the RE, must accept concurring party status prior to their expenditure of CDBG-DR funds; and

**WHEREAS**, NCORR and SHPO conferred with the Counties to determine if they wish to be concurring parties to this amended PA; and

**WHEREAS**, DOC, NCEM, NCORR, and the SHPO conferred with the Eastern Band of Cherokee Indians, the Cherokee Nation, the United Keetoowah Band of the Cherokee Indians, and the Catawba Indian Nation, the federally-recognized tribes with cultural affiliation in North Carolina, to determine if they wished to join in this PA as consulting parties; and

**WHEREAS**, the Eastern Band of Cherokee Indians, the Cherokee Nation, the United Keetoowah Band of the Cherokee Indians tribes declined to join in this PA; and

**WHEREAS**, the Catawba Indian Nation accepted the invitation to be a consulting party to this PA; and

**WHEREAS**, NCORR as part of recovery efforts to date have consulted with local units of government, individuals and organizations who, due to the nature of their legal and economic relation(s) to the Programs' Undertakings or their concern with the effects of the Programs' Undertakings on historic properties, have demonstrated a legitimate interest; and

**WHEREAS**, NCORR have sought public participation by utilizing HUD procedures for public involvement found at 24 CFR 58.43; 58.45-46; 58.59 and other applicable sections of that part; and

**WHEREAS**, NCORR and SHPO will continue to identify interested parties and initiate consultation with them on a case-by-case basis, and will involve the public by disseminating information about those Undertakings and their effects on historic properties on NCORR's Hurricane Matthew website at <https://www.rebuild.nc.gov/>; and

**NOW THEREFORE**, NCORR and SHPO as signatories, agree that, with an effective date of July 1, 2019, the disaster recovery Undertakings funded by the CDBG-DR Programs shall be implemented in accordance with the following stipulations to take into account the effects of the Undertakings on historic properties.

## **STIPULATIONS**

### **I. Inter-agency Agreement**

- A. NCORR, by way of DPS authority, shall enter into an Inter-Agency Reimbursement Agreement with the Department of Natural and Cultural Resources to fund, within SHPO, on a time-limited basis, one (1) full-time Historic Preservation/Restoration Specialist (Qualified Staff), who meets the Secretary of the Interior's Professional Qualifications, outlined at 36 CFR Part 61. The Inter-Agency Agreement shall be added to this PA as Appendix H.
- B. If, as a result of the Initial Project Review outlined in Stipulation II, historic properties will be affected, Qualified Staff will coordinate the consultation process among the NCORR, the Counties and any concurring or affected parties pursuant to the ACHP regulations at 36 CFR Part 800.5- 36 CFR Part 800.6 to avoid, resolve or mitigate any adverse effect(s).
- C. Qualified Staff shall monitor the implementation of all efforts to avoid or mitigate adverse effects to historic properties, including consultation with the Counties and

their consultants to ensure adherence to any conditions to avoid adverse effects or to mitigate adverse effects upon historic properties.

## **II. Initial Project Review**

- A. The HPO shall, within fifteen (15) working days of receipt of the property information outlined in a *SHPO Data Transfer Form*, determine if a property, applying for assistance under the Programs, is listed in, is, or may be eligible for listing in the National Register of Historic Places (a Historic Property).
  1. If the property is not historic, the HPO will document on the *SHPO Data Transfer Form* that No Historic Property is present within the Undertaking's Area of Potential Effects (APE) and no further review is necessary.
  2. If the property is or may be Historic, the HPO will determine the effect of any Undertaking that is not an *Activity Categorically Excluded from Review* per Appendix A and document the Finding of Effect using the *Historic Property Effects Form*.
  3. Qualified Staff will provide the final evaluation of the property and effects finding to NCORR within thirty days (30) of receipt.
- B. If the effect of the Undertaking is adverse, Qualified Staff will determine if the use of one or more of the Standard Treatment Measures outlined in Appendix C will avoid or mitigate the adverse effect and document that the use of a Standard Treatment is acceptable.
- C. If Qualified Staff determines that the use of a Standard Treatment Measure is not acceptable and the property will be adversely affected, Qualified Staff shall consult with NCORR, the appropriate County and any consulting party(ies) per 36 CFR Part 800.6 to resolve the adverse effect.

## **III. Archaeological Reviews**

- A. The HPO shall coordinate with the Office of State Archaeology (OSA) to determine if archaeological resources are likely to be affected by a proposed Undertaking.
  1. If there is no likelihood for archaeological resources to be affected, the HPO will document that finding on a *SHPO Data Transfer Form*.
  2. If there is a likelihood that archaeological resources will be affected, Qualified Staff, in consultation with OSA, will determine what work is necessary to identify and evaluate the significance of the archaeological resources.
    - i. Qualified Staff will provide recommendations on work is needed to evaluate the archaeological resource(s) within thirty (30) days of receipt of the information provided per Appendix B.
    - ii. Qualified Staff, in consultation with OSA, will review the results of the recommended survey/testing and determine the eligibility of the resource(s).

3. If the archaeological resource(s) is deemed eligible for the NRHP, Qualified Staff, in consultation with OSA, will determine the effect of the proposed treatment and provide the effect finding to NCORR within thirty days (30) of receipt of the information listed and as formatted in Appendix B.
- B. Qualified Staff will explore with the RE and OSA how the project might be revised to avoid any eligible archaeological resource(s).
- C. If the resource(s) cannot be avoided and will be adversely affected, Qualified Staff will consult with NCORR and OSA and any consulting party(ies) per 36 CFR Part 800.6 to resolve the adverse effect.

#### **IV. Consultation with Certified Local Governments**

- A. In the event a county or local government within the fifty Counties is a Certified Local Government (CLG) with a local preservation commission, the CLG's commission shall be invited to become a Concurring Party to this PA and work with the HPO's Qualified Staff to explore how a project might be revised to avoid any impacts per 36 CFR Part 800.
- B. If impacts cannot be avoided and the resource will be adversely affected, the HPO will consult with NCORR and OSA, and any other consulting party(ies) per 36 CFR Part 800.6 to resolve the adverse effect
- C. If a CLG's commission declines becoming a Concurring Party to this PA, HPO's Qualified Staff will work with NCORR and the County within the process outlined at 36 CFR Part 800.6 to resolve any adverse effects within the CLG's jurisdiction.

#### **V. Mitigation Measures and Monitoring**

- A. If an adverse effect cannot be avoided, Qualified Staff will consult with the NCORR and the County, the project applicant and any consulting, concurring or interested parties for the undertaking to resolve the adverse effect, pursuant to 36 CFR Part 800.6.
  1. If implementation of one or more of the Standard Treatment Measures found in Appendix C will resolve the adverse effect, a Memorandum of Agreement (MOA) will be developed among the parties for implementation of those measures.
  2. If none of the Standard Treatment Measures found in Appendix C will resolve the adverse effect, the parties shall consult to develop Alternative Mitigation Measures and develop a MOA that incorporates those measures for resolving the adverse effect.
- B. Qualified Staff 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.
- C. In the event the Inter-Agency Reimbursement Agreement between NCORR and HPO (Appendix H) expires prior to completion of any or all Standard Treatment

or Alternative Mitigation Measures of the several MOAs, staff of the HPO will continue monitoring the implementation of the MOAs until such time as any and all mitigation measures are complete.

**VI. Dispute Resolution**

A. Should the SHPO or another consulting or concurring party or individual object within thirty (30) days to any plans or documentation provided for review pursuant to this PA and NCORR shall consult with the objecting party(ies) to resolve the objection. If NCORR determine that the objection cannot be resolved, it shall forward all documentation relevant to the dispute to ACHP. Within 30 days after receipt of all pertinent documentation, ACHP will either:

1. Provide NCORR with recommendations which NCORR will take into account in reaching a final decision regarding the dispute, or
2. Notify NCORR that it will comment pursuant to 36 CFR Part 800.7(c) and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by NCORR in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.

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

B. Any member of the public, any agency or organization may request ACHP review of Section 106 compliance for an individual undertaking in accordance with 36 CFR Part 800.9(a).

**VII. Unanticipated Discoveries and Treatment of Human Remains**

A. If, during implementation of any Undertakings carried out by the RE and covered by this PA, a previously unidentified historic property is encountered, or a previously identified historic property is affected in an unanticipated manner, the RE will consult with the other parties to this PA. The RE 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. B below.

B. Treatment of Human Remains and Funerary Objects

1. NCORR, in consultation with the SHPO and OSA, 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 shall be protected from the time of discovery

from further construction activities, pending consultation to resolve treatment of such remains.

2. NCORR shall immediately notify the State Archaeologist and the appropriate County Medical Examiner should any human remains and/or associated funerary objects be encountered by any activity covered by this PA. In the event of such discovery, NCORR and the State Archaeologist shall consult regarding the treatment and disposition of these remains. This consultation shall include consideration of the Treatment Guidelines for Human Remains and Funerary Objects, attached as Appendix D.
3. 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.
4. 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 ACHP'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.
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**

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

#### **IX. Termination**

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

**X. Duration**

This PA shall continue in full force and effect until (i) June 30, 2020 or (ii) until the programs covered by it are complete with regard to Hurricane Matthew recovery, whichever event occurs last. During the six (6) month period prior that event, the signatories will consult to consider an extension or amendment of the PA. No extension or amendment will be effective unless the primary signatories to the PA agree in writing.

Execution and implementation of this PA evidences that, the RE in cooperation with SHPO, has satisfied its responsibilities under Section 106 of NHPA for all Undertakings under this PA.

**[SIGNATURE PAGES TO FOLLOW]**



IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of each Party.

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

Laura H. Hogshead  
Signature

Laura H. Hogshead  
Printed Name

Chief Operating Officer  
Title

7/12/19  
Date

North Carolina State Historic Preservation Officer

Kevin Cherry  
Signature

Kevin Cherry  
Printed Name

Deputy Secretary / SHPO  
Title

7/12/2019  
Date

FILED BY ADVISORY COUNCIL ON HISTORIC PRESERVATION

Name of signer \_\_\_\_\_ Date \_\_\_\_\_

**PROGRAMMATIC AGREEMENT  
BETWEEN THE  
NORTH CAROLINA 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 FUNDS  
FOR HURRICANE MATTHEW**

Execution and implementation of this PA evidences that, the RE in cooperation with SHPO, has satisfied its responsibilities under Section 106 of NHPA for all Undertakings under this PA.

**AGREED AS CONSULTING PARTY**

**Catawba Indian Nation**

*Tribal Historic Preservation Officer*

*Wenona L. Haire, PhD*  
Name of signer

Date *9/3/17*

**PROGRAMMATIC AGREEMENT  
BETWEEN THE  
NORTH CAROLINA 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 FUNDS  
FOR HURRICANE MATTHEW**

Execution and implementation of this PA evidences that, the RE in cooperation with SHPO, has satisfied its responsibilities under Section 106 of NHPA for all Undertakings under this PA.

AGREED AS CONSULTING PARTY

[COUNTY NAME]

\_\_\_\_\_  
Name of signer

\_\_\_\_\_  
Date

**APPENDIX H  
(REPLACING APPENDIX H OF APRIL 25, 2018)**

**NORTH CAROLINA  
WAKE COUNTY**

**REIMBURSEMENT AGREEMENT**

**NORTH CAROLINA DEPARTMENT  
OF PUBLIC SAFETY**

**AND**

**NORTH CAROLINA DEPARTMENT OF  
NATURAL AND CULTURAL RESOURCES**

**DATE:** 7/12/19

THIS AGREEMENT is made effective July 1, 2019, by and between the North Carolina Department of Public Safety, an agency of the State of North Carolina, hereinafter referred to as the NCDPS, and the North Carolina Department of Natural and Cultural Resources, hereinafter referred to as the DNCR.

**WITNESSETH**

WHEREAS, NCDPS and DNCR recognize the need to function as a collaborative and cooperative team to meet the needs of North Carolina; and

WHEREAS, NCDPS and DNCR have committed together to deliver project review as required by federal law that arose from 2016 natural disasters expediently and provide for emergency recovery while protecting the natural and human environment; and

WHEREAS, to that end, NCDPS and DNCR have entered into a Programmatic Agreement to this end, effective July, 1, 2019; and

WHEREAS, NCDPS and DNCR, to meet project review goals and to facilitate effective working relationships, have agreed to maintain one (1) full-time, term-limited position within DNCR to assist with the activities and duties listed in the Programmatic Agreement, with benefit to the North Carolina Office of Recovery and Resiliency ("NCORR"), a department within NCDPS; and

WHEREAS, NCDPS has agreed to fund said position as a full-time, term-limited DNCR employee subject to the conditions hereinafter set forth; and

WHEREAS, DNCR has agreed to comply with the provisions and requests of NCDPS to support said position hereinafter set forth;

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, to fund and support one (1) position within DNCR as contemplated in the Programmatic Agreement ("PA") entered into by the parties and incorporated by reference herein, as follows:

**SCOPE OF PROJECT:**

1. DNCR agrees to maintain the one position listed below, and NCDPS, through NCORR, agrees to fund the salary, employee benefits, and overhead items described in this AGREEMENT for this position, in accordance with the terms and conditions contained in this AGREEMENT.

One (1) position within the State Historic Preservation Office (HPO):

a) Historic Preservation/Restoration Specialist - GN 10

2. Pursuant to this AGREEMENT, the position's core activities shall be exclusively dedicated (100%) to NCDPS project work to provide expedited project delivery and coordination, technical assistance, document review and collaborative problem solving as identified in APPENDIX H, Attachment 1, Position Description Summary, attached hereto and made a part hereof. The Parties agree that in addition to the core activities of the position, the position will include Inherent Activities as defined in Section 3 and that these Inherent Activities are within the scope of proper activities for which NCDPS will provide reimbursement under this AGREEMENT. Upon written request by DNCR, NCDPS may approve (in writing and in its sole discretion) the performance of other activities not related to disaster recovery including, but not limited to, voluntary work activities that are generally available to other DNCR employees. Such written approval need not be sought in cases of state- or federally-declared emergencies (such as hurricanes, floods, tornadoes, or earthquakes).

It is the intent of the parties that the incumbent to this position dedicate 100% of his or her work week to activities that may be funded by the Community Development Block Grant - Disaster Recovery ("CDBG-DR") and this AGREEMENT, since NCORR will reimburse the incumbent with CDBG-DR funds.

3. The position shall participate as a full-time DNCR employee with said inherent agency requirements, including, but not limited to, personnel training, staff meetings, agency public hearings, agency committees, administrative duties, and other required duties. (These inherent agency requirements are hereinbefore and hereinafter collectively referred to as "Inherent Activities"). The DNCR shall notify NCDPS in writing if the incumbent for this position is on leave for more than 30 consecutive calendar days, and the Parties shall reach a mutual agreement on how the core activities of the position will be met. The notification shall be required in advance for planned leave of more than 30

consecutive calendar days or shall be required immediately following the 30-day time period for any unplanned leave.

4. The position shall perform the job duties and responsibilities outlined in the abbreviated position descriptions included in APPENDIX H, Attachment 1. The person in this position shall perform at a "meets expectations" or higher level, and if they fail to do so, DNCR shall take appropriate steps under the personnel rules to obtain this level of performance. In the event a job description summary must be amended, it must be done with the mutual consent and written approval of the appropriate authorizing agents of both parties. If the agreed upon duties are not carried out, if work is undertaken by the position that is not related to the intent of this AGREEMENT, or if work is undertaken that is otherwise outside the scope of the position as defined herein, NCDPS shall have the option to terminate funding for the position and/or participation in this AGREEMENT in accordance with the procedure specified in this Paragraph. If NCDPS believes that the position is not performing as agreed upon in this AGREEMENT, then NCDPS shall notify DNCR in writing as to the nature of any discrepancy and shall give DNCR thirty (30) days to review and correct any discrepancy in accordance with this AGREEMENT. In the event that any discrepancy cannot be resolved then the process stated in Section 12 may be initiated. Notwithstanding the foregoing, NCDPS may not terminate funding for a position during a time when it is obligated under this AGREEMENT to pay short term disability for that position.
5. The position shall conduct their work in accordance with the attached Public Service Code of Conduct, which may be amended from time to time.

#### **REPORTING AND ACCOUNTABILITY SYSTEM:**

6. DNCR shall provide the required reporting and pre-approval as described in this AGREEMENT.
  - A. In conjunction with the reimbursement process noted in Section 8, the position must maintain quarterly records outlining the effort and time spent on the work, Inherent Activities, and activities as defined in APPENDIX H, Attachment 1 and herein. These records will account for one hundred percent (100%) of the time worked by each position, including time worked on non-NCDPS activities, if any, as approved by the NCDPS authorizing agent, and include quantifiable measures achieved in accordance with the Performance Measures identified in APPENDIX H, Attachment 2, attached herein and made a part hereof. These quarterly records must be submitted to NCORR and its designee within thirty (30) days following the end of each quarter and should be done in conjunction with the reimbursement process. The quarterly submittal deadlines are April 30, July 30, October 30, and January 30. In the event these dates occur on a nonbusiness day, reports must be submitted by the next business day. The format of the quarterly report shall be provided by NCORR and its designee following consultation with HPO.

- B. At the end of the one-year term of this AGREEMENT, DNCR shall submit to NCDPS a qualitative and quantitative programmatic report summarizing services provided by the position under the terms of this AGREEMENT. Said report shall include, but not be limited to, a narrative description of the contributions and value added to NCDPS' programs, trend analysis of services and deliverables provided, quantifiable measures achieved in accordance with the Performance Measures included in APPENDIX H, Attachment 2, and any efforts facilitating the disaster recovery process. Said report shall summarize the activities reported quarterly and shall be submitted no later than forty-five (45) days after the end of term of this AGREEMENT.
- C. Interim meetings between NCDPS and DNCR may be held for the purpose of discussing the quality of work performed and the key accomplishments, setting of priorities and goals, reviewing quarterly provided on the said position and adherence to the Public Service Code of Conduct in APPENDIX H, Attachment 3, which may be amended from time to time.
- D. In addition, two-way feedback and consultation can be initiated by any party at any time for the purposes of strategic planning, process improvement and for better service and communication.

#### **BUDGET STATEMENT AND REIMBURSEMENT PROCEDURE:**

- 7. Subject to compliance by the DNCR with the provisions set forth in this AGREEMENT, an annual budget shall be developed by the DNCR and shall be subject to approval by NCDPS as follows:
  - A. Annual budgets shall be developed for the funded position and shall be subject to approval by the NCDPS.
  - B. At a minimum, said annual budget must include line item appropriations for salary, retirement contribution, social security contribution, medical insurance contribution, office supplies, office furniture, travel, training, communication tools, information technology, and other employee benefits. The NCDPS funding obligation for the positions includes all the employee compensation and benefits that DNCR is required by law or by personnel rule or policy to provide to the employee who fills the position that is the subject of this AGREEMENT except is not obligated to fund or pay for workers' compensation claims in whole or in part.
  - C. The DNCR may request budget revisions, if necessary. Written approval for revision is required from NCDPS and/or its designee. Upon approval, said budget revisions shall be deemed a part of this AGREEMENT.
  - D. DNCR shall obtain written pre-approval from NCDPS and/or its designee prior to any out-of-state travel for which reimbursement from NCDPS or the State is

requested by the incumbent. NCDPS reserves the right to deny authorization or approval of such requests.

- E. DNCR shall obtain written pre-approval from NCDPS and/or its designee prior to any training for which the incumbent intends to seek reimbursement by NCDPS or the incumbent. NCDPS reserves the right to deny authorization or approval of such requests.
  - F. DNCR shall notify NCDPS in writing when the employee in the position is going on Short-Term Disability. NCDPS will cover the disability benefit for the period that DNCR cannot be reimbursed by the retirement system or other third-party source then in effect and available. NCDPS will not under any circumstances cover any Extended Short-Term or Long-Term Disability. The core activities for the position of anyone on Short Term Disability must follow the process prescribed in Section 3.
  - G. Without further approval of either Party, the maximum total annual budget amount (beginning July 1 to June 30 of any year) is based on a \$77,544 annual salary (which is \$51,000 base salary, and \$26,544 in benefits based on a 40 hour work week). The incumbent's salary may automatically adjust where there is a legislative raise or increase, and/or legislative directive or law to increase the salary of the position herein or of all State employees (including, for example, cost of living adjustments for DNCR employees).
  - H. Notwithstanding the foregoing, and for the purposes of this Agreement, DNCR provides that a 30 hour work week is "full-time." The incumbent in this position will work only 30 hours a week. At 30 hours a week, or 75% time, the maximum annual budget for this position is \$54,128 (which includes reimbursement for health and retirement benefits, prorated accordingly). NCORR will not reimburse DNCR for any amounts that exceed this budget. Any hours worked above 30 hours a week will be compensated by DNCR in compensation time, and not reimbursed by NCORR. DNCR must provide accurate invoices that reflect the actual time worked.
8. Subject to compliance by DNCR with the provisions set forth in this AGREEMENT, NCDPS shall reimburse DNCR as follows:
- A. HUD requires that for consultants and employees receiving CDBG-DR funds, that time and effort reporting be provided. Therefore, time and effort reports for this position will be submitted monthly to NCORR by DNCR, effective July 1, 2019. By August 1, 2019, DNCR must have updated the Integrated HR-Payroll System, formerly BEACON, for the incumbent to access the charge object functionalities to reflect the proper activities and categories for CDBG-DR funding, as required and designated by NCORR. Guidance on the appropriate categories will be provided by NCORR to DNCR, the guidance of which may be amended from time to time without notice. Until this system is set up, DNCR shall submit the



incumbent's time and effort in a report and form designated by NCORR. NCDPS shall reimburse DNCR based on monthly or quarterly invoices and quarterly reports submitted by DNCR. Reimbursement will be for the actual costs of the position up to the maximum reimbursement included in the negotiated annual budget for the position, within the HPO. For documentation and reimbursement purposes, monthly or quarterly invoices must be itemized.

- B. DNCR shall submit an invoice for the position within thirty (30) days following the end of each month or quarter. Each invoice shall contain appropriate documentation identifying the actual costs of the position as requested by NCDPS. The invoice for the position shall be submitted to NCORR and/or its designee. Reimbursement shall be made upon approval of said invoice by NCORR and/or its designee.
- C. DNCR is solely responsible for all agreements, contracts, and work orders entered into or issued by DNCR. NCDPS shall not be liable for any expenses or obligations incurred except those provided for by this AGREEMENT. NCDPS shall not reimburse DNCR for any costs that exceed the total approved budget funding at any time.

In no event shall NCDPS reimburse DNCR any amount in excess of the maximum budget as stated in Paragraph 7, Section G of this Agreement.

- 9. DNCR shall be responsible for maintaining appropriate records in accordance with state accounting procedures and regulations. Proper documentation, as requested by NCDPS, shall be submitted prior to any disbursement of funds by NCDPS. DNCR, as a component of the State of North Carolina, is subject to audit by the Office of the State Auditor. The Office of the State Auditor may audit the DNCR in accordance with 2 CFR 200. Since the Office of the State Auditor makes this information available through the State of North Carolina Single Audit Report, NCDPS will accept this document in lieu of a separate, independent audit.
- 10. DNCR shall maintain all books, documents, papers, accounting records and such other evidence as may be appropriate to substantiate costs incurred under this AGREEMENT. Further, DNCR shall make such materials available at its offices at all reasonable times during the AGREEMENT period, and for five (5) years from the date of final payment under this AGREEMENT, for inspection and audit by NCORR's Financial Management Division.
- 11. As the employer of the position, DNCR is fully responsible for handling and paying Workers' Compensation Claims that may be filed by the individual in the position covered by the AGREEMENT. This includes, but is not limited to, payment of medical expenses, disability claims associated with claims, and related attorney fees.

## **PERFORMANCE PERIOD**

12. Subject to the provisions stated herein, the AGREEMENT shall be in effect from July 1, 2019 through either (i) June 30, 2020, or (ii) until the programs covered by the Programmatic Agreement (PA) are complete, whichever event occurs last. During the six months prior to that event the signatories will consult to consider an extension or amendment.
  - A. Subject to any notice or cure period required or allowed by this Agreement, failure on the part of any party to comply with any of the provisions contained in the AGREEMENT shall be grounds for the other party/ies to terminate participation in this AGREEMENT.
  - B. In the event any party to this AGREEMENT should choose to withdraw from this AGREEMENT, written notification must be given to the Contracting Officer of the other agencies thirty (30) days prior to withdrawal.
  - C. All terms and conditions of this AGREEMENT are dependent upon and subject to the allocation of funds for the purpose set forth in the AGREEMENT, and the AGREEMENT shall automatically terminate if funds cease to be available. NCDPS will promptly notify DNCR if funding becomes unavailable or NCDPA learns funding is likely to become unavailable.
  - D. For the purpose of CDBG-DR reimbursement by NCORR to DNCR, the effective start date of the incumbent's position shall be July 1, 2019. For time worked on and after July 1, 2019, DNCR will submit the time and effort reports and invoices to NCORR directly.

## **MODIFICATION**

13. Any changes, amendments, corrections, or additions to this AGREEMENT or its APPENDICES herein, shall be in writing, shall be executed and approved by the appropriate Department Head, Authorized Agent or Contracting Officer of the parties who execute and approve the original AGREEMENT, shall be in accordance with applicable law, and shall become effective upon execution by all parties. This AGREEMENT can be extended by the mutual agreement of all parties.
14. If changes, amendments, corrections, reallocations, reclassifications or additions to this AGREEMENT or its APPENDICES are attempted or made by any party without following the prescribed process in Section 13 and excluding actions by the Office of State Personnel or the General Assembly, the other parties shall have the option to terminate the position or funding for it and/or participation in this AGREEMENT.

#### **ADDITIONAL PROVISIONS:**

15. When this AGREEMENT provides a party with a right of approval or concurrence, the party shall not unreasonably withhold the same.
16. It is mutually understood that NCDPS may conduct periodic audits on the position as identified in this AGREEMENT. Said audits may examine time spent and the nature of work on NCDPS projects or the accounting records and receipts for the position.
17. Work proposed to be performed under this AGREEMENT by DNCR shall not be subcontracted or outsourced without prior written approval by NCDPS or its designee.
18. It is the policy of NCDPS not to enter into any agreement with parties that have been debarred by any government agency. By execution of this Agreement, DNCR certifies, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by a governmental department or agency.
19. DNCR and its agents, including all contractors, sub-contractors, or sub-recipients, shall comply with the following federal policies: (a) Conflict of Interest; (b) Equal Employment Opportunity.
20. DNCR and its agents, including all contractors, sub-contractors, or sub-recipients, shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.
21. DNCR and its agents, including all contractors, sub-contractors, or sub-recipients, agree to comply with the requirements of 49 CFR Part 20, New Restrictions on Lobbying.
22. DNCR and its agents, including all contractors, sub-contractors, or sub-recipients, agree to comply with 49 C.F.R. § 32.400, Drug-Free Workplace requirements under subpart B of 49 C.F.R. Part 32.
23. NCDPS and DNCR are executive branch agencies of the State of North Carolina and, therefore, have no known legal authority to give indemnities. As between said parties, each party will be primarily liable to the other for damages caused by the party or its officers, agents, or employees acting within the course and scope of their employment with respect to the subject matter of this AGREEMENT, except to the extent that any such loss is actually reimbursed by a contractor or insurer. With respect to the claims of third parties, NCDPS and DNCR hereto enjoy the State's sovereign immunity except as expressly waived by the North Carolina Tort Claim Act, Article 31 of Chapter 143 of the General Statutes of North Carolina, and may be liable only as therein provided. None of the parties will take any action that could or might compromise the sovereign immunity of the other.

25. In no way shall it be construed or implied that NCDPS or DNCR is by this AGREEMENT intending to abrogate its obligation and duty to comply with the regulations promulgated under federal and state law.
26. No changes in the scope of this AGREEMENT shall occur until the changes have been mutually agreed upon by all parties to this AGREEMENT, and approved in writing by the appropriate Department Head, Authorized Agent or Contracting Officer, as included in Sections 13 and 14 of this AGREEMENT.
27. By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies.
28. This AGREEMENT contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this AGREEMENT except as expressly set forth herein.
29. The parties hereby acknowledge that the individual executing the AGREEMENT on their behalf is authorized to execute this AGREEMENT on their behalf and to bind the respective entities to the terms contained herein and that he has read this AGREEMENT, conferred with his attorney, and fully understands its contents.
30. The following shall survive the termination, expiration, or performance of this AGREEMENT: (a) all obligations and liabilities that accrue under this AGREEMENT before the termination, expiration, or performance of this AGREEMENT, (b) all obligations under this AGREEMENT to provide reports, documentation, or information to the other Party or third parties, (c) all provisions of this AGREEMENT that impose an obligation after termination, expiration, or performance of this AGREEMENT, and (d) all obligations under this AGREEMENT which by their nature or context are intended to be performed after the termination, expiration, or performance of this AGREEMENT.
31. A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of this AGREEMENT as binding as an original, and the parties agree that this AGREEMENT can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the AGREEMENT.

**[SIGNATURE PAGES TO FOLLOW]**

IN WITNESS WHEREOF, this AGREEMENT has been executed, in duplicate, the day and year heretofore set out, on part of NCDPS and DNCR by authority duly given.

L.S. ATTEST

NORTH CAROLINA DEPARTMENT OF  
NATURAL AND CULTURAL  
RESOURCES

BY: Jennifer M. Fontes  
TITLE: Assistant to Secretary of  
Natural and Cultural Resources  
DATE: 7/12/19

BY: Heidi Chesney  
TITLE: Deputy Secretary / SHPO  
DATE: 7/12/2019

"N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization."

(SEAL)

Joshua Davis 7-12-19

(FINANCE OFFICER)

Federal Tax Identification Number



Remittance address:

North Carolina Department of Natural and  
Cultural Resources

To the extent this agreement is a "Cooperative Agreement," as that term is defined by N.C.G.S. § 143B-24, and to the extent approval of the Department of Administration is required, approval is hereby given as indicated by signatures below.

NORTH CAROLINA DEPARTMENT OF  
PUBLIC SAFETY

BY: Ramond Hopkirk

TITLE: Chief Operating Officer

DATE: 7/12/19

## **APPENDIX H, ATTACHMENT 1: POSITION DESCRIPTION SUMMARY**

### **STATE HISTORIC PRESERVATION OFFICE (100% NCDPS Work)**

**Title: Environmental Review Specialist (State Historic Preservation Office)**

**Classification: Historic Preservation/Restoration Specialist – GN 10**

This position will review Disaster Recovery and Hazard Mitigation projects in the counties most affected by Hurricane Matthew. It is time limited to 12 months with the potential of renewal for another 6 to 12 months. It will implement the terms of the *Programmatic Agreement between the NC Departments of Commerce, Public Safety and Natural and Cultural Resources for Use of U. S. Department of Housing and Urban Development Community Development Block Grant Disaster Recovery Funds for Hurricane Matthew in North Carolina* by:

- Using the HPO GIS and statewide survey databases to review (within 14 days of receipt) disaster recovery and hazard mitigation projects funded by federal and state agencies.
- Determine if historic properties will be affected; and, if so determine the effect(s).
- Work with project sponsors and property owners to adjust plans to avoid adverse effects to historic properties, if possible; or
- If adverse effect(s) cannot be avoided, develop Memorandums of Agreement to resolve the adverse effect.
- Monitor the mitigation measures outlined in the Memorandums of Agreement to ensure their fulfillment.
- All work to be documented per the terms of the Programmatic Agreement and inter-agency reimbursement agreement between the three departments, including monthly and quarterly reports to DOC/DPS.

Also:

- Inherent Activities consisting of DNCR's agency requirements, including, but not limited to, personnel training, staff meetings, agency public hearings, agency committees, administrative duties, and other required duties.

## **APPENDIX H, ATTACHMENT 2: PERFORMANCE MEASURES**

The following measures and targets are set to ensure the agencies work together to optimize the benefits of this AGREEMENT. It is understood by the parties, NCDOC, NCDPS and DNCR, that meeting performance measures takes collaboration and commitment from all parties, as most activities are dependent on action by the parties. Any party may choose to revisit these measures and targets and evaluate the need for adjustments based on the first half year of execution of this AGREEMENT. If the parties agree on needed adjustments, such adjustments may be added to, and become part of this AGREEMENT.

### **STATE HISTORIC PRESERVATION OFFICE (HPO)**

#### **Historic Preservation/Restoration Specialist – GN 10 (aka Environmental Review Specialist for Disaster Recovery)**

##### **1. Document Reviews and Agency Responses**

- (A) Position will provide reviews and/or Agency responses for each action required by HPO or when requested by NCDPS / NCDOC within the established timeframes for the following actions:
1. Reviews federal and state undertakings related to 2016 disaster recovery as outlined in the Programmatic Agreement between NCDOC, NCDPS, and DNCR for their potential to affect historic properties.
  2. After projects are logged in by the Environmental Review Assistant and provided to the employee with a date-due deadline for completion, the specialist:
    - reviews the project area through available sources (GIS and Survey databases, files, and publications) to determine the likelihood for the presence of historic structures;
    - prepares a written response for each project within the deadline, noting if additional information is needed to determine the National Register eligibility of affected properties or to begin consultation for projects that adversely affect historic properties;
    - coordinates the preliminary review of projects by Survey and Restoration Specialists in the Raleigh and two HPO regional offices and combines them into a final comment. If appropriate coordinates with the Office of State Archaeology on the presence of archaeological resources within the project area;
    - processes the identification of historic properties, determinations of National Register of Historic Places eligibility and of effect after coordination with federal and state agencies and the public,



- meets on-site or through other means with stakeholders to better understand the nature and effects of the proposed project and to ensure that all parties are cognizant of the review process and possible outcomes; and
- helps develop appropriate mitigation measures and draft Memoranda of Agreement pursuant to applicable federal and state laws and regulations.
- Monitors implementation of mitigation measures.

**Measure:** *Percent (%) of reviews and/or responses delivered within established timeframes for each action or when requested by NCDOC*

**Target:** *100% delivery within established timeframes for reviews and responses*

**2. Database Update and Maintenance.** Under the PA, the position is responsible for:

- (A) adding all new and updating all existing property records in the HPO's Survey and GIS databases for properties that are determined eligible or no longer eligible for listing in the National Register of Historic Places as part of the Environmental Review process;
- (B) accessioning all Historic Structures Survey Reports to the HPO library and digital files; and
- (C) working with the DNCR Information Technology Services (ITS), HPO and OSA staffs to revise and maintain the Environmental Review project tracking database.

**Measure:** *Percent (%) of updates, accessioning, and revisions delivered within established timeframes for each action required by HPO or when requested by NCDOC*

**Target:** *100% delivery within established timeframes for same*

**3. Education/Outreach.** In support of the objectives of the PA, the position will provide the following education and outreach services:

- (A) answer inquiries about historic preservation matters and the environmental review process or projects covered by the PA;
- (B) educate and guide agency professionals, consultants, contractors and other stakeholders through the Section 106 process to a final outcome;
- (C) assist the HPO GIS Specialist in develop publicly accessible GIS mapping layer for PA-related review locations;
- (D) assist the Environmental Review Coordinator in developing and conducting educational workshops and training on historic preservation issues related to the PA; and

- (E) helps update the Environmental Review section of the HPO website for PA related activities as necessary.

**Measure:** *Percent (%) of education and outreach services delivered within established timeframes for each action required by HPO or when requested by NCDOC*

**Target:** *100% delivery within established timeframes for same*

## **APPENDIX H, ATTACHMENT 3: Public Service Code of Conduct**

As partners in emergency recovery and environmental decision-making processes, we must work together to respond to and aid in emergency recovery in an environmentally responsible manner.

Public service is a public trust. We must earn and maintain this trust by conducting ourselves in a manner that reflects the following principles:

**Professionalism** – We will conduct ourselves in a professional manner in dealing with other agencies and the public.

**Fairness and Reasonableness** – We will be open-minded, impartial, and consistent in our interactions with other agencies and the public to ensure all actions and decisions are free from bias and are not arbitrary or capricious. We will treat people equally and with tolerance.

**Knowledge** – We will remain knowledgeable of applicable laws, regulations, and scientific and technical advancements, which affect the delivery of the emergency recovery program in an environmentally responsible manner.

**Honesty** – We will be truthful, straightforward, and candid in all dealings.

**Timeliness** – We will strive to provide other agencies and the public with timely responses regardless of whether those responses are favorable or adverse.

**Accountability** – We will be decisive in all actions and accept responsibility for any of our decisions and resulting consequences. All decisions and recommendations will be based on fact and properly documented.

**Respect** – We will treat others with dignity, courtesy, compassion, and sensitivity.

## **APPENDIX A**

### **Activities Categorically Excluded from Review**

*These activities may be amended in accordance with Stipulation VIII of this Programmatic Agreement.*

In addition to projects and activities that are either exempt under HUD regulations (24 CFR 58.34) or are categorically excluded as not subject to review of the laws listed at 24 CFR 58.5 in accordance with 24 CFR 58.35(b), the signatories to this Programmatic Agreement concur that the following types of activities do not have the potential to cause adverse effects to historic properties, assuming such historic properties are present, and therefore the Responsible Entity (RE) has no further obligations under Section 106.

These Categorically Exclusions (Exclusions) apply to all CDBG-DR projects that will have limited or no effect on historic properties, either because the Undertakings do not "have the potential to cause effects on historic properties, assuming such historic properties were present," pursuant to 36 CFR 800.3(a)(1), the work will be conducted in previously disturbed areas, or the repairs will meet specific standards. As set forth at **Stipulation I. B.**, projects falling under one or more of these Exclusions will require review by qualified RE staff, but do not require review by the SHPO. Exclusions are organized into categories of activities based on the types of disaster related work typically funded by the CDBG-DR Program (Appendix B). The laws of the State of North Carolina shall govern the activities and work performed in accordance with this Programmatic Agreement, so long as such laws are not federally preempted.

When referenced in an Exclusion, "in-kind" shall mean that the repair is done with the same material, or a close match when original materials are no longer produced, and will match all physical and visual aspects of existing historic materials, including form, color, and workmanship. "In-kind" mortar will also match the strength, content, color and joint tooling of historic mortar. When referenced in the Exclusions, previously disturbed soils refers to soils that are not likely to possess intact and distinct soil horizons and which have the reduced likelihood of possessing archaeological artifacts, features, and phenomena within their original depositional contexts.

#### **Section 1: Administrative Costs and Non –Brick and Mortar Financial Assistance**

A. Economic development activities including equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs on associated with construction or expansion of existing operations where physical improvements, if any, will be limited to those activities described in the Excluded Activity sections below;

B. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payments assistance, interest buydowns, interim mortgage assistance, and similar activities that result in the transfer of title where no change in use will occur and physical improvements, if any, will be limited to those activities described in the Excluded Activity sections below;

C. Building acquisition where physical improvements, if any, will be limited to those activities described in the Excluded Activity sections below.

## **Section 2: Undertakings Involving Ground Disturbance**

### **Non-Specific Activities**

If the project will not involve buildings, objects, structures, defined sites, or cultural landscapes that are 50 years or age or older in the APE, and the following condition is met, the SHPO does not need to review the project regardless of activity. The project consultant or engineer shall document how the project meets the qualifying criterion on an *Excluded from SHPO Review Form* and submit it to the SHPO.

#### *Qualifying Criterion:*

The Area of Potential Effects (APE) has been profoundly disturbed. Profound disturbance as it relates to the APE occurs when a past activity or activities have physically altered the three-dimensional APE of an undertaking in its entirety to the point where there is no potential for an archaeologically significant property to remain.

### **Specific Excluded Activities**

When the following ground disturbing activities are proposed for any project locations not meeting the Qualifying Criterion, they will be considered excluded from further review by the SHPO, because the activities have limited potential to adversely affect historic properties:

- A. Photoscopic pictures of water and/or sewer pipe.
- B. Re-lining of non-historic water and/or sewer pipe (i.e., plastic, clay, concrete).
- C. Point repairs of water and/or sewer pipe.
- D. Hydrant replacements.
- E. Manholes cover replacements.
- F. New/replacement service lines and related appurtenances involving boring or slit trenches up to one (1) foot in width and 100 feet in length.
- G. Equipment replacement, purchase, removal, and/or installation.
- H. Disturbances confined to the current footprint of an existing facility compound, such as water and/or sewer treatment plants.
- I. Directional boring of utility lines without sending and receiving pits.
- J. Connecting pits relating to directional boring for utility lines no bigger than 10 feet by 10 feet.
- K. In-place replacement of water and/or sewer mains, if no known National Register of Historic Places listed or eligible properties, including sites and historic districts, are within the APE.
- L. Wells in existing well fields.
- M. Test boring/well sites to determine soil suitability, if no recorded archeological sites are in the vicinity.
- N. Replacement of concrete or asphalt sidewalks.
- O. Replacement of water towers on the same parcel when that parcel is less than one (1) acre in size, if water tower to be demolished is less than 50 years old and the new tower is not more than a 10% increase in capacity or an increase of more than 20 feet in height as compared to the existing water tower.

- P. Utility upgrades without land disturbance.
- Q. Parking lot rehabilitation or construction of less than one (1) acre in size, located on agricultural land, provided any ground disturbance activities will be confined to the plowzone, which generally extends 10 to 12 inches below the surface.
- R. Overhead power line replacement.
- S. Resurfacing and/or rehabilitation of existing concrete or asphalt roads, drives, or entries where the area is within both existing horizontal and vertical alignment. This does not apply to roads found eligible for listing on the National Register of Historic Places.
- T. Conversion of an existing gravel road to concrete or asphalt where the area is within both existing horizontal and vertical alignment. This does not apply to roads found eligible for listing on the National Register of Historic Places.
- U. Pavement widening and/or shoulder construction and the addition of auxiliary lanes, such as turn lanes or climbing lanes where the area is within both existing horizontal and vertical alignment of an existing right of way. This does not apply to roads found eligible for listing on the National Register of Historic Places.

### **Section 3: Undertakings Involving Architectural/Historical Resources**

#### **Non-Specific Excluded Activities**

If the following condition is met, the SHPO does not need to review the architectural portion of a project regardless of activity. The project consultant or engineer shall document how the project meets the qualifying criterion on an *Excluded from SHPO Review Form* and submit it to the SHPO.

#### *Qualifying Criterion:*

The Project will involve a building of any type that is less than 45 years old and not located within, adjacent to, or within the view-shed of a listed or potentially eligible National Register historic district.

#### **Specific Excluded Activities**

When the following activities are proposed for any architectural properties not meeting the Qualifying Criterion, they will be considered excluded from further review by the SHPO, because the activities have limited potential to adversely affect historic properties. The project consultant or engineer shall document how the project meets the qualifying criterion on an *Excluded from SHPO Review Form* and submit it to the SHPO.

#### **A. Exterior Rehabilitation**

- a) Caulking and weather stripping in a color complementary to the adjacent surfaces
- b) Scraping, extremely low-pressure (less than 100 psi) washing, and/or repainting of exterior cladding. This does not apply to destructive surface preparation treatments, such as water blasting, sand or other particle blasting, power sanding, or chemical cleaning.
- c) Repair or in-kind replacement of windows (i.e., new windows will duplicate the material, dimensions, design, detailing, and operation of the known historic

windows), as follows (this does not apply to the replacement of existing archaic, decorative, or architectural/structural glass):

- i. Repair, scrape, paint, and re-glaze existing windows.
  - ii. Repair or in-kind replacement of window sash, glass, and/or hardware, including jam tracks. Consideration should be given first to identifying ways to repair rather than replace damaged historic materials.
  - iii. Repair or in-kind replacement of damaged and non-operable transoms. Consideration should be given first to repair rather than replacement of damaged historic materials.
- d) Installation of storm windows and doors provided they conform to the shape and size of the historic windows and doors. The meeting rails should be at the same location as those of the window being covered. Color should complement trim.
- e) Repair or in-kind replacement (i.e., the new features will duplicate the extant material, dimensions, and detailing) of the following features (consideration should be given first to identifying ways to repair rather than replace damaged historic materials):
- i. Porches - railings, post/columns, brackets, cornices, steps, flooring, ceilings, and other decorative treatments.
  - ii. Roofs.
  - iii. Siding.
  - iv. Exterior architectural details and features.
  - v. Doors, including cellar/bulkhead doors.
  - vi. Gutters and downspouts.
- f) Repair or reconstruction of concrete/masonry walls, parapets, chimneys, or cornices, provided any new masonry or mortar matches the color, strength, composition, and joint width of existing walls, and no power tools are used on historic materials.
- g) Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
- h) Construction or replacement of wheelchair ramps provided the ramps are on secondary façades and will not directly impact the material fabric of the building.
- i) Installation of temporary wheelchair ramps on any façade.
- j) Substantial repair or in-kind replacement of signs or awnings. This does not apply to historic signs—painted, neon, or otherwise.

## **B. Interior Rehabilitation**

- a) Non-destructive or concealed testing for damage assessment or identification of hazardous materials (e.g., lead paint, asbestos, etc.).
- b) Any changes to the *non-public areas* of the building that are not in public spaces and do not affect the exterior of the building. (Public spaces in a residential building are limited to the rooms on the front elevation, including a hall, parlor and other rooms with openings such as a window or door onto the front elevation. Public spaces in a non-residential building are those spaces that the public would be welcomed into such as a lobby, hallway or major offices or meeting areas.)
- c) Installation of insulation in ceilings, attic spaces, and crawl spaces.

d) Installation of insulation in wall spaces provided an appropriate interior vapor barrier or vapor barrier paint is used and historic exterior clapboards are removed and reinstalled carefully. This does not apply to the installation of urea formaldehyde foam insulation or any other thermal wall insulation containing water.

### **C. Site Improvements**

- a) Repair or in-kind replacement of driveways, parking lots, and walkways, although consideration should be given first to repair rather than replacement of damaged historic materials whenever feasible.
- b) Repair or in-kind replacement of non-historic landscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.
- c) Repair or in-kind replacement of fencing and other exterior retaining or freestanding walls, provided masonry and mortar matches the color, strength, composition, rake, and joint width of historic wall and no power tools are used on historic materials.



## **APPENDIX B**

### **FORMS FOR PROJECT DOCUMENTATION**

*These forms may be amended in accordance with Stipulation VIII of this Programmatic Agreement.*

- SHPO Data Transfer Form– per Stipulation II. A. and II. A. 1
- Excluded from SHPO Review Form – per Stipulation II. A. 2 and Appendix A.
- Project Information Form for Non-excluded Projects – per Stipulation I. B.
- Recommendations to Responsible Entity (RE) on Archaeological Survey or testing, if Archaeological Resources Suspected – per Stipulation III. A. 2.i.
- Finding of Effects Form – per Stipulations II. C and III. C.

*These forms shall be developed among the parties to capture the necessary information as completely and efficiently as possible and allow for documentation of eligibility determinations and finding of effects.*

## APPENDIX C

### STANDARD MITIGATION MEASURES

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

If Undertakings result in or will result in adverse effects to historic properties, the Responsible Entity (RE) and SHPO may develop a treatment measure plan that includes one or more of the following Standards Mitigation Measures (36 CFR 68), depending on the nature and number of historic properties affected and the severity of the adverse effects.

#### **A. Recordation Package**

State-Level Documentation: Prior to project implementation, the RE shall oversee the successful delivery of a State Level Documentation Report prepared by staff or contractors, who meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. For the purposes of this Agreement, the State-Level Documentation Reports will be considered complete and in compliance with the documentation standards when they, at a minimum, follow the SHPO's Digital Policies and Resources for Survey and National Register Photography, Conducting A Survey: Survey Manual, Field Form and Database Computer Mapping found at:

[http://www.hpo.ncdcr.gov/digital/NCHPO\\_Digital\\_Start\\_Page.html](http://www.hpo.ncdcr.gov/digital/NCHPO_Digital_Start_Page.html) and include:

- a. Interior photo-documentation as part of this Standard Treatment will only be required when the RE and SHPO concur that such documentation is appropriate for a specific property.
- b. A concise narrative history of the property, and an appropriate historical context.
- c. To the extent feasible and in consultation with SHPO, the RE's State-Level Documentation Reports prepared for multiple properties within an individual historic district will be combined into more comprehensive reports. Subsequent State-Level Documentation of historic properties from the same historic districts will be submitted as Addenda.
- d. The RE shall submit the State-Level Documentation Report to SHPO for review and approval. SHPO will respond within ten (10) days of receipt with approval or any requests for amendments. If SHPO does not respond within the specified timeframe, the RE may assume SHPO approval and proceed with the project.

#### **B. Design Review by SHPO**

Prior to project implementation, the RE, shall work with SHPO to develop a historically sensitive construction approach. Plans and specifications will, to the greatest extent feasible, preserve the basic character of a building in the design, scale, massing, fenestration patterns, orientation and materials of the original building. Primary emphasis shall be given to the major street elevations that are visible. Significant contributing features (e.g. trim, windows, doors, porches) will be repaired or replaced with either in-kind materials or materials that come as close as possible to the original materials in basic appearance. Aesthetic camouflaging treatments such as use of veneers, paints, texture compounds and other surface treatments and/or use of sympathetic infill

panels and landscaping features, such as vegetative screening for elevated structures (see **Appendix G**), will be employed to the greatest extent feasible. Final construction drawings used in the bidding process will be submitted to SHPO for review and comment prior to the award of a construction contract and the initiation of construction activities.

**C. Public Interpretation**

Prior to project implementation, the RE will work with SHPO to design an educational interpretive plan. The plan may include signs, displays, educational pamphlets, websites 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 the RE will continue to consult throughout implementation of the plan until all agreed upon actions have been completed by the RE.

**D. Historical Context Statements and Narratives**

Prior to project implementation, the RE will work with SHPO to determine the topic and framework of a historic context statements or narratives the RE shall be responsible for completing using staff or contractors, who meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The statements or narratives may focus on an individual property, a historic district, a set or related properties, or relevant themes.

Once the topic of the historic context statements or narratives has been agreed to, the RE shall continue to coordinate with SHPO through the drafting of the document and delivery of a final product. SHPO shall have final approval over the end-product. The RE will use staff or contractors, who meet the Secretary's Professional Qualifications for the appropriate discipline.

**E. Oral History Documentation**

Prior to project implementation, the RE will work with SHPO 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 RE shall continue to coordinate with SHPO through the data collection, drafting of the document, and delivery of a final product. SHPO shall have final approval over the end-product. The RE will use staff or contractors, who meet the Secretary's Professional Qualifications for the appropriate discipline.

**F. Historic Property Inventory**

Prior to project implementation, the RE will work with SHPO to identify the parameters of historic property inventory efforts. Efforts may be directed toward the re-survey of previously designated historic properties and/or districts which have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation. Once the boundaries of the survey area have been agreed upon, the RE shall continue to coordinate with SHPO through the data collection process. The RE will use SHPO standards for the survey of historic properties and SHPO forms. EM will prepare a draft inventory report, using SHPO templates and guidelines, and work with SHPO until a final property inventory is approved. The RE will use staff or contractors, who meet the Secretary's Professional Qualifications for the appropriate discipline.

**G. National Register and National Historic Landmark Nominations**

Prior to project implementation, the RE will work with SHPO to identify individual properties that would benefit from a completed National Register or National Historic Landmark nomination form. Once the parties have agreed to a property, the RE shall continue to coordinate with SHPO through the drafting of the nomination form. SHPO will provide adequate guidance to the RE during the preparation of the nomination form and shall formally submit the final nomination for inclusion in the National Register. The RE will use staff or contractors, who meet the Secretary's Professional Qualifications for the appropriate discipline.

## APPENDIX D

### GUIDANCE FOR THE UNANTICIPATED DISCOVERY OF HUMAN REMAINS

The following guidance is intended to provide an understanding of what legal protections exist for human remains in North Carolina and what steps must be taken if they are encountered during construction on a project. It should be noted that the graves and remains of Native Americans are present in many areas that are now residential neighborhoods, and colonial graves and other historic burials may be found outside formally marked cemeteries and burial grounds.

North Carolina General Statute §70-29 requires that anyone who knows or reasonably believes that human remains are being exposed or disturbed **shall immediately notify the Chief Medical Examiner, and the State Archaeologist.**

**§ 70-29.** Discovery of remains and notification of authorities. (a) Any person knowing or having reasonable grounds to believe that unmarked human burials or human skeletal remains are being disturbed, destroyed, defaced, mutilated, removed, or exposed, shall notify immediately the medical examiner of the county in which the remains are encountered. (b) If the unmarked human burials or human skeletal remains are encountered as a result of construction or agricultural activities, disturbance of the remains shall cease immediately and shall not resume without authorization from either the county medical examiner or the State Archaeologist, under the provisions of G.S. 70-30(c) or 70-30(d). (c) (1) If the unmarked human burials or human skeletal remains are encountered by a professional archaeologist, as a result of survey or test excavations, the remains may be excavated and other activities may resume after notification, by telephone or registered letter, is provided to the State Archaeologist. The treatment, analysis and disposition of the remains shall come under the provisions of G.S. 70-34 and 70-35. (2) If a professional archaeologist directing long-term (research designed to continue for one or more field seasons of four or more weeks' duration) systematic archaeological research sponsored by any accredited college or university in North Carolina, as a part of his research, recovers Native American skeletal remains, he may be exempted from the provisions of G.S. 70-30, 70-31, 70-32, 70-33, 70-34 and 70-35(c) of this Article so long as he: a. Notifies the Executive Director within five working days of the initial discovery of Native American skeletal remains; b. Reports to the Executive Director, at agreed upon intervals, the status of the project; c. Curates the skeletal remains prior to ultimate disposition; and d. Conducts no destructive skeletal analysis without the express permission of the Executive Director. Upon completion of the project fieldwork, the professional archaeologist, in consultation with the skeletal analyst and the Executive Director, shall determine the schedule for the completion of the skeletal analysis. In the event of a disagreement, the time for completion of the skeletal analysis shall not exceed four years. The Executive Director shall have authority concerning the ultimate disposition of the Native American skeletal remains after analysis is completed in accordance with G.S. 70-35(a) and 70-36(b) and (c). (d) The State Archaeologist shall notify the Chief, Medical Examiner Section, Division of Health Services, Department of Health and Human Services, of any reported human skeletal remains discovered by a professional archaeologist. (1981, c. 853, s. 2; 1997-443, s. 11A.118(a); 2007-484, s. 10(b).)

Once notified, the Chief Medical Examiner and the State Archaeologist will consult to determine if the remains are human and whether the remains are archaeological in nature. If both of these



conditions are true, the State Archaeologist will determine whether the remains are Native American or non-Native in origins and initiate consultations with the property owner and other parties. Within 72 hours, the State Archaeologist, in consultation with the property owner, will determine the appropriate course of action, which may include, where feasible, preservation in place, or relocation.

If preservation in place is not feasible, the State Archaeologist will work with the other parties to respectfully recover and relocate the remains and any associated materials from the property. Most recovery efforts are completed in five days or less. Failure to immediately notify the State Archaeologist and Chief Medical Examiner when graves or human remains are discovered may lead to legal penalties.

**When to notify**

If bones are encountered which are suspected to be human, contact the State Archaeologist for guidance. If remains are encountered which are clearly human, stop all work in the area of the discovery and **notify the State Archaeologist and the Chief Medical Examiner immediately.**

**State Archaeologist**

John Mintz

North Carolina Department of Natural and Cultural Resources

Office of State Archaeology

Office: (919) 807-6555

Email: [john.mintz@ncdcr.gov](mailto:john.mintz@ncdcr.gov)

**North Carolina Office of the Chief Medical Examiner**

4312 District Dr.

Raleigh, NC 27609

Office: (919) 743-9000

## **APPENDIX F**

### **Guidance for Elevating Historic Properties**

The following guidelines are to provide guidance in considering the effect of elevations on historic building and district to ensure that communities are provided with the best opportunities to recover from disasters in a manner that is least destructive to the historic integrity of the subject buildings. However, many elevations result in an adverse effect to the subject building and its setting in that the elevation will alter the historic building to the extent that its condition will no longer effectively convey its historic materials, design, location or setting.

#### **When elevation of a historic property may be appropriate.**

When a historic building has been damaged by flooding and federal funding is available to repair the damage and mitigate the risk of subsequent flooding, first assess whether alternative treatments are feasible.

The relationship of a structure to grade is always important in defining its historic and visual character. Raising or elevating a historic property is, therefore, generally discouraged without first considering whether there are other feasible alternatives that would require less change to its character. Potential alternatives to elevating a property may include, but are not limited to:

- temporary or permanent flood protection, flood proofing, or other exterior/interior measures to make the structure more resilient to flooding and protect against hazards,
- site or landscaping changes (such as regrading or constructing a berm),
- moving/relocating the resource to another location), or
- raising or elevating a property in combination with flood protection measures or other site or landscaping changes to reduce the magnitude of change in elevation, and, thereby, reduce the impact on the historic and visual character of the structure.

Where such measures are impractical, the aim should be to elevate to the minimum necessary height to which a historic building can be elevated to meet current program or regulatory requirements. The potential for adverse effects to the historic integrity of buildings is increased with height. A four foot elevation may result in no adverse effects to a historic property when a six or eight foot elevation would substantially alter the building's original design and relationship to its surroundings.

Where current flood hazard regulations, building codes, or insurance requirements essentially render a building unusable in its historic condition, then elevations may be necessary to prevent the loss of the building. Consideration of proposed alterations to the existing design of a historic building is highly dependent on the specific context of each property. One of the important considerations for SHPO is how the subject building relates to the surrounding historic buildings. This is important, as most historic properties are elements within historic districts. Where a substantial percentage of homes in a historic district have already been elevated, the changes to

the visual character of the district caused by the elevation of a single building may be relatively minor.

The architectural style and construction of a building also plays an important role in establishing whether a proposed elevation will result in a major change to the historic design and setting of the building. The size and proportions of the historic building to be elevated relative to the height of the elevation is another consideration. Finally, the relationship of the original structure to adjacent features, such as roadways, should also be considered.

In general, design considerations should include:

- The height of an elevation ideally should not exceed the elevation of the historic first story.
- All designs should take into account the existing height and style of the surrounding buildings. Uniformly elevated historic buildings in a district are less obtrusive than a "broken" streetscape composed of inconsistently elevated (in height) and non-elevated buildings.
- All designs must maintain as much of the historic structure and character as possible, including doorways, windows, porches and other exterior features.
- The front door must remain a means of egress. Removal of the front door very often results in a major change to the historic design and appearance.
- Add-on designs including new porches, decks, and additions should be avoided. If the addition of a porch is necessary for the egress, the design should be as small and simple as possible and designed in a manner sympathetic to the historic style and character of the building.
- For beachfront properties, buildings should be elevated using open wood or concrete piers or concrete blocks; enclosed spaces beneath beachfront properties should be avoided as they may substantially change the scale and massing of the historic building.
- Low elevations (four feet or less) may be successfully designed with breakaway walls or other treatments that extend the design of the original structure down to the ground surface, particularly when the existing building is large. The break between the original structure and the elevated section should be visible through the incorporation of horizontal trim or other elements to distinguish the historic construction from the new.
- Where appropriate for the environmental setting, simple vegetative screens may help reduce the visual impact of the elevation and provide a stronger visual connection between the historic building and the ground surface.

**No elevation of a historic building or a building within or adjacent to a historic district is exempt from SHPO review, a finding of effect, and possible mitigation.**



## **APPENDIX G**

### **LANDSCAPING GUIDANCE FOR ELEVATED HISTORIC BUILDINGS**

For those projects which have already proceeded to construction and for which there are potential adverse effects to the historic integrity of historic buildings or districts, the following treatments may be implemented to mitigate the potential adverse impacts.

Visual screening of the structural elements constructed to elevate the historic buildings should be accomplished through the selective planting of appropriate shrubs, grasses, and other plants that will obscure the new structural elements. The intent of the screening is to allow the newly elevated building to better blend in with the surrounding landscape and to decrease the visual presence of the new construction. Plant selection should be made based on the environmental characteristics of the project site, space constraints, and the anticipated size at maturity for the species and varieties selected. As each site is unique, the specific plants selected will vary, but generally should not substantially exceed the height of the elevated structure at maturity. Where feasible, the applicant shall select conifers or other evergreen species which provide consistent screening throughout the year. Where such selections are inappropriate due to space constraints or environmental characteristics, ornamental grass species which retain foliage through the winter months or deciduous shrubs may be substituted.

The RE shall provide to SHPO a concise narrative description and sketch planting plan showing the locations and types of plants, which will be used relative to the newly elevated historic house or other building for review and comment prior to approving the application. If SHPO does not request additional information or provide comments or within ten (10) days of receipt of these materials, the RE may assume SHPO's approval and proceed with closing of the application.