

SAMPLE

PROGRAMMATIC AGREEMENT BETWEEN THE CORPS OF ENGINEERS, TRIBES AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING the program that is the subject of the PA

Note that only the agency and the Council are identified in the heading. Technically a PA is executed between the agency and the Council, with others, including SHPOs or the National Conference of SHPOs (NCSHPO), as concurring parties. At the discretion of the agency and Council, any such party may be "elevated" to the status of a full signatory, with the ability to terminate implementation of the PA, but this is a matter for the agency and Council to decide.

WHEREAS the Corps proposes to do with regard to the *program that is the subject of the PA* and

WHEREAS the Corps has determined that the *program that is the subject of the PA* "will" or "may" have effects on historic properties as defined at Section 301(5) of the National Historic Preservation Act as amended (16 U.S.C. 470w-5); and

In contrast with the formats for MOAs, the PA format assumes that specific historic properties have not been identified. This sort of generality is appropriate in a PA, but is usually not so in an MOA.

WHEREAS because *briefly identify reasons for electing to execute a PA instead of following the standard process*, the Corps has elected to comply with Section 106 if not already cited, "of the National Historic Preservation Act (16 U.S.C. 470f); hereinafter Section 106" through execution and implementation of a Programmatic Agreement (PA) pursuant to 36 CFR § 800.13; and

It is important to identify and briefly explain the reasons for executing a PA rather than following the standard Section 106 process. A cold reader -- a court, for example -- should be able to understand why this approach was pursued.

WHEREAS the "purpose" or "purposes" of this PA (11) "is" or "are" *briefly identify purposes of PA*; and

This "purpose" clause can be merged with the "rationale" clause that precedes it, but for clarity it is sometimes best to create separate clauses. For example, the rationale for a PA might be to simplify and streamline review of routine actions, but the purpose might be more specifically to restructure the way the SHPO participates in such review, and to specify how public participation is provided for.

WHEREAS The Corps has consulted with the Advisory Council on Historic Preservation (Council) in accordance with 36 CFR § 800.13 to develop this PA; and

WHEREAS pursuant to 36 CFR § 800.13 (b), the Corps, the Tribes and the Council have invited

SHPO representative involved to participate in the consultation and to sign this PA; and

WHEREAS pursuant to Section 101(d)(6)(B) of NHPA ,the Corps has invited Indian tribe(s) to participate in the consultation and to concur in this PA; and

WHEREAS the Corps, Tribes and the Council have provided for public involvement in the development of this PA in accordance with 36 CFR § 800.13(c) by *briefly identify how public participation has been provided for* and

The regulations actually give the Council the responsibility for ensuring public participation in development of PAs, but pragmatically the agency always shares this responsibility, and usually has public notification and participation responsibilities under other authorities as well.

NOW, THEREFORE, the Corps, Tribes and the Council agree that where applicable, "upon the Corps decision to proceed with the following procedures, the Corps shall ensure that the following stipulations are implemented in order to take into account the effects of the *program that is the subject of the PA* on historic properties.

Note that the "now, therefore" clause essentially says that the Council and agency (and others where they participate) agree that implementing the PA's stipulations will be how the agency will meet one of its two Section 106 responsibilities -- to take effects on historic properties into account. By signing the PA, the Council is rendering its comments, thus allowing the agency to comply with the other requirement of Section 106. The Corps shall insure that the following stipulations are implemented:

Execution of this PA by the Corps of Engineers and the Council, and implementation of its terms, evidence that the Corps has afforded the Council an opportunity to comment on *program that is the subject of the PA* and its effects on historic properties, and that the Corps has taken into account the effects of *program that is the subject of the PA* on historic properties.

CORPS OF ENGINEERS

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

TRIBE

By: _____ Date: _____

TRIBE

By: _____ Date: _____

TRIBE

By: _____ Date: _____

STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____