

**REVISED THIRD DRAFT – May 9, 2025**

**PROGRAMMATIC AGREEMENT**

**AMONG THE**

**FEDERAL HIGHWAY ADMINISTRATION,**

**FEDERAL TRANSIT ADMINISTRATION,**

**WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC**

**PRESERVATION, OREGON STATE HISTORIC PRESERVATION OFFICE,**

**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,**

**OREGON DEPARTMENT OF TRANSPORTATION, AND**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION**

**ACT FOR THE INTERSTATE BRIDGE REPLACEMENT PROGRAM, CITY OF**

**VANCOUVER, CLARK COUNTY, WASHINGTON, AND CITY OF PORTLAND,**

**MULTNOMAH COUNTY, OREGON**

**RECITALS**

**WHEREAS,** the Interstate Bridge Replacement (IBR) Program (Program) is a continuation of the previously suspended Columbia River Crossing (CRC) project with the same purpose to improve safety, mobility, and seismic stability of the Interstate-5 (I-5) corridor between Portland, Oregon, and Vancouver, Washington. The multimodal project will extend across the Columbia River from Victory Boulevard in Portland, Oregon to State Route 500 in Vancouver, Washington and include a new bridge, interchange and roadway improvements, extension of light rail transit from north Portland to downtown Vancouver and associated improvements, new shared use paths to improve bicycle and pedestrian access, and enhanced zero-emission express bus service; and

**WHEREAS,** WSDOT and ODOT are proposing to utilize funds administered by the Federal Highway Administration (FHWA) under the authority of 23 U.S.C. 101, et seq. and 49 U.S.C. 6701, and the Federal Transit Administration (FTA) authorized by 49 U.S.C. Chapter 53; and

**WHEREAS,** FHWA and FTA have determined that the Program is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations at 36 CFR Part 800, as amended (August 5, 2004) (Section 106 Regulations); and

**WHEREAS,** FHWA and FTA are the co-lead federal agencies for the purpose of ensuring that the Program complies with the NHPA and the Section 106 Regulations; and

**WHEREAS,** the project proponents for the Program are the Washington State Department of Transportation (WSDOT) and the Oregon Department of Transportation (ODOT), and are project sponsors, as defined in 23 U.S.C. § 139(a)(10); and

1 **WHEREAS**, WSDOT and ODOT entered into an Intergovernmental Agreement to establish a  
2 bi-state joint office (“IBR Program”) to administer the Program on behalf of WSDOT and  
3 ODOT, which will advance the Program through final design and construction, and undertake  
4 certain actions required under this Agreement on behalf of ODOT and WSDOT; and

5 **WHEREAS**, the Intergovernmental Agreement establishing the IBR Program shall not alter  
6 WSDOT’s and ODOT’s responsibility, respectively, for compliance with the terms of this  
7 Agreement; and

8 **WHEREAS**, FHWA and FTA have initiated consultation on the Program, in accordance with  
9 36 CFR § 800.3(c) with the Washington State Department of Archaeology and Historic  
10 Preservation (DAHP) and the Oregon State Historic Preservation Office (Oregon SHPO) in  
11 coordination with WSDOT and ODOT; and

12 **WHEREAS**, in consultation with DAHP and Oregon SHPO, FHWA and FTA are proceeding  
13 with a Programmatic Agreement (Agreement) in accordance with 36 CFR § 800.14(b) for the  
14 Program to satisfy the requirements of the NHPA and Section 106 Regulations because the  
15 effects on historic properties, as defined in 36 CFR § 800.16(l), cannot be fully determined  
16 prior to approval of the Program; and

17 **WHEREAS**, FHWA and FTA invited 38 federally recognized Indian Tribes and Native  
18 Hawaiian organizations to be consulting parties to the Program in accordance with 36 CFR §  
19 800.3(f)(2); and

20 **WHEREAS**, of the 38 Indian Tribes and Native Hawaiian organizations invited by FHWA and  
21 FTA to be Program consulting parties, 10 federally recognized Indian Tribes accepted the  
22 invitation to become consulting parties consistent with 36 CFR § 800.3(f)(2), and no responses  
23 were received from the invited Native Hawaiian organizations; and

24 **WHEREAS**, in accordance with 36 CFR § 800.2(c)(2)(ii)(C), FHWA and FTA formally  
25 initiated government-to-government consultation with the following ten (10) federally  
26 recognized Indian Tribes who accepted the invitation to become consulting parties to the  
27 Program: Confederated Tribes of the Colville Reservation, Confederated Tribes of the Grand  
28 Ronde Community of Oregon, Confederated Tribes of Siletz Indians, Confederated Tribes of the  
29 Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon,  
30 Confederated Tribes and Bands of the Yakama Nation, Cowlitz Indian Tribe, Nez Perce Tribe,  
31 Nisqually Indian Tribe, and Spokane Tribe of the Spokane Reservation Indians (collectively,  
32 “Tribes”); and

33 **WHEREAS**, FHWA and FTA have invited the Tribes to sign this Agreement as concurring  
34 parties and the Tribes that have accepted this invitation are indicated accordingly in  
35 Attachment A; and

1 **WHEREAS**, FHWA and FTA, as the co-lead federal agencies for the Program, acknowledge  
2 their continued responsibility to engage in meaningful consultation with the Tribes (pursuant to  
3 Executive Order 13175, 54 U.S.C. § 302706(b), the January 26, 2021, Presidential Memorandum  
4 on Tribal Consultation and Strengthening Nation-to-Nation Relationships, and 36 CFR  
5 § 800.2(c)(2)) throughout the process of carrying out the stipulations of this Agreement  
6 regardless of whether a Tribe signs this Agreement as a concurring party; and

7 **WHEREAS**, this Agreement does not alter the existing government-to-government relationship  
8 between the FHWA and FTA, and any Tribe; and

9 **WHEREAS**, nothing in this Agreement is intended to repeal, supersede, or modify any right,  
10 privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or Executive  
11 Order pertaining to any Tribe, nor is it intended to confer any additional right, privilege, or  
12 immunity not otherwise granted, reserved, or established pursuant to treaty, statute, or Executive  
13 Order pertaining to any Tribe; and

14 **WHEREAS**, FHWA and FTA recognize that Tribes possess special expertise in identifying  
15 NRHP-eligible places of religious and cultural significance to the Tribes; assessing Program  
16 effects to these historic properties; and identifying measures to avoid, minimize, or mitigate any  
17 adverse effects to these historic properties; and

18 **WHEREAS**, the Program will require Department of the Army permits under Section 404 of the  
19 Clean Water Act, 33 U.S.C. § 1344 and Section 10 of the Rivers and Harbors Act of 1899, 33  
20 U.S.C. § 403, as well as a Department of Army permission under Section 14 of the Rivers and  
21 Harbors Act of 1899, 33 U.S.C. § 408, from the Army Corps of Engineers (USACE); and the  
22 authorization of the Department of the Army permits and permission are undertakings, as defined  
23 in 36 CFR § 800.16(y), and thus subject to review under Section 106 of the NHPA and its  
24 implementing regulations at 36 CFR Part 800; and

25 **WHEREAS**, the Program will require a U.S. Coast Guard (USCG) permit in accordance with  
26 the General Bridge Act of 1946, 33 U.S.C. § 525-533, as amended, and the authorization of this  
27 permit is subject to Section 106 review as an undertaking per 36 CFR §800.16(y); and

28 **WHEREAS**, USACE and USCG designate FHWA and FTA as co-lead federal agencies for the  
29 Program for purposes of Section 106 in accordance with 36 CFR § 800.2(a)(2), and

30 **WHEREAS**, for purposes of 36 CFR § 800.2(c)(2), USACE and USCG designate FHWA and  
31 FTA as co-lead agencies for Program consultation with Tribes in accordance with 36 CFR §  
32 800.2(c)(2)(ii); and

33 **WHEREAS**, notwithstanding the foregoing lead-agency designation, USACE and USCG  
34 acknowledge their respective Tribal Trust responsibilities under Executive Order 13175; and

1 **WHEREAS**, FHWA and FTA have invited the USACE and the USCG to be invited Signatories  
2 to this Agreement; and

3 **WHEREAS**, the National Park Service (NPS) is a land holding agency within the Program's  
4 area of potential effects (APE) and administers the Fort Vancouver National Historic Site within  
5 the Vancouver National Historic Reserve (VNHR). The VNHR was established on November  
6 12, 1996 (Public Law 104-333, Sec. 502) and includes Fort Vancouver, designated as a National  
7 Monument on June 19, 1948 (Public Law 80-715) and redesignated, with expanded boundaries,  
8 as Fort Vancouver National Historic Site on June 30, 1961 (Public Law 87-78); and

9 **WHEREAS**, FHWA and FTA have invited NPS to be an invited Signatory to this Agreement as  
10 the Federal agency with administrative jurisdiction over the VNHR; and

11 **WHEREAS**, nothing in this Agreement will alter or affect NPS's or General Services  
12 Administration's decision-making roles or authority pertaining to the Historic Monuments Public  
13 Benefit Conveyance and Federal Lands to Parks responsibilities associated with Federal Historic  
14 Surplus Property programs under 40 U.S.C. § 550(b), (e) and (h), and other applicable statutes,  
15 including, but not limited to, any deed, management direction, or other provisions associated  
16 with Officers Row, the Howard House, the Police Station, Central Park, Old Apple Tree Park,  
17 Delta Park, and Marshall Park; and

18 **WHEREAS**, FHWA and FTA have invited WSDOT and ODOT to be invited Signatories to this  
19 Agreement due to their responsibilities for implementing the terms of this Agreement; and

20 **WHEREAS**, FHWA and FTA on July 25, 2023, notified the Advisory Council on Historic  
21 Preservation (ACHP) of their intent to proceed with a Programmatic Agreement for the Program,  
22 in accordance with 36 CFR § 800.14(b), to satisfy the requirements of Section 106 of the NHPA  
23 because the effects of the Program on historic properties, as defined in 36 CFR § 800.16(l),  
24 cannot be fully determined prior to approval of the Program, and invited the ACHP to participate  
25 in the consultation and development of this Agreement; and

26 **WHEREAS**, the ACHP notified FHWA and FTA on August 9, 2023, that the ACHP would  
27 participate in consultation to develop this Agreement; and

28 **WHEREAS**, FHWA and FTA, in coordination with WSDOT and ODOT, have prepared this  
29 Agreement in consultation with the parties identified in Table A-1 of Attachment A (collectively,  
30 the "Consulting Parties"), including DAHP, Oregon SHPO, NPS regarding the VNHR, and the  
31 Tribes, pursuant to 36 CFR § 800.2(c), and

32 **WHEREAS**, FHWA and FTA, in coordination with WSDOT and ODOT, have invited the  
33 Consulting Parties other than ACHP, DAHP, Oregon SHPO, USACE, USCG, and NPS  
34 regarding the VNHR to sign this Agreement as concurring parties, and these other Consulting

Parties that have accepted the invitation to be a concurring party are indicated accordingly in Attachment A; and

**WHEREAS**, all Signatories to this Agreement, required and invited, are referred to as “Signatories” in this Agreement; and

**WHEREAS**, FHWA and FTA, in coordination with WSDOT and ODOT and in consultation with DAHP, Oregon SHPO, NPS regarding the VNHR, the Tribes, and other Consulting Parties, have determined and documented the Program’s APE, as shown in the maps in Attachment B, and DAHP and Oregon SHPO have concurred with the APE on July 9, 2024 and have determined the scope of the identification efforts within the APE, in accordance with 36 CFR § 800.4(a); and

**WHEREAS**, FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation with DAHP, Oregon SHPO, NPS regarding the VNHR, the Tribes, and the other Consulting Parties have completed the inventory of the historic built environment and have begun archaeological investigations within the APE; and

**WHEREAS**, FHWA and FTA, in coordination with WSDOT and ODOT, have consulted with DAHP, Oregon SHPO, NPS regarding the VNHR, the Tribes, and other Consulting Parties on the identification of buildings, structures, sites, districts, and objects associated with the historic built environment within the APE that are historic properties, as defined in 36 CFR § 800.16(l) (“Historic Built Environment (HBE) Resources”) and in accordance with 36 CFR § 800.4; and

**WHEREAS**, FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation with DAHP and Oregon SHPO, NPS regarding the VNHR, the Tribes, and other Consulting Parties, subsequently applied the criteria of adverse effect to HBE Resources identified in the APE pursuant to 36 CFR § 800.5(a) and have consulted on the effects of the Program on these HBE Resources; and

**WHEREAS**, FHWA and FTA, in coordination with the WSDOT and ODOT, and in consultation with DAHP, Oregon SHPO, NPS regarding the VNHR, the Tribes, and other Consulting Parties, have agreed to implement a phased process for identification and evaluation of archaeological sites, and defer until after the execution of this Agreement the completion of the identification and evaluation of archaeological sites, assessment of effects on all identified NRHP-eligible archaeological sites (“NRHP-Eligible Archaeological Sites”), and resolution of adverse effects, as appropriate, consistent with 36 CFR §§ 800.4(b)(2) and 800.5(a)(3), respectively, as provided for in this Agreement. This approach is warranted because the land areas within the APE are large and include multiple parcels, some areas of the APE are and will remain inaccessible for archaeological investigations until preconstruction and construction, and detailed information on the location of specific ground-disturbing elements of Program design will not be known until after the execution of this Agreement; and

1 **WHEREAS**, FHWA and FTA provided an opportunity for public comment on this Agreement  
2 beginning on May 9, 2025, and considered input provided consistent with 36 CFR § 800.2(d);  
3 and

4 **WHEREAS**, WSDOT and ODOT, in coordination with FHWA and FTA, have offered each of  
5 the Tribes the opportunity to conduct investigations for the purpose of identifying and evaluating  
6 Historic Properties of Religious and Cultural Significance to Indian Tribes (HPRCSITs) that may  
7 be NRHP-eligible and affected by the Program. HPRCSIT investigations have begun and may  
8 continue following execution of this Agreement; and

9 **WHEREAS**, the assessment of effects and resolution of adverse effects, if any, to identified  
10 NRHP-eligible HPRCSITs, will occur prior to construction and in compliance with terms of this  
11 Agreement; and

12 **WHEREAS**, WSDOT and ODOT anticipates construction of the Program will involve a  
13 sequenced series of inter-related construction packages, to be delivered through several  
14 construction contracts, carried out over multiple years, and may adopt various delivery methods  
15 as needed to efficiently meet Program construction goals; and

16 **WHEREAS**, FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation  
17 with DAHP and Oregon SHPO, NPS regarding the VNHR, the Tribes, and the other Consulting  
18 Parties, have identified 12 NRHP-Eligible Archaeological Sites (“Previously Identified  
19 Archaeological Sites”) within the APE as of the execution date of this Agreement; and

20 **WHEREAS**, FHWA and FTA shall consult with the Signatories of this Agreement and the  
21 Consulting Parties on effects to newly identified historic properties and shall resolve adverse  
22 effects to newly identified historic properties following the terms stipulated in this Agreement;  
23 and

24 **WHEREAS**, should an emergency occur during construction of the Program that represents an  
25 imminent threat to public health or safety or creates a hazardous condition, and in either case, has  
26 the potential to affect historic properties, FHWA and FTA shall take into account the effects of an  
27 emergency undertaking on historic properties pursuant to 36 CFR § 800.12(b)(2) and (d); and

28 **WHEREAS**, the definitions in 36 CFR § 800.16 apply throughout this Agreement; and

29 **NOW, THEREFORE**, FHWA, FTA, WSDOT, ODOT, DAHP, Oregon SHPO, and ACHP  
30 agree that the Program shall be implemented in accordance with the following stipulations in  
31 order to take into account the effects of the Program on historic properties.

## 32 **STIPULATIONS**

33 FHWA and FTA, in coordination with WSDOT and ODOT, shall ensure that the following  
34 measures are carried out.

## I. Roles and Responsibilities

- A. Co-Lead Federal Agencies: FHWA and FTA are the co-lead federal agencies for the Program and are responsible for ensuring the terms of this Agreement are implemented. FHWA and FTA shall coordinate with WSDOT and ODOT to carry out the terms of this Agreement. FHWA and FTA shall retain responsibility for government-to-government consultation with the Tribes, as required under 36 CFR § 800.2(c)(2)(ii)(C), in recognition of the Tribes' status as sovereign nations. As Signatories, FHWA and FTA can amend or terminate this Agreement and will ensure that the stipulations in this Agreement are carried out in accordance with the terms prescribed in this Agreement.
- B. WSDOT and ODOT: WSDOT and ODOT are the project sponsors, and having received Federal financial assistance, will be responsible for implementing the stipulations of this Agreement, in coordination with FHWA and FTA. WSDOT and ODOT shall assist FHWA and FTA with tribal coordination efforts unless a Tribe requests direct consultation and coordination with FHWA and FTA. WSDOT and ODOT, in coordination with the IBR Program, will each make determinations and assess compliance for Program activities within their own jurisdiction. As Signatories, WSDOT and ODOT can amend or terminate this Agreement and will ensure that specified stipulations and procedures for which it has assumed responsibility are carried out in accordance with the terms prescribed in this Agreement.
- C. DAHP: DAHP is responsible for advising, assisting and consulting with the Co-Lead Federal Agencies and WSDOT; reviewing and monitoring activities carried out pursuant to this Agreement, as provided for under Stipulation XII; and providing review and comment as specified in this Agreement. As a Signatory, DAHP can amend or terminate this Agreement.
- D. Oregon SHPO: Oregon SHPO is responsible for advising, assisting and consulting with the co-lead Federal agencies and ODOT; reviewing and monitoring activities carried out pursuant to this Agreement, as provided for under Stipulation XII; and providing review and comment as specified in this Agreement. As a Signatory, SHPO can amend or terminate this Agreement.
- E. NPS: As the Federal agency with administrative jurisdiction over the VNHR, which is within the Program's APE, NPS will be involved in ongoing consultation with FHWA and FTA, in addition to WSDOT, DAHP, Tribes, and other Consulting Parties, as appropriate, concerning the assessment and resolution of adverse effects of the Program on historic properties within the boundaries of the VNHR and any properties that are contributing elements to historic properties within the VNHR that may extend outside the VNHR boundaries. As a Signatory, NPS can amend or terminate this Agreement.
- F. ACHP: ACHP shall review and monitor activities carried out pursuant to this Agreement, as provided for under Stipulation XII. ACHP shall also provide comments on issues that may arise as requested by Signatories to this Agreement and participate in dispute

1 resolution as specified in Stipulation XIII. As a Signatory, ACHP can amend or terminate  
2 this Agreement.

- 3 G. Consulting Parties: The Consulting Parties, as identified in Table A-1 of Attachment A,  
4 include those individuals or organizations that have a demonstrated interest in the Project  
5 who have participated in the Section 106 process. Consulting Parties who sign this  
6 Agreement as a Concurring Party retain their rights as Consulting Parties to participate in  
7 consultation as provided in this Agreement.

## 8 **II. Consultation and Public Engagement**

- 9 A. Document Review: FHWA and FTA, in coordination with WSDOT and ODOT, will  
10 consult with DAHP, Oregon SHPO, NPS regarding the VNHR, the Tribes, and other  
11 Consulting Parties to seek comments on documentation of the identification and  
12 evaluation of historic significance of historic properties, assessments of adverse effects,  
13 resolution of adverse effects on historic properties, and the treatment of historic  
14 properties consistent with 36 CFR § 800.2(a)(4).

- 15 1. Unless otherwise stated elsewhere in this Agreement, DAHP, Oregon SHPO, NPS  
16 regarding VNHR, the Tribes and other Consulting Parties will have up to thirty (30)  
17 calendar days from the date of receipt to review and provide written comments to  
18 FHWA, FTA, WSDOT and ODOT on documents provided for their review and as  
19 stipulated in this Agreement.
- 20 2. FHWA and FTA, in coordination with WSDOT and ODOT, shall consider any written  
21 comments received within the review timeframe per Stipulation II.A.1.
- 22 3. If DAHP, Oregon SHPO, NPS regarding the VNHR, the Tribes or other Consulting  
23 Parties do not submit written comments to FHWA, FTA, WSDOT and ODOT within  
24 thirty (30) calendar days as provided in this Stipulation, it is understood the non-  
25 responding parties have no comments on the submittal.

- 26 B. Additional Consulting Parties: Should additional individuals and organizations with a  
27 demonstrated interest in the Program—due to the nature of their legal or economic  
28 relation to the undertaking or affected properties, or their concern with the undertaking's  
29 effects on historic properties, as provided in 36 CFR § 800.2(c)(5)—be identified  
30 following execution of this Agreement, FHWA and FTA, in coordination with WSDOT  
31 and ODOT, shall consider whether such individuals or organizations should be  
32 Consulting Parties, consistent with 36 CFR § 800.3(f).

- 33 1. Any landowner whose land may be affected by the Program as a result of Program  
34 Changes, as defined and described in Stipulation VII.A, that may occur following  
35 execution of this Agreement, shall be invited by FHWA and FTA, in coordination  
36 with WSDOT and ODOT, to be a Consulting Party.
- 37 2. Written requests by individuals and organizations to become Consulting Parties  
38 following execution of this Agreement will be considered by FHWA and FTA, in



1 coordination with WSDOT and ODOT, and in consultation with DAHP and Oregon  
2 SHPO, as applicable, consistent with 36 CFR § 800.3(f)(3).

- 3 C. Public Engagement: WSDOT and ODOT, in consultation with FHWA and FTA, shall  
4 continue to seek and consider the views of the public during the implementation of this  
5 Agreement using the Program’s community engagement process, which includes online  
6 open houses, listening sessions, community briefings, community working groups, and  
7 public comments submitted by email and telephone.

### 8 **III. Standards and Guidelines**

#### 9 A. SOI Standards and Guidelines:

- 10 1. FHWA, FTA, WSDOT and ODOT shall ensure activities carried out pursuant to this  
11 Agreement will meet the SOI Standards and Guidelines for Archaeology and Historic  
12 Preservation (48 Fed. Reg. 44716-44742, September 29, 1983) as well as existing  
13 standards and guidelines for historic preservation activities established by DAHP and  
14 Oregon SHPO.
- 15 2. FHWA and FTA, in coordination with WSDOT and ODOT, shall ensure that all  
16 historic built environment and archaeological investigations conducted pursuant to  
17 this Agreement are performed by or under the direct supervision of a person or  
18 persons meeting the SOI Professional Qualification Standards (48 Fed. Reg. 44738-  
19 39, September 29, 1983), hereinafter referred to as “Qualified Person” or “Qualified  
20 Persons.”
- 21 a) Qualified Person(s) shall recognize and integrate tribal knowledge and expertise  
22 in the identification of NRHP-eligible HPRCSITs, the assessment of Program  
23 effects to these HPRCSITs, and the identification of measures to avoid, minimize,  
24 or mitigate any adverse effects to these HPRCSITs.
- 25 b) In instances where the Qualified Person must be employed by WSDOT or ODOT  
26 in order to implement stipulations of this Agreement, that Qualified Person is  
27 hereinafter referred to as a “WSDOT or ODOT Qualified Person.”

#### 28 B. Curation:

- 29 1. FHWA and FTA, in coordination with WSDOT and ODOT, shall ensure that any  
30 collections, as defined in 36 CFR § 79.4, will be curated in accordance with 36 CFR  
31 Part 79 Curation of Federally Owned or Administered Archaeological Collections.

#### 32 C. Transmittal of Documentation to DAHP and SHPO:

- 33 1. DAHP: Consistent with the requirements in Stipulation XI, FHWA, FTA, and  
34 WSDOT shall transmit all consultation site forms, reports, and other documentation  
35 associated with investigations and findings in Washington to DAHP through the  
36 Washington Information System for Architectural and Archaeological Records Data

(WISAARD). Further, this Agreement stands in lieu of a Washington State Archaeological Excavation Permit for all adverse effects off federal lands, as per Revised Code of Washington (RCW) 27.53.

2. Oregon SHPO: Consistent with the requirements in Stipulation XI, FHWA, FTA, and ODOT shall transmit all consultation documents, reports, and other documentation associated with investigations and findings in Oregon to Oregon SHPO through the Go Digital system. Further, the state of Oregon requires archaeological permits (ORS §§ 390.235 and 358.905-961) for any archaeological investigations on non-federal public lands and excavations within archaeological sites on private lands. Nothing in this Agreement will be construed to waive that requirement nor the standards that must be met as stipulated in the archaeological permits.

#### **IV. Historic Built Environment Resources**

- A. Identified HBE Resources: FHWA and FTA, in coordination with WSDOT and ODOT, have conducted investigations of the APE to identify HBE Resources, and have evaluated effects to those properties identified, as described in Recitals above.

1. HBE Resources Not Adversely Affected: This Agreement does not address any HBE Resources within the APE that FHWA and FTA, in coordination with WSDOT and ODOT, and with concurrence from DAHP and Oregon SHPO for HBE Resources in their respective jurisdictions, determined will not be adversely affected. Should any Program Changes, as defined and described in Stipulation VII.A, occur following execution of this Agreement, the effects on these HBE Resources will be subject to the procedures in Stipulation VII.C.
2. Adversely Affected HBE Resources: FHWA and FTA, in coordination with WSDOT and ODOT, and with concurrence from DAHP and Oregon SHPO for HBE Resources in their respective jurisdictions, determined the Program will have an adverse effect on 13 HBE Resources, based upon the criteria of adverse effect in 36 CFR § 800.5(a)(1) (“Adversely Affected HBE Resources”). A list of the Adversely Affected HBE Resources is provided in the Historic Built Environment Resources Treatment Plan (Attachment C).
3. Treatment Measures for Adversely Affected HBE Resources: Treatment measures to resolve the adverse effects of the Program on Adversely Affected HBE Resources were developed by FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation with DAHP, Oregon SHPO, NPS regarding the VNHR, the Tribes, and the other Consulting Parties. These treatment measures, which are detailed in the Historic Built Environment Resources Treatment Plan (Attachment C), shall be implemented by FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation with DAHP and Oregon SHPO, as applicable, NPS regarding VNHR, the Tribes, and the other Consulting Parties.

1 B. HBE Resources Identification as a Result of Program Changes:

2 1. Identification of HBE Resources:

- 3 a) If any Program Changes, as described and defined in Stipulation VII.A, result in  
4 changes to the APE, FHWA and FTA, in coordination with WSDOT and ODOT,  
5 will conduct identification efforts for buildings, structures, sites, districts, and  
6 objects associated with the historic built environment within any geographic area  
7 or areas added to the APE consistent with 36 CFR § 800.4(b)(1).
- 8 b) If any new buildings, structures, sites, districts, and objects associated with the  
9 historic built environment are identified, FHWA and FTA, in coordination with  
10 WSDOT and ODOT, will follow the evaluation process below.

11 2. Evaluation of HBE Resources:

- 12 a) FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation  
13 under this Agreement with DAHP and Oregon SHPO, as applicable, NPS  
14 regarding the VNHR, the Tribes, and other Consulting Parties, shall evaluate  
15 historic significance of any buildings, structures, sites, districts, and objects  
16 associated with the historic built environment identified as a result of Program  
17 Changes, as described and defined in Stipulation VII.A, consistent with 36 CFR §  
18 800.4(c).
- 19 i. FHWA and FTA, in coordination with WSDOT and ODOT, and in  
20 consultation with DAHP, Oregon SHPO, as applicable, NPS regarding the  
21 VNHR, the Tribes, and other Consulting Parties will ensure buildings,  
22 structures, sites, districts, and objects associated with the historic built  
23 environment are evaluated by a Qualified Person and in accordance with  
24 NRHP-eligibility criteria in 36 CFR § 800.4(c).
- 25 ii. If FHWA and FTA, in coordination with WSDOT and ODOT, and in  
26 consultation under this Agreement with DAHP and Oregon SHPO, as  
27 applicable, NPS regarding the VNHR, the Tribes, and other Consulting  
28 Parties, determine that buildings, structures, sites, districts, and objects  
29 associated with the historic built environment identified as a result of Program  
30 Changes are HBE Resources, the process to assess effects set forth in  
31 Stipulation IV.B.3 will be followed.
- 32 b) Evaluation Determination Objections:
- 33 i. Should any Signatory object to FHWA's and FTA's determination on the  
34 NRHP-eligibility of an HBE Resource identified as a result of Program  
35 Changes, as described and defined in Stipulation VII.A, FHWA and FTA shall  
36 attempt to resolve the dispute through continued consultation.

- 1           ii. If an objection over NRHP eligibility cannot be resolved, FHWA and FTA  
2           shall submit the determination to the Keeper of the National Register of  
3           Historic Places for resolution pursuant to 36 CFR § 800.4(c)(2). The Keeper's  
4           decision shall be final.

5           3. Assessment of Effects:

- 6           a) FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation  
7           under this Agreement with DAHP and Oregon SHPO, as applicable, NPS  
8           regarding the VNHR, the Tribes, and other Consulting Parties, will assess the  
9           effects of any Program Changes, as defined and described in Stipulation VII.A, on  
10          HBE Resources consistent with 36 CFR § 800.5(a).

- 11          i. FHWA and FTA, in coordination with WSDOT and ODOT, and in  
12          consultation under this Agreement with DAHP, Oregon SHPO, as applicable,  
13          NPS regarding the VNHR, the Tribes, and other Consulting Parties will apply  
14          the criteria of adverse effect as a result of Program Changes to HBE  
15          Resources within the APE consistent with 36 CFR § 800.5.

- 16          ii. If it is determined that the Program will adversely affect an HBE Resource  
17          identified as a result of Program Changes, FHWA and FTA, in coordination  
18          with WSDOT and ODOT, will follow the process set forth in Stipulation  
19          IV.B.4.

20          b) Finding of Effect Determination Objections:

- 21           i. Should any Signatory object to FHWA's and FTA's finding of effect for an  
22           HBE Resource identified as a result of Program Changes, as described and  
23           defined in Stipulation VII.A, FHWA and FTA will attempt to resolve this  
24           dispute through continued consultation.

- 25           ii. If an objection cannot be resolved in this manner, FHWA and FTA shall follow  
26           the process for dispute resolution in Stipulation XIII.

27          4. Resolution of Adverse Effects:

- 28          a) If it is determined that an HBE Resource identified as a result of Program  
29          Changes, as described and defined in Stipulation VII.A, will be adversely affected  
30          by the Program, FHWA and FTA, in coordination with WSDOT and ODOT, and  
31          in consultation under this Agreement with DAHP and Oregon SHPO, as  
32          applicable, NPS regarding the VNHR, the Tribes, and other Consulting Parties,  
33          shall identify measures to avoid, minimize or mitigate the adverse effect.

- 34          i. In the event that adverse effects to HBE Resources cannot be avoided or  
35          minimized, FHWA and FTA, in coordination with WSDOT and ODOT, and in

consultation under this Agreement with DAHP and Oregon SHPO, as applicable, NPS regarding the VNHR, the Tribes, and other Consulting Parties, shall identify measures to mitigate the adverse effect.

ii. Treatments to avoid, minimize or mitigate adverse effects will be added to the Historic Built Environment Resources Treatment Plan (Attachment C), which will be revised following the procedures in Stipulation XIV.B

iii. Treatments to avoid, minimize, or mitigate adverse effects will be included in the appropriate Program construction contracts and plans.

b) Resolution of Adverse Effects Objections:

i. Should any Signatory to this Agreement object to measures to resolve adverse effects to HBE Resources identified as a result of Program Changes, as described and defined in Stipulation VII.A, FHWA and FTA shall attempt to resolve the dispute through continued consultation.

ii. If an objection cannot be resolved through continued consultation, FHWA and FTA shall follow the process for dispute resolution in accordance with Stipulation XIII.

**V. Archaeological Investigations, Evaluations, Assessments of Effects, and Resolution of Adverse Effects**

A. Schedule for Implementation: No later than 60 days after issuance of an Amended ROD for the Program, FHWA and FTA, in coordination with WSDOT and ODOT, shall prepare a schedule for completing the identification of archaeological sites (including archaeological investigations), the evaluation of historic significance of identified archaeological sites, the assessment of adverse effects to NRHP-Eligible Archaeological Sites, and the resolution of adverse effects for NRHP-Eligible Archaeological Sites. The schedule will be linked to the schedule for preparing the Program's construction packages.

B. Archaeological Investigations: This subsection applies to the Previously Identified Archaeological Sites, and the areas of archaeological sensitivity, as described in Stipulation V.B.2.a.

1. Previously Identified Archaeological Sites - FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation with DAHP and Oregon SHPO, as applicable, NPS regarding the VNHR, the Tribes, and other Consulting Parties, will develop the plan for undertaking the investigation of Previously Identified Archaeological Sites, as described in the Archaeological Resources Identification, Monitoring and Treatment Plan (Attachment D).

1           2. Areas of Archaeological Sensitivity

2           a) FHWA and FTA, in coordination with WSDOT and ODOT, in consultation with  
3           DAHP, Oregon SHPO, as applicable, NPS regarding the VNHR, the Tribes, and  
4           other Consulting Parties have identified four primary areas in the APE deemed  
5           sensitive for the presence of Newly Identified Archaeological Sites, as described  
6           in D-III of the Archaeological Resources Identification, Monitoring and Treatment  
7           Plan (Attachment D).

8           b) FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation  
9           with DAHP and Oregon SHPO, as applicable, NPS regarding the VNHR, the  
10          Tribes, and other Consulting Parties, shall determine whether an investigation will  
11          be conducted in areas of archaeological sensitivity in advance of construction, or  
12          whether such areas will be archaeologically monitored during construction, as  
13          described in the Archaeological Resources Identification, Monitoring, and  
14          Treatment Plan (Attachment D).

15          i.    The decision of whether to test in advance of construction or to monitor  
16          during construction will be based on consideration of the relative costs and  
17          benefits of each approach; anticipated construction methods; logistical, and  
18          site access and scheduling factors; and will take in to consideration the views  
19          of the Tribes.

20          c) Investigations in Advance of Construction:

21          i.    In areas of archaeological sensitivity where it has been determined an  
22          investigation will be conducted in advance of construction, FHWA and FTA,  
23          in coordination with WSDOT and ODOT, shall proceed with an investigation  
24          as detailed in the schedule for implementation.

25          ii.   FWHA and FTA, in coordination with WSDOT and ODOT will develop a  
26          plan for undertaking the investigation of areas of archaeological sensitivity  
27          and amend the Archaeological Identification, Monitoring and Treatment Plan  
28          (Attachment D), in accordance with Stipulation XIV.B, and prior to any  
29          Program preconstruction or construction.

30          3. Archaeological Monitoring During Construction

31          a) In areas of archaeological sensitivity and within Previously Identified  
32          Archaeological Sites and Newly Identified Archaeological Sites where it has been  
33          determined that monitoring during construction will be conducted, FHWA and  
34          FTA, in coordination with WSDOT and ODOT, will develop a plan for  
35          implementing monitoring during construction and amend the Archaeological

1 Identification, Monitoring and Treatment Plan (Attachment D), in accordance  
2 with Stipulation XIV.B.

3 C. Identification of Archaeological Sites

- 4 1. Based upon the investigations discussed in Stipulation V.B.2, FHWA and FTA, in  
5 coordination with WSDOT and ODOT, and in consultation under this Agreement with  
6 DAHP and Oregon SHPO, as applicable, NPS regarding the VNHR, the Tribes, and  
7 other Consulting Parties, will determine whether there are any Newly Identified  
8 Archaeological Sites within areas of archaeological sensitivity, consistent with 36  
9 CFR § 800.4(b)(2), and as described in D-III of the Archaeological Resources  
10 Identification, Monitoring and Treatment Plan (Attachment D).
- 11 2. If any Newly Identified Archaeological Sites are identified, or if any new information  
12 regarding Previously Identified Archaeological Sites as a result of Program Changes  
13 as defined in Stipulation VII.A or investigations in Stipulation V.B.1 is identified,  
14 FHWA and FTA, in coordination with WSDOT and ODOT, will follow the evaluation  
15 process below.

16 D. Evaluation of Previously Identified and Newly Identified Archaeological Sites

- 17 1. FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation under  
18 this Agreement with DAHP and Oregon SHPO, as applicable, NPS regarding the  
19 VNHR, the Tribes, and other Consulting Parties, shall evaluate historic significance  
20 of any Newly Identified Archaeological Sites, or Previously Identified Archaeological  
21 Sites as a result of new information identified during investigations in V.B.1. or  
22 Program Changes, as defined and described in Stipulation VII.A, consistent with 36  
23 CFR § 800.4(c) and as described in the Archaeological Resources Identification,  
24 Monitoring, and Treatment Plan (Attachment D).
- 25 a) FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation  
26 with DAHP, Oregon SHPO, as applicable, NPS regarding the VNHR, the Tribes,  
27 and other Consulting Parties will ensure Newly Identified Archaeological Sites  
28 and Previously Identified Archaeological Sites are evaluated by a Qualified  
29 Person in accordance with Stipulation III.A and in accordance with  
30 NRHP-eligibility criteria in 36 CFR § 800.4(c).
- 31 b) The evaluation of a Newly Identified Archaeological Site may require additional  
32 testing or excavation to determine the horizontal and vertical extent of the  
33 resource within the APE, its temporal association, its integrity, and its historic  
34 significance.
- 35 c) If Newly Identified Archaeological Sites and Previously Identified Archaeological  
36 Sites are determined to be NRHP eligible based upon the evaluation by a

1 Qualified Person, FHWA and FTA, in coordination with the WSDOT and ODOT  
2 will follow the process to assess effects set forth in Stipulation V.E below.

3 2. Evaluation Determination Objections:

4 a) Should any Signatory object to FHWA's and FTA's determination on the NRHP-  
5 eligibility of a Newly Identified Archaeological Site or Previously Identified  
6 Archaeological Site, FHWA and FTA shall attempt to resolve the dispute through  
7 continued consultation.

8 b) Should any Tribe object to a determination of NRHP eligibility of a Newly  
9 Identified Archaeological Site or Previously Identified Archaeological Site that is  
10 also a HPRCSIT, FHWA and FTA shall attempt to resolve the dispute through  
11 continued consultation with the Tribe.

12 c) If an objection over NRHP eligibility cannot be resolved through continued  
13 consultation, FHWA and FTA shall submit the determination to the Keeper of the  
14 National Register of Historic Places for resolution pursuant to 36 CFR  
15 § 800.4(c)(2). The Keeper's decision shall be final.

16 E. Assessment of Effects on All NRHP-Eligible Archaeological Sites

17 1. FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation under  
18 this Agreement with DAHP and Oregon SHPO, as applicable, NPS regarding the  
19 VNHR, the Tribes, and other Consulting Parties, will assess the effects of the  
20 Program on all NRHP-Eligible Archaeological Sites as follows:

21 a) FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation  
22 with DAHP, Oregon SHPO, as applicable, NPS regarding the VNHR, the Tribes,  
23 and other Consulting Parties will apply the criteria of adverse effect to all NRHP-  
24 Eligible Archaeological Sites within the APE consistent with 36 CFR § 800.5.

25 b) If it is determined that the Program will adversely affect an NRHP-Eligible  
26 Archaeological Site, FHWA and FTA, in coordination with WSDOT and ODOT,  
27 will follow the process to resolve adverse effects set forth in Stipulation V.F.

28 2. Finding of Effect Determination Objections:

29 a) Should any Signatory object to FHWA's and FTA's finding of effect for a NRHP-  
30 Eligible Archaeological Site, FHWA and FTA will attempt to resolve this dispute  
31 through continued consultation.

32 b) Should any Tribe object to a finding of effect for a NRHP-Eligible Archaeological  
33 Site that is also a HPRCSIT, FHWA and FTA will attempt to resolve this dispute  
34 through continued consultation with the Tribe.



- 1 c) If an objection cannot be resolved through continued consultation, FHWA and  
2 FTA shall follow the process for dispute resolution in Stipulation XIII.

3 F. Resolution of Adverse Effects on NRHP-Eligible Archaeological Sites

- 4 1. If it is determined that a NRHP-Eligible Archaeological Site will be adversely  
5 affected by the Program, FHWA and FTA, in coordination with WSDOT and ODOT,  
6 and in consultation under this Agreement with DAHP and Oregon SHPO, as  
7 applicable, NPS regarding the VNHR, the Tribes, and other Consulting Parties, shall  
8 identify measures to avoid, minimize or mitigate the adverse effect.

- 9 a) Treatments to avoid or minimize adverse effects to NRHP-Eligible  
10 Archaeological Sites will be added to the Archaeological Resources Identification,  
11 Monitoring and Treatment Plan (Attachment D), which will be amended  
12 following the procedures in Stipulation XIV.B.

- 13 b) Treatments to avoid or minimize adverse effects to NRHP-Eligible  
14 Archaeological Sites will be included in the appropriate Program construction  
15 contracts and plans.

16 2. Data Recovery:

- 17 a) In the event that adverse effects to NRHP-Eligible Archaeological Sites cannot be  
18 avoided or minimized, FHWA and FTA, in coordination with WSDOT and  
19 ODOT, and in consultation with DAHP and Oregon SHPO, as applicable, NPS  
20 regarding the VNHR, the Tribes, and other Consulting Parties, shall determine if  
21 data recovery is an appropriate measure to resolve adverse effects on NRHP-  
22 Eligible Archaeological Sites.

- 23 b) If it is determined through consultation that data recovery is an appropriate  
24 measure to resolve adverse effects, FHWA and FTA, in coordination with  
25 WSDOT and ODOT, will prepare a data recovery plan, as appropriate, that will be  
26 added to the Archaeological Resources Identification, Monitoring and Treatment  
27 Plan (Attachment D) which will be amended following the procedures in  
28 Stipulation XIV.B.

- 29 3. Other Mitigation: If adverse effects cannot be avoided and data recovery is not  
30 determined appropriate through the above consultation process, FHWA and FTA, in  
31 coordination with WSDOT and ODOT, and in consultation with DAHP and Oregon  
32 SHPO, as applicable, NPS regarding the VNHR, the Tribes, and other Consulting  
33 Parties, shall continue consultation to determine if other mitigation is appropriate for  
34 resolving adverse effects to NRHP-Eligible Archaeological Sites.

- 35 a) Other mitigation may include, but is not be limited to the analysis and synthesis of  
36 data obtained from similar archaeological sites within the region, using this

analysis and synthesis to develop Section 106 compliance guidance documents for future federal undertakings in the region, development of historic contexts and preservation priorities for similar archaeological sites in the region, or development of public-oriented materials on the affected NRHP-Eligible Archaeological Sites.

- b) If FHWA and FTA determine, through consultation, that the use of other mitigation is appropriate, WSDOT and ODOT shall prepare site-specific mitigation plans for each adversely affected NRHP-Eligible Archaeological Site to be added to the Archaeological Resources Identification, Monitoring and Treatment Plan (Attachment D), which will be amended following the procedures in Stipulation XIV.B.

#### 4. Resolution of Adverse Effect Objections

- a) Should any Signatory to this Agreement object to a final data recovery plan or site-specific mitigation plan using other mitigation approaches FHWA and FTA shall attempt to resolve the dispute through continued consultation.
- b) Should any Tribe object to a final data recovery plan or site-specific mitigation plan using other mitigation approaches for an NRHP-Eligible Archaeological Site that is an HPRCSIT, FHWA and FTA shall attempt to resolve the dispute through continued consultation.
- c) If an objection cannot be resolved through continued consultation, FHWA and FTA shall follow the process for dispute resolution in accordance with Stipulation XIII.

### **VI. Historic Properties of Religious and Cultural Significance to Indian Tribes (HPRCSIT)**

A. Schedule for Implementation: No later than 60 days after issuance of an Amended ROD for the IBR Program, FHWA and FTA, in coordination with WSDOT and ODOT, shall prepare a schedule for completing the identification of HPRCSITs, evaluation of historic significance of identified HPRCSITs, the assessment of adverse effects to NRHP-eligible HPRCSITs, and the resolution of adverse effects to NRHP-eligible HPRCITs. The schedule will be linked to the schedule for preparing the Program's construction contract packages.

#### B. Identification of HPRCSITs:

##### 1. Background:

- a) WSDOT and ODOT, in coordination with FHWA and FTA, offered the Tribes the opportunity to conduct investigations of the APE for the purpose of identifying HPRCSITs that may be NRHP-eligible.

- 1 b) The Cowlitz Indian Tribe (CIT), the Confederated Tribes of the Grand Ronde  
2 Community of Oregon (CTGR) and the Confederated Tribes and Bands of the  
3 Yakama Nation (YN), have responded and accepted this offer.
- 4 c) WSDOT entered into individual Intergovernmental Agreements (IGAs) with the  
5 CIT, the CTGR, and the YN.
- 6 ii. Pursuant to the IGA, the CIT, the CTGR and the YN, respectively, will  
7 conduct oral histories to help in the identification of HPRCSITs, compile the  
8 information obtained from such oral histories into a report, and submit a  
9 report to WSDOT and ODOT.
- 10 iii. In accordance with the respective IGA, the oral histories will be compiled into  
11 reports prepared separately by the CIT, the CTGR and the YN. The CIT, the  
12 CTGR, and the YN will determine whether any information cannot be shared  
13 outside of the tribe and redact such information from the report.
- 14 iv. Culturally sensitive information contained in the reports will be kept  
15 confidential to the extent allowable by law, in accordance with Stipulation XI.
- 16 v. As of the Execution Date of this Agreement, the CIT and YN have submitted  
17 their reports to WSDOT and ODOT. The CTGR have begun to conduct oral  
18 histories to help in the identification of HPRCSITs and shall submit their  
19 reports WSDOT and ODOT after the execution of this Agreement and prior to  
20 Program construction. As a result, the identification of measures to resolve  
21 any adverse effects to NRHP-eligible HPRCSITs, as described below, will be  
22 carried out after execution of this Agreement and prior to construction.
- 23 d) FHWA and FTA, in coordination with WSDOT and ODOT, and in individual  
24 consultation with the CIT, the CTGR and the YN under this Agreement, will  
25 identify any HPRCITs.
- 26 e) If any HPRCITs are identified, FHWA and FTA, in coordination with WSDOT  
27 and ODOT, will follow the evaluation process set forth in Stipulation VI.C.

28 C. Evaluation of HPRCSITs:

- 29 1. If HPRCSITs associated with the CIT, the CTGR, or the YN are identified, FHWA  
30 and FTA, in coordination with the WSDOT and ODOT, and in consultation under this  
31 Agreement with DAHP and Oregon SHPO, as applicable, the CIT, the CTGR, and the  
32 YN, as applicable, and NPS regarding the VNHR, shall evaluate the NRHP-eligibility  
33 of any HPRCSITs consistent with 36 CFR § 800.4(c).
- 34 a) FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation  
35 under this Agreement with DAHP, Oregon SHPO, and the CIT, the CTGR, and

1 the YN, as applicable, and NPS regarding the VNHR, will ensure HPRCSITs are  
2 evaluated by a Qualified Person as described Stipulation III.A.

- 3 b) If it is determined that HPRCSITs are NRHP-eligible, FTA and FHWA, in  
4 coordination with WSDOT and ODOT, will follow the process to assess effects of  
5 the Program as set forth in Stipulation VI.C.

6 2. Evaluation Determination Objections:

- 7 a) Should the CIT, CTGR or YN object to a determination of NRHP eligibility of a  
8 HPRCSIT, FHWA and FTA shall attempt to resolve the dispute through continued  
9 consultation with the Tribe.
- 10 b) Should any Signatory object to FHWA's and FTA's determination on the NRHP-  
11 eligibility of a HPRSCIT, FHWA and FTA shall attempt to resolve the dispute  
12 through continued consultation.
- 13 c) If an objection over NRHP eligibility cannot be resolved, FHWA and FTA shall  
14 submit the determination to the Keeper of the National Register of Historic Places  
15 for resolution pursuant to 36 CFR § 800.4(c)(2). The Keeper's decision shall be  
16 final.

17 D. Assessment of Effects:

- 18 1. FHWA and FTA, in coordination with WSDOT and ODOT, and in consultation under  
19 this Agreement with DAHP and Oregon SHPO, as applicable, the CIT, the CTGR,  
20 and the YN, as applicable, and NPS regarding the VNHR, will assess the effects of  
21 the Program on NRHP-eligible HPRCSITs consistent with 36 CFR § 800.5(a).

- 22 a) If it is determined that a HPRCSIT will be adversely affected, FHWA and FTA, in  
23 coordination with WSDOT and ODOT, will follow the process to resolve adverse  
24 effects as set forth in Stipulation VI.E below.

25 2. Finding of Effect Determination Objections:

- 26 a) Should CIT, CTGR, or YN object to FHWA's and FTA's finding of effect for a  
27 HPRCSIT, FHWA and FTA shall attempt to resolve the dispute through continued  
28 consultation with the Tribe.
- 29 b) Should any Signatory object to FHWA's and FTA's finding of effect for a  
30 HPRCSIT, FHWA and FTA shall attempt to resolve the dispute through continued  
31 consultation.
- 32 c) If an objection cannot be resolved in this manner, FHWA and FTA shall follow the  
33 provision for dispute resolution in Stipulation XIII.

1 E. Resolution of Adverse Effects:

- 2 1. For any adversely affected HPRCSITs identified, FHWA and FTA, in coordination  
3 with WSDOT and ODOT, and in consultation under this Agreement with DAHP and  
4 Oregon SHPO, as applicable; the CIT, the CTGR, and the YN, as applicable; and NPS  
5 regarding the VNHR shall identify measures to avoid adverse effects. If adverse  
6 effects cannot be avoided, FHWA and FTA, in coordination with WSDOT and ODOT,  
7 shall consult with DAHP and Oregon SHPO, as applicable; the CIT, the CTGR, and  
8 the YN, as applicable; and NPS regarding the VNHR, and appropriate other  
9 Consulting Parties (identified in consultation with the CIT, the CTGR, and the YN as  
10 applicable), to identify measures to minimize or mitigate the adverse effects, and shall  
11 prepare treatment plans that include these measures for each adversely affected  
12 NRHP-eligible HPRCSIT.
- 13 a) Any treatment measures to avoid or minimize adverse effects will be added to the  
14 Historic Properties of Religious and Cultural Significance to Indian Tribes  
15 Treatment Plan (Attachment H), which will be amended in accordance with the  
16 procedures in Stipulation XIV.B.
- 17 b) Treatments to avoid or minimize adverse effects to NRHP-Eligible HPRCSITs  
18 will be included in the appropriate Program construction contracts and plans,  
19 upon consultation with CIT, the CTGR, and the YN, as applicable.

20 **VII. Consultation Regarding Program Changes**

- 21 A. Program Changes: The replacement of the I-5 Bridge across the Columbia River will  
22 involve a complex, multi-phased series of inter-related construction packages that will be  
23 carried out over multiple years, through the adoption of various delivery methods. The  
24 advancement of the Program through final design and construction may result in changes  
25 to the Program design, construction packages or delivery methods following execution of  
26 this Agreement (“Program Changes”). If such Program Changes require revisions to the  
27 APE or additional consultation under this Agreement to identify historic properties,  
28 assess the effects, and resolve adverse effects, FTA and FHWA, in coordination with  
29 WSDOT and ODOT, shall follow the processes set forth in this Stipulation.  
30 Implementation of the procedures in this Stipulation will be included in the provisions of  
31 the Program’s construction contracts.
- 32 B. Changes to the Area of Potential Effects:
- 33 1. FHWA and FTA, in coordination with WSDOT or ODOT, shall determine if revisions  
34 to the APE are warranted and if so, shall revise Attachment B (Area of Potential  
35 Effects), which shall be amended in accordance with Stipulation XIV.B.
- 36 C. Identification of Additional Historic Properties:
- 37 1. Screened Actions: A WSDOT or ODOT Qualified Person, in coordination with

FHWA and FTA, shall screen any proposed changes irrespective of whether they require changes to the APE. The screening process which is set forth in the Screened Program Actions Having Minimal Potential to Cause Effects to Historic Properties (Attachment E) will determine if the proposed actions have minimal potential to cause effects to historic properties and are appropriately excluded from further Section 106 review.

a) As stipulated in Attachment E, for an action to be determined to have minimal potential to cause effects to historic properties and excluded from further review, the action must be listed in Attachment E and must meet all of the terms and conditions stipulated in Attachment E.

2. Any proposed actions resulting from Program Changes that are not listed in the Screened Program Actions Having Minimal Potential to Cause Effects to Historic Properties (Attachment E), or if listed but do not satisfy the conditions in Attachment E, will be subject to the following requirements:

a) HBE Resources: In the event Program Changes are of a nature that could potentially result in additional adverse effects to HBE Resources, FHWA and FTA, in coordination with WSDOT and ODOT, will follow the procedures set forth in Stipulation IV.B and as detailed in Section C-III of the Historic Built Environment Treatment Plan (Attachment C).

b) NRHP-Eligible Archaeological Sites: In the event Program Changes are of a nature that could potentially result in adverse effects to NRHP-Eligible Archaeological Sites, FHWA and FTA, in coordination with WSDOT and ODOT, will follow the procedures set forth in Stipulation V and as detailed in the Archaeological Identification, Monitoring and Treatment Plan (Attachment D).

c) HPRCSITs: In the event Program Changes are of a nature that could potentially result in adverse effects to HPRCSITs, FHWA and FTA, in coordination with WSDOT and ODOT, will follow the procedures set forth in Stipulation VI and as detailed in the Historic Properties of Religious and Cultural Significance to Indian Tribes Treatment Plan (Attachment H).

## **VIII. Post-Review Discoveries**

A. Should suspected human remains, funerary objects, sacred objects, or objects of cultural patrimony (referred to collectively as “human remains”) be discovered at any time prior to or during construction, all ground-disturbing activities within 100 feet of the discovery location will cease immediately. WSDOT and ODOT and their respective contractors shall follow the procedures provided in the Post-Review Discovery Plan (Attachment F) and the Human Remains Treatment Plan (Attachment G).

- 1 B. Should archaeological resources be discovered during construction activities, all ground  
2 disturbing work within 100 feet of the discovery location will cease and WSDOT and  
3 ODOT and their respective contractors will follow procedures in the Post-Review  
4 Discovery Plan (Attachment F).
- 5 C. Should buildings, structures or objects associated with the historic built environment be  
6 discovered during construction activities, all work within 100 feet of the discovery  
7 location will cease and WSDOT and ODOT and their respective contractors shall follow  
8 the procedures for discovery in the Historic Built Environment Resources Treatment Plan  
9 (Attachment C).

## 10 **IX. Treatment of Human Remains**

- 11 A. The Human Remains Treatment Plan (Attachment G) provides the procedures for the  
12 treatment of human remains discovered within the APE at any time prior to or during  
13 Program construction. The Human Remains Treatment Plan (Attachment G) describes the  
14 compliance processes associated with federal land, non-federal lands in Washington, and  
15 non-federal lands in Oregon.
- 16 1. The Human Remains Treatment Plan (Attachment G) includes but is not limited to  
17 the following:
- 18 a) The steps to stabilize, secure, and/or keep human remains in situ, and  
19 b) The steps to protect, secure, and relocate human remains if it is not possible to  
20 keep human remains in situ.
- 21 B. In order to implement the Human Remains Treatment Plan (Attachment G), WSDOT and  
22 ODOT shall identify within their respective states prior to Program preconstruction and  
23 construction activities:
- 24 1. Secure locations for screening soils removed during preconstruction and construction  
25 activities in order to identify human remains within these soils, when screening of  
26 soils is determined to be appropriate following the consultation process discussed in  
27 The Human Remains Treatment Plan (Attachment G);
- 28 2. Secure temporary storage for human remains that cannot remain in situ; and  
29 3. Location for reburial of human remains.
- 30 WSDOT and ODOT shall identify these locations and facilities in consultation with and  
31 approval from FHWA and FTA, and NPS regarding the VNHR. These locations and  
32 facilities will also be identified in consultation with the Tribes.

## 33 **X. Training**

- 34 A. WSDOT and ODOT shall conduct training to ensure that all commitments under this  
35 Agreement and as set forth in the Agreement Attachments, as applicable, are properly  
36 tracked and executed. The purpose of the training will be to inform construction

management, supervisors, inspectors, and field crews of their role and responsibility to report suspected archaeological resources or human remains encountered during Program activities, and the procedures that must be followed to ensure against further disturbance until the discovery is resolved.

1. WSDOT and ODOT will ensure that Program Managers, staff, contractors, and subcontractors assigned to the Program and responsible for overseeing preconstruction and construction activities receive the training.

2. WSDOT and ODOT shall conduct an additional mandatory training for the on-site construction managers, supervisors, inspectors, field crews, and archaeological and tribal monitors, related to awareness and sensitivity to archaeological resources and human remains in the APE, as detailed in the Archaeological Identification, Monitoring, and Treatment Plan (Attachment D), the Post Review Discovery Plan (Attachment F) and the Human Remains Treatment Plan (Attachment G).

B. WSDOT or ODOT Qualified Persons shall develop the specific content, format, and outcomes of the training in consultation with FHWA, FTA, DAHP, Oregon SHPO, and the Tribes. The training will be distributed no later than 60 days after the execution of this Agreement. The training will be conducted prior to Program preconstruction and construction, and during Program construction, as needed, including for example, as an element of on-boarding of new personnel in the positions listed in Stipulations X.A above. WSDOT or ODOT Qualified Persons shall develop the schedule for the training in consultation with FHWA, FTA, DAHP, Oregon SHPO, and the Tribes.

## **XI. Confidentiality of Information**

A. State and Federal Entities:

1. The Signatories to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of the NHPA, 54 USC § 307103, and 36 CFR § 800.11(c). In accordance with Section 304 and 36 CFR § 800.11(c), FHWA and FTA shall to withhold from disclosure to the public, information about the location, character, or ownership of a historic property if the federal agencies determine that disclosure may 1) cause a significant invasion of privacy, 2) risk harm to the historic property, or 3) impede the use of a traditional religious site by practitioners.

2. The Signatories to this Agreement shall ensure that all actions and documentation prescribed by this Agreement are, where necessary and authorized by applicable law, consistent with the requirements of Section 304 of the NHPA and 36 CFR § 800.11(c).

3. In Washington, the locations of archaeological sites and HPRCSITs, defined as



1 traditional cultural places in Washington Administrative Code 365-196-450, are  
2 exempt from public disclosure in accordance with RCW 42.56.300.

- 3 4. The location of archaeological sites in Oregon is exempt from public disclosure in  
4 accordance with ORS 192.345 and 192.355.
- 5 5. The Signatories shall ensure that all maps, records, and other documentation on the  
6 location of Program-related archaeological sites and HPRCSITs identified prior to,  
7 during, or after Program construction are kept confidential and are not released to the  
8 public to the fullest extent allowable by state and federal law.
- 9 6. WSDOT and ODOT shall prohibit their respective contractors from contacting the  
10 media or any member of the public or otherwise sharing information with any  
11 member of the public regarding any discovery of archaeological sites or human  
12 remains. This prohibition will be included in all contracts for Program-related work  
13 along with the requirements for reporting the discovery of archaeological sites and  
14 human remains to WSDOT and ODOT, as applicable, following the procedures in the  
15 Post-Review Discovery Plan (Attachment F).
- 16 7. Prior to the release of any information regarding discoveries, where not prohibited  
17 under applicable state or federal law, WSDOT and ODOT, in coordination with  
18 FHWA and FTA, shall consult with DAHP and Oregon SHPO, as applicable, as well  
19 as the Tribes to determine whether a public statement is appropriate and if so, how the  
20 information should be shared with the public.

## 21 **XII. Monitoring of Agreement Performance**

- 22 A. Quarterly Reporting: For the duration of this Agreement, WSDOT and ODOT, in  
23 coordination with FHWA and FTA, shall provide the Signatories, Tribes, and other  
24 Consulting Parties with a jointly prepared written performance report every quarter  
25 describing the implementation status of this Agreement.

- 26 1. The quarterly performance reports shall include the following:
  - 27 a) Any changes in the schedule for completing the identification and NRHP  
28 evaluation of archaeological sites and HPRCSITs, assessment of effects on all  
29 NRHP-Eligible Archaeological Sites and HPRCSITs, and identification of  
30 measures to resolve adverse effects to NRHP-Eligible Archaeological Sites and  
31 HPRCSITs, if needed;
  - 32 b) An explanation for changes in the schedule;
  - 33 c) A list of Program actions determined to have minimal potential to cause effects to  
34 historic properties and are excluded from further review following the procedures  
35 in Stipulation VI.C.1 and Attachment E; and

- 1 d) Any amendments including revisions to Attachments to this Agreement  
2 (Stipulation XIV).
- 3 e) Any additional measures to resolve adverse effects to newly identified historic  
4 properties or changes to agreed-upon measures to resolve adverse effects to  
5 historic properties (Stipulation VII.C).
- 6 B. Quarterly Meetings: WSDOT and ODOT, in coordination with FHWA and FTA, shall  
7 provide an opportunity for quarterly meetings with Signatories, Tribes, and other  
8 Consulting Parties following issuance of each performance report.
- 9 1. The Signatories, Tribes and other Consulting Parties may request additional meetings  
10 with FHWA and FTA to discuss issues relating to the performance of this Agreement.
- 11 C. Annual Meetings: FHWA and FTA, in coordination with WSDOT and ODOT, shall  
12 convene an annual meeting of the Signatories to this Agreement.
- 13 1. The meeting will include discussion of the following:
- 14 a) The work undertaken pursuant to the terms of this Agreement,  
15 b) Proposed scheduling changes,  
16 c) Objections or disputes received by FHWA and FTA from Signatories or Tribes  
17 pursuant to the dispute and objection process stipulated in this Agreement.
- 18 2. The annual meeting will be held on or close to the anniversary of the execution of this  
19 Agreement, and meeting attendees will include senior FHWA, FTA, WSDOT and  
20 ODOT Program managers and decision makers.
- 21 3. At any time during the Program, the Signatories to this Agreement may choose,  
22 through a simple majority vote of the Signatories, to change the schedule and  
23 frequency of the meetings described in this stipulation. Such a change in scheduling  
24 and frequency of meetings will not require a formal amendment of this Agreement,  
25 but will be documented through written correspondence, such as emails or letters,  
26 among all of the Signatories.
- 27 D. Notification of Non-Compliance: FHWA and FTA, in coordination with the WSDOT and  
28 ODOT, shall monitor construction performance to ensure compliance with the conditions  
29 of this Agreement.
- 30 1. Should a non-compliance event occur, WSDOT and ODOT shall notify the  
31 Signatories, Tribes, and other Consulting Parties, and WSDOT and ODOT, in  
32 coordination with FHWA and FTA, shall address the non-compliance event following  
33 the specifications of the applicable construction contract or contracts. A meeting may  
34 be held to discuss the event and the need for any corrective action.

- 1 E. Government to Government Consultation: At any time, a Tribe may request a separate  
2 government-to-government meeting with FHWA and FTA to monitor the performance of  
3 this Agreement.

### 4 **XIII. Dispute Resolution**

- 5 A. Should any Signatory to this Agreement object at any time to any actions proposed or the  
6 manner in which the terms of this Agreement are implemented, FHWA and FTA shall  
7 consult with the objecting Signatory to resolve the objection. Should any consulting Tribe  
8 object at any time to any actions proposed or the manner in which the terms of this  
9 Agreement are implemented when involving a HPRCSIT, FHWA and FTA shall consult  
10 with the objecting Tribe to resolve the objection.
- 11 B. If FHWA and FTA determine within 30 calendar days that such objections cannot be  
12 resolved, FHWA and FTA shall forward all documentation relevant to the dispute,  
13 including the FHWA's and FTA's proposed resolution, to the ACHP. The ACHP shall  
14 provide FHWA and FTA with its advice on the resolution of the objection within 30 days  
15 of receiving adequate documentation from FHWA and FTA.
- 16 C. If the ACHP does not provide its advice regarding the dispute within 30 calendar days of  
17 receiving adequate documentation from FHWA and FTA, FHWA and FTA may make a  
18 final decision regarding the dispute and proceed accordingly without ACHP's advice.
- 19 D. FHWA and FTA shall prepare a written response that considers any timely comments  
20 from ACHP and the other Signatories to this Agreement, regarding the dispute and  
21 provide ACHP and the other Signatories with a copy of the written response. FHWA and  
22 FTA shall recommend the best course of action to resolve the dispute. FHWA and FTA  
23 shall prepare a written response that considers any timely comments from the ACHP and  
24 the objecting Tribe when the dispute involves a HPRCSIT and provide the ACHP and the  
25 objecting Tribe with a copy of the written response. FHWA and FTA shall recommend the  
26 best course of action to resolve the dispute involving the HPRCSIT.
- 27 E. The responsibility of FHWA and FTA to carry out all other actions subject to the terms of  
28 this Agreement that are not the subject of the dispute will remain unchanged.

### 29 **XIV. Amendments**

- 30 A. Any Signatory wishing to amend this Agreement shall submit the text of the proposed  
31 amendment in writing to all Signatories and Consulting Parties. The Signatories shall  
32 have 30 calendar days to either agree to the amendment in writing or provide written  
33 comments describing their objections to the amendment. The amendment will be  
34 effective on the date it is signed by all Signatories and filed with the ACHP.
- 35 B. Amending Attachments: The attachments to this Agreement may require revisions after  
36 the execution of this Agreement as discussed in Stipulations herein. FHWA and FTA, in  
37 coordination with WSDOT and ODOT, and in consultation with the Signatories, shall  
38 determine if revision of an attachment is required. The process for amending attachments  
39 set forth in this subsection shall not be used to amend Stipulations in this Agreement. If

1 amendments to attachments are required, FHWA and FTA, in coordination with WSDOT  
2 and ODOT, shall:

- 3 1. Submit a draft of the revised attachment along with any supporting documentation, to  
4 DAHP and Oregon SHPO, NPS regarding the VNHR, the Tribes, and other  
5 Consulting Parties for a 15-calendar-day review.
- 6 2. FHWA and FTA shall consider all review comments and shall submit a second draft  
7 to DAHP and Oregon SHPO, NPS regarding the VNHR, the Tribes, and other  
8 Consulting Parties for a second 15-calendar day review.
  - 9 a) FHWA and FTA, in coordination with WSDOT and ODOT, shall consult with any  
10 Tribe that objects to a revised attachment involving a HPRCSIT pursuant to  
11 (36 CFR 800.2(c)(2)(ii)).
- 12 3. FHWA and FTA shall consider all review comments on the second draft, shall prepare  
13 a final draft of the attachment, and shall transmit the final attachment to state legal  
14 counsel for legal sufficiency review and subsequently to the Signatories to obtain  
15 their written consent.
- 16 4. FHWA and FTA shall distribute the final attachment to all Signatories of this  
17 Agreement and copy the Tribes and other Consulting Parties with a signed cover  
18 letter confirming the revisions based on consultation with DAHP and Oregon SHPO,  
19 NPS regarding the VNHR, the Tribes, and other Consulting Parties. The revised  
20 attachment will be used throughout the remainder of the Program unless further  
21 revisions to an attachment are warranted due to additional Program Changes, as  
22 described and defined in Stipulation VII.A. Amendments to attachments made using  
23 the process set forth in this subsection are not effective until the Oregon and  
24 Washington Attorney General's Offices provide legal sufficiency approval of the  
25 amendment.

## 26 **XV. Termination**

27 If any Signatory of this Agreement determines that its obligations under this Agreement will not  
28 or cannot be carried out, that Signatory shall immediately consult with the other Signatories to  
29 attempt to develop an amendment per Stipulation XIV. If, within 30 calendar days, an  
30 amendment cannot be agreed upon, any Signatory may terminate the Agreement upon written  
31 notification to the other Signatories. In the event of termination, FHWA and FTA shall comply  
32 with 36 CFR Part 800 for all remaining Program actions, or until a new agreement is executed  
33 fulfilling the requirements of 36 CFR Part 800.

## **XVI. Effective Date; Duration of the Agreement**

- A. Effective Date: This Agreement becomes effective on the date the last of all Signatories has signed the Agreement and all required legal approvals have been obtained (“Effective Date”).
- B. Duration of Agreement: This Agreement will continue in full force and effect until 10 years from the Effective Date, or when all terms of this Agreement have been completed, whichever occurs first. This Agreement will automatically terminate if the Program is terminated or authorization for the Program is rescinded.
- C. Extension: At any time in the six-month period prior to its expiration, the Signatories will consult to consider an extension of this Agreement. At such time, the Signatories may consider an amendment to extend this Agreement unmodified for an additional specified duration or consult to amend this Agreement in accordance with Stipulation XIV. No extension will be effective until all Signatories have signed the amendment consistent with Stipulation XIV.A.

**Execution** of this Agreement by the Signatories and implementation of its terms constitutes evidence that the FHWA and FTA have taken into account the effects of the Program on historic properties and afforded the ACHP an opportunity to comment.

### **List of Signatories and Concurring Parties (to be replaced by signature pages)**

- Federal Highway Administration
- Federal Transit Administration
- Washington State Department of Archaeology and Historic Preservation
- Oregon State Historic Preservation Office
- Washington State Department of Transportation
- Oregon Department of Transportation
- National Park Service
- U.S. Army Corps of Engineers
- U.S. Coast Guard
- Advisory Council on Historic Preservation
- Tribal Concurring Parties (TBD)
- Department of the Army, Office of Army Cemeteries (Concurring Party)
- Oregon Legislative Commission on Indian Services (Concurring Party)
- Other Concurring Parties (TBD)

### **Attachments**

- A: Consulting Parties
- B: Area of Potential Effects
- C: Historic Built Environment Resources Treatment Plan

- 1 • D: Archaeological Resources Identification, Monitoring, and Treatment Plan
- 2 • E: Screened Program Actions Having Minimal Potential to Cause Effects to Historic
- 3 Properties
- 4 • F: Post-Review Discovery Plan
- 5 • G: Human Remains Treatment Plan
- 6 • H: Historic Properties of Religious and Cultural Significance to Indian Tribes Treatment
- 7 Plan