PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, AND THE ALASKA STATE HISTORIC PRESERVATION OFFICER REGARDING ALASKA'S HIGHWAY SYSTEM ROADS AFFECTED BY THE FEDERAL-AID HIGHWAY PROGRAM IN ALASKA

WHEREAS, the Federal Highway Administration (FHWA), under authority of 23 U.S.C. 101 et seq., implements the Federal-Aid Highway Program (Program) in the State of Alaska by funding and approving State and locally sponsored transportation projects that are administered by the Alaska Department of Transportation and Public Facilities (DOT&PF); and

WHEREAS, the FHWA and DOT&PF have determined that this federally-assisted program may have an effect on roads included in or eligible for inclusion in the National Register of Historic Places (NRHP) (hereafter, historic roads) and have consulted with the Advisory Council on Historic Preservation (ACHP) and the Alaska State Historic Preservation Officer (SHPO) pursuant to Section 800.14 of the regulations (36 CFR 800), implementing Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, in accordance with Section 6004(a) of the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) (P.L. 109-059), codified as Section 326 as amended Chapter 3 of Title 23 U.S.C., the Secretary of the United States Department of Transportation (U.S. DOT), acting by and through FHWA has assigned to DOT&PF the responsibility for compliance with Section 106 of NHPA for projects covered by the 6004(a) Memorandum of Understanding (MOU) and DOT&PF may contemplate additional agreements that assign FHWA responsibility in the future; and

WHEREAS, the objective of this Agreement is to allow DOT&PF to efficiently proceed with needed transportation projects while, in cooperation with FHWA and SHPO, it develops an efficient, systematic approach to evaluating the NRHP eligibility of roads receiving Program funding in Alaska; and

WHEREAS, the need for the efficiencies provided by this Agreement is further heightened by funding of these projects under the American Recovery and Reinvestment Act of 2009; and

WHEREAS, this Agreement provides an alternative process and establishes thresholds for Program undertakings with minimal or low potential to affect the characteristics that may make a road eligible for listing in the National Register of Historic Places; and

WHEREAS, the Agreement can apply to all roads subject to Program Funding; and

WHEREAS, DOT&PF participated in the consultation and has been invited to be a Signatory to this Agreement; and

NOW THEREFORE, FHWA, ACHP, DOT&PF, and SHPO agree that the Program shall be administered in accordance with the following stipulations to satisfy FHWA's and DOT&PF's Section 106 responsibilities with regard to potential impacts to Alaska roads that may be eligible for inclusion on the NRHP.

STIPULATIONS

FHWA and DOT&PF shall ensure that the following measures are carried out:

1. COORDINATION AND CONSULTATION

A. FHWA, DOT&PF, and SHPO will strive to work cooperatively in all matters concerning the identification, evaluation, and treatment of historic properties along Alaska roads.

B. DOT&PF will encourage, invite, and support SHPO participation in on-site field visits and meetings when there are questions on applicability of Program undertakings and their implementation under the terms of this Agreement.

C. SHPO will routinely provide timely reviews and constructive comments to all written requests for consultation from DOT&PF and FHWA and will regularly communicate, advise, and meet with DOT&PF to share information and seek to resolve issues pertaining to Alaska roads, corridors and road related features.

D. FHWA and DOT&PF will consult with the Signatories, the National Park Service (NPS), and other consulting parties as identified by FHWA, DOT&PF, and SHPO during the development of the Linear Feature Guidance and Historic Context of this Agreement as described in Stipulations 5.B and 5.C.

2. APPLICABILITY OF SECTION 106 TO ALASKA ROADS AND HIGHWAYS

A. This Agreement only pertains to effects on roads. The FHWA and DOT&PF shall follow all other aspects of 36 CFR 800 for undertakings that could result in effects to historic properties other than roads. The Agreement does not apply to effects on:
   1. Road related features in the APE, including, but not limited to, bridges, waysides, tunnels, and campgrounds.
   2. Non-road potential historic properties, including, but not limited to, archaeological sites, buildings, structures, objects, and districts.
   3. Roads that are listed or previously determined eligible for listing in the NRHP.
   4. Portions of roads located in historic districts or National Historic Landmarks.

   The Agreement also does not apply to undertakings that occur on or affect Tribal lands as they are defined in 36 CFR 800.16(x). Tribal lands are all lands within the exterior boundaries of any Indian reservation, and all dependent Indian communities. (The only Tribal land in Alaska under this definition is the Metlakatla Indian Community Federal Reservation on Annette Island.)

3. EXEMPTION FROM CONSIDERING EFFECTS TO ROADS

A. Professional Qualifications
   1. All actions that ensure the implementation of the terms of this Agreement shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards (published in 48 FR 44738-44739).
   2. DOT&PF shall employ staff meeting the Secretary of the Interior's Professional Qualifications Standards qualified in the fields of history or architectural history. The Professional Qualified Individual (PQI) will ensure that all processing and documentation meet the requirements of this Agreement.

B. Exemption from Considering Effects to Roads
   1. FHWA and DOT&PF will not need to comply with Section 106 with regard to the effects of an undertaking on roads within the scope of this Agreement when the DOT&PF PQI determines that the undertaking falls within the thresholds established under Appendix A of this Agreement. FHWA and DOT&PF will still need to comply with Section 106 for the undertaking, as applicable, with regard to effects on other properties.
   2. The PQI may consult with the SHPO regarding such a determination at any time, either formally or informally.
   3. The PQI will document such a determination. The documentation will include the name of the PQI making the determination and enough information to produce the annual report under Stipulation 4 of this Agreement.

4. ANNUAL REPORTING REQUIREMENTS

By October 31st for each year this Agreement is in effect, DOT&PF shall submit a report summarizing the following information to SHPO and FHWA for each project determined by the PQI to be subject to the exemption under Stipulation 3.B.1 of this Agreement: federal number, project name, indication of whether DOT&PF has been assigned federal agency responsibility under SAFETEA-LU 6004(a), type of undertaking, and basis for determination under Stipulation 3.B.1 of this Agreement.

5. LINEAR FEATURE GUIDANCE AND CONTEXT DEVELOPMENT

A. Roads Workshop
   1. FHWA and DOT&PF shall organize and host a workshop to develop shared goals and understandings for linear feature guidance and context on historic roads and highways. The workshop will be developed in cooperation with SHPO and will also include a planning session that will outline future planning meetings, workshop goals, and responsibilities. FHWA and DOT&PF will invite the NPS to participate in this workshop. The workshop is to be attended by representatives from FHWA Alaska Division, DOT&PF Statewide and Regions, and SHPO. Workshop participation by other interested parties in addition to NPS may be identified by FHWA, DOT&PF, and SHPO.

2. FHWA and DOT& PF shall host the workshop no later than four (4) months after signing this Agreement.

B. Linear Feature Guidance
   1. Based on the results of the workshop and existing NPS guidance, DOT&PF will develop Interim Guidance for the evaluation of roads for those undertakings that fall outside the exemption under Stipulation 3 of this Agreement. That Interim Guidance will be used until a more developed historic context is completed per Stipulation 5.C of this Agreement.
      a. DOT&PF will prepare a white paper on NRHP eligibility of roads and highways in Alaska subject to Program funding in consultation with NPS, SHPO, and FHWA that identifies general issues, resource treatment, boundaries, integrity, effects, and types.
         1. DOT&PF shall schedule a preliminary meeting with SHPO and FHWA within two (2) months of the execution of this Agreement to identify a timeline and objectives to complete the white paper six (6) months after signing this Agreement.
         2. DOT&PF shall submit the final white paper to NPS, SHPO, ACHP, and FHWA six (6) months after signing this Agreement.
      b. Based on the white paper, DOT&PF will develop draft guidance from the final white paper to evaluate roads in consultation with SHPO and FHWA. FHWA will provide other consulting parties as identified by FHWA, DOT&PF, and SHPO a thirty (30) calendar day opportunity to review and comment on the draft guidance. DOT&PF shall take into account comments received during the review period.
   2. The final guidance to evaluate NRHP eligibility of roads will be developed by DOT&PF in consultation with NPS, SHPO, ACHP, and FHWA within six (6) months of the completed final historic context (Stipulation 5.C.11).

C. Historic Roads Context
   1. DOT&PF will develop a Historic Roads Context in consultation with SHPO and FHWA. The context shall include methodology for identification and treatment of historic roads that identifies historic themes, property types, eligibility criteria, treatment approaches, and program recommendations.
   2. DOT&PF shall submit a context outline to SHPO within nine (9) months of signing this Agreement.
   3. SHPO shall submit context comments to DOT&PF thirty (30) days after receiving the outline.
   4. DOT&PF shall submit a draft Historic Roads Context to SHPO within two (2) years of signing this Agreement.
   5. SHPO shall submit draft comments to DOT&PF sixty (60) days after receiving the draft.
   6. DOT&PF shall take into account any SHPO comments received during the review period.
   7. DOT&PF shall submit the revised draft to SHPO within six (6) months of the receipt of SHPO's draft comments.

8. FHWA shall provide the NPS and other consulting parties as identified by FHWA, DOT&PF, and SHPO a thirty (30) calendar day opportunity to review and comment on the revised draft Historic Roads Context.
9. SHPO shall submit final draft comments to DOT&PF thirty (30) days after receiving the final draft.
10. DOT&PF shall take into account any comments received during the review period.
11. DOT&PF shall submit final Historic Roads Context to NPS, SHPO, and FHWA within six (6) months of the receipt of SHPO's final draft comments.

6. ALASKA HISTORIC TRANSPORTATION ROUTES BOOKLET

A. DOT&PF shall develop an Alaska Historic Transportation Routes Booklet for the general public that depicts architectural, natural, cultural, and transportation related features along Alaska's road system.

B. DOT&PF shall prepare a draft outline of the booklet and submit it to SHPO within three (3) months of the completion of the final historic context (Stipulation 5.C.11). FHWA, DOT&PF, and SHPO may invite other interested parties to participate in this review.

C. SHPO shall provide comments on the outline to DOT&PF thirty (30) days after receiving the outline.

D. DOT&PF shall submit a draft booklet to SHPO within six (6) months of the receipt of SHPO's comments on the outline.

E. SHPO shall provide comments on the booklet to DOT&PF thirty (30) days after receiving the draft. If SHPO determines a second review is necessary, SHPO must notify DOT&PF and specify an agreeable timeframe for the second review.

F. Within six (6) months after receiving SHPO's comments on the draft booklet, DOT&PF shall provide SHPO fifty (50) copies of the final product and produce a minimum of one thousand (1,000). Distribution of the booklets shall be determined in consultation among FHWA, DOT&PF, and SHPO.

7. AMENDMENTS

Any Signatory to this Agreement may at any time propose amendments, whereupon all Signatories shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.

8. DISPUTE RESOLUTION

A. Should any Signatory to this Agreement object in writing to FHWA regarding any action carried out or proposed with respect to the implementation of this Agreement, FHWA shall consult with the objecting party. If after initiating such consultation FHWA determines that the objection cannot be resolved through consultation, it shall forward all

documentation relevant to the objection to ACHP, including FHWA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:

1. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly;
2. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify FHWA that the objection will be referred to ACHP for formal comment and proceed to refer the objection and comment within forty-five (45) calendar days.

B. Should ACHP not exercise one of the above options within thirty (30) calendar days after receipt of the pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objections.

C. FHWA shall take into account any ACHP recommendations or comments provided in accordance with this stipulation with reference only to the subject of the objection; FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

D. At any time during implementation of any stipulation in this Agreement, should an objection to any such stipulation or its manner of implementation be raised by a member of the public, FHWA shall take the objection into account and consult as needed with the objecting party, ACHP, DOT&PF, and SHPO to address the objection.

9. DURATION

This Agreement shall continue in full force and effect until all measures provided for are completed or until five (5) years from its execution date. No extension or modification shall be effective unless all Signatories to the Agreement have agreed to it in writing.

10. TERMINATION

FHWA, DOT&PF, SHPO, or ACHP may propose to terminate this MOA by providing thirty (30) days notice to the other explaining the reasons for the proposed termination. FHWA, DOT&PF, SHPO, and ACHP will consult during this period to seek agreement on amendments or other actions that will avoid termination. At the end that thirty (30) day period, the party proposing termination may terminate the Agreement by written notification to the others. In the event of termination, FHWA and DOT&PF will comply with 36 CFR 800 with regard to road eligibility and individual undertakings covered by this Agreement and not completed at the time of termination.

Execution and Implementation of this Agreement is evidence that FHWA and DOT&PF have taken into account the effect of the Program in the State of Alaska on historic roads and have provided ACHP reasonable opportunity to comment.

Signatories

FEDERAL HIGHWAY ADMINISTRATION

By: _____ 1/29/10
David C. Miller, Division Administrator, Alaska Division Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ 2/16/10
John M. Fowler, Executive Director Date

STATE HISTORIC PRESERVATION OFFICER

By: Joan M. Antonsson 2.23.10
for Judith E. Bittner, Alaska SHPO Date

Invited Signatory

ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

By: _____ 1/26/10
Leo von Scheben, Commissioner Date

APPENDIX A
Undertaking Thresholds for the
Programmatic Agreement Regarding Alaska's Highway System Roads

The Federal Highway Administration (FHWA), the Alaska State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and the Alaska Department of Transportation and Public Facilities (DOT&PF) have executed a Programmatic Agreement (Agreement) to implement the federal-aid highway program on Alaska's roads which may be eligible for inclusion in the National Register of Historic Places. The Agreement is intended to protect historic roads and other historic properties, but at the same time provide an efficient and systematic approach to project development.

Stipulation 3.B. of the Agreement sets forth that FHWA and DOT&PF will not need to comply with Section 106 with regard to the effects of an undertaking on roads within the scope of the Agreement when the DOT&PF Professional Qualified Individual determines that the undertaking falls within the thresholds established under this Appendix. FHWA and DOT&PF will still need to comply with Section 106 for the undertaking, as applicable, with regard to effects on other properties.

The relevant types of undertakings fall under four broad categories: road widening, road realignment, surface material change, and new construction. The specific thresholds applicable to Stipulation 3.B. of the Agreement are the following:

1. **Minor Road Widening:** Road and/or clear zone widening by no more than a 25% increase of the average surface/cleared widths, involving one or more of the following activities:
   - Widening travel lanes and shoulders: This is to meet current safety standards for existing highway facilities. The design standard widths vary depending on traffic volume, road classification, and the terrain. A typical widening project will add material to the existing road prism to provide additional surface area.
   - Adding shoulders: This provides a reserved area along an existing roadway/highway for emergency maneuvers, and serves as a buffer between the main thoroughfare and the edge of the road.
   - Widening the road for a turning lane: This is to provide a separate auxiliary lane that allows a vehicle to leave the road more safely at a decreased speed. The minimum length of a turning lane is 100' and additional length is needed for the taper.
   - Widening the shoulder for a pedestrian/bicycle lane: (This undertaking also falls under "surface material change" as it often involves both the widening and paving of a gravel-surfaced shoulder.) The existing shoulder would be widened to accommodate one-way bicycle traffic. The current standards provides a 4' wide paved bicycle lane or when adjacent to guardrail or curb a lane that is 5' wide.
   - Widening the shoulder for a vehicle turnout/pullout or bus stop: This allows vehicles to pull out of the through travel lane to give passing opportunities to following vehicles and a widened road section onto which a bus can pull and be completely off the road travel surface.
   - Widening for drainage improvements: Lack of sufficient drainage features along a road can lead to severe damage of the road prism. This would place additional material on the embankment to provide for limited riprap erosion control protection, alter ditches through

minor widening and/or installation of fabric ditch lining, and conduct in-kind replacement or lengthening of cross culverts within the existing road prism.

- Widening the clear zone: This improves sight distances and provides additional room for motorists to avoid accidents. If tree lines are reconfigured, it can be done in irregular patterns to avoid uniform appearance.

2. **Minor Road Realignment:** Correction of substandard road geometrics to improve drivers' line-of-sight and eliminate "blind spots". The thresholds for this category are established according to horizontal and vertical alignments shifts as follows:
   - Horizontal alignment shifts by no more than 25% increase of surface width: This would provide for minor shifts in the horizontal alignment to soften tight curves and to improve the alignment of skewed or offset intersections.
   - Vertical alignment shifts up to 2' in elevation: This would provide minor improvements to the road profile and adjustments to its banking and curves.

3. **Surface Material Change:** Road surface materials in Alaska generally fall under three main types (gravel, asphalt, and chip-seal). Undertakings that change surface material of the travel lanes from gravel to asphalt or chip seal exceed this category's threshold and therefore are not applicable for the exemption under Stipulation 3.B of the Agreement. However, the following undertakings are applicable for that exemption:
   - Chip seal applications to asphalt: Chip seal is a seal coating surface treatment application (combining a layering of emulsion and small aggregate) applied to the top layer of the road wearing surface. This maintenance measure is used as a preservation technique on existing gravel and asphalt surfaces to prolong the life of the road. Applying chip seal to an asphalt concrete surface fills small depressions and cracks, but the surface characteristics will remain similar to the aged asphalt concrete.
   - Paving existing shoulder: In rural areas, improving and paving shoulders to an existing paved road can be the best way to accommodate bicyclists and benefit motor vehicle traffic. Paved shoulders can extend the service life of the road surface by reducing the deterioration of edge of the travel surface. Paved shoulders at least 4 feet wide to accommodate bicycle travel or 5 feet wide adjacent to guardrail or curb.
   - Paving widened or new shoulder: This is similar to the previous action; however, it would also include the addition of a new highway shoulder.
   - Paving access road/driveway approach aprons: This surfacing treatment would be consistent with the surfacing of the adjacent road.

4. **New Construction:** New construction for the following purpose(s):
   - American with Disabilities Act (ADA) compliance: This would provide improvements to existing pedestrian crossings.
   - Installation of drainage improvements (including ditching and culverts): Ditching and cross culverts are common components of roads. Sufficient drainage features are necessary to preserve the road prism. This would provide for cross culverts in new locations within the road prism and ditch construction, both with limited riprap erosion control protection. This would not provide headwalls at the inlet/outlet of culverts at locations where they previously did not exist.