

39 WHEREAS, either FHWA or NDOT will serve as “lead Federal agency” for Section 106
40 responsibilities for purposes of compliance and having the authority to commit the agency to
41 any obligation it may assume under this Agreement, dependent upon whether the project or
42 action at issue is a Project Assigned; and

43 WHEREAS, for Projects Not Assigned, FHWA Division is the lead Federal agency and the
44 FHWA Division Administrator is the Agency Official for the FAHP-funded projects not assigned
45 under the 326 MOU and under an anticipated 327 MOU, and is a signatory to this Agreement;
46 and

47 WHEREAS, for Projects Assigned, NDOT is deemed to be the lead Federal agency and
48 the NDOT Director is the Agency Official for the purposes of compliance with 36 CFR Part 800
49 for FAHP-funded projects, and is a signatory to this Agreement; and

50 WHEREAS, the responsibilities of NESHPO under Section 106 are to advise, assist,
51 review, and consult with Federal agencies as they carry out their historic preservation
52 responsibilities and to respond to Federal agencies’ requests within a specified period of time,
53 has participated in the development of this Agreement and has been invited to be a signatory to
54 this Agreement; and

55 WHEREAS, FHWA and NDOT have invited ACHP to participate in development of this
56 Agreement pursuant to 36 CFR §800.14(b) and the ACHP accepted this invitation in a letter dated
57 October 8, 2020; and

58 WHEREAS, pursuant to the consultation conducted under 36 CFR §800.14(b), the
59 signatories have developed this Agreement in order to establish an efficient and effective program
60 alternative for taking into account the effects of the FAHP on historic properties in Nebraska and
61 for affording the ACHP a reasonable opportunity to comment on undertakings covered by this
62 Agreement; and

63 WHEREAS, FHWA and NDOT have solicited public participation from Nebraska
64 Association of Professional Archeologists, the Nebraska Archeology Society, Restoration
65 Exchange Omaha and Preservation Association of Lincoln, Federal and State agencies, Certified
66 Local Governments (CLG’s) (Appendix A) about this Agreement, has requested their comments,
67 and has taken any comments received into account; and

68 WHEREAS, FHWA and NDOT recognize that FHWA has a unique legal relationship with
69 Tribes established in the Constitution of the United States, treaties, statutes, and court decisions,
70 and therefore, and regardless of whether a Project is assigned, consultation with a Tribe must
71 recognize the government to government relationship between the federal government and the
72 Tribes; and

73
74 WHEREAS, NDOT, FHWA, NESHPO, and ACHP acknowledge that Tribes possess
75 special expertise in assessing the NRHP eligibility of properties with tribal religious and cultural
76 significance pursuant to 36 CFR §800.4(c)(1); and

77

78 WHEREAS, this Agreement shall not apply to undertakings that occur on or affect tribal
79 lands as they are defined in 36 CFR §800.16(x). Tribal lands are all lands within the exterior
80 boundaries of any Indian reservation and all dependent Indian communities. For such
81 undertakings, NDOT shall follow the procedures in 36 CFR Part 800; and

82 WHEREAS, FHWA and NDOT have notified any federally recognized Indian tribes
83 (Appendix B) (Tribes) that attach religious and cultural significance to historic properties that may
84 be affected by an undertaking in Nebraska about this Agreement, has requested their comments,
85 and has taken any comments received into account; and

86 WHEREAS, this Agreement shall replace the 2015 Programmatic Agreement Among The
87 Federal Highway Administration, The Nebraska State Historic Preservation Officer, The Advisory
88 Council on Historic Preservation And The Nebraska Department of Roads to Satisfy the
89 Requirements of Section 106 for the Federal-aid Highway Program In the State of Nebraska, as
90 amended (2020, 2021); and

91 WHEREAS, FHWA, NESHPO, ACHP and NDOT are collectively referred to herein as the
92 “signatories” or individually as “signatory”; and

93 NOW, THEREFORE, FHWA, NESHPO, ACHP, and NDOT agree that the FAHP in
94 Nebraska shall be carried out in accordance with the following stipulations in order to take into
95 account the effects of the FAHP on historic properties in Nebraska and that these stipulations
96 shall govern compliance of the FAHP with Section 106 of the NHPA until this Agreement expires
97 or is terminated.

98 STIPULATIONS

99 FHWA and NDOT shall ensure that the following measures are carried out:

100 To aid the signatories of this Agreement, the stipulations are organized in the following order:

- 101 I. Applicability and Scope
- 102 II. Definitions
- 103 III. Professional Qualification Standards
- 104 IV. Rights and Responsibilities
- 105 V. Consultation with Tribes
- 106 VI. Participation of Other Consulting Parties and the Public
- 107 VII. Project Review
- 108 VIII. The Section 106 Process
- 109 IX. Emergency Situations
- 110 X. Post-Review Discoveries
- 111 XI. Treatment of Human Remains
- 112 XII. Administrative Stipulations

113 I. APPLICABILITY AND SCOPE

114 A. This Agreement shall apply to all FAHP NDOT-administered projects in Nebraska
115 and sets forth the process that will be met to ensure compliance under Section 106.

116 1. For Projects Not Assigned to NDOT, FHWA is the lead Federal
117 agency;

118 2. For Projects Assigned to NDOT, NDOT is deemed to be the lead
119 Federal agency.

120 B. FHWA and NDOT establish through this agreement three tiers of project review,
121 dependent upon the type of effects to historic properties.

122 1. Tier I Project Review: Tier I projects are defined as having no
123 potential to affect historic properties as defined under 36 CFR §800.3(a)(1)
124 and must meet the criteria outlined in Stipulation VII.A.

125 2. Tier II Project Review: Tier II projects are defined as having the
126 potential to affect historic properties but following screening by the NDOT
127 Professionally Qualified Staff (NDOT PQS, defined below) will be
128 determined not to require case-by-case review by, or consultation with
129 NESHPO. NDOT will support and document a finding of *no historic*
130 *properties affected*.

131 3. Tier III Project Review: Tier III projects are defined as actions that
132 result in an effects determination of *no adverse effect* or *adverse effect* and
133 require consultation with NESHPO.

134 C. Cooperating Federal agencies as defined in 40 CFR §1508.5 who recognize the
135 lead Federal agency for an undertaking subject to this agreement may fulfill their
136 obligations under Section 106 of NHPA according to 36 CFR §800.2(a)(2) provided
137 that the lead Federal agency follows the requirements of this Agreement and the
138 cooperating agency's undertaking does not have the potential to cause effects to
139 historic properties beyond those considered by the lead Federal agency under this
140 Agreement.

141 1. All consultation with an agency regarding lead Federal agency status and
142 compliance with Section 106 will be documented.

143 D. In the event that another federal agency not initially a party to or subject to this
144 Agreement receives an application for funding/license/permit for an undertaking
145 subject to this Agreement, that agency may fulfill its Section 106 responsibilities by
146 stating in writing it concurs with the terms of this Agreement and notifying FHWA,
147 NDOT, NESHPO, and ACHP that it intends to do so, and adherence to the terms of
148 this Agreement.

149 **II. DEFINITIONS**

150 A. Unless otherwise specifically defined herein, the definitions provided in 36 CFR
151 §800.2 and 36 CFR §800.16 shall apply to this Agreement.

152 **III. PROFESSIONAL QUALIFICATION STANDARDS**

153 A. All actions prescribed by this Agreement that involve the identification,
154 evaluation, analysis, recording, treatment, monitoring, or disposition of historic
155 properties, or that involve the reporting or documentation of such actions in the form
156 of reports, forms, or other records, shall be carried out by or under the direct
157 supervision of a person or persons who meets the Secretary of the Interior's
158 Professional Qualifications Standards (36 CFR Part 61). However, nothing in this
159 stipulation may be interpreted to preclude FHWA or NDOT or any agent or contractor
160 thereof from using the services of persons who do not meet these qualifications
161 standards, providing their activities are conducted under the direct supervision of a
162 person who does meet the standards.

163 B. NDOT shall employ a minimum of one (1) person trained, experienced, and
164 qualified in one or more of the fields of archeology, history, architectural history and
165 historic architecture (as defined in 36 CFR Part 61). They are designated as
166 professionally qualified staff (PQS).

167 C. All Section 106 determinations will be performed by either a NDOT PQS or
168 performed by a NDOT consultant who meets the Secretary of the Interior's
169 Professional Qualifications Standards. All NDOT consultant Section 106 actions shall
170 be reviewed and approved by a NDOT PQS.

171 **IV. RIGHTS AND RESPONSIBILITIES**

172 The following section identifies the responsibilities of FHWA, NDOT, ACHP and
173 NESHPO in complying with the terms of this Agreement.

174 A. FHWA Rights and Responsibilities

175 1. FHWA retains the responsibility for government to government
176 consultation with federally recognized Tribes as defined in 36 CFR
177 §800.16(m), whether or not NDOT has been identified as the lead Federal
178 agency. NDOT may assist FHWA in consultation provided the individual
179 tribes agree to alternate procedures.

180 2. For all other Projects and project activities not assigned, FHWA
181 shall:

182 a) Remain legally responsible for ensuring that the terms of this
183 Agreement are carried out and for all findings and determinations made

184 pursuant to this Agreement and as defined in 36 CFR §800.2(a) and
185 §800.2(c)(4).

186 b) Submit notice of adverse effects to ACHP, NESHPO, and
187 consulting parties.

188 3. FHWA may audit, monitor, or take other actions to ensure NDOT
189 is adequately complying with 36 CFR Part 800 and the provisions of this
190 Agreement.

191 B. NDOT Rights and Responsibilities

192 1. For Projects Assigned, NDOT shall remain legally responsible for
193 ensuring that the terms of this Agreement are carried out and for all findings
194 and determinations made pursuant to this Agreement and as defined in 36
195 CFR §800.2(a) and §800.2(c)(4).

196 2. For all Projects, NDOT shall:

197 a) Submit through file sharing to the NESHPO and FHWA copies of
198 all fieldwork reports, site forms, Reconnaissance Level Survey forms and
199 any other relevant documents.

200 b) Submit a quarterly list (by standard calendar) of projects for which
201 Section 106 has been completed that quarter to NESHPO and FHWA.

202 c) Ensure curation of archeological materials recovered under this
203 Agreement at a facility meeting the standards of 36 CFR Part 79.

204 3. For all Projects, NDOT PQS shall:

205 a) Ensure that the requirements for documentation are met in
206 accordance with 36 CFR §800.11(d) and the most current, approved
207 NDOT Section 106 Guidelines.

208 b) Determine whether the proposed federal action is an undertaking
209 as defined in 36 CFR §800.16(y).

210 c) Determine under 36 CFR §800.3(a)(1) whether the undertaking is
211 a type of activity that has the potential to cause effects on historic
212 properties.

213 d) Determine under 36 CFR §800.3(c) and (d) whether the
214 undertaking may occur on or has the potential to affect historic properties
215 on tribal lands as they are defined in 36 CFR §800.16(x).

216 e) Solicit public comment and involvement, in accordance with 36
217 CFR §800.3(e) and NDOT's most current and FHWA approved Public
218 Involvement Procedures.

- 219 f) Identify, as appropriate, any consulting parties, as described in 36
220 CFR §800.2, and invite them to participate in the undertakings as
221 described in 36 CFR §800.3 and covered by this Agreement.
- 222 g) Determine and document the scope of identification efforts and
223 level of effort, as described in 36 CFR §800.4 (a) and (b), including the
224 undertaking's APE.
- 225 h) Determine and document boundaries for historic properties as
226 defined by National Register Bulletins and as detailed in the most current,
227 FHWA-approved, NDOT Section 106 Guidelines.
- 228 i) Determine and document the NRHP eligibility of properties within
229 the APE.
- 230 j) Determine and document whether historic properties may be
231 affected by the undertaking.
- 232 k) Assess effects by applying the criteria of adverse effects as
233 described in 36 CFR §800.5(a) (1) and document the finding of effects.
- 234 l) For Projects Assigned, submit notice of adverse effects to ACHP,
235 NESHPO, and consulting parties.
- 236 m) For Projects Assigned, consult with NESHPO and ACHP (if ACHP
237 has chosen to participate) to resolve adverse effects through the
238 development and execution of a Memorandum of Agreement (MOA) or a
239 Programmatic Agreement (PA), if appropriate.
- 240 n) For Projects Not Assigned, provide the recommendation of effects
241 and associated documentation to FHWA for no adverse effect and
242 adverse effect findings.
- 243 o) For Projects Not Assigned, provide sufficient information to FHWA
244 for their use in consultation with NESHPO and with ACHP (if the effect is
245 adverse and ACHP has chosen to participate) to resolve adverse effects
246 through the development and execution of a Memorandum of Agreement
247 (MOA) or Programmatic Agreement (PA), if appropriate.

248 C. ACHP Rights and Responsibilities

- 249 1. The ACHP will be notified of findings of adverse effect by the
250 applicable lead Federal agency and will be invited to participate in resolving

251 the adverse effect of an undertaking in accordance with 36 CFR
252 800.6(a)(1).

253 2. The ACHP will participate in accordance with Stipulation XII.C in
254 the resolution of disputes that may occur through the implementation of this
255 Agreement.

256 **D. NESHPO Rights and Responsibilities**

257 1. NESHPO shall be responsible for responding to FHWA and NDOT
258 requests according to the terms of this Agreement; and

259 2. Shall participate in site visits and meetings to discuss large or
260 complex undertakings upon request by FHWA or NDOT as staff time and
261 resources permit.

262 **V. CONSULTATION WITH TRIBES**

263 A. FHWA shall retain responsibility for complying with all federal requirements
264 pertaining to government-to-government consultation with Tribes. Notwithstanding
265 any other provision of this stipulation, FHWA shall honor the request of any Tribe for
266 government-to-government consultation regarding an undertaking covered by this
267 Agreement.

268 B. NDOT shall make a reasonable and good faith effort to identify any Tribes that
269 might attach religious and cultural significance to historic properties in the area of
270 potential effects (APE) in accordance with 36 CFR §800.3(f)(2).

271 1. For Projects Not Assigned, NDOT shall convey identified tribes to
272 FHWA who then, at their discretion, shall invite Tribes to participate as a
273 consulting party under 36 CFR §800.2(c).

274 a) NDOT shall compile and submit Section 106 documentation to
275 FHWA for review and approval. This documentation shall be prepared in
276 accordance with 36 CFR §800.11 and FHWA approved NDOT Section
277 106 Guidance.

278 b) FHWA shall initiate and complete consultation with Tribes in
279 accordance with 36 CFR Part 800, except where separate agreements
280 have been executed with Tribes.

281 c) FHWA shall provide NDOT record of all tribal consultation efforts
282 for NDOT to complete project documentation.

283 2. For Tier II and Tier III Projects Assigned, NDOT shall invite Tribes
284 to participate as a consulting party under 36 CFR §800.2(c). NDOT shall
285 initiate and complete consultation with Tribes in accordance with 36 CFR

286 Part 800, except where separate agreements have been executed with
287 Tribes.

288 a) If the State adequately resolves any project-specific Indian tribe
289 issues or concerns, then FHWA's role in the environmental process shall
290 be limited to carrying out the government-to-government consultation
291 process. FHWA shall enter into government-to-government consultation
292 with any Indian tribe who contacts FHWA or NDOT (via written or oral
293 communication) to make such a request. The parties shall notify each
294 other of any government-to-government requests received.

295 b) If FHWA determines through consultation with an Indian tribe, or
296 an Indian tribe indicates to FHWA, that the proposed resolution of tribal
297 issues or concerns by the State is not adequate, then FHWA may
298 reassume responsibility for processing the project or an individual
299 responsibility assumed by the State. The FHWA shall notify the State that
300 the project will be excluded.

301 C. NDOT shall maintain records of all tribal consultation efforts in a manner
302 consistent with NDOT's most current, FHWA-approved guidance documents.

303 D. Alternate Procedures: If Tribes express interest, FHWA and NDOT will work to
304 develop alternate procedures acceptable to and agreed upon by the Tribe(s), FHWA,
305 and NDOT regarding respective consultation responsibilities.

306 VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

307 A. Consulting parties shall be identified pursuant to, and their participation in
308 undertakings covered under this Agreement shall be governed by 36 CFR §800.2(c)
309 and §800.3(f). Other individuals and organizations with a demonstrated interest in the
310 undertaking may participate as consulting parties. Other parties entitled to be
311 consulting parties shall be invited to participate in the Section 106 process. Any land-
312 managing agency whose land may be affected by an undertaking shall be invited to
313 participate in the Section 106 process.

314 B. Any local governments (including Certified Local Governments (CLGs)) or
315 applicants that are entitled to be consulting parties under 36 CFR §800.2(c) shall be

316 invited to participate. All written requests of individuals and organizations to
317 participate as consulting parties shall be considered.

318 C. For Tier II and Tier III projects, NDOT shall identify consulting parties as
319 described above.

320 1. Regardless of Assignment, NDOT shall complete consultation for
321 those projects which result in a project effect finding of No Historic
322 Properties Affected.

323 2. For Projects Not Assigned FHWA shall complete consultation for
324 those projects which result in a project effect finding of No Adverse Effect or
325 Adverse Effect. NDOT shall coordinate with FHWA regarding consulting
326 parties and shall compile and submit Section 106 documentation to FHWA
327 for review and approval. This documentation shall be prepared in
328 accordance with 36 CFR §800.11.

329 D. Public Involvement

330 1. Section 800.2(d) states that the views of the Public are essential
331 to informed Federal decision making in the Section 106 process. Public
332 involvement in planning and implementing undertakings covered by this
333 Agreement shall be governed by the FHWA-approved NDOT Public
334 Involvement Procedures. Public involvement and the release of information
335 hereunder shall be consistent with 36 CFR §800.2(d) (1-2), §800.3(e), and
336 §800.11(c) (1 and 3) as well as public involvement regulations in 23 CFR
337 §771.111 and 23 CFR Part 450, and the FHWA-approved NDOT Public
338 Involvement Procedures.

339 **VII. PROJECT REVIEW**

340

341 All undertakings reviewed under this Agreement shall utilize the following "Tier" review
342 system:

343 A. Tier I Project Review

344 Pursuant to 36 CFR §800.3(a)(1), if the undertaking is a type of activity that
345 does not have the potential to cause effects on historic properties,
346 assuming such historic properties were present, then that undertaking will
347 be processed as a Tier I project. This undertaking will not require further
348 review under Section 106. Tier I projects must correspond to the conditions
349 and meet the actions identified in Appendix C. Tier I projects are processed
350 by the NDOT PQS.

351 B. Tier II Project Review

352 1. Tier II undertakings are those determined by the NDOT PQS to
353 have the potential to affect historic properties but that upon review, result in
354 a project effects determination of *no historic properties affected*.

355 2. Tier II undertakings shall not require case-by-case review by
356 NESHPO prior to NDOT determining that all Section 106 requirements
357 have been satisfied.

358 3. Two categories of Tier II projects have been established under
359 this Agreement:

360 a) Tier II – No Cultural Resource Investigations

361 (1) The signatories to this Agreement agree that certain
362 undertakings have minimal potential to cause effects on historic
363 properties. Such undertaking types are listed in Appendix D “Tier
364 II – Undertakings with Minimal Potential to Cause Effects”.

365 (2) Undertakings with activity types listed in Appendix D shall
366 be reviewed and documented by the NDOT PQS but following
367 documentation, will be determined to require no further review or
368 consultation under this Agreement.

369 b) Tier II – Cultural Resource Investigations

370 (1) After NDOT PQS review, these are undertakings which
371 have potential to affect historic properties, and which contain
372 activities that are not listed in Appendix D and which result in a
373 project effects determination of no historic properties affected.

374 (2) If the NDOT PQS determines that there are: (1) no historic
375 properties present; (2) unevaluated archeological sites; or (3)
376 historic properties present within the APE, but the undertaking will
377 have no effect on them as defined in 36 CFR §800.16(i), NDOT
378 shall make and document a finding of *no historic properties*
379 *affected* (36 CFR §800.4(d)(1).

380 C. Tier III Project Review

381 Tier III projects are all undertakings that result in a finding of *no adverse*
382 *effect* or *adverse effect*. The Section 106 process shall be completed as
383 described in Stipulation VIII of this Agreement.

384 VIII. THE SECTION 106 PROCESS

385 For Projects Assigned, NDOT performs the duties outlined below and assumes
386 authority and responsibility for all actions, findings, and determinations. For Projects

387 Not Assigned, NDOT performs the duties below in consultation with FHWA who
388 assumes authority and responsibility for all actions, findings, and determinations.

389 For all undertakings reviewed in pursuant to this Agreement, the following process
390 shall be implemented:

391 A. NDOT shall establish the undertaking and determine if the undertaking is a type
392 of activity that has the potential to cause effects on historic properties and whether the
393 undertaking occurs on Tribal or Federal lands.

394 1. If NDOT determines that the undertaking is one with no potential
395 to cause effects (Tier I), NDOT will document this decision using the NDOT
396 PQS Tier I form (Appendix C). Section 106 is complete.

397 2. If NDOT determines that the undertaking has minimal potential to
398 cause effects on historic properties and the activity type(s) conform with
399 Appendix D, no cultural resource investigations will be conducted.

400 a) NDOT shall involve the public, Tribes and other consulting parties
401 in a manner that is consistent with 36 CFR §800.2, 800.3(e) and 800.3(f)
402 and is also in compliance with the FHWA-approved Public Involvement
403 Procedures and associated documentation requirements.

404 b) A project effects determination of *no historic properties affected*
405 will be documented on the "NDOT Tier II PQS Memo, Undertakings with
406 Minimal Potential to Cause Effects form (Attachment A).

407 3. If NDOT determines that the project does not meet the
408 considerations of VIII.A.1 or VIII.A.2 above, NDOT shall continue the
409 Section 106 process as described below.

410 B. Identification and Evaluation of Historic Properties

411 1. Pursuant to 36 CFR §800.4(a), NDOT shall determine the scope
412 of identification efforts, including determining and documenting the
413 undertaking's area of potential effects (APE), as defined at 36 CFR
414 §800.16(d). The APE will be defined according to procedures outlined in the
415 most current, FHWA-approved NDOT Section 106 Guidelines. The
416 NESHPO agrees that NDOT shall define the APE but need not conduct
417 consultation on the definition of the APE if following the agreed upon
418 process in the approved Section 106 Guidelines. If unusual circumstances
419 arise, NDOT may coordinate with the NESHPO in defining the APE.

420 a) If NDOT initiates consultation with the NESHPO on the scope of
421 the identification efforts and the definition of the APE, NESHPO shall
422 have 15 calendar days to comment. If NESHPO does not respond within
423 that time period, NDOT may assume that NESHPO has no objections and
424 may proceed to the next step in the 106 process.

425 b) For Projects Not Assigned, NDOT shall provide information to
426 FHWA regarding NDOT's recommendation regarding definition of the
427 APE and the level of effort for the identification and evaluation of historic
428 properties for review and comment. Upon review, FHWA may request
429 NESHPO review.

430 2. NDOT shall involve the public, Tribes and other consulting parties
431 in a manner that is consistent with 36 CFR §800.2, 800.3(e) and 800.3(f)
432 and is also in compliance with the FHWA-approved Public Involvement
433 Procedures and associated documentation requirements.

434 3. Pursuant to 36 CFR §800.4(b), NDOT shall ensure the
435 identification of cultural resources that may exist within the APE and gather
436 information to evaluate the integrity and eligibility of these properties for
437 listing in the NRHP.

438 4. NDOT's identification and evaluation of historic properties shall
439 follow the Secretary of the Interior's Standards and Guidelines for
440 Identification (48 FR 44720-23), and will be consistent with guidance issued
441 by NESHPO, FHWA, NDOT, and any other guidance, methodologies,
442 agreements, or protocols that FHWA, NDOT, and NESHPO agree should
443 be used to identify properties, including those of other land-managing
444 agencies.

445 5. NDOT shall evaluate the historic significance of identified
446 properties in the APE in accordance with 36 CFR §800.4(c) and shall make
447 determinations regarding eligibility. The NDOT PQS will identify
448 boundaries, following standards set forth in National Register Bulletin 21,
449 Defining Boundaries for National Register Properties. NDOT may consult
450 with NESHPO on the outcome of identification and evaluation of historic
451 resources, if necessary.

452 6. Pursuant to 36 CFR § 800.3(g), the lead Federal agency may
453 request NESHPO review a consultation that addresses multiple steps in §§
454 800.3 through 800.6 on findings of inventory, determinations of eligibility,
455 and finding of effect, provided NDOT and the SHPO agree it is appropriate
456 and other consulting parties and the public are afforded an adequate
457 opportunity to express their views pursuant to 36 CFR §800.2(d).

458 a) If NESHPO fails to comment on any findings contained in a lead
459 Federal agency consultation submission within 15 calendar days of
460 receipt, the lead Federal agency may assume they have no objection and
461 proceed to the next step in the consultation process pursuant to 36 CFR
462 §800.3(c)(4).

463 7. Agreements regarding the NRHP eligibility of properties evaluated
464 hereunder, and any disagreements pertaining thereto, shall be governed by
465 36 CFR §800.4(c)(2). In the event of a disagreement, the lead Federal
466 agency shall first consult with the disagreeing party to resolve the
467 disagreement.

468 a) If the disagreement cannot be resolved through additional
469 consultation, the lead Federal agency shall notify NESHPO, whereupon
470 the lead Federal agency, NESHPO, and any consulting party shall consult
471 to resolve the disagreement in accordance with a time frame specified by
472 the lead Federal agency.

473 b) If the disagreement is not resolved, the lead Federal agency shall
474 refer the issue to the Keeper of the National Register of Historic Places to
475 obtain a determination of eligibility. A formal determination of eligibility
476 from the Keeper is final.

477 C. Finding of Effect

478 1. No Historic Properties Affected

479 a) If NDOT determines that either there are no historic properties
480 present or there are historic properties present within the APE, but the
481 undertaking will have no effect on them as defined in 36 CFR §800.16(i),
482 NDOT shall make and document a finding of *no historic properties*
483 *affected* (36 CFR §800.4(d)(1)). This decision shall be documented using
484 the NDOT Tier II PQS Memo - No Historic Properties Affected form
485 (Attachment A).

486 b) NDOT shall notify all consulting parties by letter of the findings it
487 makes for individual Tier II projects, consistent with the confidentiality
488 provisions of 36 CFR §800.11(c), prior to approving the undertaking.

489 c) For Projects Not Assigned, FHWA may seek clarification or
490 adjustments to NDOT Tier II findings, determinations or documentation, if
491 there is cause to do so, during the project NEPA determination stage.

492 2. No Adverse Effect

493 a) The lead Federal agency shall recommend a finding of *no adverse*
494 *effect* if none of the undertaking's anticipated effects meet the criteria of
495 adverse effect under 36 CFR §800.5(a)(1), or if the lead Federal agency
496 modifies the undertaking or imposes conditions that will avoid adverse
497 effects to historic properties.

498 b) The lead Federal agency shall submit its eligibility determination,
499 finding of effect and supporting documentation to all consulting parties for
500 comment and will request NESHPO concurrence on the finding.

501 (1) Where FHWA is the lead Federal agency, NDOT shall
502 submit eligibility recommendations, recommendation of effects,
503 and supporting documentation, including the documentation
504 specified in 36 CFR §800.11(e), to FHWA for review and approval.
505 FHWA will complete the finding of effect and all consultation.

506 c) The lead Federal agency may consult at any time, either formally
507 or informally, with NESHPO regarding application of the Criteria of
508 Adverse Effect.

509 d) If NESHPO, or another consulting party, objects within 30 days of
510 receipt of a finding of *no adverse effect*, the lead Federal agency will
511 either consult to resolve the objection or request ACHP to review the
512 finding pursuant to 36 CFR §800.5(c)(2).

513 e) The lead Federal agency shall maintain a record of the finding and
514 provide information on the finding to all consulting parties and the public
515 on request, consistent with the confidentiality provisions of 36 CFR
516 §800.11(c) and Stipulation XII.G of this Agreement.

517 f) NDOT shall document these decisions using the NDOT Tier III
518 PQS Memo, No Adverse Effect form (Attachment A).

519 3. Adverse Effect

520 a) Where the lead Federal agency determines an *adverse effect*, as
521 defined by the criteria of adverse effect set forth in 36 CFR §800.5(a)(1),
522 cannot be avoided, the lead Federal agency shall make and document a
523 finding of *adverse effect*.

524 (1) Where FHWA is the lead Federal agency and when there
525 is an *adverse effect*, as defined by the Criteria of Adverse Effect

526 set forth in 36 CFR §800.5(a) that cannot be avoided, NDOT shall
527 recommend and document a finding of *adverse effect* for review
528 by FHWA.

529 b) Prior to any finding of adverse effect, the lead Federal agency
530 may consult either formally or informally with NESHPO regarding
531 application of the criteria of adverse effect.

532 4. Resolution of Adverse Effect

533 a) When a finding of *adverse effect* has been made, the lead Federal
534 agency shall, in consultation with NESHPO and other consulting parties,
535 evaluate alternatives or modifications to the project that would avoid,
536 minimize, or mitigate adverse effects on historic properties. The lead
537 Federal agency shall propose measures to resolve adverse effects, to be
538 documented in a Memorandum of Agreement (MOA) or Programmatic
539 Agreement (PA).

540 b) The lead Federal agency shall make information available to the
541 public, including the documentation specified in 36 CFR §800.11(e),
542 subject to the confidentiality provisions of 36 CFR §800.11(c) and
543 Stipulation XII.G.

544 c) The lead Federal agency shall provide an opportunity for
545 members of the public to express their views on resolving adverse effects
546 of the project through NDOT's most current, FHWA-approved Public
547 Involvement Procedures. FHWA, NDOT PQS and NESHPO shall be
548 invited to any public meeting. NDOT shall document the views of the
549 public and shall provide copy to NESHPO and to FHWA where FHWA is
550 the lead Federal agency.

551 d) For locally administered projects, the lead Federal agency shall
552 coordinate with the Project Proponent and the NDOT Public Involvement
553 Coordinator to develop appropriate public outreach. NDOT shall provide
554 an opportunity for members of the public to express their views on
555 resolving adverse effects of the project. FHWA, NDOT PQS, and
556 NESHPO shall be invited to any public meeting. NDOT shall document
557 the views of the public and shall provide a copy to NESHPO and to
558 FHWA where FHWA is the lead Federal agency.

559 e) The lead Federal agency shall notify ACHP of the finding,
560 pursuant to 36 CFR §800.6(a)(1). The lead Federal agency shall indicate
561 intent to prepare a MOA or a PA and shall invite ACHP to participate in
562 the undertaking and in the development of an agreement document to
563 resolve adverse effects.

564 (1) ACHP shall advise the lead Federal agency and the
565 consulting parties whether it will participate within 15 days of
566 receipt of notice.

567 (a) The lead Federal agency will provide supporting
568 documentation in accordance with 36 CFR §800.11(e).

569 (2) ACHP shall determine participation pursuant to 36 CFR
570 §800.6(a)(l).

571 f) After consideration of the views of all consulting parties and the
572 public, if the lead Federal agency, NESHPO and ACHP (if it has chosen
573 to participate pursuant to 36 CFR Part 800 Appendix A) agree on how the
574 adverse effects will be resolved, they shall execute an MOA, pursuant to
575 36 CFR §800.6(c), or a PA pursuant to 36 CFR §800.14(b).

576 g) A copy of the MOA or the PA shall be provided to each signatory,
577 invited signatory, and concurring parties. If not a signatory, a copy of the
578 MOA or the PA will be provided to the ACHP and to FHWA.

579 h) Once finalized, the lead Federal agency shall incorporate the
580 measures to resolve adverse effects into the undertaking, and NDOT
581 shall implement the undertaking.

582 i) If the lead Federal agency determines that an undertaking may
583 adversely affect a National Historic Landmark, the lead Federal agency
584 shall request NESHPO, ACHP, and the Secretary of the Interior, as well
585 as any other consulting parties, to participate in consultation to resolve
586 any adverse effects, pursuant to 36 CFR 800.10.

587 j) NDOT shall document these decisions using the NDOT Tier III
588 PQS Memo, Adverse Effect form (Attachment A).

589 D. Supplemental Evaluations

590 When a project scope is revised (e.g., design changes, utility relocation, addition of
591 new ROW) the NDOT PQS will determine whether the changes require modifying the
592 APE or revising the project effect finding. For Projects Not Assigned, NDOT shall
593 coordinate with FHWA, and any necessary consultations will be conducted through
594 FHWA if the original or modified Section 106 determination is no adverse effect or
595 adverse effect. In determining whether further review is required under Section 106,
596 the NDOT PQS will consider the level of effort and the age of the survey and will
597 follow the steps presented below.

598 1. If the scope changes do not require modifying the APE and the
599 finding of effect remains the same, then no further consultation will be

600 required. The NDOT PQS will document this finding to the project file, either
601 through an email memo or a Section 106 Supplemental PQS memo.

602 2. If the scope change has the potential to alter the finding of effect
603 for an undertaking, then NDOT will evaluate this change and will follow the
604 process in Stipulation VIII, as applicable. Consultation efforts will be
605 commensurate with the nature and scope of the changed potential effects.
606 The NDOT PQS will document this finding and consultation efforts to the
607 project file, through a Section 106 Supplemental PQS memo.

608 3. If the scope changes do require modifying the APE, the NDOT
609 PQS will determine whether a new survey is warranted, as follows:

610 a) When the expanded APE has not been previously surveyed, the
611 NDOT PQS will arrange for a survey to be conducted following
612 procedures outlined in the most current and FHWA-approved NDOT
613 Section 106 Guidelines.

614 b) When the expanded APE has been previously surveyed with no
615 historic properties identified, the NDOT PQS will document this finding to
616 the project file, either through an email memo or a Section 106
617 Supplemental Evaluation PQS memo. No further consultation will be
618 required.

619 c) If the expanded APE has not been previously surveyed but after
620 professional evaluation, the NDOT PQS determines that survey of the
621 area within the expanded APE is unwarranted (i.e., location is in existing
622 fill or in a cut section, the area is in a topographic location that is unlikely
623 to contain significant, intact archeological resources and/or there are no
624 architectural or structural resources) the NDOT PQS will document this
625 finding and the reason(s) survey is unwarranted to the project file, either
626 through an email memo or a Section 106 Supplemental Evaluation PQS
627 memo. No further consultation will be required.

628 4. If the scope changes do require expanding the APE and the
629 NDOT PQS determines a new or updated survey is required, depending on
630 the survey results, NDOT will proceed as follows:

631 a) When no additional historic properties are identified within the
632 modified APE and the revised scope will not alter the finding of effect for
633 the undertaking, then the NDOT PQS will document this finding using a
634 Section 106 Supplemental Evaluation PQS memo. No further consultation
635 will be required.

636 (1) If the additional survey was conducted on lands managed
637 by a federal agency consultation will follow Stipulation V and VI,
638 as applicable.

639 b) When additional historic properties are identified within the
640 expanded APE, but the finding of effect for the undertaking is unchanged,
641 the NDOT PQS will document this finding using a Section 106
642 Supplemental Evaluation PQS memo and will follow the review and
643 consultation process in Stipulations V through VIII, as applicable.
644 Consultation efforts will be commensurate with the nature and scope of
645 the change and will take into account information received from
646 consulting parties during previous consultation efforts.

647 c) When additional historic properties are identified within the
648 expanded APE, and as a result, the finding of effect for the undertaking
649 may be altered, the NDOT PQS will document this finding using a Section
650 106 Supplemental Evaluation PQS memo and will follow the review and
651 consultation process in Stipulations V through VIII, as applicable.
652 Consultation efforts will be commensurate with the nature and scope of
653 the change and will take into account information received from
654 consulting parties during previous consultation efforts.

655 E. Project Reporting

656 1. Upon request from any signatory to this agreement, NDOT shall
657 furnish project information in the format and on the schedule requested.

658 2. NDOT PQS shall compile and submit a list of all projects to FHWA
659 and NESHPO quarterly.

660 3. NDOT shall ensure that this list includes the county, project name
661 and number, type of Tier, effect determination, level of effort (i.e. desktop
662 review, field survey), consultation measures, and description of any NRHP
663 listed, eligible, or newly recommended eligible properties identified during
664 Section 106 evaluations.

665 4. NDOT shall also provide availability of all cultural resource
666 reports, site forms, and other documentation for undertakings completed
667 during the quarter to NESHPO and FHWA continuously through file
668 sharing.

669 **IX. NDOT EMERGENCY SITUATIONS**

670 Pursuant to 36 CFR § 800.12(d), immediate rescue and salvage operations
671 conducted to preserve life or property are exempt from the provisions of Section 106.
672 The following provisions provide procedures for emergency undertakings as
673 authorized by 36 CFR § 800.12(b)(1) and only apply to undertakings that will be
674 implemented within 30 days after the disaster or emergency has been formally
675 declared by the appropriate authority or later if ACHP grants an extension of the 30-
676 day deadline. 36 CFR § 800.12(d).The below stipulations relate only to the

677 procedures for review, analysis, and consultation required under Section 106 whereas
678 procedures for obtaining Emergency Relief funding from FHWA's Emergency Relief
679 Program are defined and controlled by other applicable laws, regulations, policies,
680 and procedures. Any actions taken with federal funds must comply with applicable
681 federal law for that funding or program. Unless otherwise permitted by law or
682 specifically stated in this section, nothing in this agreement will be interpreted to
683 permit stand-alone permanent repairs without first completing the Section 106
684 process.

685 1. Activities that remain entirely within the roadway/trail cross-
686 sections and fill locations that existed prior to the emergency event are
687 considered undertakings with minimal potential to cause effect and will
688 result in an effect determination of *no historic properties affected*. These
689 activities shall be processed in accordance with Stipulation VIII.A(2) of this
690 agreement, prior to the commencement of the undertaking.

691 2. For activities that occur outside the roadway/trail cross-sections
692 and fill locations that existed prior to the event, NDOT shall either:

693 a) Provide notice of the emergency action through electronic mail
694 (when appropriate) or documented phone call to NESHPO/THPO/Tribes
695 at least 10 calendar days prior to the start of repairs.

696 (1) The notice shall: 1) be clearly and prominently marked as
697 an emergency notification; 2) briefly disclose the nature of the
698 damage and the immediate repairs; 3) offer the opportunity to
699 provide immediate input; 4) provide notice that due to the nature
700 of the emergency, the work to stabilize/protect the site or restore
701 essential traffic will begin immediately.

702 (2) NESHPO shall reply within 5 calendar days if they object to
703 the commencement of repair. Repairs shall not begin until SHPO
704 objections are resolved.

705 b) Alternately, NDOT will complete the Section 106 process for these
706 undertakings, following Stipulations VIII through X of this agreement.

707 B. All other projects will comply with the procedures in Stipulations VIII through X of
708 this Agreement. In these situations, NDOT may request an expedited review by
709 NESHPO and consulting parties. Tribal consultation shall proceed pursuant to 36
710 CFR §800.12 or according to any alternate procedures agreed upon by the Tribe(s).
711

712 **X. POST-REVIEW DISCOVERIES**

713 NDOT shall ensure that the NDOT Standard Specification 107.10, Archeological and
714 Paleontological Discoveries (Attachment B) applies to all Federal-aid projects unless project
715 specific measures are developed and agreed upon through the consultation process.

716 A. Planning for Subsequent Discoveries

717 1. When NDOT's identification efforts in accordance with Stipulation
718 VIII.B and most current, approved NDOT Section 106 Guidelines indicate
719 that historic properties are likely to be discovered during implementation of
720 an undertaking, NDOT shall include in any environmental document a plan
721 for discovery of such properties. Implementation of the plan as originally
722 proposed or modified as necessary owing to the nature and extent of the
723 properties discovered, will be in accordance with 36 CFR §800.4-6.

724 B. Discoveries Made Prior to Project Construction

725 1. If previously unidentified archeological or historic properties or
726 unanticipated effects are discovered after the lead Federal agency has
727 completed its review under this Agreement and prior to commencement of
728 project construction, the lead Federal agency, in consultation with
729 NESHPO, shall carry out the applicable requirements of this Agreement.
730 Specifically, the lead Federal agency shall make project effect
731 determinations as stipulated under this Agreement.

732 C. Discoveries Made After Project Construction Begins

733 1. If previously unidentified historic properties, or unanticipated
734 effects, are discovered after project construction begins, that portion of the
735 project will stop immediately, in accordance with NDOT Standard
736 Specification 107.10 (Attachment B).

737 2. The NDOT Construction Project Manager will immediately contact
738 the NDOT Technical Resources Unit Program Manager. Where FHWA is
739 the lead Federal agency, the NDOT Technical Resources Unit Program
740 Manager will notify FHWA within 24 hours of the discovery.

741 3. No further work in the area of discovery will proceed until the lead
742 Federal agency determines that the requirements of 36 CFR §800.13 have
743 been satisfied, including consultation with Tribes as necessary (subject to
744 Stipulation V) that may attach traditional religious and cultural significance
745 to the discovered property.

746 4. The lead Federal agency will notify SHPO, the tribe(s), and other
747 consulting parties as appropriate within forty-eight (48) hours. Where
748 FHWA is the lead Federal agency, NDOT will document the unanticipated
749 discovery and will provide said documentation along with recommendations
750 for NRHP eligibility and a project effects determination to FHWA. The lead

751 Federal agency will consult with NESHPO, as appropriate. The
752 unanticipated discovery shall be processed pursuant to this Agreement.

753 5. If the project's effect is determined to be adverse, NDOT shall
754 design a plan for avoiding, minimizing, or mitigating adverse effects on the
755 eligible property. The lead Federal agency shall consult with NESHPO,
756 ACHP and Tribes as a Tier III project under this Agreement.

757 6. If NESHPO or the tribe(s) does/do not file an objection within 48
758 hours to NDOT's plan for addressing the discovery, the lead Federal
759 agency may carry out the requirements of 36 CFR §800.13 and the ACHP
760 does not need to be notified.

761 7. NDOT shall provide FHWA, NESHPO and the tribe(s) a report of
762 the actions when they are completed.

763 **XI. TREATMENT OF HUMAN REMAINS**

764 If human remains are discovered during construction, depending on land ownership,
765 Native American remains and any funerary objects, sacred objects, or objects of
766 cultural patrimony (cultural objects) found on federal or tribal land within the APE shall
767 be treated pursuant to the Native American Graves Protection and Repatriation Act
768 (NAGPRA) of 1990 (25 USC 3001 et seq. and its implementing regulations (43 CFR
769 Part 10, as amended)) or the Nebraska Unmarked Human Burial Sites and Skeletal
770 Remains Protection Act of 1989 if remains are found on non-federal or non-tribal land.

771 A. If human remains are encountered during construction, all construction would
772 cease at the location in accordance with NDOT Standard Specification 107.10
773 (Attachment B).

774 B. The location would be secured and protected from damage and disturbance by
775 the NDOT Construction Project Manager. No human remains or materials associated
776 with the remains will be collected or removed until appropriate consultation has taken
777 place and a plan of action has been developed.

778 C. The NDOT Construction Project Manager shall immediately notify the local law
779 enforcement (county sheriff/county coroner) and the NDOT Technical Resources Unit
780 Program Manager.

781 D. If not assigned, the NDOT Technical Resources Unit Program Manager shall
782 notify FHWA within 24 hours of the discovery.

783 E. No further work in the area of discovery will proceed until the lead Federal
784 agency determines that the requirements of 36 CFR 800.13 have been satisfied.

785 F. If law enforcement determines that a crime is not involved, History Nebraska staff
786 will be contacted by the appropriate county attorney's office. History Nebraska staff

787 shall promptly assist in examining the discovered material to attempt to determine its
788 origin and identity pursuant to Nebraska Revised Statute 12-1203. History Nebraska
789 staff is required to conduct an onsite investigation within 48 hours to make a
790 preliminary determination of the origin and identity of the remains and promptly relate
791 the findings in writing to the county attorney and interested parties, who may include:
792 a descendant Indian Tribe, a descendant family, or the Nebraska Commission on
793 Indian Affairs (NCIA). This initial contact often outlines the need for further
794 examination of the remains by a qualified physical anthropologist to assist with
795 cultural affiliation determination.

796 G. If the human remains are determined to be non-Native American, consultation
797 with NESHPO, the lead Federal agency, the State Archaeologist, and other
798 appropriate parties will be required to determine a plan of action.

799 **XII. ADMINISTRATIVE STIPULATIONS**

800 **A. Documentation**

801 1. All documentation that NDOT develops to support findings and
802 determinations made under this Agreement shall be consistent with 36 CFR
803 §800.11 and shall be in accordance with most current, approved NDOT
804 Section 106 Guidelines, and its subsequent revisions or editions, as
805 appendices to this Agreement, and with applicable guidelines and
806 procedures of land-managing agencies that have jurisdiction over the land
807 involved in the undertaking.

808 2. Documentation prepared by local agencies or their consultants in
809 support of such findings shall be submitted to NDOT for review and
810 approval by the NDOT PQS. NDOT shall transmit all documentation cited
811 herein to NESHPO as stipulated by this Agreement. NDOT shall not
812 transmit to FHWA or NESHPO any documentation that has not been
813 reviewed and approved by the NDOT PQS.

814 3. All documentation prepared in support of this Agreement shall be
815 kept on file at NDOT and made available to consulting parties and the
816 public as stipulated by the Agreement consistent with applicable
817 confidentiality requirements as described in 36 CFR §800.11(c) and
818 pursuant to Stipulation XII.G.

819 4. For all projects, upon NDOT PQS approval, reports and forms will
820 be submitted by NDOT continuously through file sharing in accordance with
821 Stipulation VIII.E including copies of fieldwork reports, site forms,
822 Reconnaissance Level Survey forms and any other relevant documents.
823

824

825 B. Monitoring/Reporting

826 1. FHWA, NESHPO, and ACHP may review activities carried out
827 pursuant to this Agreement. NDOT shall facilitate this review by compiling
828 specific categories of information to document the effectiveness of the
829 Agreement and by making this information available on an annual basis to
830 FHWA, NESHPO and ACHP in the form of a written report. The annual
831 report shall include, but is not limited to, a narrative summarizing actions
832 taken under the Agreement within the review period, including all findings
833 and determinations, accomplishments, public objections, trainings, and
834 inadvertent effects or foreclosures.

835 2. NDOT shall prepare the annual written report identified in
836 Stipulation XII.B. NDOT shall submit the annual reports to FHWA, NESHPO
837 and ACHP no later than three (3) months following the end of the Federal
838 fiscal year (September 30) after the execution of the agreement.

839 3. NDOT, FHWA, and NESHPO will meet annually to evaluate the
840 agencies' joint functioning under the Agreement, and to suggest revisions
841 to its stipulations. NDOT shall coordinate and facilitate this meeting and it
842 will be held within 60 days of issuance of the annual report. Prior to any
843 such meetings, ACHP will be notified at least 30 days in advance, and may
844 participate at its discretion.

845 4. Program Reviews will occur annually and will be initiated within
846 three (3) months of the annual report being issued, unless the FHWA,
847 NDOT, NESHPO, and ACHP all agree in writing that a review that year
848 would be unnecessary. If all parties agree that a review that year is not
849 necessary, a review will be held the following year (not to surpass two (2)
850 full years without a review). The focus of the review will be decided as part
851 of the annual meeting, and can include project reviews, file reviews, and/or
852 interviews, at the discretion of the signatory agencies. At a minimum, the
853 reviews will be used to determine if the Agreement requirements are being
854 met, decide if amendments to the Agreement are warranted, review the
855 reporting format and categories for adequacy, and identify any other actions
856 that may be needed in order to take into account the effects of the FAHP on
857 historic properties in Nebraska. The results of each review shall be
858 summarized within a stand-alone Program Review report. This report shall
859 be provided to all signatories.

860 5. NDOT shall provide notice to the public that the annual report
861 herein prescribed is available for public inspection and ensure the public
862 are made aware of its availability and that the public may comment to
863 signatory parties on the report. Within 30 calendar days of issuance of the
864 annual report, NDOT shall coordinate with FHWA, and in consultation with

865 NESHPO, will identify the specific recipients of the public notice and
866 outreach methodology.

867 C. Resolving Objections to Implementation of this Agreement. Within this section,
868 FHWA is the lead Federal agency for Program level objections, government-to-
869 government consultation concerns, and objections for unassigned project-level
870 actions. NDOT is the lead Federal agency for objections regarding assigned project-
871 level actions.

872 1. If any signatory party determines that the agencies are not
873 meeting its responsibilities under this Agreement, measures will be taken to
874 resolve the concerns with the lead Federal agency. FHWA retains the
875 authority to determine federal-aid eligibility for any project(s) which may
876 have been processed in noncompliance of this Agreement and retains the
877 authority to rescind this Agreement.

878 2. Should any signatory party object in writing to the FHWA
879 regarding the manner in which the terms of this Agreement are carried out,
880 FHWA will immediately notify the other signatory parties of the objection
881 and proceed to consult with the objecting party to resolve the objection.
882 FHWA will honor the request of any signatory party to participate in the
883 consultation and will take any comments provided by such parties into
884 account. The lead Federal agency shall establish a reasonable time frame
885 for such consultations.

886 3. If the objection is resolved through consultation, the lead Federal
887 agency may authorize the disputed action to proceed in accordance with
888 the terms of such resolution.

889 4. If after initiating such consultation, the lead Federal agency
890 determines that the objection cannot be resolved through consultation, the
891 lead Federal agency shall forward all documentation relevant to the
892 objection to ACHP and other signatory parties, including the lead Federal
893 agency's proposed response to the objection. Within 30 days after receipt
894 of all pertinent documentation, ACHP shall exercise one of the following
895 options:

896 a) Advise the lead Federal agency that ACHP concurs in the lead
897 Federal agency's proposed response to the objection, whereupon the
898 lead Federal agency will respond to the objection accordingly; or

899 b) Provide the lead Federal agency with recommendations, which
900 the lead Federal agency shall take into account in reaching a final
901 decision regarding its response to the objection; or

902 c) Notify the lead Federal agency that the objection will be referred
903 for comment pursuant to 36 CFR §800.7(a) (4) and proceed to refer the

904 objection and comment. In this event, the lead Federal agency shall
905 ensure that the Agency Official is prepared to take the resulting
906 comments into account in accordance with 36 CFR §800.7(c)(4).

907 5. Should ACHP not exercise one of the foregoing options within 30
908 days after receipt of all pertinent documentation, the lead Federal agency
909 may proceed with the proposed response to the objection.

910 6. The lead Federal agency shall take into account any ACHP
911 recommendation or comment and any comments from the other signatory
912 parties to this Agreement in reaching a final decision regarding the
913 objection. The lead Federal agency responsibility to carry out all actions
914 under this Agreement that are not the subject of the objection shall remain
915 unchanged.

916 7. The lead Federal agency shall provide all other signatory parties
917 to this Agreement with a written copy of its final decision regarding any
918 objection addressed pursuant to this Stipulation.

919 8. The lead Federal agency may authorize any action subject to
920 objection under this Stipulation to proceed, provided the objection has been
921 resolved in accordance with the terms of this Stipulation.

922 9. At any time during implementation of the terms of this Agreement,
923 should any member of the public raise an objection in writing pertaining to
924 such implementation to any signatory party to this Agreement, that
925 signatory party shall immediately notify the lead Federal agency. The lead
926 Federal agency shall immediately notify the other signatory parties in
927 writing of the objection. Any signatory party may choose to comment on the
928 objection to the lead Federal agency. The lead Federal agency shall
929 establish a reasonable time frame for this comment period. The lead
930 Federal agency shall consider the objection, and in reaching its decision,
931 will take all comments from the other signatory parties into account. Within
932 15 days following closure of the comment period, the lead Federal agency
933 will render a decision regarding the objection and respond to the objecting
934 party. The lead Federal agency will promptly notify the other signatory
935 parties of its decision in writing, including a copy of the response to the
936 objecting party. The lead Federal agency's decision regarding resolution of
937 the objection will be final. Following the issuance of its final decision, the
938 lead Federal agency may authorize the action subject to dispute hereunder
939 to proceed in accordance with the terms of that decision.

940 D. Amendment

941 Any signatory party to this Agreement may at any time propose
942 amendments to the Agreement, whereupon all signatory parties shall

943 consult to consider such amendment. This Agreement may be amended
944 only upon written concurrence of all signatory parties. The amendment will
945 be effective on the date a copy is signed by all the signatories.

946 E. Appendices and Attachments

947 1. This PA includes several appendices. Appendices were
948 developed in coordination with the appropriate resource agencies.

949 2. Appendices to this Agreement may be individually amended
950 through written agreement of the signatory parties without requiring
951 amendment of the Agreement.

952 3. Attachments to this document may be altered or updated without
953 amendment.

954 F. Termination

955 1. Any signatory party may terminate this Agreement. If this
956 Agreement is not amended as provided for in Stipulation XIII.D, or if any
957 signatory party proposes termination of this Agreement for other reasons,
958 the party proposing termination shall notify the other signatory parties in
959 writing, explain the reasons for proposing termination, and consult with the
960 other parties for no more than 30 days to seek alternatives to termination.

961 2. Should such consultation fail, the signatory party proposing
962 termination may terminate this Agreement by promptly notifying the other
963 parties in writing.

964 3. Beginning with the date of termination, the FHWA and NDOT shall
965 ensure that until and unless a new Agreement is executed for the actions
966 covered by this Agreement, such undertakings shall be reviewed
967 individually in accordance with 36 CFR §800.

968 G. Confidentiality

969 All parties to this Agreement acknowledge that information about historic
970 properties, potential historic properties, or properties considered historic for
971 purposes of this Agreement are or may be subject to Nebraska Revised
972 Statute 84-712.05 and the provisions of Section 304 of NHPA. Nebraska
973 Revised Statute 84-712.05 stipulates that records or portions of records
974 may be withheld from the public if these records would reveal the location,
975 character, or ownership of any known archaeological, historical, or
976 paleontological site in Nebraska when necessary to protect the site from a
977 reasonably held fear of theft, vandalism, or trespass. Section 304 allows
978 the head of a Federal agency or other public official receiving grant
979 assistance, after consultation with the Secretary of the Interior to withhold

980 from disclosure to the public, information about the location, character, or
981 ownership of a historic resource if the Federal agency determines that
982 disclosure 1) may cause a significant invasion of privacy; 2) risks harm to
983 the historic resource; or 3) impedes the use of a traditional religious site by
984 practitioners. Having so acknowledged, all parties to this Agreement will
985 ensure that all actions and documentation prescribed by this Agreement
986 are, where necessary, consistent with the requirements of Section 304 of
987 the NHPA.

988 H. Duration of Agreement

989 1. This Agreement shall remain in effect for a period of five (5) years
990 after the date it takes effect (the date the last party signs) unless it is
991 terminated prior to that time. Six (6) months prior to the conclusion of the
992 five-year period, NDOT will notify all parties in writing. If there are no
993 objections from the Signatories, NDOT will amend the Agreement to extend
994 its duration pursuant to Stipulation XII.D. If any party objects to extending
995 the Agreement, or proposes amendments, NDOT will convene all
996 signatories to consider amendments or other actions to resolve the
997 objection pursuant to Stipulation XII.C (Resolving Objections).

998 2. Execution of this Agreement by FHWA, NDOT, NESHPO, and
999 ACHP and implementation of its terms evidence that FHWA and NDOT and
1000 have taken into account the effects of FAHP undertakings on historic
1001 properties, afforded ACHP an opportunity to comment, and has complied
1002 with Section 106 of the NHPA and 36 CFR Part 800 for the FAHP and its
1003 individual undertakings.

1004

1005

1006 **SIGNATORIES**

1007

1008 FEDERAL HIGHWAY ADMINISTRATION

1009

1010

1011 Joseph A. Werning, Division Administrator Date

1012 Federal Highway Administration, Nebraska Division

1013

1014

1015 NEBRASKA STATE HISTORIC PRESERVATION OFFICER

1016

1017

1018 Jill Dolberg, Interim Director Date

1019 History Nebraska

1020

1021

1022 ADVISORY COUNCIL ON HISTORIC PRESERVATION

1023

1024

1025 Jordan Tannenbaum, Vice Chairman Date

1026 Advisory Council on Historic Preservation

1027

1028 NEBRASKA DEPARTMENT OF TRANSPORTATION

1029

1030

1031 John Selmer, P.E., Director Date

1032 Nebraska Department of Transportation

1033

1034

1051

Appendix B

1052

List of Tribes

1053 FHWA and NDOT identified and invited the following Tribes to be consulting parties to the
1054 Agreement and any joint FHWA and NDOT undertakings.

1055

Durrell Cooper
Chairman
Apache Tribe of Oklahoma
PO Box 1330
Anadarko, OK 73005

Crystal Lightfoot
THPO
Apache Tribe of Oklahoma
PO Box 1330
Anadarko, OK 73005

Jordan Dresser
Chairman
Arapaho Tribe of the Wind River Reservation,
Wyoming
PO Box 396
Ft Washaki, WY 82514

Ben Ridgley
THPO
Arapaho Tribe of the Wind River Reservation,
Wyoming
PO Box 396
Ft Washaki, WY 82514

Reggie Wassana
Governor
Cheyenne and Arapaho Tribes
PO Box 167
Concho, OK 73022

Max Bear
THPO
Cheyenne and Arapaho Tribes
700 Black Kettle Blvd
Concho, OK 73022

William Nelson, Sr
Chairman
Comanche Nation of Oklahoma
PO Box 908
Lawton, OK 73502

Martina Minthorn
THPO
Comanche Nation of Oklahoma
#6 S.W. D Ave., Ste C
Lawton, OK 73502

Peter Lengkeek
Chairman
Crow Creek Sioux Tribe of the Crow Creek
Reservation, South Dakota
PO Box 50
Fort Thompson SD 57339

Merle Marks
THPO
Crow Creek Sioux Tribe of the Crow Creek
Reservation, South Dakota
PO Box 286
Fort Thompson SD 57339

Timothy Rhodd
Chairman
Iowa Tribe of Kansas and Nebraska
3345 B. Thrasher Rd.
White Cloud, KS 66094

Mr. Lance Foster
THPO
Iowa Tribe of Kansas and Nebraska
3345 B, Thrasher Rd
White Cloud KS 66094

Edgar B Kent Jr.
Chairman
Iowa Tribe of Oklahoma
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Lincoln, NE 68509

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Appendix C

1059 Activities that are Undertakings with *no potential to cause effects to historic properties* pursuant to 36
1060 CFR §800.3(a)(1). Projects of this type shall be reviewed for applicability and documented as a Tier I
1061 project, undertakings with *No Potential to Cause Effects to Historic Properties*.

	1. Acquisition of scenic easements.
	2. Grants for training, education and research programs which do not involve construction or ground-disturbing activities.
	3. Purchase of equipment or materials which do not involve construction.
	4. Ridesharing activities.
	5. Visual bridge inspections. Includes collection of physical samples (e.g., paint chips, timber pile cores) from the bridge structure. Note per the Bridge Inspection Minor CE: Soil adjacent to substructure components can be removed and replaced using hand tools. Excavations, limited to two feet in depth and within one foot of substructure components, are permitted to verify the condition of the substructure and/or aid in sample collection.
	6. Approvals for disposal of excess ROW or for joint or limited use of the ROW previously purchased with federal funds, provided no properties over 50 years old are located on the property.
	7. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels, as long as those parcels do not contain properties over 50 years old.

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Appendix D

Actions or Activities (Undertakings) with Minimal Potential to Cause Effects which result in an effect determination of *No Historic Properties Affected*

Per Stipulation VII.B(3)(a) of the Agreement, certain NDOT transportation projects constitute an undertaking, as defined in 36 CFR 800.16(y) but pose little potential to affect historic properties included in or considered eligible for listing on the NRHP due to the nature of the activity and the specific scope of work. Projects of this type shall be reviewed for applicability and processed as a Tier II project; *no historic properties affected. This determination shall be documented on the "NDOT Tier II PQS Memo, Undertakings with Minimal Potential to Cause Effects form (Attachment A).*

Definitions and Requirements:

1. Historic Properties = NRHP Eligible or Listed Buildings, Districts, Objects, Sites, Structures
2. No activity can involve the acquisition of additional Right of Way (ROW) or easement (activities must be restricted to existing disturbed ROW and/or and permanent easements). Right of Entry is exempt as long as clearing, grubbing, or ground disturbance shall not occur.
3. If an activity is not on the list below, it does not qualify as exempt and must go through Section 106 review as described in Stipulation VIII of the Agreement.
4. A project that involves more than one of the activities found in Appendix D may still meet the scope and applicability of Appendix D unless other elements of the project require a higher level of effort, i.e. fieldwork. No activity can be a subset of a larger activity.
5. No new earthwork activity may occur on federal property or federally granted easement.
6. For the purposes of this Appendix, previously disturbed soils are present within the roadway prism and are generally found between the toe of roadway fill slopes, to the depth of previous disturbance or depth of roadway fill.

A. Grading and Earthwork	
1	Grading within the hinge point, not to exceed the depth of the existing fill. Ground disturbance is limited to existing fill material or previously disturbed soils.
2	Addition of fill material to expand existing fill slopes.
3	Sediment Removal and Scour Repair to as-built condition. Includes culvert cleaning, shoulder reconstruction, slide/slump debris removal, repair of erosional feature by filling voids, ditch cleanout to constructed elevation. Ground disturbance is limited to existing fill material or previously disturbed soils.
B. Lighting and Traffic Control	
1	Traffic signals, intersection lighting, pedestrian signals, Dynamic Message Signs (DMS) underpass lighting or railroad lighting within existing Right of Way (ROW). Conditions: in kind repair/replacement and/or ground disturbance is limited to existing fill material.
2	Repair, replace, or upgrade existing Signal Control Boxes or Junction Boxes. Applies to existing boxes only.
3	Installation and operation of Intelligent Transportation System elements such as cameras, weather stations, and traffic counters. Installation in existing fill material, previously disturbed soils or within existing conduit, and/or installation is on existing poles.
4	Pavement Marking. Does not occur on historic or NRHP eligible brick streets or highways.
5	Maintenance and replacement of highway signs on existing poles, new sign installation within existing fill material.
6	Improving existing bicycle and pedestrian lanes and paths on their existing alignments. Ground disturbance is limited to existing fill material.

7	Repair, replace, reset or upgrade of electronic variable message signs, traffic sensors, closed circuit television cameras, and highway advisory radio systems including remote controlled flashing signs support structures. Ground disturbance is limited to existing fill material.
	C. Asphalt and Concrete
1	Crack sealing, patching, pothole repair, overlaying, milling, resurfacing (including full depth replacement), in-place pavement recycle, diamond grinding, armor coat/chip seal (AST/BST), fog/slurry seal, microsurfacing, grooving, spall repair, joint sealing, installation of rumble strips, and pavement marking. This activity does not include actions on brick streets, brick highways, historic roads, or historic bridges. The maintenance or rehabilitation is limited to the existing surfaced areas with only minimal/negligible surface expansion, is the same as the existing vertical and horizontal alignments of the roadway, no ditching or drainage work is included. All staging areas can be limited to existing paved or previously disturbed surfaces only (e.g., surfaces with little to no vegetation due to previous disturbance). Ground disturbance is limited to existing fill material.
2	Shoulder and median repair and installation, all within the toe-of-slope: Includes shoulder building through the addition of pavement to existing shoulder, construction of turn lanes, bike lanes and medians, beveled edges and trench widening. Shoulder: Equipment must be confined to existing roadway and shoulder. Median: all activities are in existing median.
3	In kind Repair / Replacement of existing features such as curbs and gutters, sidewalks, ADA ramps and other features, within the existing Right of Way. Does not apply adjacent to a historic building or within a historic district.
4	ADA Ramp: Installation of ADA ramps within the existing Right of Way. Does not apply adjacent to a historic building or within a historic district.
	D. Bridges and Culverts (Not applicable to historic bridges, culverts or associated historic features)
1	Painting, cleaning, repair and replacement of bridge railings and associated guardrails.
2	Bridge deck repair or replacement. Includes: expansion joints, patching spalled areas, overlaying and repairing, timber plank replacement, milling and resurfacing, silica fume overlays.
3	Bridge Drainage System, in-kind repair or replacement. Includes plugging pipe, and repair/replacement of riprap, gabion structures, and concrete slabs within their existing footprint. Soil disturbance, including access to the structures, must be limited to fill areas or previously disturbed soils
4	Bridge Substructure, Pile Encasement. Reinforcement of piles with concrete sheaths including: addition of concrete encasement approximately 6 inches in diameter, placement of temporary fill for dewatering activities, Placement of coffer dams for dewatering activities. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
5	Bridge Substructure, Abutment Slope Repair. In kind repair and/or replacement of existing concrete abutments. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
6	Replacement or construction of portions of a bridge below the superstructure including all or part of the following foundation elements: abutments, undermined abutment caps, columns, wall piers, footings and pile caps. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
7	Bridge Substructure: Repair. Includes the following activities: removal of concrete and rebar and the subsequent setting of pre-stressed concrete or steel beams placing of framework, rebar, and concrete. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.

8	Heat straightening and/or in-kind replacement of damaged steel beams. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
9	Curb and Flume, Repair / Replacement / Installation. Soil disturbance, including access to the structures, must be limited to fill areas or existing disturbed areas.
E. Incidental Construction	
1	Bike / Scooter Stations, installation upon or within existing right-of-way when outside historic districts and not directly adjacent to historic properties.
2	Electric Charging Stations, installation upon or within existing right-of-way when outside historic districts and not directly adjacent to historic properties.
3	Underground Utility Conduit, installation. Within existing fill material or previously disturbed soils.
4	Utility Poles and Underground Utilities, replacement, relocation, installation. Within existing fill material or previously disturbed soils.
5	Repair, replacement, or installation of highway safety hardware including guardrail, end terminals, attenuators, median barriers, and cable barriers. Work is within existing roadway toe-of-slope or in the median of a divided highway. Does not apply to historic bridges.
6	Repair / Maintenance of ROW fencing, limited to repair/replacing fence wire and fence posts only at existing fence post locations. Does not apply if grading is required.
F. Railroad	
1	Repair / Replacement of at-grade railroad crossing gates, lights, signs and the rail crossing driving surface. Work is limited to in kind replacement/repair and ground disturbance is limited to existing fill material or previously disturbed railroad Right of Way.
2	Repair, replace, or upgrade the crossing surface between the railroad tracks and ten feet outside the railroad tracks.
3	Repair, replace, reset, or upgrade of highway safety improvements including automatic flashing lights and gates, warning bells, and constant warning time track circuitry (train detection to activate lights and gates).
G. Miscellaneous	
1	Improvements to existing maintenance facilities, rest areas (excluding I-80 rest areas), and truck weigh stations less than 50 years old. Limited to improvements to the buildings and parking areas themselves and does not include disturbance to the total grounds of the facility.
2	Mowing or brush removal/trimming. Hand trimming, stumps are left in place. Does not apply when work occurs adjacent to or within the boundary of a historic property.
3	Activities that remain entirely within the roadway/trail cross-sections and fill locations that existed prior to an emergency event.

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Attachment A

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NDOT Section 106 PQS Forms

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**Section 106 Tier I PQS Memo
No Potential to Cause Effects to Historic Properties**

Control No:		Project No:		Project Name:	
Date of Project Description:		Project Location:			

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NDOT PQS Project Effects Determination:			
NDOT PQS Signature:		Date:	

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1103 Activities that are Undertakings with *no potential to cause effects to historic properties* pursuant to 36
1104 CFR §800.3(a)(1).

	1. Acquisition of scenic easements.
	2. Grants for training, education and research programs which do not involve construction or ground-disturbing activities.
	3. Purchase of equipment or materials which do not involve construction.
	4. Ridesharing activities.
	5. Visual bridge inspections. Includes collection of physical samples (e.g., paint chips, timber pile cores) from the bridge structure. Note per the Bridge Inspection Minor CE: Soil adjacent to substructure components can be removed and replaced using hand tools. Excavations, limited to two feet in depth and within one foot of substructure components, are permitted to verify the condition of the substructure and/or aid in sample collection.
	6. Approvals for disposal of excess ROW or for joint or limited use of the ROW previously purchased with federal funds, provided no properties over 50 years old are located on the property.
	7. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels, as long as those parcels do not contain properties over 50 years old.

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1108 The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are
1109 being, or have been, carried out by NDOT pursuant to 23 USC 326 and the First Renewed Memorandum of Understanding dated
1110 September 17, 2021, and executed by FHWA and NDOT.

1111

1112 This undertaking has been reviewed under the programmatic agreement entitled Programmatic Agreement Among the Federal
1113 Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the
1114 Nebraska Department of Transportation to Satisfy the Requirements of Section 106 for the Federal Aid Highway Program in the
1115 State of Nebraska (January 2023) and meets the requirements to be considered a Tier I Project.

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**Section 106 Tier II PQS Memo
Undertakings with Minimal Potential to Cause Effects
No Historic Properties Affected**

Control No:		Project No:		Project Name:	
Date of Project Description:		Project Location:			

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NDOT PQS Project Effects Determination:	<i>no historic properties affected</i>		
NDOT PQS Signature:		Date:	

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Per Stipulation VII.B(3)(a) of the Programmatic Agreement Among The Federal Highway Administration, The Nebraska State Historic Preservation Officer, *The Advisory Council on Historic Preservation*, and *The Nebraska Department of Transportation To Satisfy The Requirements of Section 106 For The Federal-Aid Highway Program In the State of Nebraska*, certain NDOT transportation projects constitute an undertaking, as defined in 36 CFR 800.16(y) but pose little potential to affect historic properties included in or considered eligible for the NRHP due to the nature of the activity and the specific scope of work. Projects of this type shall be reviewed for applicability, and documented as a Tier II project, *no historic properties affected*, using this form.

1136 Appendix D Section and Item Number(s) associated with this Project:

1137 Section _____ Item No. _____

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1140 **Tribal Consultation:**

THPO/ Tribes	Correspondence Sent (date)	THPO/Tribal Response (date)	Comments

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The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the First Renewed Memorandum of Understanding dated September 17, 2021, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement entitled Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Nebraska Department of Transportation to Satisfy the Requirements of Section 106 for the Federal Aid Highway Program in the State of Nebraska (January 2023), and meets the requirements to be considered a Tier II Project, Minimal Potential to Cause Effects.



**Section 106 Tier II PQS Memo
No Historic Properties Affected**

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Control No:		Project No:		Project Name:	
Date of Project Description:				Project Location:	

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NDOT PQS Project Effects Determination:					
NDOT PQS Signature:				Date:	

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Tribal Consultation:

THPO/ Tribes	Correspondence Sent (date)	THPO/Tribal Response (date)	Comments

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CLG Consultation:

CLG	Correspondence Sent (date)	CLG Response (date)	Comments

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Other Consulting Parties	Correspondence Sent (date)	Response (date)	Comments

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Area of Potential Effects (APE)

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APE considered is consistent with 36 CFR 800.16(d) – (Y/N):

Summary of Archeological Investigations

Summary of Architectural / Structural Investigations

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Historic Properties Identified Within APE (leave blank if none):

Property	ROW Needed? (Specify Type & Amount)

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Sensitive Areas (leave blank if none):

Property	Address	STA	MM - MM

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These Sensitive Area(s) shall be indicated on project plans. (Design)
No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur within the boundary of the Sensitive Area(s). (Contractor)

Provide narrative to support <i>no historic property affected</i> finding of effect

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The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the First Renewed Memorandum of Understanding dated September 17, 2021, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement entitled Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Nebraska Department of Transportation to Satisfy the Requirements of Section 106 for the Federal Aid Highway Program in the State of Nebraska (January 2023) and meets the requirements to be considered a Tier II Project.



DEPARTMENT OF TRANSPORTATION Section 106 Tier III PQS Memo

No Adverse Effect (or) Adverse Effect

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Control No:		Project No:		Project Name:	
Date of Project Description:				Project Location:	

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NDOT PQS Project Effects Determination:			
SHPO Concurrence:			Date:
NDOT PQS Signature:			Date:

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Tribal Consultation:

THPO/ Tribes	Correspondence Sent (date)	THPO/Tribal Response (date)	Comments

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CLG Consultation:

CLG	Correspondence Sent (date)	CLG Response (date)	Comments

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Other Consulting Parties	Correspondence Sent (date)	Response (date)	Comments

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Area of Potential Effects (APE)
APE considered is consistent with 36 CFR 800.16(d) – (Y/N):

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Summary of Archeological Investigations

Summary of Architectural / Structural Investigations

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Historic Properties Identified Within APE:

Archeological Site	ROW Needed? (Specify Type & Amount)	Architectural Property	ROW Needed? (Specify Type & Amount)

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Sensitive Areas:

	MM - MM		MM – MM

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This/these Sensitive Area(s) shall be indicated on project plans. (Design)
No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur within the boundary of the Sensitive Area(s). (Contractor)

Provide narrative supporting no adverse effect finding, or detail efforts to avoid an adverse effect finding:

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Summarize mitigation:

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Section 4(f): significant archeological site(s) within APE warranting preservation in place:

Archeological Site	Comment

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The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the First Renewed Memorandum of Understanding dated September 17, 2021, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement entitled Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Nebraska Department of Transportation to Satisfy the Requirements of Section 106 for the Federal Aid Highway Program in the State of Nebraska (January 2023), as amended, and meets the requirements to be considered a Tier III Project.

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Attachment B

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NDOT Standard Specification 107.10 – Archaeological and Paleontological Discoveries (2017)

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Should the contractor encounter any fossils, meteorites, Native American relics, or other articles of

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historical or geological interest, such articles shall become the property of the State. The Engineer shall

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be promptly notified when any such articles are uncovered, and the Contractor shall suspend operations

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in the area involved until such time that arrangements are made for their removal and preservation.

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