

**DRAFT**  
**NATIONWIDE PROGRAMMATIC AGREEMENT**  
**AMONG THE DEPARTMENT OF HOMELAND SECURITY,**  
**THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION**  
**OFFICERS,**  
**AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**REGARDING MAINTENANCE, REPAIR, AND UPGRADES TO IMPROVE CLIMATE**  
**RESILIENCY AND SUSTAINABILITY, REDUCE ENERGY AND WATER**  
**CONSUMPTION,**  
**AND INCREASE USE OF RENEWABLE ENERGY AT**  
**DEPARTMENT OF HOMELAND SECURITY FACILITIES**

**[DATE]**

**WHEREAS**, the Department of Homeland Security (“DHS” or “Department”) is the third largest agency in the federal government, comprised of 15 new and legacy sub-agencies, or Components, and more than 260,000 employees. DHS-owned federal facilities are very diverse, consisting of a variety of use types, including office, warehouse, family housing, operation centers, detention centers, laboratories, shore facilities, and training campuses, in addition to structures such as navigational aids and communication towers and land; and

**WHEREAS**, DHS has determined certain facilities under its authority and control at the Headquarters (“HQ”) and Component-level require maintenance, repair, and upgrades to enhance facility resilience, foster sustainability, improve performance by reducing energy and water use, increase the use of renewable energy, and decrease greenhouse gas emissions in response to growing risks from sea level rise, extreme weather events, floods, higher ambient temperatures, utility disruptions, and other impacts arising from global climate change; and

**WHEREAS**, DHS has established a framework and tools to support strategic prioritization and identification of sustainability and resilience actions to mitigate the impacts of climate change on DHS facilities and address DHS contributions to climate change from these facilities; and

**WHEREAS**, DHS acknowledges historic preservation and climate resilience and sustainability measures can function together collaboratively to support Departmental goals; and

**WHEREAS**, Section 106 of the National Historic Preservation Act (“NHPA”), 54 United States Code (U.S.C.) 306108 and its implementing regulations codified in 36 Code of Federal Regulations (C.F.R.) Part 800, requires federal agencies to take into account the effects of their undertakings on historic resources eligible for, or listed on, the National Register of Historic Places (“historic properties” or “National Register”) and afford the Advisory Council on Historic Preservation (“ACHP”) a reasonable opportunity to comment; and

**WHEREAS**, DHS has determined climate resilience and sustainability measures constitute an undertaking pursuant to 36 C.F.R. 800.16(y); and

**WHEREAS**, DHS consulted with the ACHP and the National Conference of State Historic Preservation Officers (“NCSHPO”) pursuant to 36 C.F.R. Part 800 and determined that Section 106 requirements can be more effectively and efficiently implemented for climate resiliency and sustainability undertakings if a programmatic approach is used to stipulate roles and responsibilities, exempt certain undertakings from Section 106 review, and streamline the resolution of adverse effects; and

**WHEREAS**, this Nationwide Programmatic Agreement (“Agreement”) is to be used per 36 C.F.R. 800.14(b)(1), where management activities are undertaken at DHS Headquarter or Component owned installations, facilities, or other land management units; and

**WHEREAS**, this Agreement may be applied when DHS HQ or a DHS Component is the sole or lead agency for an undertaking, but may not be applied on Tribal lands; and

**WHEREAS**, this Agreement does not invalidate existing program alternatives or any other Section 106 agreements, and such existing program alternatives and agreements will be followed, instead of this Agreement, when applicable; and

**WHEREAS**, DHS invited federally recognized Indian Tribes (“Tribes”), Native Hawaiian organizations (“NHO”), Tribal Historic Preservation Officers (“THPOs”), and the National Association of Tribal Historic Preservation Officers (“NATHPO”) to consult on September 13, 2023, pursuant to 36 C.F.R. Part 800, and held two (2) informational and listening sessions held on October 2, 2023; and

**WHEREAS**, DHS invited State Historic Preservation Officers (“SHPOs”) to two (2) informational and listening sessions held on October 4, 2023; and

**WHEREAS**, DHS invited the National Trust for Historic Preservation (“National Trust”) to comment on February 3, 2023, August 11, 2023, and September 12, 2023 and received no response to date; and

**WHEREAS**, DHS provided opportunities for public review and comment by publishing online information about this Agreement and receiving comments through an online platform from September 13, 2023 to October 30, 2023 and received [results of public comment]; and

**WHEREAS**, upon execution of this Agreement, and as detailed in this Agreement, the ACHP may still provide advisory comments to DHS regarding the coordination of Section 106 reviews, notify DHS of concerns raised by the NCSHPO, Tribes, SHPOs, THPOs, NHOs, the National Trust, other interested parties and the public regarding an undertaking, and participate in the resolution of adverse effects for complex, controversial, or other non-routine undertakings in accordance with Appendix A of 36 CFR Part 800; and

**NOW THEREFORE**, DHS, ACHP, and NCSHPO (hereinafter, “consulting parties”) agree that implementation of this Agreement in accordance with the following stipulations will allow DHS to meet its responsibilities under Section 106 of the NHPA for undertakings subject to this Agreement.

## STIPULATIONS

DHS will implement climate resiliency and sustainability undertakings (“CRS Undertakings”) identified in Appendix A of this Agreement in accordance with the following stipulations.

### I. Definitions

- a. The definitions in 36 C.F.R. 800.16 apply to the terms used in this Agreement and are incorporated herein by reference.
- b. The following definitions from DHS Directive 023-03, rev. 00, *Climate Resilience*, will be used in this Agreement:
  - i. Adaptation: Adjustment of natural or human systems to a new or changing environment.
  - ii. Climate Resilience: The ability to anticipate, prepare for, and adapt to changing conditions and withstand, respond to, and recover rapidly from climate related disruptions, challenges, and risks through adaptability, innovation, and preparedness.
- c. The following definition from DHS Directive 252-01, rev. 01, *Organization of the Department of Homeland Security*, will be used in this Agreement:
  - i. Component: Any organization, which reports directly to the Office of the Secretary (the Secretary, the Deputy Secretary, the Chief of Staff, the Counselors, and their respective staff) when approved as such by the Secretary. Examples of DHS Components include U.S. Customs and Border Protection, the Federal Emergency Management Agency, and U.S. Coast Guard.
- d. The following definitions from the Council on Environmental Quality’s December 2020 *Guiding Principles for Sustainable Federal Buildings and Associated Instructions* (“CEQ Guiding Principles”) will be used in this Agreement:
  - i. Federal Facilities: Any building, installation, structure, or other property (including any applicable fixtures) owned or operated by, or constructed or manufactured and leased to, the Federal Government. The term “facility” includes a group of facilities at a single location or multiple locations managed as an integrated operation and contractor-operated facilities owned by the Federal Government. The term “facility” does not include any land or site for which the cost of utilities is not paid by the Federal Government. 42 U.S.C. § 8253.

- ii. High-Performance Building: A building that integrates and optimizes on a life cycle basis all major high-performance attributes, including energy conservation, environment, safety, security, durability, accessibility, cost-benefit, productivity, sustainability, functionality, and operational considerations. 42 U.S.C. § 17061.

## II. Roles and Qualifications

- a. Federal Preservation Officer (“FPO”): The DHS official responsible for coordinating and providing oversight of cultural resource management activities and ensuring compliance with applicable statutes, regulations, Executive Orders, and DHS policy.
  - i. This Agreement shall be managed by the DHS FPO and Deputy FPO (“DFPO”).
  - ii. The DHS FPO shall provide annual training to Components on this Agreement.
  - iii. An annual data call to Components/sub-agencies shall be issued by the DHS FPO for oversight and reporting purposes.
  - iv. The DHS FPO shall perform an annual audit on no less than 10 percent of undertakings from the previous fiscal year.
  - v. The DHS FPO shall ensure all DHS records regarding use of this Agreement are maintained for each CRS Undertaking. Records to be maintained will include the following information at a minimum:
    - 1. A description of the undertaking, including the specific location of the work;
    - 2. The name(s) of the Qualified Professional that carried out or supervised the use of this Agreement; and
    - 3. A summary of the undertaking’s implementation, indicating how it was carried out, any problems that arose, photographs, and the outcome. DHS will provide copies of these records, within a reasonable timeframe, when requested in writing by the ACHP or the relevant SHPO, THPO, Indian Tribe, NHO, or the public, as appropriate.
- b. DHS Qualified Professional: A DHS Qualified Professional is an employee or qualified professional contractor overseen by a DHS employee who provides specialized cultural resource management services, including conducting the appropriate archeological, historical, or architectural analysis and preparing

compliance documentation. The DHS Qualified Professional performs historic property inventories, evaluations, assessment of effects, and resolution of adverse effects, among other duties, and meets the Secretary of the Interior's *Professional Qualification Standards*. When providing notification to the appropriate SHPO or THPO of a CRS Undertaking that may potentially adversely affect a historic property, the DHS Qualified Professional ensures the following minimum information is provided in submission packages per the SHPO-specific submittal requirements:

- i. Justification of the undertaking being classified as a resilience or sustainability project and subject to the terms of this Agreement;
- ii. Description of the proposed undertaking including maps, drawings, and photographs, subject to security protocol;
- iii. Identification of known historic properties in the APE with brief details on the characteristics that qualify them for the National Register;
- iv. Discussion of previous surveys, agreement documents, or consultations;
- v. Explanation of the no adverse effect or adverse effect determination; and
- vi. Recommended avoidance, minimization, or mitigation measures.

### **III. Applicability**

#### **a. Scope**

- i. This Agreement applies to the CRS Undertakings identified in Appendix A and covers activities of DHS HQ and Components.
- ii. This Agreement does not amend, replace, or invalidate any existing program alternatives or other Section 106 agreements.

#### **b. Area of Potential Effects**

- i. The term "Area of Potential Effects" or "APE" is defined in 36 C.F.R. 800.16(d). For the purposes of this Agreement, the APE for direct effects is limited to the DHS federal facility physical footprint and immediate area of potential ground disturbance. Further:
- ii. Visual effect considerations for CRS Undertakings occurring wholly within the interior of a facility are restricted to the interior of that federal facility.

- iii. Visual effect considerations for CRS Undertakings occurring on the exterior of a DHS federal facility, are defined as the viewshed in which the CRS undertaking has the potential to introduce visual elements that diminish or alter the setting, including the landscape where the setting is a character-defining feature, of a historic property.

#### **IV. Undertakings Excluded from Section 106 Review**

CRS Undertakings that meet any of the following conditions do not require additional Section 106 review or consultation with the ACHP, SHPO, THPO, Tribes, NHOs, the public, and other interested parties (“other parties”) and will not be submitted to the SHPO or THPO for review. The Department will keep records of all CRS Undertakings subject to this Agreement for compliance and auditing purposes.

- a. CRS Undertakings at a DHS federal facility less than or equal to 45 years of age where:
  - i. a DHS Qualified Professional has determined it is not eligible for listing on the National Register under 36 C.F.R. 60.4(g), and
  - ii. there would be no adverse effect on historic properties within the visual APE; and
  - iii. ground disturbance is required and limited to areas previously mechanically disturbed from construction excavation and filling to the full depth of the proposed CRS Undertaking where the probability of finding intact archaeological resources is low as determined by a DHS Qualified Professional based on professional expertise, familiarity with the area, and similar geomorphology elsewhere, or previous assessments or Section 106 consultation, concluded no historic archaeological resources are present or expected.
- b. CRS Undertakings at a DHS federal facility greater than 45 years of age where:
  - i. the federal facility has been previously surveyed or evaluated for above ground and/or below ground resources, as applicable, within the preceding 10 years and determined ineligible for listing on the National Register by a DHS Qualified Professional with concurrence by the relevant SHPO, and for which a re-evaluation or additional survey is not deemed necessary; or
  - ii. subsurface areas within the APE have been previously mechanically disturbed from construction excavation and filling to the full depth of the proposed CRS Undertaking where the probability of finding intact archaeological resources is low as determined by a DHS Qualified Professional based on professional expertise, familiarity with the area, and similar geomorphology elsewhere, or previous assessments or Section 106

consultation concluded no historic archaeological resources are present or expected; or

- iii. there would be no effect on historic properties and there are no adverse effects on other historic properties within the visual APE as determined by a DHS Qualified Professional; or
- iv. there would be no adverse effect as determined by a DHS Qualified Professional and a submission package of the no adverse effect determination has been provided to the appropriate SHPO, THPO, Tribe, or NHO for thirty (30) calendar days for concurrence; or
- v. the federal facility is a National Historic Landmark and a no adverse effect determination has been made by a DHS Qualified Professional and a submission package of the no adverse effect has been provided to the appropriate SHPO, THPO, Tribe, NHO, and the National Park Service for thirty (30) calendar days for concurrence.

V. Consultation with Tribes and Native Hawaiian organizations on CRS Undertakings Off Tribal Lands

- a. The United States Government has a unique legal and political relationship with Tribal Governments as set forth in the Constitution of the United States, treaties, statutes, court decisions, and Executive Orders. The United States recognizes the right of Tribes to self-government. Tribes exercise inherent sovereign powers over their members and territories. DHS is committed to strengthening the government-to-government relationship between the United States and Tribes.
- b. DHS recognizes that, while unlikely, CRS Undertakings could directly or indirectly impact sacred sites or historic properties off tribal lands with traditional religious and cultural significance to a Tribe or NHO and is committed to regularly and meaningfully collaborating, communicating, and cooperating with Tribes through consultation.
- c. DHS will use reasonable and good faith efforts to identify any resources that may have traditional religious and cultural significance through tribal consultation and during the identification phase of each CRS Undertaking where ground disturbing activities are proposed. DHS will utilize historic maps, information gathered from previous consultations pursuant to Section 106 of the NHPA, SHPO or Tribal databases, and the Housing and Urban Development's Tribal Directory Assistance Tool to identify the appropriate Tribes and NHOs to be engaged for further consultation.
- d. Should it be determined through tribal consultation that the proposed CRS Undertaking could potentially result in an adverse effect on a historic property

with traditional religious and cultural significance, the process set forth in 36 C.F.R. 800.5 will be followed.

- e. Information regarding historic properties with traditional religious or cultural significance or sacred sites provided to DHS by Tribes or NHOs may be sensitive. Upon request, DHS shall keep sensitive information provided by Tribes or NHOs confidential consistent with applicable federal laws.

## VI. Section 106 Review Process

For any CRS Undertaking listed in Appendix A of this Agreement, DHS will complete the *Nationwide Programmatic Agreement for Sustainability and Resilience Undertakings Review Form* (Appendix B) for compliance and auditing purposes.

For any CRS Undertaking not listed in Appendix A of this Agreement, the DHS Qualified Professional will follow the standard Section 106 process as identified in 36 C.F.R. Parts 800.1-800.5. DHS will use best efforts to avoid and minimize adverse effects on historic properties and will appropriately consult and mitigate those effects as necessary. If the DHS Qualified Professional determines the CRS Undertaking would result in either no adverse effect or an adverse effect on historic properties, 36 C.F.R. 800.6 is substituted by the following process, as applicable.

### a. **Process for No Adverse Effect**

The process for a finding of no adverse effect follows 36 C.F.R. 800.5(3)(b) with the following additions:

- i. DHS will provide a submission package to the appropriate parties identified pursuant to 36 C.F.R. 800.3(f) of the no adverse effect determination as made by a DHS Qualified Professional.
- ii. If there is no response from the parties within thirty (30) calendar days, DHS shall assume concurrence and the completion of Section 106 responsibilities.
- iii. If there is a disagreement with the federal finding and DHS determines the CRS Undertaking would result in an adverse effect determination, Section VI.b of this Agreement is followed.
- iv. If DHS maintains a no adverse effect determination and a disagreement persists, the process provided in 36 C.F.R. 800.5(c)(2) is followed.

### b. **Adverse Effect Consultation and Resolution**

The process for a finding of adverse effect follows 36 C.F.R. 800.6 with the following additions:



- i. DHS will provide a submission package to the appropriate parties identified pursuant to 36 C.F.R. 800.3(f) of the adverse effect determination as made by a DHS Qualified Professional and propose avoidance, minimization, or mitigative measures to resolve the adverse effect.
- ii. DHS will make publicly available on its website for forty-five (45) calendar days, unclassified documentation of the CRS Undertaking to have a potential adverse effect on a historic property as specified in 36 C.F.R. 800.11(e), subject to confidentiality provisions of 36 C.F.R. 800.11(c), as early as possible in the planning process to solicit public comment on proposed avoidance, minimization, or mitigative measures.
- iii. If the parties as identified in 36 C.F.R. 800.3(f) do not respond in writing within thirty (30) calendar days of DHS's adverse effect determination and proposed resolution, the proposed CRS Undertaking would proceed in accordance with DHS's resolution proposal. Once the CRS Undertaking has been completed and avoidance, minimization, or mitigation implemented, DHS shall provide the appropriate SHPO or THPO and the ACHP with an overview of activities for the administrative record.
- iv. If the parties as identified in 36 C.F.R. 800.3(f) respond in writing within thirty (30) calendar days of DHS's adverse effect determination and proposed resolution, DHS shall convene a virtual or in-person meeting within fifteen (15) calendar days of receiving the response to discuss resolution of adverse effects.
- v. If avoidance is not possible, DHS will draft a Memorandum of Agreement ("MOA") memorializing proposed terms DHS and the signatories identified pursuant to 36 C.F.R. 800.6(c) have agreed upon to resolve the adverse effect within thirty (30) calendar days following the first meeting. Signatories shall have thirty (30) calendar days to review and provide comments on the draft MOA.
- vi. Within fifteen (15) calendar days following receipt of any signatory's comments on the draft MOA, DHS shall convene a second virtual or in-person meeting. This 30/15 day cadence of preparation, dissemination, review, and meeting shall continue until finalization of the MOA draft which shall take no longer than 180 days after the first meeting described in subparagraph iv above.
- vii. Pending no disagreement, DHS will provide the final MOA and signature pages to signatories, which shall be signed and returned within thirty (30) calendar days.

- viii. If the final MOA has not been signed by the signatories within thirty (30) calendar days per subparagraph vii above, and there is no disagreement with respect to the terms of the MOA or requests for additional review time or meetings, the DHS FPO or DFPO will request in writing the ACHP's participation in the resolution of adverse effects and execution of the MOA.
- ix. If no response is received from the signatories after thirty (30) calendar days of the ACHP's efforts to progress the MOA to finalization, the ACHP will notify all signatories and sign a two-party MOA without SHPO involvement.
- x. If the ACHP has not signed the MOA within thirty (30) days of receiving the notification in subparagraph ix above, DHS can proceed in accordance with 36 C.F.R. 800.7 in order to conclude its Section 106 responsibilities for the CRS Undertaking.

## **VII. Emergencies**

If an emergency is declared by the President or Governor of a State, or if DHS determines an urgent, sudden, and serious event or an unforeseen change in circumstances necessitates immediate action to remedy harm or avert imminent danger to life, health, or property during the implementation of any CRS Undertaking, DHS shall notify the ACHP and appropriate SHPO, THPO(s), Indian tribes, and NHO(s) of repair or replacement needs and plans along with information on the federal facility(ies), undertaking, or other relevant actions in response to the emergency as set forth in 36 C.F.R. 800.12(b)(2).

## **VIII. Unanticipated or Post-Review Discoveries**

In the event of an unanticipated discovery of historic or cultural resources during a CRS Undertaking, DHS follows the process identified in 36 C.F.R. 800.13, with the following streamlined processes for timeliness:

- a. If previously unidentified historic properties, human remains, funerary objects, sacred objects, or items of cultural patrimony, or unanticipated effects, including audible, atmospheric, and cumulative effects to historic properties are discovered during project implementation, the work immediately halts within a 50-foot radius of the discovery and interim nondestructive measures are implemented to protect the discovery from damage, looting, and vandalism. Within 48 hours of the discovery, DHS shall notify the relevant SHPO, THPO, Tribe, or NHO, as appropriate, of the inadvertent discovery.
- b. DHS will dispatch a Qualified Professional to inspect the site and determine the area and nature of the affected find. Construction work may then continue in the area outside the find as defined by DHS.

- c. Within five (5) business days of the original notification, DHS in consultation with the SHPO, THPO, Tribes, and NHOs, as appropriate, will determine whether the unanticipated or post-review discovery is eligible for the National Register or has been identified by as Tribe as a Sacred Site and will work collaboratively with the relevant SHPO, THPO, Tribe, or NHO, as appropriate, to determine the contents of the Discovery Plan, including ways to minimize, avoid, or mitigate adverse effects and appropriate methods of identification, transport, and storage of materials.
- d. Any disputes over the eligibility of unanticipated or post-review discoveries will be resolved in accordance with the requirements of 36 C.F.R. 800.4(c)(2), as appropriate.
- e. Native American human remains, funerary objects, sacred objects, or items of cultural patrimony found on federal land will follow the Native American Graves Protection and Repatriation Act and its implementing regulations (43 C.F.R. Part 10) and be consistent with the Discovery Plan.

## **IX. Training**

- a. The DHS FPO or DFPO will provide annual training sessions to Component project teams and personnel involved in CRS Undertakings on the requirements of this Agreement.
- b. DHS HQ and Component facility managers and environmental planning and historic preservation staff ensure operational staff, tenants, and contractors involved in the implementation of CRS undertakings are provided information regarding the terms of this Agreement prior to project execution to ensure compliance.

## **X. Annual Report and Meeting**

- a. Beginning December 1, 2024, and on each anniversary thereafter, DHS will submit to the ACHP and NCSHPO an annual report summarizing all undertakings reviewed under this Agreement during the prior fiscal year (October 1 – September 30). The first report will cover the period from the effective date of this Agreement through September 30, 2024. Each report will be organized by state or territory and will identify examples of successful implementation, examples of failures or problems with implementation, and training activities.
- b. Within thirty (30) calendar days of submitting the first annual report, DHS will convene a meeting with the ACHP and NCSHPO, to examine the Agreement's effectiveness based on the information provided in the report. At this first report meeting, DHS and the ACHP and NCSHPO will determine the necessity, frequency, and timing of future annual meetings and reporting.

## **XI. Amendments**

Any signatory to this Agreement may propose an amendment of this Agreement by submitting the proposed amendment in writing to all signatories. Once the proposed amendment or changes have been provided, the signatories will consult on the proposal for no more than sixty (60) calendar days, unless additional time is agreed upon by all signatories. The Amendment will go into effect upon written agreement by all signatories.

## **XII. Dispute Resolution**

- a. If a signatory to this Agreement objects to any actions carried out or proposed by DHS pursuant to this Agreement, it will notify DHS in writing of such objection.
- b. Within thirty (30) calendar days following receipt of the written objection from a signatory, DHS shall convene a meeting of the signatories to discuss the objection and work toward a resolution.
- c. If after thirty (30) calendar days from meeting, a signatory determines that a resolution cannot be found and the objection remains, DHS shall distribute documentation relevant to the objection and attempts at resolution to all signatories, including the ACHP. Signatories to this Agreement and the ACHP will be given thirty (30) calendar days to submit to DHS a written statement regarding the dispute and whether it concurs or disagrees with any proposed resolution, which may include termination pursuant to 36 CFR 800.7 should the dispute include a failure to resolve an adverse effect after following Section VI(b) of this Agreement.
- d. If none of the signatories submit a written statement to DHS within the thirty (30) calendar day period of meeting per subparagraph b above, DHS will notify signatories of its final decision and proceed accordingly.
- e. DHS's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

## **XIII. Agreement Effective Date and Termination**

- a. The effective date of this Agreement is the last date of signature from the ACHP, NCSHPO, and DHS.
- b. Any signatory may request termination of this Agreement by written notice to the other signatories.
- c. The party proposing the termination of this Agreement shall include in its notification to the other signatories a written explanation supporting the termination request and provide thirty (30) calendar days to consult and seek alternatives to termination. If a resolution is not agreed upon and the termination

request has not been retracted within ninety (90) calendar days of initial written notification, this Agreement shall thereupon be terminated. At that time, DHS will notify all signatories of the termination.

- d. If this Agreement is terminated, DHS will consult in accordance with 36 C.F.R. 800.14 to develop a new Program Alternative or comply with the standard process outlined in 36 C.F.R. 800 for CRS Undertakings.

#### **XIV. Expiration Clause**

This Agreement will expire ten (10) years from the effective date, unless extended by written agreement of all signatories. The signatories will meet no later than six (6) months prior to the expiration of this Agreement to determine if renewal and/or revision is warranted.

#### **XV. No Commitment or Obligation of Funds**

Nothing in this Agreement shall constitute funds commitment or obligation by any Party. Nothing in this Agreement shall constitute an agreement by any Party to obligate or transfer funds in advance of any appropriation of those funds. Specific activities or projects that involve the transfer of funds, services, or property between or among any of the Parties will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOA does not provide such authority.

IN WITNESS WHEREOF, the signatories have caused this Agreement to be executed by their respective authorized officers on the dates below.

Dr. Teresa R. Pohlman  
Executive Director, Sustainability and Environmental Programs  
U.S. Department of Homeland Security

Reid Nelson  
Executive Director  
Advisory Council on Historic Preservation

Ramona Bartos  
President  
National Conference of State Historic Preservation Officers

## **Appendix A**

### **Climate Resiliency and Sustainability Undertakings at DHS Owned Federal Facilities**

The climate resiliency and sustainability undertakings (“CRS Undertakings”) covered by this Agreement are associated with the Department of Homeland Security’s efforts to meet several Administration, Executive, Legislative, and Departmental priorities associated with reducing greenhouse gas emission, reducing energy and water usage, increasing the number of high-performance buildings in its portfolio, and increasing facility resilience and sustainability. The sustainable design and operational principles identified in the Council on Environmental Quality’s December 2020 *Guiding Principles for Sustainable Federal Buildings and Associated Instructions* (“CEQ Guiding Principles”) were heavily influential in identifying CRS Undertakings for the Department’s climate resiliency and sustainability measures. The CEQ Guiding Principles are intended to ensure new and existing federal buildings will accomplish the following:

- Employ integrated design principles.
- Optimize energy performance.
- Protect and conserve water.
- Enhance the indoor environmental quality.
- Reduce the environmental impact of materials.
- Assess and consider building resilience.

**CATEGORY 1** – In accordance with 36 CFR 800.3(a)(1), the following CRS Undertakings, identified as Category 1, have been determined by DHS to have no potential to effect historic properties and do not require Section 106 consultation. A DHS Qualified Professional will keep records of all CRS Undertakings subject to this Agreement by completing the *DHS Nationwide Programmatic Agreement for Climate Resiliency and Sustainability Undertakings Review Form* in Appendix B for compliance and auditing purposes.

For this category of undertakings, “public right-of-way” means any character defining feature(s) of a historic property(ies) visible from the public street or sidewalk immediately adjacent to the property. For this category, ground disturbance is permitted if it occurs in areas previously subjected to mechanized construction excavation and fill to the full depth of the proposed CRS Undertaking, and/or has been previously surveyed and a no effect determination made by a DHS Qualified Professional.

- 1. Energy Efficiency and Conservation Measures**
  - a. Duct sealing, insulation, repair, or replacement in unoccupied areas.
  - b. Repair or in-kind replacement of existing heating, ventilation, and air conditioning (HVAC) equipment including pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers, and thermostats that are within the facility or on the rear of the structure or not visible from any public right-of way.
  - c. Existing HVAC system fuel switching.
  - d. Adding or replacing existing smart building automation and building automated control management systems including HVAC control systems and the

replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors and carbon monoxide detectors (wired or non-wired).

- e. Removal, replacement, or repair of window unit air conditioners and heat pumps.
- f. Replacement or installation of removable interior window film.
- g. Installation or replacement of rigid or flexible dryer venting to the outside.
- h. Interior light fixture or lighted sign maintenance, retrofit, or replacement, including ballasts, conversion to color-temperature appropriate LED lighting, dimmable light switches, and day lighting controls. If an interior light fixture is historic and must be replaced, it will be replaced in-kind to match the configuration, material, size, detail, and construction method of the historic fabric.
- i. Installation of occupancy/proximity sensors to automatically turn off/on lights.
- j. Exterior lighting repairs, upgrades, and in-kind replacement, including ballasts, sensors, and energy storage devices not visible from public rights of way.
- k. Replacement or installation of electrical systems, including conduit and wiring, provided such alteration does not detract from the qualities that contribute to the significance of the historic property, does not involve removal or alteration of significant historic elements, and does not damage, alter, or remove significant historic fabric.
- l. Maintenance, upgrade, and new installation of non-hard wired devices including photo-controls, occupancy sensors, thermostats, humidity, light meters, and other building control sensors.
- m. Appliance replacement (upgrade to EnergyStar appliances).
- n. Flat or shallow pitch roof replacement (shallow pitch is defined as a pitch with a rise-to-run ratio equal to or less than 3" to 12") with no part of the surface of the roof visible from the ground.
- o. Repairing or replacing existing driveways, parking areas, and walkways with sustainable or permeable materials of similar appearance.
- p. Energy audits, utility condition assessment, and feasibility studies (conducted either by personnel or noninvasive advanced technology, including small, unmanned aircraft systems, i.e., drones, LIDAR/SONAR scans, etc).
- q. New energy metering, monitoring, and telemetry devices that do not permanently change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure, is not visible from the public right of way.
- r. Materials and systems that provide moisture and mold control.
- s. Non-permanent systems and materials used for sanitization, green cleaning, and integrated pest management.
- t. Geolocation, maintenance, repair, upgrade, or replacement of existing below-grade utilities when activities conform to the original footprint of ground disturbance in both size and depth.
- u. Maintenance, repair, upgrade, or replacement of existing above-grade utilities and related features when activities conform to the original footprint and general size and volume.
- v. Addition of native shade trees to reduce cooling loads of federal facilities that do not permanently change the appearance of the exterior of the building or alter the characteristics and integrity of historical or cultural landscapes.

- w. Removal of non-character-defining existing natural features, such as trees and bushes, which encroach upon or damage a federal facility where removal activities would not impact the foundation of a historic property.
- 2. Water Efficiency and Conservation Measures**
- a. Water heater tank and pipe insulation repair and replacement.
  - b. Installation of water metering.
  - c. Installation of interior laboratory systems and equipment, such as water conservation, recycling, or purification systems, steam sterilizers, energy efficient fume hood filtration/washdown systems, etc.
  - d. Repair, in-kind replacement, or new water efficient landscaping or irrigation systems (e.g., gutter replacement and redirection, rainwater gardens, etc.) that do not alter the characteristics and integrity of a historic property or of historical or cultural landscapes.
  - e. Repair and in-kind replacement of non-historic landscaping.
- 3. Climate Resiliency**
- a. Elevation of existing mechanical equipment not visible from public rights of way.
  - b. Installation of backup generator equipment that does not permanently change the appearance of the interior or exterior of the building and is out of view of public rights of way.
  - c. In-kind replacement of generators, transformers, and condensers.
  - d. Removal of water by temporary physical or mechanical means without ground disturbance, through utilization of pumps, emergency generators, fans, and dehumidifiers.
  - e. Installation of perimeter drainage (e.g., French drains) when performed in previously disturbed ground.
  - f. Temporary utilization of plastic sheeting attached at mortar joints, sandbags, and a water-filled bladder/dam.

**CATEGORY 2** – No consultation is required for Category 2 CRS Undertakings if *Secretary of the Interior’s Standards for Rehabilitation*, *Secretary of the Interior’s Standards for Rehabilitation and Guidelines on Flood Adaptation for Rehabilitating Historic Buildings*, and the *Secretary of Interior’s Standards for Rehabilitation and Guidelines on Sustainability for Rehabilitating Historic Buildings* are followed and verified by a DHS Qualified Professional. The DHS Qualified Professional will keep records of all CRS Undertakings subject to this Agreement by completing the *DHS Nationwide Programmatic Agreement for Climate Resiliency and Sustainability Undertakings Review Form* in Appendix B for compliance and auditing purposes.

For this category of undertakings, “public right-of-way” means any character defining features of a historic property(ies) visible from the public street or sidewalk immediately adjacent to the property. For this category, ground disturbance is permitted if it occurs in areas previously subjected to mechanized construction excavation and fill to the full depth of the proposed CRS Undertaking, and/or has been previously surveyed and a no effect determination made by a DHS Qualified Professional.



## 1. Energy Efficiency and Conservation Measures

- a. Thermal insulation in walls, floors, ceilings, attics, basements, crawl spaces, ducts, and foundations.
- b. Blown in wall insulation where no decorative plaster is damaged.
- c. Temporary installation of new above-ground utilities or utility systems (e.g., water storage tanks, mobile telecommunication towers/antennas, mobile photovoltaic panels or wind turbines, energy efficient or solar parking lot lighting, emergency response equipment and control centers, generators, etc.) where activities are located on existing foundations or paved areas, support on-going existing operations, and are no more than 50 sq. ft. in area, provided such alteration, if in a historic district or adjacent to a historic property, does not detract from the qualities that contribute to the significance of that historic property.
- d. Painting over previously painted exterior surfaces, provided destructive surface preparation treatments are not used such as water-blasting, sandblasting, and chemical removal.
- e. Repairing or upgrading electrical or plumbing systems and installing mechanical equipment, in a manner that does not permanently change significant historic elements and no significant historic fabric will be damaged, altered, or removed.
- f. Installation of new HVAC equipment (such as pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, or heat exchangers) in a manner that does not permanently change significant historic elements and no significant historic fabric will be damaged, altered, or removed.
- g. Solar systems (including photovoltaic and solar thermal) not visible from the public right-of-way and if ground-mounted can be installed without ground disturbance and if roof-mounted will not require new building reinforcement.
- h. Integrated shingle-style or thin film solar systems on the rear roof of the facility, behind the parapet or not visible from the public right-of-way.
- i. Wind mounted systems that will not require ground disturbance and if building-mounted will not require building reinforcement, permanent attachment, or impacts to character-defining features.
- j. Replacement of noncharacter-defining exterior lighting.
- k. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs not visible from the public right-of-way.
- l. Replacement of existing exterior siding, trim, rails, joints, stucco, or veneer; existing decking, porches, landings, stairs, railings, guardrails or handrails; existing canopies or awnings; or existing building numbers and signs. if material is damaged beyond repair, considering firstly, in-kind material, and secondly compatible substitute material that closely resemble the existing design, dimension, profile, and texture.
- m. Roofing, cladding and sheeting, underlayment sheathing, flashing, gutters, soffits, downspouts, and catch basin replacement if material is damaged beyond repair considering firstly, in-kind material, and secondly compatible substitute material that closely resemble the existing design, dimension, profile, and texture in a manner that does not alter the roofline.

- n. Installation of solar screens on exterior windows.
- o. Sealing air leaks around windows and doors using weather stripping, door sweeps, and caulk that does not involve removal or alteration of significant historic elements, and does not damage, alter, or remove significant historic fabric.
- p. Installing storm windows, storm doors, or wood screen doors in a manner that does not harm or obscure historic windows, doors, or trim.
- q. Installing insulated exterior replacement doors where the door openings are not altered, a character defining feature of an historic property, or visible from the public right-of-way.
- r. In-kind replacement of windowpanes. Clear plate, double, laminated, or triple insulating glazing can be used, provided it does not result in altering the existing window material, tint, form, muntin profiles, or number of divided lights. This does not apply to the replacement of intact decorative glass.
- s. In-kind repair or replacement of windows that duplicate the material, dimension, design, detailing, and operation of the historic window to include repairing, scraping, and repainting of existing windows; in-kind replacement of window sash, glass, and hardware; and in-kind replacement of damaged and non-operable transoms.
- t. Installing vents (such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit, and frieze board vents or combustion appliance flues) if not located on a primary roof elevation or not visible from the public right-of-way.
- u. Installing foundation vents, if painted or finished to match the existing foundation material.
- v. Installation of floor materials over non-character-defining flooring in a reversible manner, provided such alteration does not detract from the qualities that contribute to the significance of a historic property, does not involve removal or alteration of significant historic elements, and does not damage, alter, or remove significant historic fabric.
- w. Reversible application of removable caulking, weather-stripping, and/or thermal insulation window film which is clear and non-reflective.
- x. Repair or in-kind replacement of interior floors, walls, and ceilings. This applies to the repair of interior finishes, including plaster and wallboard, provided the repair is restricted to the damaged area and does not affect adjacent materials.  
*This does not apply to historic architectural finishes such as decorative plaster or plaster substrates for decorative materials such as wainscoting, murals, gold leaf, etc.*

## 2. **Water Efficiency and Conservation Measures**

- a. Water conserving product replacement or installation (e.g., low-flow drinking fountains, toilets, urinals, sinks/faucets, water tanks, plumbing fixtures, etc.) that does not permanently change the appearance of the interior or exterior of the building.
- b. Installation or replacement of downspout extensions, provided that the color of the extensions is historically appropriate for the period and style of the property.

- c. Rainwater catchments and harvesting systems and/or gray water systems not viewable from the public right-of-way.

**3. Climate Resiliency**

- a. Dry floodproofing using watertight shields for windows and doors and use of sealants and membranes on the exterior of a federal facility. If the federal facility is a historic property, materials consistent with the historic context that do not change the historic design drastically, permanently change the appearance of the facility or damage the historic character of the historic property, or appear or reduce evidence of workmanship will be prioritized.
- b. Installation of interior storm windows.
- c. If the federal facility is located in a floodplain or coastal zone, the in-kind stabilization and elevation of at least two feet above base flood elevation for federal facility parking areas or ingress/egress roads which does not include widening or deepening of the existing parking area or road footprint.
- d. Re-introduction of green spaces through the removal of concrete pads or parking areas that do not expand beyond the federal facility's original footprint or depth of ground disturbance.
- e. Creation of bioswales within pre-existing curbs and parking lots that do not permanently change the appearance of historic landscapes and remain within previously disturbed ground.
- f. Existing wetland, stream channel, wet or dry catch basin, erosion ditch, and stormwater system improvement, restoration, and protection in previously disturbed ground.
- g. Detachable water-level sensors on facility foundations that do not permanently change the appearance of historic landscapes.
- h. Erosion control activities (such as gravel or riprap placement) where activities are constructed in a reversible manner and are located at or adjacent to existing paved areas.
- i. Installation of foundation sump pumps within previously disturbed ground.

**Appendix B**  
**DHS Nationwide Programmatic Agreement for Climate Resiliency and Sustainability**  
**Undertakings Review Form**

The following checklist is to be utilized for confirming CRS Undertaking(s) identified in Appendix A adhere to the conditions identified within this Nationwide Programmatic Agreement. Through the utilization of this review form, DHS continues to ensure no adverse effects to historic properties would result from the undertaking(s) identified in Appendix A. Should the proposed CRS Undertaking(s) occur on tribal lands, or if the proposed CRS Undertaking(s) is not covered in Appendix A, 36 C.F.R. Parts 800.1-800.5 are followed. Should a DHS Qualified Professional determine the proposed CRS Undertaking would result in a no adverse effect or adverse effect determination, Section VI of this Nationwide Programmatic Agreement is followed. This review form should be saved for tracking and reporting purposes and become part of the administrative record for National Environmental Policy Act compliance.

This section of the review form is to be completed by facility or project management staff prior to a CRS Undertaking(s) commencement and should be submitted to a DHS Qualified Professional as early as possible in the project planning stage, but at least 45 days prior to the commencement of work.

**I. General**

Review Date:

Project Start Date:

Address (include labeled map, pictures, and/or floorplan of facility):

City, State:

Facility Construction Date, if known:

Project Title:

Project Tracking Number (optional):

Form Completed By:

Program Comment Undertaking Category from Appendix A (1 or 2):

--For Category 2 undertakings, the Secretary of the Interior's *Standards for Rehabilitation*. Secretary of the Interior's *Standards for Rehabilitation and Guidelines on Flood Adaptation for Rehabilitating Historic Buildings*, and the Secretary of Interior's *Standards for Rehabilitation and Guidelines on Sustainability for Rehabilitating Historic Buildings*, as appropriate, must be consulted and followed.

**II. Project Description**

Provide specific information on: the proposed CRS Undertaking purpose; location within, on, or around the federal facility (e.g., lobby, elevator, office space, hallway, roof, parking lot, etc.); materials to be used and/or replaced (e.g., brick, glass, woodwork, plaster, roofing, concrete, etc.); permanent or temporary nature of the undertaking; discussion and scope of ground-disturbing activities associated with the undertaking; and if the area has been previously evaluated or surveyed for historic or cultural resources.

This section of the review form is to be completed either by an individual supervised by or who themselves meets the qualifications consistent with the Secretary of the Interior's *Professional Qualification Standards*.

### **III. Identification of Historic Properties**

The facility is:

- Unevaluated
- Not eligible for the National Register of Historic Places (NRHP)
- Eligible for listing on the NRHP
  - Provide NRHP criteria/criterion and brief integrity statement
- Listed on the NRHP
  - Provide listing date, NRHP criteria/criterion and brief integrity statement
- Listed as a National Historic Landmark
  - Provide listing date and brief integrity statement
- Known historic properties within the defined visual APE
- Known archeological site within the defined APE
- Known properties of traditional religious and cultural significance to a Tribe within the defined APE

### **IV. Effect Determination**

The proposed CRS Undertaking(s) would result in:

- No Potential to Cause Effect (Section 106 concluded)
  - Supporting information/documentation
- No Effect (Section 106 concluded)
  - Supporting information/documentation
- No Adverse Effect (follow Section VI of Nationwide Programmatic)
  - Supporting information/documentation
- Adverse Effect (follow Section VI of Nationwide Programmatic)
  - Supporting information/documentation and description of the adverse effect

### **V. Nationwide Programmatic Agreement**

The proposed CRS Undertaking(s) would/would not be covered under the Nationwide Programmatic Agreement.

-Category 1 is/is not applicable

--For proposed undertaking(s) listed in Category 1 of Appendix A, Section 106 requirements have been fulfilled and no further consultation is necessary. Maintain this form for the administrative record.

-Category 2 is/is not applicable

--The proposed CRS Undertaking(s) listed in Category 2 of Appendix A will adhere to the Secretary of the Interior's *Standards for Rehabilitation*, Secretary of the Interior's *Standards for Rehabilitation and Guidelines on Flood Adaptation for Rehabilitating Historic Buildings*, and the Secretary of Interior's *Standards for Rehabilitation and Guidelines on Sustainability for Rehabilitating Historic Buildings*, as appropriate. Maintain this form for the administrative record.

- Category 1 and 2 do not apply and the standard Section 106 process as identified in 36 C.F.R. Parts 800.1-800.5 will be followed.

**VI. Conditions:**

Discuss any special considerations or conditions for the undertaking(s) to proceed:

**VII. Additional Comments:**

DHS Qualified Professional Verification and Signature and Date:

DRAFT