

**PROGRAMMATIC AGREEMENT**  
**Among the**  
**FEDERAL HIGHWAY ADMINISTRATION,**  
**MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY**  
**ADMINISTRATION,**  
**NATIONAL PARK SERVICE,**  
**MARYLAND STATE HISTORIC PRESERVATION OFFICER,**  
**VIRGINIA STATE HISTORIC PRESERVATION OFFICER**  
**AND**  
**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**Implementing Section 106 of the National Historic Preservation Act for the**  
**I-495 and I-270 Managed Lanes Study**  
**Anne Arundel, Frederick, Montgomery and Prince George's Counties, Maryland, and**  
**Fairfax County, Virginia**

**WHEREAS**, the U.S. Department of Transportation, Federal Highway Administration (FHWA), plans to approve the I-495 and I-270 Managed Lanes Study (MLS), a proposed Public-Private Partnership (P3) administered by the Maryland Department of Transportation State Highway Administration (MDOT SHA); and

**WHEREAS**, the MLS Preferred Alternative, “Alternative 9 Phase I South” (Project) consists of construction of Priced Managed Lanes along Interstates 495 and 270, beginning in Fairfax County, Virginia, and extending north to approximately Interstate 370, and east along the separated portions of I-495 (“spurs”) to approximately Maryland Route 187, as described in detail via documentation linked in Attachment 4; and

**WHEREAS**, FHWA has determined that the Project is an undertaking, as defined in 36 C.F.R. §800.16(y), and thus is subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 C.F.R. Part 800 as amended; and

**WHEREAS**, MDOT SHA, with the approval of FHWA, intends to deliver the Project as a P3 using the services of a private sector developer or multiple developers who will advance the Project and be responsible for design, construction, operation and maintenance, subject to approvals by MDOT SHA and/or FHWA; and

**WHEREAS**, the Project may be implemented in construction phases, yet to be fully defined, and although this Programmatic Agreement (PA) reflects evaluation of the entire defined Project, certain commitments may require phased implementation; and

**WHEREAS**, FHWA is the lead agency for purposes of ensuring that the Project complies with Section 106 of the NHPA, as amended, and codified in its implementing regulations, 36 C.F.R. Part 800, as amended (August 5, 2004); and

**WHEREAS**, MDOT SHA, on behalf of FHWA, has established and updated the Area of Potential Effects (APE) for the project in consultation with the Maryland State Historic Preservation Office (MD SHPO) and Virginia State Historic Preservation Office (VA SHPO), encompassing the corridor project limits as described above, including areas of direct limits of disturbance, inclusive of all project elements with the potential to affect historic properties, such as identified natural resource and park mitigation sites, and a sufficient buffer for audible and visual effects where they may be likely to occur; a link to the detailed map of the APE is provided in Attachment 4; and

**WHEREAS**, the National Park Service (NPS) agrees FHWA is the lead federal agency for purposes of ensuring that the Project complies with Section 106 of the NHPA, as amended, and codified in its implementing regulations, 36 C.F.R. Part 800, as amended (August 5, 2004) and has agreed to participate in this PA as an Invited Signatory; and

**WHEREAS**, federal agencies which, at FHWA's invitation, designate FHWA as the lead federal agency for the Project may use this PA to fulfill their obligations under Section 106 of the NHPA according to 36 C.F.R. 800.2(a)(2), without the need for amendment of this PA, provided that FHWA follows the requirements of this PA; and

**WHEREAS**, NPS would authorize permanent use of the affected federal park property for the Project through coordination with FHWA for a Highway Deed Easement and would issue a permit for temporary use of land under its administration for construction-related activities. NPS intends to use this PA to comply with 36 C.F.R. Part 800, 54 U.S.C. § 100902, 36 C.F.R. Part 14; and

**WHEREAS**, the Project will involve the use of lands managed by the NPS within the Chesapeake and Ohio Canal National Historical Park, a unit of the National Park System, and the George Washington Memorial Parkway (GWMP), a unit of the National Park System, that includes the Clara Barton Parkway; and

**WHEREAS**, NPS is charged in its administration of the units of the National Park System to meet the directives of other laws, regulations, and policies including the NPS Organic Act as codified in Title 54 U.S.C. § 100101(a) to “conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations”; and

**WHEREAS**, the GWMP, a unit of the National Park System, with portions located in Montgomery County, Maryland; and Fairfax and Arlington Counties and the City of Alexandria in Virginia, was established following the authorization of the parkway pursuant to what is known as the Capper-Cramton Act, Public Law 71-284, 46 Statute 482 (1930), and came to be administered by NPS pursuant to Executive Order 6166 of June 10, 1933. The GWMP is on the National Register of Historic Places (NRHP) for its association with twentieth century parkway design, engineering, landscape architecture, park planning and conservation, commemoration, and an association with George Washington; and

**WHEREAS**, the Clara Barton Parkway is the portion of the GWMP that runs along the Maryland side of the Potomac River and which also became part of the National Park System through the

Capper-Cramton Act (originally as the Maryland portion of the GWMP). The Clara Barton Parkway, as a portion of the GWMP, is also on the NRHP; and

**WHEREAS**, the Chesapeake and Ohio Canal National Historical Park, a unit of the National Park System, stretches along the Potomac River from Rock Creek at Georgetown in Washington, D.C., to Cumberland, Maryland, for 184.5 miles, was established as a national monument in 1961 and was then established as a national historical park by Congress in 1971, through Public Law 91-664 for the purpose of preserving and interpreting the 19th century transportation canal and its associated scenic, natural, and cultural resources; and providing opportunities for education and appropriate outdoor recreation. The Chesapeake and Ohio Canal National Historical Park is listed on the NRHP and contains more than 1,300 historic structures, including one of the largest collections of 19th century canal features and buildings in the national park system. The towpath and canal cross underneath I-495 at the American Legion Bridge, in Bethesda, Maryland; and

**WHEREAS**, FHWA has elected to phase the identification, evaluation, and effects assessment of certain portions of the APE and historic properties where unavailability of access or design information precluded such identification, evaluation and assessment, as provided in 36 C.F.R. 800.4(b)(2), and 36 C.F.R. 800.5(a)(3); and

**WHEREAS**, FHWA will ensure additional identification, evaluation, and assessment is completed in a timely manner prior to final design and construction, to allow for meaningful consultation and practical opportunities to avoid, minimize, or mitigate for any potential adverse effects to historic properties; and

**WHEREAS**, FHWA has initiated consultation pursuant to 36 C.F.R. 800.3(c) with the MD SHPO by letter on April 12, 2018 and the VA SHPO by letter on May 14, 2019, and the term “SHPO” is used to refer to both state offices when one is not specified; MDOT SHA on behalf of FHWA will continue to consult with the appropriate SHPO and consulting parties under the terms of this PA in order to identify historic properties, assess the effects of the Project on historic properties, and, if necessary, resolve adverse effects to historic properties; and

**WHEREAS**, FHWA, pursuant to 36 C.F.R. 800.6(a)(1)(i)(C), on March 26, 2018, initiated Section 106 consultation with the Advisory Council on Historic Preservation (ACHP), and the ACHP has chosen to participate in the consultation pursuant to 36 C.F.R. 800.6(a)(1)(iii); and

**WHEREAS**, FHWA, pursuant to 36 C.F.R. § 800.10(c), invited the Secretary of the Interior (Secretary) to participate in consultation by letter dated March 16, 2020, as the Project includes National Historic Landmarks (NHL) within the APE, and the National Park Service, National Capital Area NHL Program (NPS-NHL) has represented the Secretary concerning the NHLs within the Project throughout consultation and will continue to participate in future consultations involving the NHLs, and

**WHEREAS**, FHWA, ACHP, MDOT SHA, and the MD SHPO, under the *Amended Programmatic Agreement Among the Federal Highway Administration, the Maryland Department of Transportation State Highway Administration, the Advisory Council on Historic Preservation, the Maryland State Historic Preservation Officer, Implementing Section 106 of the National*

*Historic Preservation Act for the Federal-aid Highway Program in Maryland* (“Statewide PA”, linked in Attachment 4), have agreed to delegate certain authorities relating to Section 106 of the NHPA to MDOT SHA for Federal-aid Highway Projects in Maryland; and

**WHEREAS**, MDOT SHA, pursuant to the Statewide PA, employs professionals meeting the Secretary of the Interior’s Professional Qualifications Standards (48 Fed. Reg. 44738-39, September 29, 1983) with experience and background in the fields of archaeology, architectural history and/or history who will oversee implementation of stipulations in this PA; and

**WHEREAS**, MDOT SHA, on behalf of FHWA, pursuant to 36 C.F.R. 800.4(a)(1), has established and updated the APE for the Project in consultation with the MD and VA SHPO, has identified historic properties within the APE, and has identified adversely affected properties, as described in the *Draft Section 106 Technical Report* of January 2020 and subsequent documentation (linked in Attachment 4); and

**WHEREAS**, MDOT SHA and FHWA, pursuant to 36 C.F.R 800.2(d) have sought and considered the views of the public regarding the Project’s effects on historic properties by providing notice and information in following its public involvement procedures under the National Environmental Policy Act (NEPA); and

**WHEREAS**, MDOT SHA, during the course of consultation, has invited the parties listed in Attachment 2 to participate in consultation on the Project; and

**WHEREAS**, the parties listed in Attachment 3, based on their relationship to specific actions as specified in this PA, or interest in historic properties affected by the project, have been invited to be consulting parties and concur by signing this PA; and

**WHEREAS**, MDOT SHA and FHWA have initiated consultation with Federally recognized Native American tribal nations (Tribes) listed in Attachment 2 and provided the Tribes with information about the Project. MDOT SHA, on behalf of FHWA, has invited the same Tribes to be consulting parties, as shown in Attachment 3, and concur by signing this PA; and

**WHEREAS**, FHWA has invited MDOT SHA and NPS to be invited Signatories to this PA, based on their responsibilities for implementation of its terms, and all Signatories, required and invited, are referred to as “Signatories” to this document; and.

**WHEREAS**, FHWA has determined that the Project will have an adverse effect on NRHP-listed or eligible properties (“historic properties”) including the George Washington Memorial Parkway (Clara Barton Parkway), the Chesapeake and Ohio Canal National Historical Park, the Washington Biologists’ Field Club on Plummers Island, Gibson Grove African Methodist Episcopal Zion Church, archaeological sites 44FX3922 (Dead Run Ridges Archaeological District), 44FX0374, 44FX0379, 44FX0389, 18MO749 and 18MO751; that additional effects may not be completely known; and that FHWA intends to use this PA to comply with 36 C.F.R. Part 800, 54 U.S.C. § 100902, 36 C.F.R. Part 14 and to govern the implementation of the Project and the resolution of adverse effects.

**NOW, THEREFORE,** FHWA, NPS, ACHP, MDOT SHA, MD SHPO, and VA SHPO, (hereinafter “Signatories”) agree that the Project will be implemented in accordance with the following Stipulations in order to take into account the effect of the Project on historic properties and that these Stipulations will govern compliance of the Project with Section 106 of the NHPA until this PA expires or is terminated.

## **Stipulations**

### **I. Roles and Responsibilities**

**A. FHWA** is the lead federal agency and is responsible for ensuring the terms of this PA are carried out.

**B. MDOT SHA** is delegated authority by FHWA under this PA and the Statewide PA to continue defined aspects of consultation, Project compliance review, and mitigation implementation. MDOT SHA will be primarily responsible for implementation of this PA excepting where otherwise specified. Additionally:

1. MDOT SHA will enter into agreements with one or more developers to design, build, and operate the Project. MDOT SHA will ensure the work of the developer or developers conforms to the requirements of this PA and may task the developer(s) with assistance with certain commitments (such as context-sensitive design); however, MDOT SHA may not delegate consultation obligations or other responsibilities specified in this PA to the developer(s).

2. MDOT SHA will require the developer(s) to retain professionals meeting the Secretary of the Interior’s Professional Qualifications Standards (48 Fed. Reg. 44738-39, September 29, 1983) with experience and background in the fields of archaeology, architectural history and/or history for the duration of design and construction to assist with design commitments, liaise with MDOT SHA cultural resources staff and facilitate compliance with this PA.

3. MDOT SHA, on behalf of FHWA, will consult with the relevant SHPO(s) for actions under this PA and 36 C.F.R. 800.

**C. NPS** is charged in its administration of the units of the National Park System to meet the directives of other laws, regulations, and policies including the NPS Organic Act as codified in Title 54 U.S.C. § 100101(a).

**D. SHPO:** The Maryland Historical Trust (MD SHPO) has jurisdiction as established in the NHPA for historic properties in Maryland. The Virginia Department of Historic Resources (VA SHPO) has jurisdiction as established in the NHPA for historic properties in Virginia. The SHPOs will:

1. Respond to requests from MDOT SHA for concurrence on eligibility determinations, effect determinations, and technical documents within a 30-day review period unless otherwise specified in this PA, or MDOT SHA specifically

provides for an extended review period at the time of submittal. MDOT SHA and FHWA may assume concurrence or no objection to determinations and submittals if no response is received within 30 days, if no extended timeline is specifically established in the review request or if no timeline is specified in 36 C.F.R. 800. All durations referenced in this PA refer to calendar days.

2. Provide written comments, share general technical assistance/guidance, and make available to MDOT SHA or its designates survey records or other documents necessary to fulfill the requirements of this PA.

**E.** **ACHP** will provide policy guidance, provide comment on issues that may arise as requested by parties to this PA, and participate in dispute resolution as specified in Stipulation XIII.

**F. Consulting Parties/Public**

1. MDOT SHA has consulted with or provided the opportunity to consult to the parties listed in Attachment 2 prior to finalizing this PA. Because the Preferred Alternative no longer affects numerous historic properties identified in earlier alternatives considered, several parties listed in Attachment 2 no longer have a demonstrable interest in historic properties affected by the Project. Parties listed in Attachment 3 continue to have a defined relationship to the Project and have been invited to concur in this PA.

2. MDOT SHA will provide all consulting parties in Attachment 3, regardless of concurring status, with opportunities to consult on Project changes or new elements with the potential to affect historic properties. MDOT SHA will offer other appropriate consulting parties the opportunity to rejoin or newly join consultation in the event of new or revised Project elements. Consulting parties may sign this PA as concurring parties at any time after execution of the PA with the invitation of MDOT SHA or FHWA. Additional consulting parties may be included in Attachment 3 without the need to amend this PA.

3. Concurrence with the PA by a party does not necessarily indicate that the party supports the Project, the Preferred Alternative, or endorses all stipulations of this PA, but rather indicates the desire of such parties to acknowledge consultation and/or remain involved in implementation of specific terms of this PA.

4. MDOT SHA will provide for notification of the public for substantial changes to the Project that would result in an expanded APE or new effects to historic properties consistent with 36 CFR 800.8(c)(1)(iv) and procedures under NEPA to ensure ongoing opportunities for public input. As appropriate, this process may identify new consulting or concurring parties who may wish to join the PA at a later time in response to Project refinement.

## II. Professional Standards

A. Guidelines, standards and regulations relevant to this PA and its purposes are listed below, and links to these documents are found in Attachment 4. Additionally, it is the intention of the Signatories to interpret this PA to incorporate any subsequent standards, revisions of standards, or applicable guidance issued by the Secretary, ACHP, or MD SHPO or VA SHPO as then in force during this PA.

1. 36 C.F.R. Part 800: Protection of Historic Properties, as amended (2004);
2. *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (1983);
3. Secretary of the Interior's Professional Qualifications Standards (48 Fed. Reg. 44738-39, September 29, 1983)
4. *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole 1994), including *Technical Update No. 1 of the Standards and Guidelines for Archaeological Investigations in Maryland: Collections and Conservation Standards* (2018);
5. *Standards and Guidelines for Architectural and Historical Investigations in Maryland* (Maryland Historical Trust, Revised 2019);
6. *Guidelines for Conducting Historic Resources Survey in Virginia* (Virginia Department of Historic Resources, revised September 2017)
7. 36 C.F.R Part 79: Curation of Federally-Owned and Administered Archaeological Collections
8. *NPS Museum Handbook*, National Park Service, revised 2019
9. Program Comment for Actions Affecting Post-1945 Concrete Steel Bridges (77 FR 68790);
10. *Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System* (ACHP Program Comment, 2005)
11. *Section 106 Archaeology Guidance* (ACHP, 2009)
12. Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects (ACHP February 2007);
13. National Register of Historic Places Bulletin 15, *How to Apply the National Register Criteria for Evaluation* (National Park Service revised 1997), National Register of Historic Places Bulletin 16A, *How to Complete the National Register Registration Form* (National Park Service revised 1997), and other National Register Bulletins as applicable
14. NPS Management Policies – Section 5, Cultural Resource Management (2006)

15. Secretary of the Interior's Standards for the Treatment of Historic Properties (1995, Revised 2017); and accompanying guidelines for Treatment of Historic Properties (1995, Revised 2017) and Cultural Landscapes (1996)

### **III. General Project Section 106 Commitments**

**A.** MDOT SHA will implement mitigation concurrent with construction phasing where impacts will occur; in the event that the Project is modified or certain elements causing adverse effects are not constructed, MDOT SHA will notify Signatories and consulting parties of the change at such time as a final decision is made to remove such elements and amend the PA as necessary.

**B.** MDOT SHA cultural resources staff who meet Secretary of the Interior's Professional Qualifications Standards will oversee implementation of all mitigation commitments and other terms of this PA.

#### **C. Consultation on Reforestation and other Mitigation Sites**

1. MDOT SHA is obligated to provide reforestation mitigation for the Project pursuant to the Maryland Reforestation Law (MD Nat Res Code § 5-103). Reforestation must occur within 2 years or 3 growing seasons of completion of construction. MDOT SHA is also coordinating with the NPS to identify reforestation sites to account for impacted NPS-managed lands. The locations to be used for reforestation are not yet fully identified. Reforestation activities may take the form of conservation easements or other noninvasive activities which would not affect historic properties. MDOT SHA will not consult on easements or conservation actions where no ground disturbance is involved. If areas outside the APE are identified for reforestation where new plantings or other activities with the potential to affect historic properties are identified, MDOT SHA will consult in accordance with Stipulation IV to add such areas to the APE, identify historic properties, and evaluate effects to historic properties. MDOT SHA will avoid adverse effects to historic properties to the maximum extent practicable in selecting reforestation planting sites. If adverse effects are unavoidable, MDOT SHA will amend this PA in accordance with Stipulation XII to resolve any such adverse effects.

2. As Project development proceeds, additional and revised mitigation or enhancement locations for impacts to resources other than historic properties may be identified. These resources include, but are not limited to wetlands, stormwater, and parks. To account for effects to historic properties at these locations, when actions are proposed at such locations that may affect historic properties, MDOT SHA will amend the APE and follow the procedure described in Stipulation IV below.

### **IV. Consultation Regarding Project Development**

**A.** Further consultation requirements regarding specific historic properties affected by the Project are described in Stipulation V. As project design advances or ancillary activities not currently known are identified, MDOT SHA will initiate consultation with SHPOs and other consulting parties (as described below) using the following process.

1. MDOT SHA cultural resources staff will review proposed changes that affect project location, design, methods of construction, materials, or limits of disturbance (LOD), for potential new effects to historic properties. Should these changes necessitate an expansion of the APE, or if the changes would affect known or potential historic properties differently than described in this PA, MDOT SHA will consult on behalf of FHWA as described in Stipulation IV.B below.

2. If MDOT SHA, working with the developer(s), finds design or construction solutions that avoid or further minimize adverse effects to historic properties, MDOT SHA will consult in accordance with the procedures in Stipulation IV.B to seek concurrence with any updated determinations of effect, and amend this PA in accordance with Stipulation XII.

3. MDOT SHA, on behalf of FHWA, will consult upon changes to the LOD within the existing APE where additional archaeological investigation is recommended in the Cultural Resources Technical Report or where such recommendations are identified in subsequent consultation documentation, including the treatment plans described in Stipulations VI and VII.

4. MDOT SHA, on behalf of FHWA, will consult as specified elsewhere in this PA regarding specific stipulations, including Monitoring of Performance (Stipulation VIII).

**B.** MDOT SHA, on behalf of FHWA, consistent with the principles described in 36 C.F.R. §§ 800.3 – 6, will consult with the appropriate SHPO(s), Signatories, concurring parties to this PA, Tribes who may ascribe religious and cultural significance to properties pursuant to 36 C.F.R. § 800.3(f)(2), local public agencies with jurisdiction and other consulting parties identified for this undertaking as appropriate on:

1. Amendments to the APE, consistent with 36 C.F.R. § 800.16(d), including identification and documentation of any new historic properties within the amended APE consistent with 36 C.F.R § 800.4(a) and (b).

2. New or revised determinations of eligibility for historic properties within the APE as described above, consistent with 36 C.F.R § 800.4(c).

3. New or revised assessment of effects to historic properties within the APE as described above, consistent with 36 C.F.R § 800.5.

4. If MDOT SHA determines there are any new adverse effects to historic properties, it will notify FHWA. MDOT SHA and FHWA will consult with the SHPO and identified consulting parties to resolve the adverse effects consistent with 36 C.F.R § 800.6, including alternatives to avoid, minimize or mitigate such adverse effects; MDOT SHA and FHWA will follow the procedures in Appendix 3 and/or amend this PA as necessary to document such resolution of any new adverse effects.

C. MDOT SHA will consult with the relevant SHPO(s), Signatories, Tribes, and appropriate consulting parties on archaeology inventory, archaeological evaluations for NRHP eligibility, and effect determinations for archaeological historic properties.

D. MDOT SHA will provide consultation materials in written or electronic form, and follow timelines for comment opportunity as specified in Stipulation I. D.

## V. **Property-Specific Commitments**

MDOT SHA will be responsible for ensuring the following mitigation and commitments are carried out, under the oversight of FHWA. MDOT SHA will either complete mitigation itself or enter into legally binding agreements with partner agencies to ensure the following stipulations are fulfilled, subject to the requirements of each stipulation below. Mitigation and commitments will be implemented by authorized construction phase, unless there is opportunity to provide advanced mitigation that is mutually agreeable to all parties, is feasible to advance, and is identified by MDOT SHA as a priority. All commitments regarding design-review with consulting parties will be conducted in a timely manner prior to final design and construction, to allow for meaningful consultation and practical opportunities to influence design to avoid impacts or ensure compatibility to the extent practicable with historic properties. Preliminary engineering activities to support design of future phases, such as geotechnical studies or other similar, minimally invasive activities with limited potential to affect historic properties may proceed within the APE prior to construction authorization and will not require consultation or advance mitigation.

### A. **George Washington Memorial Parkway (including Clara Barton Parkway)**

1. MDOT SHA will continue property-specific Design-Review consultation with NPS and SHPOs to ensure a context-sensitive design for new facilities, and, through the ongoing design process, minimize, to the extent practicable, impacts to character-defining features and resources that contribute to the George Washington Memorial Parkway/Clara Barton Parkway as a historic property. Key elements for NPS review include the bridge design, trail connections, retaining walls, ramp improvements, signage plans and barrier. MDOT SHA will provide NPS and SHPOs a comment opportunity on plans at a draft level of design and a second opportunity prior to finalization of design for elements on

NPS property or within the APE adjacent to NPS property; for each review there will be minimum 30-day review period. In the event of objections relating to the final design from NPS or SHPOs that cannot be resolved, MDOT SHA and FHWA will follow Stipulation XIII of this PA.

2. MDOT SHA will provide NPS funding in an amount not to exceed \$250,000 for a Cultural Landscape Report (CLR) for Clara Barton Parkway. The CLR will include historical narrative, updated existing conditions and analysis and evaluation, and treatment guidelines for management of character-defining features. NPS will complete the CLR within five (5) years of receipt of funds from MDOT SHA and provide a copy of the completed CLR, along with a summary of implementation of any treatment measures in a timely manner following their implementation, to MD SHPO and MDOT SHA.

**B. Dead Run Ridges Archaeological District (44FX3922) and individual sites 44FX0374, 44FX0379 and 44FX0389**

1. In consultation with VA SHPO, NPS, and other appropriate consulting parties including consulting Tribes, MDOT SHA will develop and implement Phase III data recovery on sites 44FX0374, 44FX0379, 44FX0389 and the Dead Run Ridges Archaeological District (44FX3922) as specified in Stipulation VI. Technical reporting, as well as interpretive materials suitable for the general public will be requirements of this effort.

2. MDOT SHA will prepare a NRHP nomination form for the Dead Run Ridges Archaeological District, no later than 12 months following finalization of the report documenting the Phase III data recovery in Stipulation V. B. 1 above, basing the nomination on the report findings. MDOT SHA will provide a copy of the draft nomination to NPS staff for review and comment prior to formal submission of the draft nomination to VA SHPO. MDOT SHA will work with VA SHPO's Register Program to develop a final draft nomination for the Dead Run Ridges Archaeological District, and VA SHPO's Register Program will process the final draft for listing in the NRHP pursuant to its established policies and procedures. The Department of Historic Resources State Review Board is under no obligation to approve the nomination for listing in the NRHP. Should the nomination be unsuccessful, or additional information be requested beyond the scope of the completed data recovery efforts, MDOT SHA will not be required to complete further fieldwork or analysis beyond what is agreed to in the treatment plan specified in Stipulation VI, or otherwise pursue nomination of the district.

**C. Chesapeake and Ohio Canal National Historical Park**

1. MDOT SHA will continue property-specific Design-Review consultation with NPS to ensure a context-sensitive design for new facilities constructed as

part of the Project, and, through the ongoing design process, minimize to the extent practicable impacts to character-defining features and resources that contribute to the Chesapeake and Ohio Canal National Historical Park as a historic property. MDOT SHA will provide NPS and MD SHPO a comment opportunity on design plans at a draft level of design, and a second opportunity prior to finalization of design for elements within the APE on or adjacent to NPS property; for each review there will be a minimum 30-day review period. In the event of objections from NPS or MD SHPO that cannot be resolved relating to the final design, MDOT SHA and FHWA will follow Stipulation XIII of this PA.

2. MDOT SHA will locate new bridge piers away from Lock 13 as part of the new Clara Barton Parkway Bridge and will avoid placing piers for the new structure closer to Lock 13 than the current bridge piers, as shown in the Preferred Alternative.

3. MDOT SHA will protect Lock 13 in place during construction, by limiting LOD around the lock structure and providing an appropriate buffer to prevent damage. MDOT SHA will rehabilitate or restore the structure if needed following construction, with treatment determined by or in consultation with NPS and MD SHPO as described below in Stipulation V.C.4 and VC.5. As part of the Archaeological Treatment Plan in Stipulation VI, MDOT SHA will include archaeological monitoring or other treatment approaches during construction in the area around Lock 13.

4. MDOT SHA will conduct a condition assessment of lock structures, the Canal and the Towpath within the Project LOD prior to construction and provide copies of the assessment to MD SHPO and NPS. MDOT SHA will provide for rehabilitation of lock structures, the Canal, and Towpath within the Project LOD following completion of substantial construction within the affected area. MDOT SHA will provide NPS and MD SHPO with a draft rehabilitation plan for review and comment prior to implementing the plan

5. MDOT SHA will provide for vibration damage monitoring of other susceptible historic structures at Chesapeake and Ohio Canal National Historical Park within the APE during construction, specifically, Lock 12 and Lock 14. Additional vulnerable structures or features (such as masonry walls) to be monitored may be identified in consultation with NPS during the preparation and review of the condition assessment identified in Stipulation V.C.4.

a. Should notable acute or incremental damage directly resulting from construction means or methods be identified as a result of the vibration monitoring, MDOT SHA will follow Section A of the Inadvertent Discovery Plan (Attachment 1).

b. General wear or degradation of the historic fabric during construction that is not attributable to specific construction practices or incidents will be remediated by the rehabilitation plan in Stipulation V.C.4.

**D. 18MO749 Archaeological Site (C&O Canal)**

In consultation with MD SHPO, NPS, and other appropriate consulting parties, including Tribes, MDOT SHA will develop and implement a Phase III Data Recovery as specified in Stipulation VI. Technical reporting, as well as interpretive materials suitable for the general public will be requirements of this effort.

**E. 18MO751 Archaeological Site (C&O Canal)**

In consultation with MD SHPO, NPS, and other appropriate consulting parties, including Tribes, MDOT SHA will develop and implement a Phase III Data Recovery as specified in Stipulation VI. Technical reporting, as well as interpretive materials suitable for the general public will be requirements of this effort.

**F. Washington Biologists' Field Club on Plummerville Island**

1. MDOT SHA will prepare a NRHP nomination for the Washington Biologists' Field Club on Plummerville Island. MDOT SHA will provide a copy of the draft nomination to NPS staff and the Washington Biologists' Field Club (WBFC) for review prior to submittal to MD SHPO and address any comments prior to formal submission of the nomination. Should the nomination be unsuccessful, MDOT SHA will not be required to resubmit the nomination or otherwise complete additional studies or research after addressing comments by NPS staff.
2. MDOT SHA will place temporary fencing along the LOD within Plummerville Island to delimit construction activities.
3. MDOT SHA will fund or implement a photographic survey documenting conditions before, during and after construction is completed adjoining Plummerville Island, within the APE boundary, and provide the results to WBFC and NPS.
4. MDOT SHA will fund or develop GIS maps to document known current and historical study locations and key natural resource features within the APE to assist in documenting change over time and provide these files to WBFC and NPS.
5. MDOT SHA will procure a sub-meter accurate GPS unit for WBFC to use in long-term monitoring of plant locations, collection sites, and other historical research features.

6. MDOT SHA, subject to any availability or rights restrictions, will provide for digitization and cataloging of historical records related to the WBFC that are under the control of WBFC but housed at the Smithsonian Museum of Natural History, specifically the collection, “SIA RU102005, Smithsonian Institution, Washington Biologists' Field Club, circa 1900-1966 Records” that are not currently available in electronic format, and provide the files to WBFC and NPS.
7. MDOT SHA will provide WBFC historical content, such as a synthesis of the digitized materials in Stipulation V.F.6, to incorporate into their website.
8. MDOT SHA will complete stipulations V.F.1-7., other than those requiring longer timeframes (such as photographic survey after construction), unless continued consultation should necessitate a longer timeframe, within two (2) years of commencement of construction activities on Plummers Island.

**G. Morningstar Tabernacle No. 88 Moses Hall and Cemetery**

1. As part of context-sensitive design, MDOT SHA will consult with the Trustees of the Morningstar Tabernacle No. 88 Moses Hall and Cemetery, Friends of Moses Hall, First Agape A.M.E. Zion Church, Cabin John Citizens Association, and other consulting parties with a demonstrated interest in the cemetery on context-sensitive treatment of noise barrier facing the cemetery; MDOT will work with the above-listed consulting parties on a context-sensitive treatment of noise barrier facing the cemetery, which may include decorative elements appropriate to the historic property and/or such elements as memorial plaques or signage. MDOT SHA will provide these consulting parties and MD SHPO comment opportunity for Project elements, specifically noise barrier, within the APE adjacent to the cemetery at a draft level of design and a second opportunity prior to finalization of design; for each review there will be a minimum 30-day review period. In the event MD SHPO does not agree with the final design, MDOT SHA and FHWA will follow Stipulation XIII of this PA.
2. MDOT SHA will conduct further studies prior to final design and construction adjacent to the cemetery as part of the treatment plan specified in Stipulation VII. Following completion of the studies in the treatment plan, MDOT SHA and FHWA will provide the results of the studies to MD SHPO and relevant consulting parties and determine project effects to the Morningstar Tabernacle No. 88 Moses Hall and Cemetery in consideration of the results of the studies and the views of the MD SHPO and relevant consulting parties. Should interments be identified outside the identified boundary of the cemetery, and no additional project avoidance options are practicable, MDOT SHA and FHWA will consult on the likely adverse effect, identify mitigation options, and amend this PA as necessary following the procedures in Stipulations IV and XIII of this PA.

## **H. Gibson Grove A.M.E. Zion Church**

1. MDOT SHA will provide First Agape A.M.E. Zion Church at Gibson Grove and MD SHPO a comment opportunity at a draft level of design and a second opportunity prior to finalization of design for Project elements on church property or within the APE adjacent to the church property, with a minimum 30-day review period.
2. MDOT SHA will improve the stormwater drainage on the church property by routing drainage into a new underground culvert to be installed as part of the Project.
3. MDOT SHA will ensure that a parking lot identified in the church's restoration plan is constructed on church property following installation of the culvert drainage design. MDOT SHA will work with First Agape A.M.E. Zion Church on schedule and timing of the culvert and parking lot work to be compatible with ongoing church restoration efforts to the extent practicable.
4. MDOT SHA will ensure Project noise- or vibration- causing construction activities are restricted adjacent to the church during scheduled worship services or key events.
5. MDOT SHA, in coordination with Montgomery County, will install sidewalk on the west side of Seven Locks Road to more accessibly connect Gibson Grove A.M.E. Zion Church and Morningstar Tabernacle No. 88 Moses Hall and Cemetery.

## **VI. Archaeological Treatment Plan (ATP)**

MDOT SHA's goal is to have a comprehensive but flexible ATP that addresses the LOD but can be revised and updated in response to Project design advancement. Prior to construction within affected areas, MDOT SHA will develop an ATP in consultation with SHPOs and appropriate consulting parties. MDOT SHA will provide for a minimum 30-day review of the initial draft of the ATP. MDOT SHA will be responsible for implementing the provisions of the ATP. The ATP will include:

- A.** Archaeological monitoring requirements during construction.
- B.** Phase I Survey in areas where property access could not be obtained (as identified in the 2019 Technical Report, Volume 4, Chapter 5): RS-1; RS-2; S-4, SWM S-4, S-5, SWM S-5, S-6, SWM S-6; S-27; SWM S-27, S-8; S-10; S-53, and the vicinity of S-28.
- C.** Phase I Survey in the vicinity of two sites, 18MO457 and 18MO190, to define site boundaries and evaluate NRHP eligibility and potential impacts.
- D.** Phase II Evaluation of Sites 18MO191 and 18MO752.
- E.** Phase III Data Recovery investigations at 18MO749 and 18MO751 within the Chesapeake and Ohio Canal National Historical Park and the Dead Run Ridges Archaeological District within the GWMP (44FX3922), and individually eligible sites

within the district 44FX0374, 44FX0379 and 44FX0389. MDOT SHA will prepare a draft NRHP Nomination form for the Dead Run Ridges archaeological district based on the results of Phase III Data Recovery investigation as described in Stipulation V. B. MDOT SHA, in consultation with other parties, will ensure the results of the data recovery are documented in technical reporting consistent with the requirements of Stipulation II, and will define and produce products or other efforts interpreting the data recovery reports to the general public.

**F.** Provisions in the treatment plan required for work on NPS federal property, including cataloging and curation to NPS standards of artifacts and associated records, permitting under the Archaeological Resources Protection Act and compliance with the Native American Graves Protection and Repatriation Act (NAGPRA).

**G.** If sites or areas proposed for archaeological treatment in the ATP are avoided by revising the Project LOD or other actions, MDOT SHA will document the revision, including updating effect determinations and seeking SHPO concurrence where required. MDOT SHA will provide such information to appropriate consulting parties and will thereby not need to complete treatment or investigation at such locations.

**H.** MDOT SHA will ensure required consultation with the appropriate SHPO and appropriate consulting parties occurs on eligibility, effects, and treatment for any newly identified archaeological historic properties prior to final design and construction in areas identified for further archaeological treatment. Reports or similar deliverables will be provided to Signatories and appropriate consulting parties with a minimum 30-day review opportunity.

**I.** MDOT SHA will consult with SHPO and appropriate consulting parties on the ATP and any revisions or modifications to the ATP. If SHPO concurs with the ATP or future revisions, no amendment of this PA is needed to implement or update the ATP. If SHPO does not agree with the ATP or future proposed changes to the ATP, MDOT SHA will seek to resolve the disagreement or follow the provisions of Stipulation XIII.

## **VII. Cemeteries and Human Remains Treatment Plan**

**A.** MDOT SHA acknowledges there is some potential for human remains associated with historic properties to be present in at least two areas of the LOD (adjacent to Morningstar Tabernacle No. 88 Moses Hall and Cemetery and in the general location of the Montgomery County Poor Farm) which are not currently accessible for the types of thorough archaeological investigation necessary to definitively identify interments. MDOT SHA will work with the developer(s) to minimize LOD to the maximum extent practicable in these areas

- B.** The treatment plan will include proposed investigations to identify and evaluate potential graves or human remains in specified sensitive areas to the maximum extent practicable to ensure avoidance or treatment prior to final design and construction.
- C.** MDOT SHA will consult with SHPO and, where identified, descendants, descendant communities and other appropriate consulting parties to fully identify, recover, and respectfully treat any human remains identified within LOD that cannot be avoided.
- D.** MDOT SHA will consult with SHPO and, where identified, descendants, descendant communities and other appropriate consulting parties on archaeological monitoring requirements for locations within LOD where potential for human remains is likely during construction, including unverified but reported locations of the Ball Family Cemetery.
- E.** MDOT SHA will seek input from affected consulting parties and concurrence from SHPO on the treatment plan prior to its implementation. MDOT SHA will be responsible for implementing the treatment plan. If SHPO does not agree with the treatment plan, MDOT SHA will seek to resolve the disagreement or follow the provisions of Stipulation XIII.
- F.** Activities on Federal Lands, including NPS-managed property, require adherence to NAGPRA. The treatment plan will include provisions for NAGPRA compliance in the event of human remains or funerary objects discovery.
- G.** MDOT SHA will ensure that at all times human remains are treated with dignity and respect in a manner consistent with ACHP's policy statement on the Treatment of Human Remains, Burial Sites and Funerary Objects.
- H.** MDOT SHA will ensure no photographs of human remains or associated funerary objects are released to the press or general public.
- I.** MDOT SHA will be responsible for all expenses for any removal, treatment and relocation/disposition of any human remains or funerary objects impacted by the Project.
- J.** MDOT SHA will fully implement all relevant provisions of the treatment plan prior to final design and any construction impacts within specified cemetery investigation locations.

### **VIII. Monitoring of Performance**

- A.** Specific points for continued consultation are defined in Stipulations IV and V.
- B.** MDOT SHA will, for the duration of the Project, provide Signatories and consulting parties listed in Attachment 3 with a written progress report twice per calendar year describing status of implementation of this PA.
- C.** MDOT SHA will provide for a meeting opportunity for Signatories and consulting parties listed in Attachment 3 following issuance of each progress report.

**D.** MDOT SHA will convene additional consulting party meetings as necessary or when requested by any Signatory;

**E.** MDOT SHA may cancel individual meetings if there are no significant issues for discussion and no Signatory objects to the cancellation.

**IX. Post-Review Discovery of Human Remains**

MDOT SHA will develop human remains treatment provisions as part of the archaeological and cemetery and human remains treatment plans in Stipulations VI and VII. MDOT SHA will follow the attached Inadvertent Discovery Plan (Attachment 1) should human remains be identified in any areas or situations not covered by the archaeological or cemetery and human remains treatment plans.

**X. Other Post-Review Discoveries**

MDOT SHA will follow the procedures in Attachment 1 of this PA for any inadvertent archaeological discoveries or inadvertent effects to historic properties during construction. MDOT SHA will provide training for the developer(s) in the Inadvertent Discovery Plan requirements.

**XI. Confidentiality**

The Signatories agree to provide by the provisions of Section 304 of the NHPA, and other applicable requirements, to withhold information concerning the location, character, or ownership of resources where release of such information may endanger the integrity of the resource.

**XII. Amendment**

Any Signatory to this PA may request that it be amended, whereupon the Signatories will consult in accordance with 36 C.F.R. § 800.14 to consider such an amendment. Amendments will be effective upon the date of the last signature from the Signatories.

**XIII. Dispute Resolution**

**A.** Should any Signatory or consulting party object at any time to the manner in which the terms of this PA are implemented, within 30 days of information being provided relating to the issue forming the basis of the objection, or within 30 days where the objector can otherwise be reasonably assumed to be aware of the issue forming the basis of objection, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will take the following steps:

1. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to ACHP. ACHP shall provide FHWA with its comment on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall

prepare a written response that takes into account any timely advice or comments regarding the dispute from ACHP, Signatories and consulting parties and provide them with a copy of this written response. FHWA will then proceed according to its final decision.

2. If ACHP does not provide its advice regarding the dispute within the 30-day period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and consulting parties to the PA and provide them and ACHP with a copy of such written response.

3. In the case of objections related to NRHP eligibility, any Signatory may object in writing within 30 days to an MDOT SHA or FHWA determination of eligibility. If MDOT SHA and FHWA are unwilling to revise the determination in response to the objection or other relevant information, FHWA (or MDOT SHA on its behalf) will submit the determination to the Keeper of the National Register of Historic Places for a determination pursuant to 36 C.F.R. Part 63.

**B.** Objections from the Public: Should a member of the public object to an action taken under this PA, or compliance with the PA, within 30 days of information being provided relating to the issue forming the basis of the objection, or within 30 days where the objector can otherwise be reasonably assumed to be aware of the issue forming the basis of objection, FHWA will ensure that MDOT SHA consults with the objecting party to respond to the objection in coordination with FHWA where relevant, provided the objection is made in writing to the FHWA or MDOT SHA contacts identified in Attachment 5 or any subsequent updates to Attachment 5. MDOT SHA and FHWA will inform other Signatories of the objection and proposed resolution. Should a Signatory disagree with the proposed resolution, the Signatories will follow Stipulation XIII.A.

**C.** FHWA's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

#### **XIV. Termination**

**A.** Any Signatory to this PA may terminate it by providing 30 days' notice in writing to the other Signatories, provided that the Signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

**B.** If any Signatory to this PA determines that a term will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation XII, above. If within 30 days (or another time period

agreed to by all Signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other Signatories.

C. In the event of termination, FHWA will comply with 36 C.F.R. § 800 for all remaining actions, or until a new agreement is reached fulfilling such requirements.

This PA will continue in full force and effect until 20 years from the date of execution of the PA, or such time of final acceptance of the Project and when all terms of this PA have been met, should the terms be met prior to the 20-year expiration. The PA will be invalid if the Project is terminated or authorization for the Project is rescinded. At any time in the six-month period prior to its expiration, the Signatories will consult to consider an extension or amendment of the PA. At such time, the Signatories may consider an amendment to extend the PA unmodified for an additional specified duration or consult to amend the PA in accordance with Stipulation XII. No extension or amendment will be effective until all Signatories have signed the amendment or amendment to extend.

In witness thereof, the Signatories to this PA, through their duly authorized representatives, have executed this PA on the days and dates set out on the following pages and certify that they have read, understood, and agreed to the terms and conditions of this PA as set forth herein.

The effective date of this PA is the date of the last signatory page.

This PA may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

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**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY  
ADMINISTRATION, MARYLAND DEPARTMENT OF TRANSPORTATION STATE  
HIGHWAY ADMINISTRATION, NATIONAL PARK SERVICE, MARYLAND STATE  
HISTORIC PRESERVATION OFFICER, VIRGINIA STATE HISTORIC  
PRESERVATION OFFICER AND ADVISORY COUNCIL ON HISTORIC  
PRESERVATION**

**IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
ACT FOR THE I-495 AND I-270 MANAGED LANES STUDY, ANNE ARUNDEL,  
FREDERICK, MONTGOMERY AND PRINCE GEORGE'S COUNTIES, MARYLAND  
AND FAIRFAX COUNTY, VIRGINIA**

**May 17, 2022**

Signatory:

FEDERAL HIGHWAY ADMINISTRATION

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Gregory Murrill  
Division Administrator  
FHWA Maryland Division

Date \_\_\_\_\_

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**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY  
ADMINISTRATION, MARYLAND DEPARTMENT OF TRANSPORTATION STATE  
HIGHWAY ADMINISTRATION, NATIONAL PARK SERVICE, MARYLAND STATE  
HISTORIC PRESERVATION OFFICER, VIRGINIA STATE HISTORIC  
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FREDERICK, MONTGOMERY AND PRINCE GEORGE'S COUNTIES, MARYLAND  
AND FAIRFAX COUNTY, VIRGINIA**

**May 17, 2022**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Reid J. Nelson  
Executive Director (Acting)

Date \_\_\_\_\_

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**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY  
ADMINISTRATION, MARYLAND DEPARTMENT OF TRANSPORTATION STATE  
HIGHWAY ADMINISTRATION, NATIONAL PARK SERVICE, MARYLAND STATE  
HISTORIC PRESERVATION OFFICER, VIRGINIA STATE HISTORIC  
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FREDERICK, MONTGOMERY AND PRINCE GEORGE'S COUNTIES, MARYLAND  
AND FAIRFAX COUNTY, VIRGINIA**

**May 17, 2022**

Signatory:

MARYLAND STATE HISTORIC PRESERVATION OFFICER

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Elizabeth Hughes  
Director  
Maryland Historical Trust

Date \_\_\_\_\_

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**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY  
ADMINISTRATION, MARYLAND DEPARTMENT OF TRANSPORTATION STATE  
HIGHWAY ADMINISTRATION, NATIONAL PARK SERVICE, MARYLAND STATE  
HISTORIC PRESERVATION OFFICER, VIRGINIA STATE HISTORIC  
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FREDERICK, MONTGOMERY AND PRINCE GEORGE'S COUNTIES, MARYLAND  
AND FAIRFAX COUNTY, VIRGINIA**

**May 17, 2022**

Signatory:

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

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Julie Langan  
Director  
Virginia Department of Historic Resources

Date \_\_\_\_\_

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**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY  
ADMINISTRATION, MARYLAND DEPARTMENT OF TRANSPORTATION STATE  
HIGHWAY ADMINISTRATION, NATIONAL PARK SERVICE, MARYLAND STATE  
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FREDERICK, MONTGOMERY AND PRINCE GEORGE'S COUNTIES, MARYLAND  
AND FAIRFAX COUNTY, VIRGINIA**

**May 17, 2022**

Signatory:

NATIONAL PARK SERVICE

\_\_\_\_\_ Date \_\_\_\_\_  
Tina Capetta  
Superintendent  
Chesapeake and Ohio National Historical Park

\_\_\_\_\_ Date \_\_\_\_\_  
Charles J. Cuvelier  
Superintendent  
George Washington Memorial Parkway

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**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY  
ADMINISTRATION, MARYLAND DEPARTMENT OF TRANSPORTATION STATE  
HIGHWAY ADMINISTRATION, NATIONAL PARK SERVICE, MARYLAND STATE  
HISTORIC PRESERVATION OFFICER, VIRGINIA STATE HISTORIC  
PRESERVATION OFFICER AND ADVISORY COUNCIL ON HISTORIC  
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**IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION  
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FREDERICK, MONTGOMERY AND PRINCE GEORGE'S COUNTIES, MARYLAND  
AND FAIRFAX COUNTY, VIRGINIA**

**May 17, 2022**

Signatory:

MARYLAND STATE HIGHWAY ADMINISTRATION

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Tim Smith, P.E.  
Administrator

Date \_\_\_\_\_

## **Attachments**

1. Inadvertent Discovery Plan
2. All Parties Invited to Consult on the Project
3. Consulting Parties invited to Concur
4. Links to Documentation Referenced
5. Contact Information for FHWA and MDOT SHA staff responsible for PA implementation (to be updated as necessary)

## **Attachment 1**

### **Inadvertent Discovery Plan**

**A. Unanticipated Impacts to Architectural Historic Properties:** if the Project causes unanticipated impacts to any National Register of Historic Places (NRHP) eligible, listed, or contributing buildings, sites, structures, or objects of the built environment, the contractor must notify the engineer and immediately cease any activity causing ongoing damage until consultation occurs. MDOT SHA shall, in consultation with the appropriate SHPO (VA or MD), determine if adverse effects have occurred to the property/properties and develop a plan for the protection of the historic property, and minimization or mitigation of impacts. If mitigation is identified, FHWA, MDOT SHA, SHPO, and other Signatories as necessary will execute a Memorandum of Agreement or amend this PA to record the identified mitigation. MDOT SHA may hold the developer(s) liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.

**B. Unanticipated Damage to Known Archaeological Resources:** if unauthorized excavation occurs outside the approved limits of disturbance (LOD) or other approved boundaries designed to protect archaeological resources or cemeteries and thereby causes impacts to known, NRHP-eligible properties, MDOT SHA will ensure any activity causing ongoing damage is stopped until consultation occurs. MDOT SHA will conduct a damage assessment consistent with the model used for such assessments under the Archaeological Resources Protection Act (<https://www.nps.gov/archeology/pubs/techbr/tchBrf20.pdf>). MDOT SHA will use the results of the assessment in consultation with the relevant SHPO to determine if the resource has been adversely affected and determine appropriate mitigation. If the resource is of known or suspected Native American affiliation, FHWA, with assistance from MDOT SHA shall consult with federally recognized Indian Tribes as appropriate. If the resource is affiliated with other known descendant groups or consulting parties, MDOT SHA will consult with such parties as well. Should damage occur on NPS land, MDOT SHA will consult with the NPS staff and regional archaeologist regarding the damage assessment report and any identified mitigation. If mitigation is identified, FHWA, MDOT SHA, SHPO, and other Signatories as necessary will execute a Memorandum of Agreement or amend this PA to record the identified mitigation. MDOT SHA may hold the developer(s) liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.

**C. Unanticipated Discovery of Human Remains:** Should any burials, interments, or human remains (hereafter, “remains”) be encountered during construction, MDOT SHA will ensure all applicable construction work in the vicinity of the remains is immediately stopped to prevent damage to the remains, or to any additional remains that might be present in the vicinity. A minimum 100-foot buffer around identified remains will be established by MDOT SHA free of disturbance, to be adjusted as appropriate for the site conditions. Construction may occur outside the buffer unless evidence of additional remains is found. If remains are suspected to be human but not confirmed, MDOT SHA will ensure that such confirmation is made by a qualified professional. Human remains will at all times be treated respectfully and access and visibility limited to the site of discovery to authorized personnel only. Within Maryland, pursuant to State of Maryland Criminal Code § 10-402, the State’s Attorney must authorize movement or removal of any remains until determined to be archaeological. If the remains are determined to be archaeological, MDOT SHA and the relevant SHPO will consult to determine treatment of the remains and any other necessary treatment such as work needed to define extent of remains in the most expeditious manner feasible. Within Virginia, human remains and associated funerary objects encountered during the course of actions taken as a result of this PA shall be treated in a manner consistent with the Virginia Antiquities Act (Code of Virginia 10.1-2305) and its implementing regulation (17VAC5-20), adopted by the Virginia Board of Historic Resources and published in the Virginia Register on July 15, 1991.

If the remains are determined archaeological and suspected to be of Native American origin, MDOT SHA, in coordination with FHWA, shall provide notification to tribal governments in accordance with any expressed tribal consultation preferences within 24 hours or as soon as practicable. MDOT SHA and/or FHWA will consult with affected federally recognized Indian Tribes, the Maryland Commission on Indian Affairs and appropriate Maryland Indian groups as appropriate regarding treatment of the remains. MDOT SHA will accommodate tribal cultural preferences to the extent practicable during such an event. If remains can be associated with other known descendant communities or organizations, including the cemetery-affiliated consulting or concurring parties to this PA, such parties shall also be consulted.

If the human remains are likely to be of Native American origin and are located on lands controlled or owned by the U.S. Government, including National Park Service Property within the APE, the Federal land managing agency will assume responsibility for compliance with the Native American Graves Protection and Repatriation Act (NAGPRA; 25 USC 3001), with MDOT SHA assistance.

In consultation with the relevant SHPO, Federally Recognized Indian Tribes, and FHWA as appropriate, and other identified descendant/affiliated consulting parties, the MDOT SHA shall develop a plan for the treatment or disposition of the remains or follow provisions of an existing treatment plan developed per this PA. MDOT SHA shall implement the provisions of the agreed treatment plan.

Should the remains be associated with, or constitute an intact archaeological resource, provision **D** below is also applicable.

**D. Unanticipated Discovery of Archaeological Resources:** If previously unidentified archaeological features, artifacts, or other materials (hereafter, “resource”) are discovered during construction, all ground-disturbing work in the vicinity of the resource shall be temporarily suspended or modified to prevent further damage to the resource, and MDOT SHA will provide a reasonable buffer where ground disturbance is prohibited to cover the extent of the resource that may not be exposed.

The MDOT SHA archaeologist shall perform a preliminary inspection to identify the resource and evaluate its likelihood of NRHP eligibility. Following this inspection, construction may resume in the vicinity of but outside the boundary of the archaeological resource as defined by the MDOT SHA archaeologist. If the resource is potentially eligible for the NRHP, MDOT SHA will consult with the relevant SHPO on an eligibility determination and, if determined eligible for the NRHP, every effort shall be made to minimize impacts through redesign or modification of construction methods. If the resource is of known or suspected Native American affiliation, FHWA, with assistance from MDOT SHA shall consult with federally recognized Indian Tribes as appropriate. If the resource can be reasonably identified with other descendant or affiliated communities, MDOT SHA shall also attempt to consult with such parties.

In consultation with the relevant SHPO, MDOT SHA shall develop a plan for the treatment of any resource determined eligible. MDOT SHA shall describe actions proposed to avoid, minimize, or mitigate adverse effects, and request SHPO, tribal, and any other consulting party comments within 5 working days, unless there is a life or safety hazard requiring immediate interim action. MDOT SHA will disclose any interim action affecting the eligible resource taken in the event of a life or safety hazard. MDOT SHA, at its discretion, may establish a longer comment period if practicable in consideration of potential safety, cost, public travel disruption, and other factors. MDOT SHA shall then implement the provisions of the agreed-upon plan and/or amend this PA to document the resolution, should the resource be determined eligible and should the Project adversely affect the resource.

## **Attachment 2**

### **All Parties Invited to Consult on the Project**

#### **Federally Recognized Tribal Nations**

- **Absentee-Shawnee Tribe of Oklahoma**
- **Delaware Nation**
- **Delaware Tribe of Indians**
- **Chickahominy Indian Tribe**
- **Chickahominy Indians Eastern Division**
- **Eastern Shawnee Tribe of Oklahoma**
- **Monacan Indian Nation**
- **Nansemond Indian Tribe**
- **Oneida Indian Nation**
- **Onondaga Nation**
- **Pamunkey Indian Tribe**
- **Rappahannock Tribe, Inc.**
- **Saint Regis Mohawk Tribe**
- **Seneca-Cayuga Nation**
- **Shawnee Tribe**
- **Tuscarora Nation**
- **Upper Mattaponi Indian Tribe**

#### **State Recognized and Other Tribes**

- **Piscataway Conoy Tribe of Maryland (PCT)**
- **PCT - Cedarville Band of Piscataway**
- **PCT - Choptico Band of Piscataway**
- **Piscataway Indian Nation**

#### **Federal Agencies**

- **Department of Defense**
- **General Services Administration**
- **Federal Railroad Administration**
- **Federal Transit Administration**
- **National Capital Planning Commission**
- **National Institute of Standards and Technology**
- **National Park Service**
- **U.S. Army Corps of Engineers**
- **U.S. Department of Agriculture**
- **U.S. Postal Service**

#### **State Agencies and Organizations**

- **Maryland Commission on Indian Affairs**
- **MDOT Maryland Transit Administration**

- **MDOT Maryland Transportation Authority**
- **Maryland Historical Trust**
- **Preservation Maryland**
- **Virginia Department of Historic Resources**
- **Virginia Department of Transportation**
- **Washington Metropolitan Area Transit Authority**

#### **County Agencies and Organizations**

- **Charles County Department of Planning**
- **Frederick County**
- **Frederick County Preservation Trust**
- **Maryland Milestones/Anacostia Trails Heritage Area, Inc.**
- **Montgomery County Department of Correction and Rehabilitation**
- **Montgomery County Department of General Services**
- **Montgomery County Department of Transportation**
- **Montgomery County Heritage Area, Heritage Tourism Alliance of Montgomery County**
- **Maryland Milestones**
- **Maryland-National Capital Parks and Planning Commission – Montgomery County Planning – Historic Preservation**
- **Maryland-National Capital Parks and Planning Commission – Montgomery Parks**
- **Maryland-National Capital Parks and Planning Commission – Prince George's County Planning – Historic Preservation**
- **Maryland-National Capital Parks and Planning Commission – Prince George's County Department of Parks and Recreation**
- **Montgomery Preservation, Inc.**
- **Prince George's County Historic Preservation Commission**
- **Prince George's County Historical and Cultural Trust**
- **Prince George's Heritage, Inc.**

#### **Municipal and Other Organizations**

- **Cabin John Citizens Association**
- **Canoe Cruisers Association**
- **C&O Canal Association**
- **C&O Canal Trust**
- **Carderock Springs Citizens' Association**
- **City of Gaithersburg**
- **City of College Park**
- **City of Glenarden**
- **City of Greenbelt**
- **City of Rockville**
- **First Agape A.M.E. Zion Church at Gibson Grove**

- **Frederick County Landmarks Foundation**
- **Heart of the Civil War Heritage Area**
- **Indian Spring Community Association**
- **National Park Seminary Master Association**
- **National Trust for Historic Preservation**
- **Peerless Rockville**
- **Rock Creek Conservancy**
- **Save Our Seminary at Forest Glen**
- **Sierra Club Maryland Chapter**
- **Silver Spring YMCA**
- **Trustees of Morningstar Tabernacle No. 88, Inc. (Friends of Moses Hall)**
- **Washington Biologists' Field Club**
- **Village of North Chevy Chase**

## **Attachment 3**

### **Consulting Parties Invited to Concur**

#### **Federally Recognized Tribes**

- **Absentee-Shawnee Tribe of Oklahoma**
- **Delaware Nation**
- **Delaware Tribe of Indians**
- **Chickahominy Indian Tribe**
- **Chickahominy Indians Eastern Division**
- **Eastern Shawnee Tribe of Oklahoma**
- **Monacan Indian Nation**
- **Nansemond Indian Tribe**
- **Oneida Indian Nation**
- **Onondaga Nation**
- **Pamunkey Indian Tribe**
- **Rappahannock Tribe, Inc.**
- **Saint Regis Mohawk Tribe**
- **Seneca-Cayuga Nation**
- **Shawnee Tribe**
- **Tuscarora Nation**
- **Upper Mattaponi Indian Tribe**

#### **State Recognized and Other Tribes**

- **Piscataway Conoy Tribe of Maryland (PCT)**
- **PCT - Cedarville Band of Piscataway**
- **PCT - Choptico Band of Piscataway**
- **Piscataway Indian Nation**

#### **Federal Agencies**

- **Department of Defense**
- **Federal Railroad Administration**
- **Federal Transit Administration**
- **National Capital Planning Commission**
- **National Institute of Standards and Technology**
- **U.S. Army Corps of Engineers**
- **U.S. Department of Agriculture**

#### **State Agencies**

- **Maryland Commission on Indian Affairs**
- **Maryland Department of Transportation – Maryland Transit Administration**
- **Maryland Transportation Authority**
- **Virginia Department of Transportation**

**Local and Other Agencies and Groups**

- **Cabin John Citizens Association**
- **Canoe Cruisers Association**
- **Carderock Springs Citizens Association**
- **City of Gaithersburg**
- **City of Rockville**
- **C&O Canal Association**
- **C&O Canal Trust**
- **First Agape A.M.E. Zion Church at Gibson Grove**
- **Maryland Milestones**
- **Maryland-National Capital Park and Planning Commission**
- **Montgomery County Heritage Area**
- **Montgomery Preservation, Inc.**
- **National Institute for Standards and Technology**
- **National Trust for Historic Preservation**
- **Peerless Rockville**
- **Preservation Maryland**
- **Trustees of Morningstar Tabernacle No. 88, Incorporated (Friends of Moses Hall)**
- **Virginia Department of Transportation**
- **Washington Biologists' Field Club**

**Attachment 4**  
**Links to Documentation Referenced In the I-495 & I-270 Managed Lanes**  
**Study PA**

**Federal Codes and Regulations**

16 U.S.C. 470aa-470mm

Archaeological Resources Protection Act (ARPA)

<https://uscode.house.gov/view.xhtml?path=/prelim@title16/chapter1B&edition=prelim>

25 U.S.C. Ch. 32 § 3001

Native American Graves Protection and Repatriation Act (NAGPRA)

<https://uscode.house.gov/view.xhtml?path=/prelim@title25/chapter32&edition=prelim>

36 C.F.R. Part 14 and 54 U.S.C. § 100902

Rights-of-Way

<https://www.ecfr.gov/current/title-36/chapter-I/part-14>

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title54-section100902&num=0&edition=prelim>

36 C.F.R. Part 63

Dispute Resolution of Determinations of Eligibility for Inclusion in the NRHP

<https://www.ecfr.gov/current/title-36/chapter-I/part-63>

36 C.F.R. Part 79

Curation of Federally Owned and Administered Archaeological Collections

<https://www.ecfr.gov/current/title-36/chapter-I/part-79>

36 C.F.R. Part 800

Implementing Regulations of Section 106 of the National Historic Preservation Act

<https://www.ecfr.gov/current/title-36/chapter-VIII/part-800?toc=1>

40 C.F.R. 1506.6(a)

Public involvement – National Environmental Policy Act

<https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A/part-1506#1506.6>

54 U.S.C.

- National Park Service and Related Programs
  - § 100101(a) Promotion and Regulation of the National Park Service (NPS Organic Act)
    - <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title54-section100101&num=0&edition=prelim>
- National Historic Preservation Act
  - § 306108 Effect of Undertaking on Historic Property

- [https://uscode.house.gov/view.xhtml?req=\(title:54%20section:306108%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:54%20section:306108%20edition:prelim))
- § 307103 Access to Information (Section 304)
- <https://www.achp.gov/digital-library-section-106-landing/frequently-asked-questions-protecting-sensitive-information>

Public Law 71-284, 46 Statute 482 (1930); Executive Order 6166 of June 10, 1933  
 Capper-Cramton Act and Administration by the National Park Service  
<https://www.ncpc.gov/about/authorities/cca/>  
[https://www.nps.gov/parkhistory/online\\_books/anps/anps\\_3b.htm](https://www.nps.gov/parkhistory/online_books/anps/anps_3b.htm)

### **State Codes and Regulations**

Maryland Criminal Code § 0-402  
 Courts and Judicial Proceedings  
<https://law.justia.com/codes/maryland/2013/article-gcr/section-10-402>

Maryland Natural Resources Code § 5-103  
 Reforestation  
<https://roads.maryland.gov/mdotsha/pages/index.aspx?PageId=158>

Virginia Antiquities Act § 10.1-2305  
 Human Remains  
<https://law.lis.virginia.gov/vacode/title10.1/chapter23/section10.1-2305/>  
 Implementation - Virginia Administrative Code 17VAC5-20  
<https://law.lis.virginia.gov/admincode/title17/agency5/chapter20/>

### **Guidelines and Standards**

#### ***Advisory Council on Historic Preservation***

- *Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System* (ACHP Program Comment, 2005)  
[https://www.achp.gov/sites/default/files/exemptions/2017-01/final\\_interstate\\_exemption\\_notice.pdf](https://www.achp.gov/sites/default/files/exemptions/2017-01/final_interstate_exemption_notice.pdf)
- *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* (ACHP February 2007)  
<https://www.achp.gov/sites/default/files/policies/2018-06/ACHPPolicyStatementRegardingTreatmentofBurialSitesHumanRemainsandFuneraryObjects0207.pdf>
- *Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges* (77 FR 68790)  
<https://www.federalregister.gov/documents/2012/11/16/2012-27866/program-comment-issued-for-streamlining-section-106-review-for-actions-affecting-post-1945-concrete>

- *Section 106 Archaeology Guidance* (ACHP, 2009)  
<https://www.achp.gov/sites/default/files/guidance/2017-02/ACHP%20ARCHAEOLOGY%20GUIDANCE.pdf>

### ***The Maryland Historical Trust***

- Standards and Guidelines for Archaeological Investigations in Maryland (Shaffer and Cole 1994)  
[https://mht.maryland.gov/documents/PDF/archeology/Archeology\\_standards\\_investigations.pdf](https://mht.maryland.gov/documents/PDF/archeology/Archeology_standards_investigations.pdf)
- *Technical Update No. 1 of the Standards and Guidelines for Archaeological Investigations in Maryland: Collections and Conservation Standards* (2018)  
[https://mht.maryland.gov/documents/PDF/archeology/Archeology\\_standards\\_curation.pdf](https://mht.maryland.gov/documents/PDF/archeology/Archeology_standards_curation.pdf)
- Standards and Guidelines for Architectural and Historical Investigations in Maryland (Maryland Historical Trust, Revised 2019)  
[https://mht.maryland.gov/documents/PDF/research/Survey\\_standards\\_architecture\\_web.pdf](https://mht.maryland.gov/documents/PDF/research/Survey_standards_architecture_web.pdf)

### ***The National Park Service***

- Management Policies – Section 5, Cultural Resource Management (2006)  
[https://www.nps.gov/subjects/policy/upload/MP\\_2006.pdf](https://www.nps.gov/subjects/policy/upload/MP_2006.pdf)
- NPS Museum Handbook, National Park Service, revised 2019  
<https://www.nps.gov/museum/publications/handbook.html>
- NRHP Bulletin 15 – How to Apply the National Register Criteria for Evaluation (National Park Service revised 1997)  
[https://www.nps.gov/subjects/nationalregister/upload/NRB-15\\_web508.pdf](https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf)
- Other NRHP Bulletins  
<https://www.nps.gov/subjects/nationalregister/publications.htm#:~:text=national%20register%20of%20historic%20places%20bulletins>
- The Secretary of the Interior’s Guidelines for the Treatment of Cultural Landscapes (1996)  
<https://www.nps.gov/tps/standards/four-treatments/landscape-guidelines/index.htm>
- The Secretary of the Interior’s Guidelines for the Treatment of Historic Properties (1995, Revised 2017)  
<https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>
- The Secretary of the Interior’s Professional Qualifications Standards  
<https://www.nps.gov/articles/sec-standards-prof-quals.htm>  
OR see 48 FR 44738  
<https://www.nps.gov/subjects/historicpreservation/upload/standards-guidelines-archeology-historic-preservation.pdf>

- The Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation (1983)  
<https://www.nps.gov/subjects/historicpreservation/upload/standards-guidelines-archeology-historic-preservation.pdf>
- The Secretary of the Interior’s Standards for the Treatment of Historic Properties (1995, Revised 2017)  
<https://www.nps.gov/tps/standards/four-treatments.htm>  
OR <https://www.ecfr.gov/current/title-36/chapter-I/part-68>

***The Virginia Department of Historic Resources***

- Guidelines for Conducting Historic Resources Survey in Virginia (Virginia Department of Historic Resources, revised September 2017)  
[https://www.dhr.virginia.gov/wp-content/uploads/2018/06/SurveyManual\\_2017.pdf](https://www.dhr.virginia.gov/wp-content/uploads/2018/06/SurveyManual_2017.pdf)

**Other Referenced Information**

- Area of Potential Effects, May 2022 [https://oplanesmd.com/wp-content/uploads/2022/05/MLS\\_APE\\_Mapping.pdf](https://oplanesmd.com/wp-content/uploads/2022/05/MLS_APE_Mapping.pdf)
- Alternative 9 Phase 1 South project description (currently available here: <https://oplanesmd.com/environmental/alternatives/pa/>)
- First Agape A.M.E. Zion Church at Gibson Grove parking lot restoration plan (<https://oplanesmd.com/wp-content/uploads/2022/04/P3-Gibson-Grove-Church-Parking-Layout.pdf>)
- I-495 and I-270 Managed Lanes Study Draft Section 106 Technical Report: [https://oplanesmd.com/deis/#:~:text=4\(f\)%20Evaluation-,appendix%20g,-Cultural%20Resources%20Technical](https://oplanesmd.com/deis/#:~:text=4(f)%20Evaluation-,appendix%20g,-Cultural%20Resources%20Technical)
- MDOT SHA Statewide PA: [https://www.roads.maryland.gov/OPPEN/2021\\_PA\\_Amendment.pdf](https://www.roads.maryland.gov/OPPEN/2021_PA_Amendment.pdf)

## **Attachment 5**

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