

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,
REGARDING
THE REPLACEMENT OF THE CAPE FEAR MEMORIAL BRIDGE (BRIDGE NO. 13)
NEW HANOVER AND BRUNSWICK COUNTIES, NORTH CAROLINA
TIP PROJECT HB-0039**

WHEREAS, the Cape Fear Memorial Bridge (CFMB) is a four-lane, steel vertical-lift bridge built over the Cape Fear River in 1969, that carries US 17/US 76/US 421 traffic between the cities of Leland and Wilmington; and

WHEREAS, while the CFMB is safe, it is becoming functionally obsolete; reaching the end of its lifecycle; and must be monitored, inspected, and maintained on a more frequent basis; and

WHEREAS, traffic delays due to repair and maintenance activities and the operation of the bridge lift cause congestion and make travel times unreliable; and

WHEREAS, the bridge also lacks bicycle and pedestrian lanes to support other modes of transportation; and

WHEREAS, on July 17, 2024, the Federal Highway Administration (FHWA) selected the North Carolina Department of Transportation (NCDOT) to receive \$242 million in grant funding to be used for replacement of the CFMB, as part of its Bridge Investment Program; and

WHEREAS, the proposed CFMB Replacement Project is expected to result in operational and capacity improvements that will meet existing and growing transportation demands, ensure efficient traffic flow on a key corridor in the state, and improve a critical evacuation route for the area's residents when hurricanes and other natural disasters hit, while also connecting bicyclists and pedestrians in New Hanover and Brunswick counties; and

WHEREAS, the CFMB Replacement Project constitutes an Undertaking subject to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), (54 U.S.C. § 306108), and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, FHWA, as lead federal agency for the Undertaking, is considering the effects of the Undertaking on historic properties pursuant to 36 CFR Part 800; and

WHEREAS, NCDOT has participated in the consultation and has been invited as a signatory to this PA; and

WHEREAS, the United States Army Corps of Engineers (USACE) has Federal Involvement in the Undertaking as a permitting agency; and USACE will rely on this Section 106 review for its permit decision; and USACE declined an invitation to be included in this PA as a signatory; and

1 **WHEREAS**, the United States Coast Guard (USCG) has Federal Involvement in the Undertaking as a
2 permitting agency; and USCG will rely on this Section 106 review for its permit decision; and USCG
3 declined an invitation to be included in this PA as a signatory; and

4 **WHEREAS**, identification of historic properties within the Undertaking's Area of Potential Effects (APE)
5 has been carried out in accordance with the Advisory Council on Historic Preservation's (ACHP)
6 regulations (36 CFR Part 800) for implementing Section 106 of the National Historic Preservation Act
7 (NHPA) (16 U.S.C. 470f); and

8 **WHEREAS**, the CFMB has been determined eligible for listing on the National Register of Historic
9 Places (NRHP); and the Wilmington Historic District is listed on the NRHP and the CFMB has been
10 identified as a contributing feature to the district; and

11 **WHEREAS**, in addition to the CFMB and Wilmington Historic District, the Undertaking's APE also
12 includes the NRHP-listed USS North Carolina, which is a National Historic Landmark (NHL) and subject
13 to Section 110 of the NHPA regulations in addition to those found in Section 106 of the NHPA; and

14 **WHEREAS**, NCDOT's Archaeology Team reviewed the APE for any potentially affected archaeological
15 resources, both terrestrial and submerged; and its review resulted in a conclusion that the Federal
16 Undertaking would not affect NRHP-listed or eligible archaeological sites; and

17 **WHEREAS**, this conclusion was shared with the North Carolina Office of State Archaeology (OSA),
18 which concurred with the finding; and

19 **WHEREAS**, FHWA and NCDOT have consulted with the North Carolina State Historic Preservation
20 Officer (NC SHPO) on the Undertaking; and

21 **WHEREAS**, current alternatives considered in an Environmental Assessment (EA) being prepared for
22 the project include replacement with a similar vertical lift bridge (65-feet vertical clearance when
23 lowered, 135-feet when raised) and a fixed 135-foot span; and

24 **WHEREAS**, FHWA, NCDOT, and the NC State Historic Preservation Officer (NC SHPO) have found
25 that either action alternative being considered for the Undertaking will have an adverse effect on the Cape
26 Fear Memorial Bridge due to its removal; and

27 **WHEREAS**, FHWA, NCDOT, and the NC SHPO recognize that the Undertaking's overall adverse effect
28 on the Wilmington Historic District is dependent upon NCDOT's selection of a preferred alternative and
29 the final design of the new bridge; and

30 **WHEREAS**, the USACE's selection of the Least Environmentally Damaging Practicable Alternative
31 (LEDPA), will also shape the degree and intensity of the adverse effect; and

32 **WHEREAS**, FHWA's Large Bridge Program grant funding obligation timeline constrains the ability to
33 fully determine if the Undertaking would have adverse effects on the Wilmington Historic District, or to
34 fully avoid, minimize, or mitigate adverse effects, prior to completing the appropriate National
35 Environmental Policy Act (NEPA) of 1969, 42 U.S.C. § 4321, *et seq.* documentation and FHWA's
36 approval of the Undertaking; and

37 **WHEREAS**, nothing herein constitutes a commitment of federal grant funding for the Undertaking,
38 which requires a separate grant agreement between FHWA and NCDOT; and

1 **WHEREAS**, FHWA and NCDOT, in consultation with the NC SHPO, determined that the most effective
2 approach to consider, avoid, minimize, and/or mitigate adverse effects to the historic district and USS
3 North Carolina as a result of the Undertaking would be through a Programmatic Agreement (PA); and

4 **WHEREAS**, FHWA and NCDOT identified one federally-recognized tribe as a potential consulting
5 party: the Catawba Indian Nation, and initiated consultation with the tribe on August 30, 2023; and

6 **WHEREAS**, the Catawba Indian Nation indicated it had no immediate concerns related to the
7 Undertaking in a written response on October 3, 2023, but did ask to be notified if Native American
8 artifacts and/or human remains are located during the ground disturbance phase of the Undertaking; and

9 **WHEREAS**, FHWA and NCDOT, pursuant to 36.CFR 800.2(d) have sought and considered the views of
10 the public regarding the Undertaking following NCDOT's public involvement procedures under the
11 National Environmental Policy Act (NEPA); and

12 **WHEREAS**, NCDOT has shared information about the Undertaking via a project website and through
13 the NEPA process, including a public meeting held in conjunction with development of an Environmental
14 Assessment (EA) in September 2024; and

15 **WHEREAS**, an additional public meeting will be held when the EA is released to the public; and

16 **WHEREAS**, pursuant to 36 C.F.R. § 800.2(c), FHWA and NCDOT identified and initiated contact with
17 the following potential consulting parties during project scoping: Eagles Island Coalition Conservation
18 Planning Committee, Gullah Geechee Cultural Heritage Corridor Commission, Historic Wilmington
19 Foundation, Inc., Cape Fear River Watch, USS North Carolina Battleship Commission, the Wilmington
20 Historic Preservation Commission, and the Wilmington Metropolitan Planning Organization (MPO); and

21 **WHEREAS**, FHWA and NCDOT received affirmative responses from the following groups, who are
22 now formally recognized as consulting parties to the Undertaking: City of Wilmington's Historic
23 Preservation Commission, Historic Wilmington Foundation, and USS North Carolina Battleship
24 Commission; and

25 **WHEREAS**, although no response was received during the initial outreach during project scoping, the
26 remaining entities (Eagles Island Coalition Conservation Planning Committee, Gullah Geechee Cultural
27 Heritage Corridor Commission, Cape Fear River Watch, and the Wilmington MPO) have now been
28 invited to consult on the development of this PA in accordance with 36 CFR § 800.2 (c), along with the
29 three entities that did respond and are currently recognized as consulting parties; and

30 **WHEREAS**, Eagles Island Coalition Conservation Planning Committee, Gullah Geechee Cultural
31 Heritage Corridor Commission, Historic Wilmington Foundation, Inc., Cape Fear River Watch, USS
32 North Carolina Battleship Commission, the Wilmington Historic Preservation Commission, and the
33 Wilmington MPO, chose to participate and were invited to sign the PA as a Concurring Party; and

34 **WHEREAS**, Eagles Island Coalition Conservation Planning Committee, Gullah Geechee Cultural
35 Heritage Corridor Commission, Historic Wilmington Foundation, Inc., Cape Fear River Watch, USS
36 North Carolina Battleship Commission, the Wilmington Historic Preservation Commission, and the
37 Wilmington MPO, either did not respond or chose not to participate or to sign the PA as a Concurring
38 Party; and

39 **WHEREAS**, in accordance with 36 CFR § 800.6 (a)(1), FHWA and NCDOT have notified the Advisory
40 Council on Historic Preservation (ACHP) of its pending adverse effect finding with specified

documentation, and the ACHP has chosen to participate / not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, due to the involvement of the USS North Carolina, which has been designated as an NHL, and in accordance with 36 CFR § 800.10, FHWA and NCDOT have notified the NPS of its pending adverse effect finding with specified documentation; and the NPS has chosen to participate / not to participate in the consultation pursuant to 36 CFR § 800.10; and

WHEREAS, FHWA and NCDOT have determined that the Undertaking will result in an overall adverse effect on historic properties. The effect of the proposed bridge replacement on the NRHP-eligible CFMB under either alternative under consideration will be adverse. The effect on the USS North Carolina is to be determined and may be dependent upon the alternative chosen. Because the CFMB is a contributing element of the NRHP-listed Wilmington Historic District, the proposed bridge replacement would be an adverse effect on the district under either alternative. However, the degree and intensity of the adverse effect will be dependent upon the project's selected alternative, as the fixed span alternative appears likely to impose a visual effect on several houses near the intersection of South 2nd Street and Queen Street that contribute to the district. In addition, the eventual alternative selection and/or decision on whether to toll the new bridge may affect traffic patterns in the district. As such, FHWA and NCDOT have agreed that development of a PA, which stipulates measures to resolve known and potential adverse effects, is the appropriate instrument for satisfying Section 106 requirements; and has developed this PA in consultation with the NC SHPO, in accordance with 36 CFR § 800.14(b)(1)(ii) when effects on historic properties cannot be fully determined prior to approval of an undertaking; and

NOW, THEREFORE, the Signatories agree that the Undertaking shall be implemented in accordance with the following stipulations to resolve adverse effects as their nature becomes known during project development, to include alternative selection in the NEPA process and LEDPA in the Section 404 permitting process.

STIPULATIONS

FHWA and NCDOT, in coordination with the other Signatories and Concurring Parties, shall ensure that the following measures are carried out:

I. General Principles

- A. FHWA and NCDOT commit to plan, design, and implement the Undertaking in accordance with the best practices and context sensitive solutions available at the time to avoid, minimize, and/or mitigate impacts to historic properties while meeting the purpose and need for the project.
- B. NCDOT, in coordination with FHWA, shall seek, discuss, and consider the views of the other Signatories and the Concurring Parties concerning design and construction options.
- C. NCDOT, in coordination with FHWA, commits to work with the Signatories and Concurring Parties to consider and develop, where reasonable, feasible, and cost effective, mitigation measures to resolve adverse effects on historic properties.

II. Roles and Responsibilities

A. FHWA (Signatory)

1. As lead federal agency, FHWA has the primary responsibility to ensure the provisions of this Agreement are carried out.
2. FHWA is responsible for all government-to-government consultation with federally-recognized Indian Tribes.

- 1 3. FHWA is responsible for all findings and determinations, including determinations of
2 eligibility and effects of the Undertaking, as well as resolution of objections or disputes.
3 4. FHWA's Preconstruction & Environment staff will be present at all scheduled meetings to
4 discuss avoidance, minimization, and/or mitigation of effects.
- 5 B. NCDOT (Invited Signatory)
- 6 1. NCDOT or its consultants will prepare any necessary analyses, documentation,
7 renderings, plans, and cost estimates as required by this Agreement.
8 2. NCDOT or its consultants will ensure that all work carried out pursuant to this
9 Agreement is done by or under the direct supervision of a qualified professional in the
10 disciplines of Archaeology, Architectural History and/or Historic Architecture, meeting
11 relevant standards outlined in the *Secretary of the Interior's Professional Qualifications*
12 *Standards*.
13 3. NCDOT shall ensure that its employees, contactors, sub-contractors, laborers, and
14 consultants are made aware that in the event of an unexpected discovery involving a
15 previously unidentified historic property or human remains or affecting a known historic
16 property in an unanticipated manner, the employee/contractor/consultant will comply
17 with Stipulation VII (Inadvertent Discovery).
18 5. NCDOT's Historic Architecture Group Leader will be present at all scheduled meetings
19 to discuss avoidance, minimization, and/or mitigation of effects.
- 20 C. NC SHPO (Signatory)
- 21 1. The NC SHPO will review, provide guidance/comments, and approve submittals as
22 specified in this Agreement.
23 2. The NC SHPO's Environmental Review Coordinator will be present at all scheduled
24 meetings to discuss avoidance, minimization, and/or mitigation of effects.
- 25 D. ACHP (Signatory)
- 26 1. The ACHP will participate in dispute resolution as outlined in Stipulation XI (Dispute
27 Resolution), as well as fulfill the responsibilities outlined in Stipulation VII (Inadvertent
28 Discovery), and Stipulation XIV (Emergency Situations), as well as any other duties as
29 specified in this Agreement.
30 2. **///add text here if ACHP wants to participate in meetings///**
- 31 E. **Concurring Parties (///TBD – may include Eagles Island Coalition Conservation Planning**
32 **Committee, Gullah Geechee Cultural Heritage Corridor Commission, Historic Wilmington**
33 **Foundation, Inc., National Park Service, Cape Fear River Watch, USS North Carolina Battleship**
34 **Commission, Wilmington MPO and the Wilmington Historic Preservation Commission – will**
35 **update as we hear from each entity///)**
- 36 1. The Concurring Parties will provide input and guidance regarding the development and
37 implementation of stipulations of this Agreement.
38 2. The Concurring Parties shall be invited to attend all scheduled meetings to discuss
39 avoidance, minimization, and/or mitigation of effects; however, their participation is
40 optional. They may also submit comments in writing in advance of scheduled meetings
41 for the Signatory's consideration.

42 III. Coordination

43 A. Timeframes

- 44 1. All time designations are in calendar days unless otherwise stipulated. If a review period
45 ends on a Saturday, Sunday, or Federal holiday, the review period will be extended until
46 the next business day.

- 1 2. All review periods start on the day the documents are provided to the relevant parties,
2 which constitutes notification, unless otherwise stipulated in this Agreement.

3 B. Communication

- 4 1. Unless otherwise stated elsewhere in this Agreement, Signatories, Invited Signatories,
5 and Concurring Parties, where appropriate, will provide comments on the documents they
6 review to FHWA, and as set forth in this stipulation.
7 2. Signatories, Invited Signatories, and Concurring Parties, where appropriate, will have up
8 to thirty (30) days from the date of receipt to review and provide written comments to
9 FHWA on documents provided for their review and comment as stipulated in this
10 Agreement. This thirty- (30) day period will be shortened to seven (7) days under
11 emergency or post-review discovery conditions.
12 3. FHWA will send all notifications required by this Agreement by electronic mail and/or
13 other electronic means, unless a mailed notification is requested by a recipient.
14 4. FHWA will ensure any written comments received within the review timeframe are
15 considered and incorporated, as appropriate, into the documentation.
16 5. If the Signatories and Concurring Parties, where appropriate, do not submit written
17 comments to FHWA within thirty (30) days of receipt of any document, FHWA will
18 assume that the non-responding parties have no comments on the submittal and concur
19 with the relevant determination, as applicable.
20 6. FHWA may consider written requests to extend the thirty- (30) day review period or may
21 determine that an additional round of review of draft document is necessary. All such
22 written requests must be received in a timely manner (at least five (5) days prior to the
23 30- (thirty) day review period end date) and provide adequate justification to extend a
24 review period. FHWA will notify Signatories, Invited Signatories, and Concurring Parties
25 of FHWA's decision in writing including the newly extended review timeframes.
26 7. If the Signatories and Concurring Parties, where appropriate, object to or recommend
27 extensive revisions to submissions stipulated in this Agreement, FHWA will work
28 expeditiously to respond to the recommendations and resolve disputes.
29 8. If FHWA cannot resolve a dispute within thirty (30) days, and if further consultation is
30 deemed unproductive by any party, the parties will adhere to the dispute resolution
31 procedures detailed under Stipulation XI (Dispute Resolution).

32
33 IV. Assessment of Effects on Historic Properties

- 34 A. On August 28, 2025, FHWA and NCDOT met with NC SHPO and shared preliminary
35 opinions regarding how the Undertaking may affect three historic properties located
36 within the project APE.
37 1. CFMB – adverse effect under either alternative
38 i. While effects to other historic properties are still to be determined, the
39 CFMB will be adversely affected under either action alternative due to its
40 proposed removal.
41 ii. The NC SHPO expressed its agreement.
42 2. USS North Carolina – to be determined
43 i. FHWA and NCDOT shared preliminary opinions that the USS North
44 Carolina will not be affected by the alternative that includes a new vertical
45 lift bridge, as it would be similar in appearance and scale as the existing
46 CFMB.

- ii. FHWA and NCDOT shared preliminary opinions that the USS North Carolina would not be adversely affected by the alternative that includes a fixed span, as the characteristics that provide its NRHP and NHL significance will be unchanged, and the relative distance to a new fixed bridge would result in no more than a negligible change in viewshed for observers looking to and from the resource.
- iii. The NC SHPO indicated that it would discuss internally before responding with its opinion.

3. Wilmington Historic District – adverse effect, degree to be determined

- i. FHWA and NCDOT shared preliminary opinions that the Wilmington Historic District would be adversely affected under either alternative due to the removal of the existing CFMB, which is a contributing structure in the district.
- ii. Under the alternative that includes a new vertical lift bridge, it appears that there would be no additional contributing elements of the district affected.
- iii. Under the fixed bridge alternative, there may be additional adverse effects to contributing structures near the intersection of South 2nd and Queen Streets due to proximity of an on/off ramp to the new bridge. Design of the fixed bridge and/or a decision to toll the bridge may also result in changes to traffic patterns within the district that could be found to increase the degree of adverse effect as well. At this time, design is not refined to the degree necessary to have more meaningful conversations, and this PA will serve as a vehicle to facilitate future discussion of the nature of any effect and potential resulting mitigation.

- B. Effect findings for the USS North Carolina and Wilmington Historic District will be finalized under this PA as project development continues, and will subsequently inform mitigation to resolve any adverse effect caused by the Undertaking.

V. Avoidance, Minimization, and/or Mitigation of Adverse Effects on Historic Properties

- A. A summary of modifications made to preliminary design to avoid or minimize adverse effects will be documented in a written report supplied by NCDOT to the NC SHPO, and the other Concurring Parties for concurrent review and comment.
- B. Under either alternative, the CFMB will be adversely affected by its removal. Mitigation of the adverse effect on this historic property shall include the following:
 - 1. Prior to the initiation of construction, NCDOT will record the existing conditions of the CFMB in accordance with the attached Historic Structures and Landscape Recordation Plan (Appendix A). The NC SHPO will have thirty (30) days in which to comment on the adequacy of the recordation. If the NC SHPO does not respond within the allotted time, the documentation will be considered acceptable. Copies of the documentation will be deposited in the files of the North Carolina Historic Preservation Office (NC HPO) and NCDOT's Historic Architecture Group.
 - 2. The appearance of the proposed bridge, its approaches, on/off ramps, signals, lighting, any infrastructure associated with potential tolling (such as license plate readers), and associated landscaping will be coordinated with the Signatories and Concurring Parties. NCDOT will provide renderings that illustrate aesthetic choices and request comments and preferences.

- i. The design, materials, and installation of aesthetic treatments will be in keeping with NCDOT's current public art policy, as applicable.
 - ii. Choices of aesthetic treatments and landscaping will be provided to SHPO, the City of Wilmington, and the concurring parties for their review and comment prior to final approval and inclusion in the final design plans.
- C. Under the raisable bridge alternative, it is anticipated that there would be no effect on the Wilmington Historic District beyond the loss of one contributing element – the bridge itself. The following minimization and mitigation measures would be pursued by FHWA and NCDOT in consultation with the other Signatories and Concurring Parties:
 1. Modifications and/or conditions will be included in the appropriate final design and construction contracts and plans and described via annual reporting as detailed below in Stipulation IX (Reporting)
 2. Acknowledging that removal of the existing Cape Fear Memorial Bridge, a contributing element of the Wilmington Historic District, would constitute an adverse effect on the district, FHWA and NCDOT, in consultation with other Signatories, Invited Signatories, and Concurring Parties will identify methods to mitigate the adverse effects of the Undertaking on the district using aesthetic and context-sensitive design for the new bridge that shall be formalized via a mitigation plan.
 3. Upon approval of the mitigation plan, FHWA shall distribute the final mitigation plan to Signatories, Invited Signatories, and Concurring Parties.
 4. NCDOT, in coordination with FHWA, will ensure that the provisions of the final mitigation plan are included in final construction plans and implemented during construction.
 5. Should any Signatory, Invited Signatory, or Consulting Party object to the final mitigation plan, FHWA shall attempt to resolve the dispute through continued consultation. Where the objection cannot be resolved in this manner, FHWA shall resolve the dispute in accordance with Stipulation XI.
 6. The mitigation plan detailing adverse effect resolution will be compiled and supplied by NCDOT to all Signatories and Concurring Parties via annual reporting as detailed below in Stipulation IX (Reporting).
- D. Under the 135-foot fixed bridge alternative, there would likely be an adverse effect on the Wilmington Historic District near the intersection of South 2nd and Queen Streets due to proximity of an on/off ramp to the new bridge. The following minimization and mitigation measures would be pursued by FHWA and NCDOT in consultation with the other Signatories and Concurring Parties.
 7. Modifications and/or conditions will be included in the appropriate final design and construction contracts and plans and described via annual reporting as detailed below in Stipulation IX (Reporting)
 8. Acknowledging that avoidance and minimization measures are unlikely to be adequate to avoid an adverse effect on the district, FHWA and NCDOT, in consultation with other Signatories, Invited Signatories, and Concurring Parties will identify methods to mitigate the adverse effects of the Undertaking on the district using aesthetic and context-sensitive design that shall be formalized via a mitigation plan.
 9. Upon approval of the mitigation plan, FHWA shall distribute the final mitigation plan to Signatories, Invited Signatories, and Concurring Parties.

10. NCDOT, in coordination with FHWA, will ensure that the provisions of the final mitigation plan are included in final construction plans and implemented during construction.
 11. Should any Signatory, Invited Signatory, or Consulting Party object to the final mitigation plan, FHWA shall attempt to resolve the dispute through continued consultation. Where the objection cannot be resolved in this manner, FHWA shall resolve the dispute in accordance with Stipulation XI.
 12. The mitigation plan detailing adverse effect resolution will be compiled and supplied by NCDOT to all Signatories and Concurring Parties via annual reporting as detailed below in Stipulation IX (Reporting).
 13. Vibration monitoring specification(s) will be prepared for any structures that contribute to the district that are determined to be vulnerable to vibration during construction activities. The vibration monitoring plans will be included in the construction contract and will be provided to the NC SHPO and other Concurring Parties for concurrent review and comment in accordance with Stipulation III (Coordination).
- E. Should the Undertaking, during construction and/or upon completion, result in substantial projected increases in traffic on Front Street, Third Street, and/or Fifth Avenue to the extent that FHWA finds that the severity of the overall expected adverse effect on the Wilmington Historic District is increased, minimization and mitigation measures would be pursued by FHWA and NCDOT in consultation with the other Signatories and Concurring Parties.
1. Associated traffic management and/or aesthetic plans will developed and distributed by NCDOT to all Signatories and Concurring Parties, and subsequently incorporated into final construction plans and implemented, in the same manner as described in Stipulations V. D. 1-7 above.

VI. Changes in Undertaking Scope

- A. NCDOT will notify the other Signatories and Concurring Parties of all changes to the Undertaking's scope of work. NCDOT will submit written documentation, including plan sheets or sketches, showing the changes and a brief explanation of why the change(s) is needed.
- B. FHWA will determine if these changes are of a nature that could potentially result in changes to previous effect findings. For minor changes with no changes in the effects findings, FHWA will document the changes within its files and notify the NC SHPO and the other Concurring Parties in writing of the change.
- C. If changes to effect findings are necessary, NCDOT will prepare appropriate updates to account for the changes in effects and submit to the NC SHPO and other Concurring Parties. The NC SHPO, and the other Concurring Parties, as appropriate, will review and provide comments on the proposed changes in accordance with the timeframes and communication procedures outlined in Stipulation III.
- D. If necessary, FHWA will coordinate with Signatories to amend the PA to account for scope changes and/or attempt to resolve any disputes via continued consultation, or by the process outlined in Stipulation XI (Dispute Resolution).

VII. Unanticipated Discovery

- 1 A. In accordance with 36 C.F.R. § 800.13(b)(3), if NCDOT identifies additional cultural
2 resource(s) during construction, other than human remains, all work will be halted within
3 twenty-five (25) feet of the discovered resource(s) and FHWA will be contacted
4 immediately. FHWA will initiate the appropriate agency coordination required for a
5 determination of eligibility or recovery effort and within 48 hours will notify SHPO,
6 ACHP, and any THPOs and Indian tribe that might attach religious and cultural
7 significance to the affected property. The SHPO, ACHP, THPO, and Indian tribes shall
8 respond within 48 hours of the notification. NCDOT will take all reasonable measures to
9 avoid, minimize harm, and protect the discovery until further consultation with the SHPO
10 and any other consulting parties has concluded. If after consultation between the
11 Signatories and Consulting Parties, additional mitigation is determined necessary, the
12 NCDOT, in consultation with the Signatories and Consulting Parties, will develop and
13 implement appropriate protection/mitigation measures for the resource(s).
- 14 A. If human remains are discovered, NCDOT shall notify the local law enforcement office,
15 coroner/medical examiner, and State Archaeologist immediately in accordance with
16 North Carolina General Statue Chapter 70, Article 3, and protect the remains from any
17 harm under NCGS Chapter 65. NCDOT must also notify Signatories and Invited
18 Signatories within twenty-four (24) hours. No photographs of human remains should be
19 taken or distributed. NCDOT will require the contractor to immediately halt work within
20 a fifty (50)-foot perimeter and immediately secure and protect the human remains and
21 any associated funerary objects in place in such a way that minimizes further exposure or
22 damage to the remains from the elements, looting, and/or vandalism. Within the
23 perimeter there will be no excavation, operation of heavy machinery, or stockpiling. No
24 activity is to be resumed without authorization from either the county medical examiner
25 of the State Archaeologist in accordance with NCGS Chapter 70-29.

26 VIII. Duration

- 27 A. This Agreement will expire if its terms are not carried out within fifteen (15) years from
28 the date of its execution. Prior to such time, FHWA may consult with the other
29 Signatories and Invited Signatories to reconsider the terms of the Agreement and amend
30 it in accordance with Stipulation XII (Amendments) below.
- 31 B. Unless terminated, the Agreement will remain in full force and effect until FHWA, in
32 consultation with other Signatories and Invited Signatories, determines that construction
33 of all aspects of the Undertaking have been completed and all terms of the Agreement
34 have been fulfilled in a satisfactory manner.
- 35 C. Signatories and Invited Signatories may agree to extend the Agreement through an
36 amendment, provided the original Agreement has not expired.
- 37

38 IX. Reporting

- 39 A. Final Reports, Deliverables, and Documentation: NCDOT will ensure that all final
40 reports, deliverables, and documentation resulting from this Agreement are provided to
41 FHWA. FHWA will distribute to Signatories, Invited Signatories, and Concurring
42 Parties, as appropriate.
- 43 B. Following the execution of this Agreement until it expires, or is terminated, or the
44 Undertaking is completed or cancelled, NCDOT Division 3, in coordination with
45 NCDOT's Environmental Analysis Unit (EAU) shall provide to FHWA an annual
46 summary report detailing work undertaken pursuant to its terms. Such report shall include
47 overall project development and/or construction progress, status of implementation to

1 minimize adverse effects, details on vibrational monitoring, any scheduling changes
2 proposed, and any changes the NCDOT believes should be made in the implementation
3 of this Agreement.

- 4 C. FHWA will review, approve, and distribute the annual report from NCDOT to all
5 Signatories, Invited Signatories, and Concurring Parties and further supply information
6 on any disputes or objections received in FHWA's efforts to carry out the terms of this
7 Agreement.
- 8 D. The first annual report shall be distributed one year after the execution of this PA and on
9 that date annually thereafter until the terms of the PA have been satisfied, it expires, or it
10 is terminated.
- 11 E. Within thirty (30) days of receipt of the report, the Signatories, Invited Signatories, and
12 Concurring Parties may request a meeting to discuss the contents as a group. This
13 meeting may occur in person or by teleconference or as a web meeting.

14 X. Confidentiality

- 15 A. Signatories and Invited Signatories to this Agreement acknowledge that information
16 about historic properties is subject to the provisions of Section 304 of the NHPA (54
17 U.S.C. § 307103) and 36 CFR § 800.11(c), relating to the disclosure of information about
18 the location, character or ownership of an historic property, and will ensure that any
19 disclosure under this Agreement is consistent with the terms of this Agreement and with
20 Section 304 of the NHPA, 36 CFR § 800.11(c), the Freedom of Information Act (5
21 U.S.C. § 552), as amended.
- 22 B. Confidentiality regarding the specific nature and location of the archaeological sites and
23 any other cultural resources discussed in this Agreement shall be maintained to the extent
24 allowable by law. Dissemination of such information shall be limited to appropriate
25 personnel within NCDOT (including its contractors), FHWA, Concurring Parties and
26 those parties involved in planning, reviewing, and implementing this Agreement.
- 27 C. When information is provided to FHWA or NCDOT by the NC SHPO or others who
28 wish greater control over the discretionary dissemination of that information, FHWA and
29 NCDOT will make a good faith effort to do so, provided the information to be controlled
30 and the rationale for withholding is clearly identified, to the extent consistent with
31 applicable law.
32

33 XI. Dispute Resolution

- 34 A. In the event the NC SHPO, NCDOT, or a Concurring Party objects in writing to any
35 actions proposed or the manner in which the terms of this Agreement are implemented,
36 FHWA will first consult with the objecting party and then with other Signatories, Invited
37 Signatories, and Concurring Parties, as appropriate, within thirty (30) days to resolve the
38 objection. If FHWA determines that such objection cannot be resolved, FHWA will
39 proceed as set forth below.
- 40 B. Should the NC SHPO, NCDOT, or a Concurring Party object at any time to any actions
41 proposed or the manner in which the terms of this Agreement are implemented, FHWA
42 shall consult with such party to resolve the objection. If FHWA determines that such
43 objection cannot be resolved, FHWA will:
- 44 1. Forward all documentation relevant to the dispute, including FHWA's
45 proposed resolution, to the ACHP. The ACHP shall provide FHWA with
46 its advice on the resolution of the objection within thirty (30) days of

1 receiving adequate documentation. Prior to reaching a final decision on
2 the dispute, FHWA shall prepare a written response that considers any
3 timely advice or comments regarding the dispute from the ACHP,
4 Signatories, Invited Signatories, and Concurring Parties, and provide
5 them with a copy of this written response. FEMA will then proceed
6 according to its final decision.

- 7 2. If the ACHP does not provide its advice regarding the dispute within the
8 thirty (30) day-period, FHWA may make a final decision on the dispute
9 and proceed accordingly. Prior to reaching such a final decision, FEMA
10 shall prepare a written response that considers any timely comments
11 regarding the dispute from the Signatories, Invited Signatories, and
12 Concurring Parties, and provide them and the ACHP with a copy of such
13 written response.

- 14 C. The Signatories' responsibility to carry out all other actions subject to the terms of this
15 Agreement that are not the subject of the dispute would remain unchanged.
16 D. Should disputes arise under exigent circumstances (e.g., concerns over construction
17 suspensions or delays), all parties except ACHP agree to expedite their respective
18 document review and dispute resolution obligations within seven (7) days.
19 E. In the event any member of the public raises a timely and substantive objection related to
20 historic preservation and pertaining to the manner in which the terms of this PA are
21 implemented, at any time during its implementation, FHWA will take the objection into
22 account by consulting with the objector to resolve the objection. When FHWA responds
23 to such an objection, it will notify Signatories, Invited Signatories, and Concurring
24 Parties, as appropriate, of the objection and the manner in which it was resolved.
25 Depending on the subject of the objection, FHWA may request the assistance of a
26 Signatory, Invited Signatory and/or a Consulting Party to resolve the objection. FHWA's
27 responsibility to fulfill all other parts of the Undertaking that are not the subject of the
28 dispute would remain unchanged.

29 XII. Amendments

- 30 A. This Agreement may be amended when such an amendment is agreed to in writing by all
31 Signatories and Invited Signatories. The amendment will be effective on the date a copy
32 is signed by all of the Signatories and Invited Signatories.
33 B. If any Signatory determines that an amendment to the terms of the Agreement must be
34 made, the Signatories and Invited Signatories shall consult for no more than ninety (90)
35 days to seek amendment of the PA.

36 XIII. Termination

- 37 A. The Signatories and Invited Signatories may terminate this Agreement by providing
38 thirty (30) days written notice to the other Signatories and Invited Signatories, provided
39 that the Signatories and Invited Signatories consult during this period to seek
40 amendments or other actions that would prevent termination.
41 B. If this Agreement is terminated, FHWA will comply with Section 106 through other
42 applicable means pursuant to 36 CFR Part 800. Prior to work continuing on the
43 Undertaking, FHWA must either (a) execute a Memorandum of Agreement or a new
44 Programmatic Agreement or (b) request, consider, and respond to the comments of the
45 ACHP under 36 CFR § 800.7. Upon such determination, FHWA will provide all other

Signatories and Invited Signatories with written notice of the termination of this Agreement.

- C. This Agreement may be terminated by the implementation of a subsequent Agreement pursuant to 36 CFR § 800.14(b) that explicitly terminates or supersedes this Agreement, or by FHWA's implementation of Alternate Procedures pursuant to 36 CFR § 800.14(a).
- D. If any provision of the Agreement is deemed by a Federal Court to be contrary to, or in violation of, any applicable existing law or regulation of the United States, only the conflicted provision(s) shall be deemed null and void, and the remaining provisions of the Agreement remain in effect.

XIV. Emergency Situations

- A. Should a natural disaster or an emergency situation occur that is an imminent threat to public health or safety, or creates a hazardous condition and has the potential to affect historic properties, NCDOT will contact the appropriate local law enforcement, as needed, and FHWA, as soon as possible. FHWA will notify Signatories, Invited Signatories, and Concurring Parties within twenty-four (24) hours of the condition that created the emergency, the immediate action taken in response to the emergency, the expected effects to historic properties, and, where appropriate, further plans to address the emergency. This will include any further proposals to avoid, minimize, or mitigate potential adverse effects to historic properties. Procedures to follow in the event of a natural disaster or emergency situation will be in accordance with 36 CFR § 800.12(b).
- B. Signatories, Invited Signatories, and Concurring Parties will have seven (7) days to review and comment on the plan(s) for further action. If Signatories, Invited Signatories, and Concurring Parties do not object to the plan within the review period, NCDOT will implement the proposed plan(s).
- C. Where possible, NCDOT will ensure that emergency response activities allow for future preservation or restoration of historic properties, consider the Secretary's *Standards for the Treatment of Historic Properties* (36 CFR Part 68), and include on-site monitoring by the appropriate qualified professional as appropriate.
- D. Immediate rescue and salvage operations conducted to preserve life or property are exempt from these and all other provisions of this Agreement in accordance with 36 CFR § 800.12(d).

XV. Effective Date of This Agreement

- A. This Agreement will go into effect on the date ACHP signs the document, which will be the final signature among all the Signatories.

XVI. Execution

- A. Within one (1) week of execution of this Agreement, FEMA will provide each Signatory, Invited Signatory, and Consulting Party with one (1) high quality, legible, full color, electronic copy of the fully-executed Agreement and all its appendices fully integrated into a single document.
- B. If the electronic copy is too large to send by electronic mail, FEMA will make copies available through an online site or through another suitable electronic means.
- C. NCDOT will also make the Agreement available to the public on its project website within thirty (30) days of execution. Proprietary, sensitive, or otherwise protected information, including the locations of archaeological sites, will be redacted in any publicly shared information about the Agreement or its appendices.

**PROGRAMMATIC AGREEMENT
AMONG
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THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,
REGARDING
REPLACEMENT OF THE CAPE FEAR MEMORIAL BRIDGE (BRIDGE NO. 13)
NEW HANOVER AND BRUNSWICK COUNTIES, NORTH CAROLINA
TIP PROJECT HB-0039**

SIGNATORY

Advisory Council on Historic Preservation

Reid Nelson
Chairman

Date _____

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INVITED SIGNATORY

North Carolina Department of Transportation

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TIP PROJECT HB-0039**

CONCUR

Wilmington Historic Preservation Commission

Name
Title

Date

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CONCUR

Historic Wilmington Foundation

Name	Title
Dr. John Doe	Professor of Mathematics
Dr. Jane Smith	Associate Professor of Biology
Dr. Michael Chen	Assistant Professor of Physics
Dr. Emily White	Research Fellow in Chemistry
Dr. Robert Brown	Visiting Professor of History
Dr. Sarah Green	Adjunct Professor of English
Dr. David Black	Senior Lecturer in Economics
Dr. Lisa Gray	Senior Lecturer in Sociology
Dr. James Blue	Senior Lecturer in Political Science
Dr. Karen Red	Senior Lecturer in Environmental Studies

Date _____

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CONCUR

USS North Carolina Battleship Commission

Name	Title
Dr. John Doe	Professor of Mathematics
Dr. Jane Smith	Associate Professor of Biology
Dr. Michael Chen	Assistant Professor of Physics
Dr. Emily White	Visiting Professor of History
Dr. Robert Brown	Adjunct Professor of Chemistry

Date _____

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CONCUR

National Park Service

Name	Title
Dr. John Doe	Professor of Mathematics
Dr. Jane Smith	Associate Professor of Biology
Dr. Michael Chen	Assistant Professor of Physics
Dr. Emily White	Visiting Professor of History
Dr. Robert Brown	Adjunct Professor of Chemistry

Date _____

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CONCUR

Eagles Island Coalition Conservation Planning Committee

Name	Title
Dr. John Doe	Professor of Mathematics
Dr. Jane Smith	Associate Professor of Biology
Dr. Michael Chen	Assistant Professor of Physics
Dr. Emily White	Visiting Professor of History
Dr. Robert Brown	Adjunct Professor of Chemistry

Date _____

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CONCUR

Cape Fear River Watch

Name	Title
Dr. J. Doe	Professor
Dr. A. Smith	Associate Professor
Dr. C. Johnson	Assistant Professor
Dr. E. Brown	Researcher
Dr. G. White	Researcher
Dr. I. Black	Researcher
Dr. K. Green	Researcher
Dr. M. Grey	Researcher
Dr. O. Blue	Researcher
Dr. Q. Yellow	Researcher
Dr. R. Purple	Researcher
Dr. S. Pink	Researcher
Dr. T. Brown	Researcher
Dr. V. Green	Researcher
Dr. W. Blue	Researcher
Dr. X. Yellow	Researcher
Dr. Y. Purple	Researcher
Dr. Z. Pink	Researcher

Date _____

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CONCUR

Gullah Geechee Cultural Heritage Corridor Commission

Name	Title
Dr. J. Doe	Professor
Dr. A. Smith	Associate Professor
Dr. C. Johnson	Assistant Professor
Dr. E. Brown	Researcher
Dr. G. White	Researcher
Dr. I. Black	Researcher
Dr. K. Green	Researcher
Dr. M. Grey	Researcher
Dr. O. Blue	Researcher
Dr. Q. Yellow	Researcher
Dr. R. Purple	Researcher
Dr. S. Pink	Researcher
Dr. T. Brown	Researcher
Dr. V. Green	Researcher
Dr. W. Blue	Researcher
Dr. X. Yellow	Researcher
Dr. Y. Purple	Researcher
Dr. Z. Pink	Researcher

Date _____

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CONCUR

Wilmington Metropolitan Planning Organization

Name

Title

Date _____