

Wilmington Riverfront Transportation Infrastructure Project

Draft Environmental Assessment

Appendix H: Project Programmatic Agreement

April 2024



PROJECT PROGRAMMATIC AGREEMENT

**AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE DELAWARE STATE HISTORIC PRESERVATION OFFICE,
THE CITY OF WILMINGTON,
AND THE RIVERFRONT DEVELOPMENT CORPORATION**

**REGARDING THE WILMINGTON RIVERFRONT TRANSPORTATION
INFRASTRUCTURE PROJECT**

FEDERAL AID NUMBER: PENDING

WHEREAS, the Federal Highway Administration (FHWA) with the City of Wilmington (City) and in cooperation with the Riverfront Development Corporation (RDC) proposes to construct the Wilmington Riverfront Transportation Infrastructure Project in Wilmington, Delaware, herein referred to as the “Project,” to provide transportation infrastructure to further the connectivity of the riverfront area and provide multi-modal resources east of the Christina River (**Attachment A**); and

WHEREAS, FHWA has determined that the Project is an undertaking, as defined in 36 C.F.R. §800.16(y), and thus is subject to review under Section 306108 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 C.F.R. Part 800 as amended; and

WHEREAS, FHWA, in consultation with the Delaware State Historic Preservation Officer (DE SHPO), has established the Project’s Area of Potential Effects (APE), as defined in 36 Code of Federal Regulations (CFR) 800.16(d), as those areas subject to direct effects within the Limit of Construction (LOC), Temporary Construction Easements (TCE), Permanent Easements (PE), Right of Way (ROW) (**Attachment B**), and adjacent or contiguous properties where visual effects may occur (**Attachment C**); and

WHEREAS, FHWA has afforded the public an opportunity to comment on the effects of the Project on historic properties through the National Environmental Policy Act (NEPA) of 1969, to fulfill its obligations defined under 36 CFR 800.2(d) to seek public comment and input on the undertaking; and

WHEREAS, FHWA has contacted the Delaware Nation and the Delaware Tribe of Indians, hereafter referred to as the Federally Recognized Indian Tribes (Tribes), to determine their interest in being a Consulting Party for this project. The Delaware Tribe of Indians and the Delaware Nation have accepted the invitation to consult on this project and are hereby referred to as “Tribes”; and

WHEREAS, FHWA contacted the Nanticoke Indian Association, the Lenape Indian Tribe of Delaware, the City of Wilmington Historic Preservation Planner, the Delaware Historical Society, Preservation Delaware, Inc., Christina Brandywine River Remediation, Restoration, and

Resilience (CBR4), the Delaware Department of Natural Resources and Environmental Control (Planning, Preservation and Development Section), the Delaware Department of Transportation (DelDOT), Southbridge Community Development Corporation, and the RDC to invite them to be Consulting Parties for this Project and the Lenape Indian Tribe of Delaware, the City of Wilmington Historic Preservation Planner, DelDOT, and Preservation Delaware, Inc., have accepted the invitation and are hereby referred to as “Consulting Parties”; and

WHEREAS, the City, in cooperation with the RDC and in coordination with FHWA, DE SHPO, and Consulting Parties have executed a historic architectural survey to identify properties eligible for the National Register of Historic Places (NRHP); and

WHEREAS, FHWA pursuant to 36 CFR 800.4(a)(2), has determined that within the APE, the following properties are listed in or eligible for the NRHP (**Attachment C**):

- South Market Street Bridge (N01434);
- Baltimore & Ohio Railroad Passenger Station (N03570);
- Dravo Shipyard Crane 1 (N12438.02);
- Dravo Shipyard Crane 2 (N12438.03);
- Dravo Shipyard Crane 3 (N12438.04);
- Dravo Shipyard Crane 4 (N12438.05);
- Kent Building (N12470); and

WHEREAS, FHWA, in consultation with DE SHPO and in accordance with 36 CFR 800.11(e), has determined that the project will have no adverse effect on the South Market Street Bridge (N01434), the Baltimore & Ohio Railroad Passenger Station (N03570), the Dravo Shipyard Cranes 1-4 (N12438.02-.05), and the Kent Building (N12470); and

WHEREAS, FHWA, in consultation with DE SHPO, has determined that the project will have no adverse effect on the above properties, but has included stipulations in this Project Level Agreement (“Agreement”) to address potential reasonably foreseeable or cumulative effects that may be caused by the undertaking; and

WHEREAS, FHWA has elected to phase the identification and evaluation of archaeological properties as provided in 36 CFR 800.4(b)(2), but will ensure that the City in cooperation with the RDC completes the process in a timely manner, to allow practical opportunities to avoid or minimize adverse effects to historic properties, as stipulated under this Agreement; and

WHEREAS, FHWA has consulted with DE SHPO, Tribes, and other Consulting Parties in accordance with Section 306108 of the NHPA, 54 U.S.C. Chapter 3061, and its implementing regulations (36 CFR 800) to resolve the potential adverse effects of the Project; and

WHEREAS, FHWA has determined that the Project may also affect as yet unidentified historic properties that have not been subject to prior cultural resource investigations, such as areas that are associated with proposed alignment modifications or other Project-related ancillary activities including, but not limited to, stormwater management facilities, wetland mitigation sites,

reforestation areas, staging, stockpiling and access areas, and disposal sites, and that the APE may need to be revised to consider such areas (see Stipulation V); and

WHEREAS, per 49 CFR, this Project's APE is located within a defined Hazardous Materials (HAZMAT) location. Therefore, all subsequent stipulations in this Agreement will need to follow federal regulations for work in a HAZMAT location; and

WHEREAS, FHWA has notified the ACHP of the Project's potential to adversely affect historic properties and their proposal to develop a Project Programmatic Agreement. The ACHP was notified of the finding on March 5, 2024, and chose not to respond, thereby declining to formally participate in the consultation at this time (36 CFR 800.5(c)(3)(i)); and

WHEREAS, the City has participated in the consultation, has responsibilities for implementing stipulations under this Agreement, and FHWA has invited the City to sign this Agreement as an Invited Signatory; and

WHEREAS, the RDC has participated in the consultation, has responsibilities for implementing stipulations under this Agreement, and FHWA has invited the RDC to sign with Agreement as an Invited Signatory; and

WHEREAS, the Invited Signatories together with FHWA and DE SHPO shall each be referred to herein as a Signatory and collectively as the Signatories; and

NOW, THEREFORE, FHWA, DE SHPO, the City, and the RDC, agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

I. Responsibilities

- A. FHWA, as a Signatory and the lead federal agency, recognizes that it has a unique legal relationship with the Tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions; and that consultation with a Tribe must, therefore, recognize the government-to-government relationship between the federal government and Tribes. As such, FHWA will be directly responsible for consultation with Tribes and in accordance with the requirements of 36 CFR 800.
- B. FHWA will be directly responsible for consultation with DE SHPO and Consulting Parties. FHWA has authority to execute, amend, and/or terminate the Agreement.
- C. FHWA remains legally responsible for all findings and determinations, including determinations of eligibility and effects of the Project, as well as resolution of objections or dispute resolution.

- D. DE SHPO, as a Signatory, has the responsibility for regulatory review under Section 306108 of the NHPA and has authority to execute, amend, and/or terminate the Agreement.
- E. The City, as an Invited Signatory, has the same rights with regard to seeking amendment and/or termination of this Agreement as other Signatories and will ensure that specified stipulations and procedures, for which it has assumed responsibility, are carried out in accordance with the terms stipulated in this Agreement.
- F. The RDC, as an Invited Signatory, has the same rights with regard to seeking amendment and/or termination of this Agreement as other Signatories and will ensure that specified stipulations and procedures, for which it has assumed responsibility, are carried out in accordance with the terms stipulated in this Agreement.
- G. The City and the RDC are collectively responsible for implementation of the stipulations for which it has assumed responsibility in this Agreement and shall be responsible for providing the necessary information to FHWA to facilitate consultation.
- H. The RDC may work with a Cultural Resources Lead that meets the Secretary of the Interior Professional Qualifications Standards outlined in Stipulation VIII.A.
- I. Cooperating and participating federal agencies who recognize FHWA as the lead federal agency for an action may fulfill their obligations under Section 306108 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA, the City, and the RDC follow the requirements of this Agreement and the cooperating agency's or participating agency's action does not have the potential to cause effects to historic properties beyond those considered by FHWA, the City, and the RDC.

II. Section 306108 of the NHPA Review Process

- A. The Section 30618 of the NHPA process described in this stipulation will apply to all stipulations in this Agreement unless otherwise specified in this Agreement.
- B. The City will provide all draft documentation prepared pursuant to this Agreement to FHWA. FHWA shall provide comments within 30 calendar days to the City. When FHWA determines the draft document is sufficient for review, it will forward to the DE SHPO, Consulting Parties, and the Tribes for review.
- C. The City will provide all final documentation prepared pursuant to this Agreement to FHWA. FHWA will provide all final documentation prepared pursuant to this Agreement to DE SHPO, Consulting Parties, and Tribes within seven (7) calendar days of receipt from the City.

- D. All review periods are 30 calendar days, unless otherwise noted, starting on the day the documents are provided.
- E. All time designations are in calendar days unless otherwise stipulated. If a review period ends on a Saturday, Sunday, or federal holiday, the review period will be extended until the next business day.
- F. FHWA and the City will ensure that all comments received within each 30-day review period are considered and will coordinate with responding parties as appropriate. If FHWA and the City do not receive comments within the 30-day review period, it is understood that the non-responding parties have no comments on the submittal, and the City may proceed to the next step of the process with FHWA's approval.
- G. All official notices, comments, requests for further information, documentation, and other communications will be sent in writing by e-mail or other electronic means, unless hard copies are requested or required.

III. Archaeological Resources

A. Identification Survey

1. The City, in cooperation with the RDC and with their Cultural Resources Lead, shall develop a Phase I Archaeological survey scope of work within 30 calendar days of execution of the Agreement to FHWA. The scope of work will include Project construction plans for all ground disturbing work including hazardous material remediation and construction. The City will submit the scope of work for review in accordance with Stipulation II.
2. Upon approval of the Phase I Archaeological survey scope of work, the City, in cooperation with the RDC and with their Cultural Resources Lead, and in consultation with DE SHPO, Consulting Parties, and Tribes, shall conduct Phase I Archaeological surveys within the areas recommended for Phase I Archaeological survey in the Phase IA Archaeological assessment map (see **Attachment B**), and will recommend if identified sites retain sufficient integrity to require a Phase II Archaeological survey to evaluate their NRHP eligibility.
3. The City, in cooperation with the RDC and with their Cultural Resources Lead, shall provide a draft Phase I Archaeology report for review in accordance with Stipulation II. The report shall meet the [Secretary of the Interior's Standards and Guidelines for Archaeology Identification](#) while also satisfying DE SHPO's *Archaeological Survey in Delaware* (2015, or its successor). FHWA will provide the final version of the Phase I Archaeology report to DE SHPO, Consulting Parties, and Tribes.

4. Pending approval from FHWA in consultation with DE SHPO, the City may commence construction in all areas of the APE determined to contain no NRHP eligible archaeological historic properties. The use of protective fencing or other measures may be used to protect NRHP eligible archaeological historic properties.

B. Evaluation Survey

1. Should the Phase I Archaeological investigations conducted under Stipulation III.A. result in a recommendation to complete a Phase II Archaeological evaluation survey, the City shall provide a scope of work for the Phase II Archaeological evaluation study to FHWA after DE SHPO concurrence on the recommendations in the Phase I Archaeological survey report. The City will submit the scope of work for review in accordance with Stipulation II.
2. The City, in cooperation with the RDC and with their Cultural Resources Lead, shall undertake evaluation of any archaeological sites found to retain sufficient integrity to recommend their eligibility for listing in the NRHP. The Phase II Archaeological Evaluation Study shall apply the National Register criteria (36 CFR 60.4) in accordance with 36 CFR 800.4(c), taking into account applicable historic contexts and management plans developed for Delaware's historic and precontact archaeological resources.
3. The City shall provide a draft Phase II Archaeological evaluation report for review in accordance with Stipulation II. The report shall meet the [*Secretary of the Interior's Standards and Guidelines for Archaeology Evaluation*](#), while also satisfying DE SHPO's Archaeological Survey in Delaware (2015, or its successor). FHWA will provide the final version of the Phase II Archaeological evaluation report to DE SHPO, Consulting Parties, and Tribes.
4. If FHWA determines that any of the National Register criteria are met, and DE SHPO concurs, the archaeological site(s) shall be considered eligible for the NRHP. If FHWA determines that the National Register criteria are not met, and DE SHPO concurs, the archaeological site(s) shall be considered not eligible for the NRHP.
5. Based on the Phase II Archaeological evaluation study, should DE SHPO not agree on the eligibility determination of an archaeological site(s), FHWA shall obtain a determination from the Secretary of the Interior, pursuant to 36 CFR 800.4(c)(2), 36 CFR 63.2(c) and 63.3(d).
6. Pending approval from FHWA in consultation with DE SHPO on the Phase II Archaeology evaluation report, the City may commence construction in all areas of the APE determined to contain no NRHP eligible archaeological historic properties. The use of protective fencing or other measures may be used to protect NRHP eligible archaeological historic properties.

C. Section 30618 of the NHPA Effect Determination and Resolution of Adverse Effects

1. Should an archaeological site(s) be determined eligible for the NRHP as described in Stipulation III.B., FHWA, in consultation with DE SHPO, the City, the RDC, Consulting Parties, and Tribes, will apply the Criteria of Adverse Effect to the site, in accordance with 36 CFR 800.5, and make a reasonable effort as defined in the ACHP [Meeting the "Reasonable and Good Faith" Identification Standard in Section 30618 of the NHPA Review](#) document to avoid and minimize impacts to it.
2. FHWA recognizes under 36 CFR 800.5(a)(1) that “reasonably and foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.”
3. If FHWA, in consultation with DE SHPO, the City, the RDC, Consulting Parties, and Tribes, determines a NRHP-eligible site is subject to an adverse effect, the City and the RDC shall develop a treatment plan that may include Phase III Archaeological data recovery excavation and/or an alternative mitigation strategy to mitigate for the adverse effects. The archaeological data recovery component may include, but is not limited to, sampling of the modern fill layers and partial stripping of it to look for cultural features. Identified features shall be investigated through excavation and collection of samples for specialized analysis. The City shall submit the treatment plan for review in accordance with Stipulation II.
4. The data recovery treatment plan shall specify, at minimum:
 - a. the property, properties, or portions of properties where data recovery is to be carried out, and any property that will or may be destroyed without data recovery;
 - b. research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 - c. facilitation of archaeological and/or Tribal monitoring, if warranted;
 - d. the research methods to be used, with an explanation of their relevance to the research questions;
 - e. the methods to be used in analysis, data management, and data dissemination, including a schedule;
 - f. a provision for assessing materials that may be in need of conservation;
 - g. proposed disposition of recovered materials and records;
 - h. proposed methods for involving the interested public in the data recovery, and for disseminating the results of the work to the interested public;
 - i. proposed benchmarks for the submission of progress reports to DE SHPO; and
 - j. provisions to meet on-site in order to evaluate the success of the initial fieldwork phase of any data recovery program, and near the end of the fieldwork efforts to validate substantial completion.

5. When and/or if a treatment plan involving an alternative mitigation strategy is approved by FHWA in consultation with DE SHPO, the City, the RDC, the Consulting Parties, and Tribes, it may include, but is not limited to, the following activities:
 - a. analysis and synthesis of past data accumulated through previous projects;
 - b. updating the relevant DE SHPO archaeological websites and GIS databases;
 - c. development of historic and prehistoric contexts and preservation priorities or statewide predictive models;
 - d. development of travel or informational displays with the cultural resource work for this Project;
 - e. oral histories from the archaeological APE;
 - f. documentaries about the history of the APE; and
 - g. improved archaeological data management and access for DE SHPO.
6. The City, in cooperation with the RDC and with their Cultural Resources Lead shall complete all necessary Phase III Archaeological data recovery fieldwork prior to commencing construction in those areas slated for Phase III Archaeological data recovery in the treatment plan. The City may complete alternative mitigation prior to commencing construction, but is not required to do so.
7. Pending approval from FHWA in consultation with DE SHPO, the City may commence construction in areas not slated for Phase III Archaeological data recovery in the treatment plan prior to the completion of all necessary data recovery fieldwork. The use of protective fencing or other measures may be used to protect NRHP eligible archaeological historic properties.
8. The City shall provide all draft archaeological reports and alternative mitigation materials for review in accordance with Stipulation II. All final reports shall meet the [Secretary of the Interior's Standards and Guidelines for Archaeology Documentation](#) while also satisfying DE SHPO's Archaeological Survey in Delaware (2015, or its successor). FHWA will provide the final version of the Phase III Archaeological data recovery report to DE SHPO, Consulting Parties, and Tribes.

D. Public Involvement

1. Should the treatment plan created under Stipulation III.C.2. require Phase III Archaeological data recovery excavations, the City, in cooperation with the RDC and with their Cultural Resources Lead will prepare a public participation and interpretation plan within 60 calendar days of approval of the Phase III Archaeological treatment plan by FHWA. The City shall submit the public participation and interpretation plan for review in accordance with Stipulation II.

2. The public participation and interpretation plan shall require the development of no more than one interpretive product for each NRHP-eligible archaeological site within the APE. The specific public interpretation product will be determined individually for each site for which mitigation is necessary and may include, but are not limited to, pamphlets, videos, historical markers, brochures, exhibits interpretive displays, or websites. The public lectures or presentations at academic conferences and/or public institutions such as schools (including primary and secondary education) and historical societies.
3. The public participation and interpretation plan will identify interested parties that may have a role in hosting or distributing the interpretive product, such as local schools, historical societies, libraries, senior centers, museums and/or other venues and individuals deemed pertinent.
4. The City shall submit draft interpretive products for review in accordance with Stipulation II.
5. The City shall complete all interpretive products no later than one (1) year of completion of the Final Phase III Archaeological data recovery report.

E. Curation

1. The City, in cooperation with the RDC and with their Cultural Resources Lead shall ensure that all records and materials resulting from the archaeological investigations will be processed, prepared for, and curated in accordance with 36 CFR Part 79 and the Division of Historical and Cultural Affairs' (the Division) *Guidelines and Standards for the Curation of Archaeological Collections* (2001, or its successor). These records and materials shall be curated at the Division, or its designee, following the policies and fees of the institution, except as may be provided for under Stipulation III.E.2. The RDC shall be responsible for all curation fees.
2. As part of the public participation and interpretation plan outlined in Stipulation III.D. of this Agreement, FHWA, DE SHPO, the City, and the RDC will consult to determine if any archaeological materials may be loaned to a public museum or other public institution for the purposes of exhibit or research, following the Division's loan policy and procedures. Such loans and exhibits may occur only after the curatorial procedures, referenced in Stipulation III.E.1., have been completed. FHWA and the Division will consult with Tribes and Consulting Parties, as appropriate, concerning curation and any public exhibition of artifacts.

F. Discovery and Treatment of Human Remains and Burials

1. The City, the RDC and/or appropriate construction engineering staff shall immediately (within 24 hours) notify DE SHPO and FHWA of the discovery of any human remains encountered during the archaeological investigations or the Project construction. The City and the RDC shall cease all activities that may disturb or damage the remains and comply with the Delaware Unmarked Human Remains Act (7 Del.C. Ch. 54). The City and the RDC shall ensure all contractors are notified of this provision, and it will be reflected in the Project construction plans.
2. If the human remains are of Native American affiliation, then FHWA will immediately notify the Tribes and DE SHPO. FHWA will then consult with Tribes, DE SHPO, the City, and the RDC to determine an appropriate course of action in accordance with 36 CFR 800, the Delaware Unmarked Human Remains Act, and the Delaware Tribe of Indians Policy for Treatment and Disposition of Human Remains and Cultural Items That May be Discovered Inadvertently during Planned Activities (**Attachment D**).

IV. Borrow Sources

- A. The City, in cooperation with the RDC and with their Cultural Resources Lead, shall review locations proposed for the source of borrow material necessary for the project. The City shall provide FHWA with the completed borrow source review form (Attachment E) and additional materials, if required. FHWA will provide review within 7 days and either forward onto DE SHPO or disagree and request additional information. FHWA will send the completed borrow source review form (Attachment E) and additional materials, if required to DE SHPO. Upon receipt of the document, DE SHPO will have no more than 30 calendar days to provide concurrence or request additional consultation. Should FHWA in consultation with DE SHPO determine that archaeological survey be necessary, the necessary steps shall follow as outlined by Stipulation III.
- B. The memo shall include, at a minimum, the following information:
 - Description of the project resulting in the borrow source, and if work is ongoing.
 - Description of the original source of the soil, including a review of historic topographic maps and aeriels, a brief description of land use, geographic features, soil type, and
 - Nearby sites and/or historic properties.
 - Description of the current location of the stockpile, including a review of historic topographic maps and aeriels, a brief description of land use, geographic features, soil type, and nearby sites and/or historic properties.

V. Unexpected Discoveries

In the event that previously unidentified cultural resources are discovered or unanticipated effects to historic properties occur during construction, FHWA shall comply with 36 CFR 800.13. The RDC shall instruct the contractor to cease construction in the immediate area of the unexpected discovery or unanticipated effects to historic properties. The City or the RDC will immediately (within 24 hours) notify FHWA. FHWA will notify DE SHPO and Consulting Parties within three (3) business days of the discovery. If said discovery or unanticipated effects pertain to resources of Native American affiliation, FHWA shall also notify the Tribes within two (2) business days of the discovery.

FHWA, DE SHPO, the City, the RDC, and Tribes, if notified, will meet at the location of the discovery within three (3) business days of the initial notification to determine appropriate treatment of the discovery prior to resumption of construction activities within the area of discovery. If the affected resource is of Native American affiliation, FHWA shall first consult with Tribes before implementing any such treatment option.

VI. Review of the Project Construction Plans

The City, in cooperation with the RDC, shall provide copies of the preliminary, semi-final, and final design Project construction plans to FHWA. FHWA shall provide copies of Project construction plans to DE SHPO and Tribes. DE SHPO and Tribes will have thirty (30) days from the receipt of materials to provide comments on the plans. During review of Project construction plans, criteria of adverse effect as outlined in Stipulation III.C.2. will be considered.

FHWA, the City, and the RDC shall take into account any comments provided. The City and the RDC shall provide FHWA with a written response within thirty (30) days from the confirmed receipt of the comments. The response will address the comments posed by DE SHPO or Tribes with either acceptance or justification for why the proposed suggestions cannot be implemented.

Commitments made by the City as part of the preliminary or semi-final design Project construction plan reviews shall be included in the final design Project construction plans to allow for meaningful consultation and practical opportunities to influence design to avoid effects or ensure compatibility to the extent practicable with historic properties.

VII. Subsequent Changes to the Project

If the City or the RDC propose any changes to the Project affecting location, design, methods of construction, materials, or footprint that may require a change in the above or below-ground APE for the Project, the City shall provide FHWA information regarding the project change for review in accordance with Stipulation II. Should FHWA, in consultation with DE SHPO, determine that the Project APE should be redefined beyond the areas depicted in **Attachments B and C**, FHWA will request a modification of the APE. The City, in cooperation with the RDC and with their

Cultural Resources Lead, shall identify and evaluate buildings, structures, sites and/or districts in any newly affected areas. Should historic properties be present in the newly affected areas, FHWA will assess the effects of the Project on these historic properties, following the process under 36 CFR 800.5.

VIII. Administrative Stipulations

A. Personnel Qualifications

All cultural resource work carried out pursuant to this Agreement will be performed by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's (SOI) Professional Qualification Standards (48 Federal Register [FR] §§ 44738-44739) in the appropriate field(s) for the activity regarding SOI-Qualified Professionals.

B. Survey and Data Recovery Standards

1. The City, in cooperation with the RDC and with their Cultural Resources Lead shall ensure that any and all cultural resource surveys and/or data recovery plans conducted pursuant to this Agreement are done in accordance with the *Secretary of the Interior's Standards and Guidelines for [Identification](#), [Evaluation](#), and for [Archaeological Documentation](#)*, as applicable, and in accordance with DE SHPO's *Architectural Survey in Delaware* (2015, or its successor) and *Archaeological Survey in Delaware* (2015, or its successor).
2. Survey proposals and data recovery plans shall include a research design that stipulates objectives, methods, and expected results; production of draft and final reports; and preparation of materials for curation in accordance with Stipulation III.E., including budgeting for initial conservation assessments and treatment. Additional requirements for data recovery plans are found in Stipulation III.C. of this Agreement.
3. All data recovery plans shall also take into account the Advisory Council on Historic Preservation's guidance for *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*. Reports will meet professional standards set forth by the Department of the Interior's "*Format Standards for Final Reports of Data Recovery Program*" (42 FR 5377-79).
4. All data recovery plans, public outreach, or future consultation shall also follow and/or consider any supplemental guidance and provisions provided by, but not limited to, the American Association of State Highway Transportation Officials, FHWA, Transportation Research Boards, National Park Service, ACHP or recognized academic journals or professional organizations as identified by DE SHPO.

5. The City, in cooperation with the RDC and with their Cultural Resources Lead shall ensure that all draft and final cultural resource reports are provided to FHWA within two (2) years of the completion of any fieldwork unless the Signatories otherwise agree to the extension. FHWA will provide draft and final cultural resource reports relevant to Native American sites to Tribes.

IX. Dispute Resolution

- A. Should any Signatory to this Agreement object in writing to any plans, specifications or actions proposed or carried out pursuant to this Agreement, FHWA shall consult with the objecting party to resolve the objection. If FHWA determines that the objection cannot be resolved, FHWA shall forward all documentation relevant to the dispute to the ACHP. Within thirty calendar (30) days after receipt of all pertinent documentation, the ACHP will either:
 1. ACHP will provide FHWA recommendations, which FHWA will take into account in reaching a final decision regarding the dispute; or
 2. Notify FHWA that it will comment pursuant to 36 CFR 800.7(a) and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.
- B. Should the ACHP not exercise one of the above options within thirty calendar (30) days after receipt of all pertinent documentation, FHWA may assume the ACHP's concurrence in its proposed response to the objection.
- C. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. FHWA's responsibility to carry out all actions under this Agreement that are not the subject of the objection will remain unchanged.

X. Duration

This Agreement shall remain in force until its stipulations have been fulfilled. This period shall not exceed five (5) years from the date of the final signature. Within six (6) months prior to the end of this five-year period should any stipulations remain unfulfilled, the parties to this Agreement will consult to determine if extension or other amendment of the Agreement is needed. No extension or amendment will be considered in effect unless all the Signatories to the Agreement have agreed to it in writing.

FHWA will notify all Signatories as to when the stipulations in this Agreement have been fulfilled. Upon notification, Signatories shall have thirty (30) days to review. Should all Signatories agree in writing that the stipulations have been fulfilled, FHWA will send out a written notification that the Agreement is complete. Should Signatories disagree, FHWA shall schedule a meeting to

address any concerns. If a resolution is not reached, FHWA shall follow the process for Dispute Resolution outlined in Stipulation IX.

XI. Review of Implementation

FHWA, DE SHPO, the City, and the RDC shall review the project annually, to monitor progress of the implementation of the terms of this Agreement. The City shall provide FHWA with an annual report describing any actions completed in the past year and an anticipated schedule for any remaining stipulations.

By consent, FHWA, DE SHPO, the City, and the RDC will meet quarterly to discuss and report progress of this Agreement. The City shall set a date within 30 days of execution of this agreement for the first quarterly meeting, which shall occur within 90 days of execution of this agreement until all stipulations have been fulfilled.

XII. Amendments

Any Signatory to this Agreement may propose to FHWA in writing that the Agreement be amended, whereupon FHWA shall consult with the other Signatories to consider such an amendment, in accordance with 36 CFR 800.6(c)(7).

XIII. Termination

- A. If FHWA, the City, or RDC determines that it cannot implement the terms of this Agreement, or DE SHPO determines that the Agreement is not being properly implemented, FHWA, DE SHPO, the City, and the RDC may propose to the other Signatories to this Agreement that the Agreement be terminated.
- B. The Signatory proposing to terminate this Agreement shall notify all parties, explaining the reasons for termination and affording them 30 days to coordinate and seek alternatives to termination. The parties shall then consult.
- C. Should all consultation fail, FHWA or DE SHPO may terminate the Agreement by so notifying all parties in writing.
- D. Should this Agreement be terminated, FHWA shall either:
 - 1. Consult in accordance with 36 CFR 800.6(a)(1) to develop a new Agreement; or
 - 2. Request the comments of the ACHP pursuant to 36 CFR 800.7(a)

XIV. Execution

- A. This Agreement may be executed in counterparts electronically and shall be considered one document and an original for all purposes. This Agreement will become effective on the date of FHWA's signature (Execution Date). FHWA will ensure each Signatory is provided with a complete copy of the Agreement, and that the final Agreement, any updates to attachments, and any amendments are filed with the ACHP.
- B. Execution of this Agreement by FHWA, DE SHPO, the City, and the RDC and implementation of its terms is evidence that FHWA has afforded the ACHP an opportunity to comment on the Project and that FHWA has taken into account the effects of the undertaking on historic properties.

SIGNATORY PAGE

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THE CITY OF WILMINGTON,
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**REGARDING THE WILMINGTON RIVERFRONT TRANSPORTATION
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FEDERAL AID NUMBER: PENDING

THE FEDERAL HIGHWAY ADMINISTRATION

By: _____
Douglas S. Atkin, FHWA Delaware Division Administrator

Date: _____

SIGNATORY PAGE

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THE DELAWARE STATE HISTORIC PRESERVATION OFFICER

By: _____
Suzanne Savery, State Historic Preservation Officer

Date: _____

SIGNATORY PAGE

PROJECT PROGRAMMATIC AGREEMENT

**AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE DELAWARE STATE HISTORIC PRESERVATION OFFICE,
THE CITY OF WILMINGTON,
AND THE RIVERFRONT DEVELOPMENT CORPORATION**

**REGARDING THE WILMINGTON RIVERFRONT TRANSPORTATION
INFRASTRUCTURE PROJECT**

FEDERAL AID NUMBER: PENDING

THE CITY OF WILMINGTON

By: _____
Michael S. Purzycki, Mayor

Date: _____

SIGNATORY PAGE

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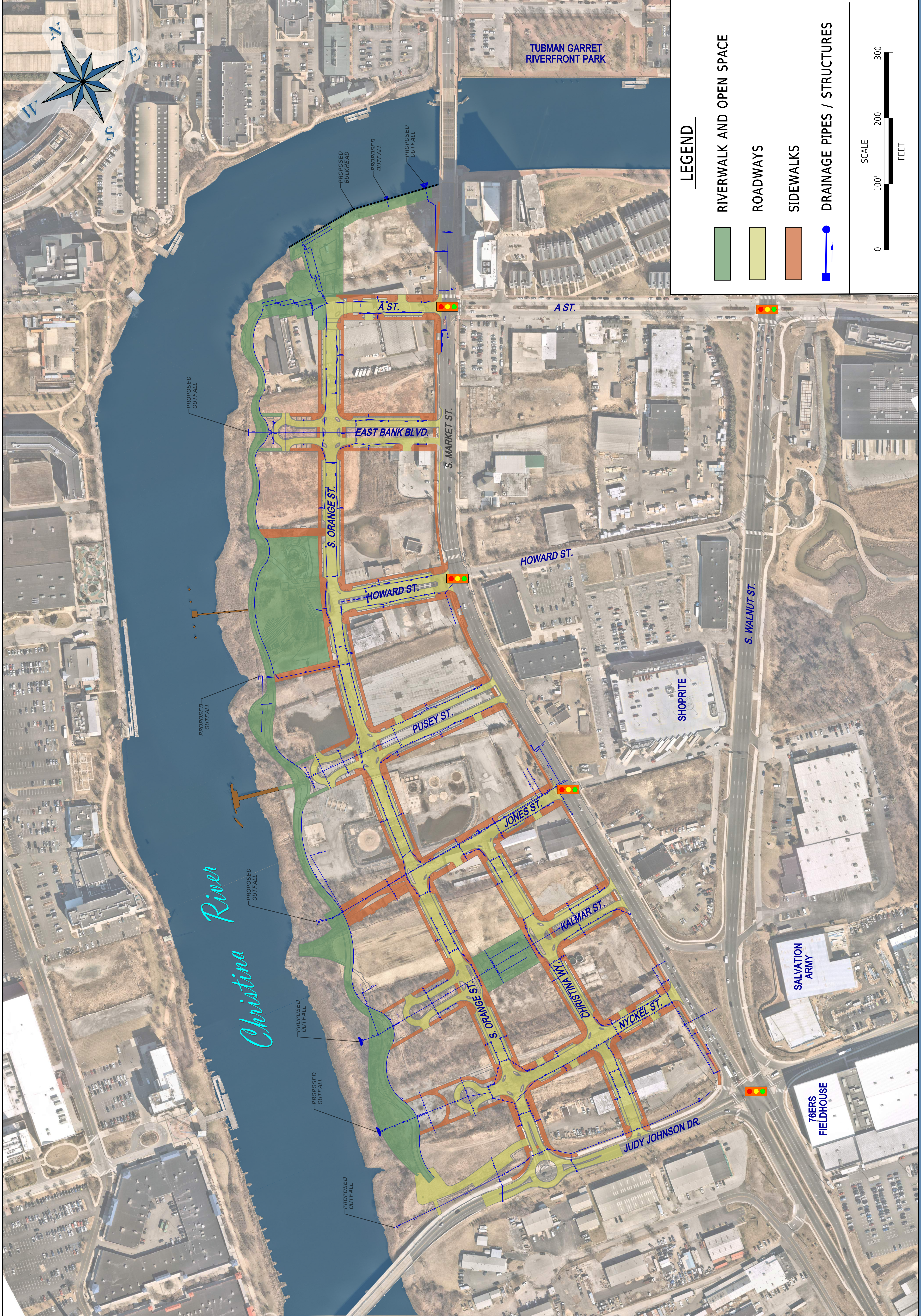
THE RIVERFRONT DEVELOPMENT CORPORATION

By: _____
Megan McGlinchey, Executive Director

Date: _____

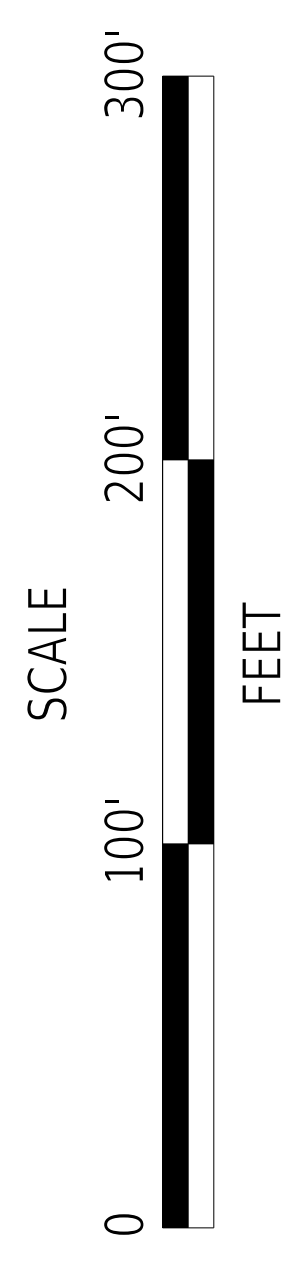
ATTACHMENT A

DRAFT



LEGEND

- RIVERWALK AND OPEN SPACE
- ROADWAYS
- SIDEWALKS
- DRAINAGE PIPES / STRUCTURES



ATTACHMENT B

DRAFT



Legend

 APE for Direct Effects

N

Wilmington Riverfront Transportation Infrastructure

0

0.1

0.2

0.4

Miles

ATTACHMENT C

DRAFT



Legend

 APE for Visual Effects

N

Wilmington Riverfront Transportation Infrastructure

0

0.1

0.2

0.4

Miles

ATTACHMENT D

DRAFT

Delaware Tribe of Indians
Policy for
Treatment and Disposition of Human Remains and Cultural Items
That May be Discovered Inadvertently during Planned Activities

Purpose

The purpose of this policy is to describe the procedures that will be followed by all federal agencies, in the event there is an inadvertent discovery of human remains.

Treatment and Disposition of Human Remains and Cultural Items

1. The federal agency shall contact the Delaware Tribe of Indians' headquarters at 918-337-6590 or the Delaware Tribe Historic Preservation Representatives at 610-761-7452, as soon as possible, but no later than three (3) days, after the discovery.
2. Place tobacco with the remains and funeral objects.
3. Cover remains and funeral objects with a natural fiber cloth such as cotton or muslin when possible.
4. No photographs are to be taken.
5. The preferred treatment of inadvertently discovered human remains and cultural items is to leave human remains and cultural items in-situ and protect them from further disturbance.
6. No destructive "in-field" documentation of the remains and cultural items will be carried out in consultation with the Tribe, who may stipulate the appropriateness of certain methods of documentation.
7. If the remains and cultural items are left in-situ, no disposition takes place and the requirements of 43 CFR 10 Section 10.4-10.6 will have been fulfilled.
8. The specific locations of discovery shall be withheld from disclosure (with exception of local law officials and tribal officials as described above) and protected to the fullest extent by federal law.
9. If remains and funeral objects are to be removed from the site consultation will begin between the Delaware Tribe of Indians and the federal agency.

ATTACHMENT E

DRAFT

BORROW SOURCE REVIEW FORM

Submitted to:

Submitted by:

Date Submitted:

Project Names & Location:

Federal Aid Project No.:

Proposed Borrow Source Location:

- Original Source of Dirt:

- Current Stockpile Location:

Type of Borrow Source:

- ☐ Commercial borrow source. No further work needed.
- ☐ Fill from **completed** project (There is no ongoing excavation of fill from the source). Cultural Resource Review Memo attached.
- ☐ Fill from ongoing project (There is ongoing excavation of fill from the source and/or the borrow pile is actively being replenished). Cultural Resource Review Memo attached.

Attachments:

- ☐ Cultural Resources Review Memo
- ☐ Map of Location
- ☐ Other

DE SHPO RESPONSE

- ☐ Commercial borrow source. No concerns.
- ☐ No archaeological potential and no concerns.
- ☐ Further consultation needed.

Comments:

Signed

Date