

**MEMORANDUM OF AGREEMENT
AMONG THE
FEDERAL HIGHWAY ADMINISTRATION,
the
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,
and the
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE
PURSUANT TO 36 CFR § 800.6
regarding the
I-26 CONNECTOR
BUNCOMBE COUNTY, NORTH CAROLINA
NCDOT TIP No. I-2513 FA No. MANHF-26-1(53)**

WHEREAS, the North Carolina Division of the Federal Highway Administration, (herein “FHWA”), serves as the lead Federal agency for the National Environmental Policy Act (herein “NEPA”) of 1969, as amended (55 USC 4321 et seq.) and for National Historic Preservation Act (NHPA) of 1966, as amended (54 USC 300101 et seq.); Section 106 compliance for the I-26 Connector in Buncombe County, NC (herein “Undertaking”); and

WHEREAS, the Undertaking does not qualify as a minor project as outlined in the NCDOT Minor Projects Programmatic Agreement (signed in October 2015) and the Section 106 Federal Aid Highway Programmatic Agreement (signed in 2000) remains in effect; and

WHEREAS, the FHWA has determined that the Undertaking will have an adverse effect upon Riverside Cemetery within the Montford Area Historic District and archaeological site 31BN826, properties listed in or determined eligible for listing in the National Register of Historic Places (NRHP), (hereinafter historic property/ies); and

WHEREAS, the FHWA has determined that the Undertaking will have no adverse effect upon the following historic properties: Freeman House, William Worley House, West Asheville/Aycock School Historic District, Great Smoky Mountain Park Bridge (Buncombe County Bridge No. 323), and archaeological site 31BN623 (Lower Hominy Hydroelectric Plant) provided the environmental commitments stipulated in this Memorandum of Agreement (MOA) are fulfilled; and

WHEREAS, the FHWA has consulted with the North Carolina State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the NHPA; and

WHEREAS, FHWA has notified the Advisory Council on Historic Preservation (Council) of the adverse effects and the Council has declined to comment or participate in the consultation; and

WHEREAS, NCDOT has participated in the consultation and has been invited by the FHWA and SHPO to be a signatory to this MOA; and

WHEREAS, the following parties were granted consulting party status by FHWA and have been invited to concur with this MOA: the Montford Neighborhood Association, the City of Asheville Transportation and Planning and Urban Design Departments, and the Preservation Society of Asheville and Buncombe County; and

WHEREAS, the following Tribal Historic Preservation Offices (THPO) were consulted regarding this Undertaking and have been invited to concur with this MOA: Eastern Band of the Cherokee Indians (EBCI), the Cherokee Nation (CN), the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB), the Muscogee (Creek) Nation (MCN), and the Catawba Nation; and

WHEREAS, the consulting parties agree that the recovery of significant information from archaeological site 31BN826 may be done in accordance with the published guidance; and

WHEREAS, the consulting parties agree that it is in the public interest to expend funds for the recovery of significant information from archaeological site 31BN826 to mitigate the adverse effect of the Undertaking; and

WHEREAS, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work:

NOW THEREFORE, the FHWA, NCDOT and the North Carolina SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations take into account the effects of the Undertaking on historic properties, archaeological site 31BN826, and archaeological resource identified during further testing and determined eligible for the NRHP.

STIPULATIONS

The North Carolina Division of FHWA and NCDOT shall ensure that the following measures are implemented:

I. Riverside Cemetery within the Montford Area Historic District (BN0022)

After consultation with the SHPO, the Asheville City Parks and Recreation Department, the Montford Neighborhood Association, the City of Asheville Transportation and Planning and Urban Design Departments, and the Preservation Society of Asheville and Buncombe County, NCDOT agrees to lessen the property impacts resulting from the Undertaking by providing funding or services for the following measures.

1. Vibration Studies and Monitoring Plan

- a. Development of Vibration Monitoring Plan: NCDOT’s Geotechnical Engineering Unit, in consultation with NCDOT Division 13, shall develop a vibration monitoring plan for the Undertaking, to include on-site research during final design as well as monitoring during construction. The recommendations of the plan shall be provided to SHPO and concurring parties for their comments prior to adoption.
 - b. Baseline Studies: On-site research, done prior to construction, will measure existing vibration exposure, determine sensitivity of key funerary monuments and assign thresholds accordingly.
 - c. Vibration Monitoring: Vibration monitoring will be conducted on key funerary monuments within Riverside Cemetery, recommended in the aforementioned vibration monitoring plan. When a reading exceeds the established threshold, an alarm will sound and the Contractor - or the cemetery manager – shall immediately contact *{insert position title here}*.
 - d. Pre-construction Surveys: NCDOT will conduct pre-construction surveys of all key funerary monuments within Riverside Cemetery to record a “before” condition so that any construction-related damage can be accurately identified.
2. Auditory Effects: Studies of predicted noise level increase attributable to the Undertaking within Riverside Cemetery are three decibels (3 dB(A)) or less and are considered “barely perceptible” to normal human hearing. Therefore, the Undertaking will not substantially interfere with the use and enjoyment of the cemetery as currently planned. Changes to the plans after the execution of this MOA may require additional noise studies and if the levels increase above five decibels (5 dB(A)), additional consultation between the signatories and concurring parties to this MOA will be required.
 3. Re-vegetation of Right-Of-Way: Re-vegetation of the highway right-of-way along the cemetery boundary will be planned and implemented in accordance with NCDOT’s Guidelines for Planting within Highway Right-of-Way. All new plant materials will be warranted for two growing seasons and replaced by NCDOT if they fail within that time period.
 4. Landscaping within Riverside Cemetery:
 - a. NCDOT will replace the existing trees (larger than 12-inch diameter) that the Undertaking affects along the cemetery boundary and the Highway Right-of-Way.
 - b. Additional areas of concentrated landscaping may be included within the boundaries of Riverside Cemetery adjacent to the highway and will be developed through discussions with the City Parks and Recreation Department, SHPO, and other concurring parties.
 - c. Preliminary Post-Construction Landscape Design plans will be provided to SHPO, the Asheville City Parks and Recreation Department, and the concurring parties for their review and comment.
 - d. NCDOT (or its contractor) shall install the landscaping after completion of roadway construction work along the historic boundary of the cemetery. All new plant materials will be warranted for two growing seasons and replaced by NCDOT if they fail within that time period.

5. Roadway Appearance: The final appearance of the roadway may include walls and/or a bridge at the western boundary of the cemetery. The appearance of the walls along the cemetery's boundary will be formed concrete walls with a simulated masonry surface treatment. The surface treatment will be designed to resemble stacked stone walls and may be painted or tinted. Plans for the surface treatments will be provided to SHPO, the Asheville City Parks and Recreation Department, and the concurring parties for their review and comment prior to final approval.

II. Freeman House (BN2470)

After consultation with the SHPO and the property owner, NCDOT agrees to lessen the audible and visual impacts resulting from the Undertaking by providing funding or services for the following measures.

1. Noise Abatement: Upon satisfactory completion of the work, NCDOT will reimburse the property owner for the costs to install central heat/AC, storm windows, and insulation based on the lowest of 3 bids provided to NCDOT by the property owner. If the property owner chooses, NCDOT will make payment directly to a third-party contractor(s).
2. Landscaping: NCDOT (or its contractor) shall install landscaping along the edges of the property facing the new facility after completion of the roadway. All new plant materials will be warranted for two growing seasons and replaced by NCDOT if they fail within that time period.

III. William Worley House (BN2442)

After consultation with the SHPO and the property owner, NCDOT agrees to lessen the audible and property impacts resulting from the Undertaking by providing funding or services for the following measures.

1. Noise Abatement: Upon satisfactory completion of the work, NCDOT will reimburse the property owner for the costs to install central heat/AC, storm windows, and insulation based on the lowest of 3 bids provided to NCDOT by the property owner. If the property owner chooses, NCDOT will make payment directly to a third-party contractor(s).
2. Retaining Wall: NCDOT will install a retaining wall, with permanent underground easements, within the property boundary along the western boundary of the property to reduce right-of-way impacts.

IV. West Asheville/Aycock School Historic District (BN1839)

After consultation with the SHPO, the principal of Aycock School, and the Asheville School District Superintendent, NCDOT agrees to lessen the property impacts resulting from the Undertaking by providing funding or services for the following measures.

1. Parking: To minimize Aycock's School's loss of parking spaces, NCDOT has agreed to provide the school with new parking lots and vehicular circulation routes as shown on the plans provided to SHPO on October 7, 2019.

2. Trees: NCDOT will preserve the screening trees along the west side of classrooms by erecting temporary fencing around the trees and tree protection signs, during construction.
3. Fencing: NCDOT will install permanent fencing (a minimum of 6 feet in height and of the school's chosen materials) between the Greenway and the west side of the school yard.
4. Protection measures: NCDOT will protect the trees and Arrowhead monument on school grounds along Haywood Road by erecting tree protection signs and temporary fencing around the trees and monument, during construction.

V. Great Smoky Mountain Park Bridge (Buncombe County Bridge No. 323)

(BN2469 - Patton Avenue Westbound)

After consultation with the SHPO and the Asheville Aesthetics Advisory Committee, NCDOT agrees to remove the cantilevered sidewalk and convert the bridge to a two-lane facility with a minimum 10-foot sidewalk on the existing deck. The existing bridge rails and pedestrian lights will be replaced with designs that meet current safety standards and are congruent with the original "art moderne" style of the bridge.

1. Any changes to the bridge plans after the execution of this MOA shall require approval from NCDOT structure design and the SHPO.
2. Any repairs to the historic substructure shall follow the *Secretary of the Interior's Standards for Rehabilitation*.
3. Additional "betterments" such as benches, planters, ornamental lights, or flags shall require approval from NCDOT structure design and the SHPO.

VI. Archaeological Site 31BN623 (Lower Hominy Hydroelectric Plant)

After consultation with the SHPO, NCDOT agrees to lessen the property impacts resulting from the Undertaking by providing services for the following measures.

1. Iron markers will be placed at each end of a wall associated with site 31BN623 to mark its extent prior to the placement of fill within the project limits.
2. Any changes to the design plans after the execution of this MOA shall require approval from the SHPO.

VII. Data Recovery at Archaeological Site 31BN826 and Further Deep Testing at Archaeological Sites 31BN823, 31BN826, 31BN868, 31BN870, 31BN871, 31BN873 and 22 Additional Acres

1. In consultation with the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation NCDOT will develop a Data Recovery Plan (DRP) for Site 31BN826, which has been determined eligible for the NRHP and will be affected by the Undertaking.
2. In consultation with the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation, NCDOT will develop, separate Data Recovery Plans (DRP) for Sites 31BN823, 31BN868, 31BN870, 31BN871, 31BN873 and any other new sites, determined eligible for the NRHP through further testing and affected by the Undertaking.
3. NCDOT will ensure that the DRPs, will be implemented after Right-of-Way is acquired and prior to construction activities within the site location as shown in the DRPs.

3. Upon completion of the Data Recovery efforts, the NCDOT will prepare and forward a Management Summary to the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation detailing the results of the Data Recovery field investigations. NCDOT will ensure that the DRPs are implemented after Right-of-Way is acquired and prior to construction activities within the site location as shown in the DRPs.
4. Upon receipt of the Management Summary, the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation will respond within fifteen (15) days to the recommendations contained within the Management Summary.
5. Upon acceptance of the recommendations contained in the Management Summary, the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation will issue NCDOT documentation that the Data Recovery field investigations have been completed.
6. The analysis and report preparation, detailing Site 31BN826 and, if required, Sites 31BN823, 31BN868, 31BN870, 31BN871, 31BN873 and any newly identified sites, will be completed by NCDOT, or their consultants, within eighteen (18) months after completion of the fieldwork.

VIII. Unanticipated Discoveries

In accordance with 36 CFR 800.11(a), if NCDOT identifies additional cultural resource(s) during construction, all work will be halted within the limits of the resource(s) and the FHWA and the SHPO will be contacted. The NCDOT and FHWA will initiate the appropriate agency and/or Tribal coordination required for a determination of eligibility or recovery effort. If after consultation between the Signatories and concurring parties, additional mitigation is determined necessary, the NCDOT, in consultation with the Signatories and concurring parties, will develop and implement appropriate protection/mitigation measures for the resource(s). Inadvertent or accidental discovery of human remains will be handled in accordance with North Carolina General Statutes 65 and 70.

IX. Amendments

Should any of the Signatory Party(ies) to this MOA believe that its terms cannot be carried out or that an amendment to the terms must be made, that party(ies) shall immediately consult with the other party(ies) to develop amendments in accordance with 36 CFR 800.6(c)(7). This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy, signed by all of the signatories, is filed with the ACHP. If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation X will be followed.

X. Dispute Resolution

Should any of the Parties to this MOA object within thirty (30) days to any plans or documentation provided for review pursuant to this MOA, the FHWA shall consult with the objecting party(ies) to resolve the objection. If the FHWA or the objecting party(ies) determines that the objection cannot be resolved, the FHWA will forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:

1. Provide the FHWA with recommendations, which the FHWA will take into account in reaching a final decision regarding the dispute, or
2. Notify the FHWA that it will comment pursuant to 36 CFR Section 800.7(c) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR Section 800.7(c)(4) with reference to the subject of the dispute.

Any recommendations or comments provided by the Council will be understood to pertain only to the subject of the dispute; the signatories' responsibilities that are not the subject of the dispute will remain unchanged.

XI. Termination

Any of the Signatory Party(ies) to this MOA may terminate the MOA by providing notice to the other parties, provided that the signatories and concurring parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this MOA will require compliance with 36 CFR 800. This MOA may be terminated by the execution of a subsequent MOA that explicitly terminates or supersedes its terms.

XII. Duration

Unless terminated pursuant to Stipulation XI above, this MOA will be in effect until the FHWA in consultation with the other Signatory Parties, determines that each of its terms have been fulfilled or if NCDOT is unable or decides not to construct the Undertaking.

Execution

Execution of this MOA by FHWA, NCDOT, and the North Carolina SHPO, its subsequent filing with the Council, and implementation of its terms evidence that the FHWA has afforded the Council an opportunity to comment on the Undertaking, and that FHWA has taken into account the effect of the Undertaking on the historic properties and archaeological sites 31BN623 and 31BN826.

AGREE:

**U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY
ADMINISTRATION, NORTH CAROLINA DIVISION**

By: _____ Date _____
John Sullivan, PE, Division Administrator

STATE OF NORTH CAROLINA, DEPARTMENT OF TRANSPORTATION

By: _____ Date _____
Chris M. Werner, P.E., Technical Services Administrator

NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date _____
Kevin Cherry, PhD, State Historic Preservation Officer

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CONCUR:

Eastern Band of the Cherokee Indians:

The Honorable Richard Sneed
Principal Chief
Eastern Band of the Cherokee Indians

Date

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CONCUR:

The Cherokee Nation:

The Honorable Chuck Hoskin, Jr.
Principal Chief
Cherokee Nation

Date

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CONCUR:

The United Keetoowah Band of Cherokee Indians in Oklahoma:

The Honorable Joe Bunch Date
Chief
United Keetoowah Band of Cherokee Indians in Oklahoma

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CONCUR:

Muscogee (Creek) Nation:

The Honorable David Hill Date
Principal Chief
Muscogee (Creek) Nation

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CONCUR:

Catawba Nation:

William Harris
Principal Chief
Catawba Nation

Date

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CONCUR:

Montford Neighborhood Association

Name TITLE	Date
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CONCUR:

City of Asheville Transportation and Planning and Urban Design Departments

Name
TITLE

Date

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CONCUR:

Preservation Society of Asheville and Buncombe County

Name TITLE	Date
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