

Section 106 Agreement Checklist: Content

Use this checklist to ensure that the Memorandum of Agreement (MOA) or project Programmatic Agreement (project PA) includes the administrative stipulations and other clauses and information that should be found in every Section 106 agreement document. Also, consider the inclusion of other stipulations to provide contingencies for changes to the undertaking, problems, and other issues that could arise during implementation of the agreement.

Project Name:

Review Date:

TITLE			
Memorandum of Agreement or Programmatic Agreement?	See definitions at 36 CFR §800.6(c) and §800.14(b)		
	Yes	No	Comments
Are all the signatories named in the title?	<input type="checkbox"/>	<input type="checkbox"/>	Federal agency(ies), SHPO/THPO, and ACHP if participating
Is the undertaking(s) named in the title?	<input type="checkbox"/>	<input type="checkbox"/>	
PREAMBLE- WHEREAS CLAUSES			
	Yes	No	Comments
Is the entire undertaking and the nature of federal involvement described?	<input type="checkbox"/>	<input type="checkbox"/>	
Does a clause note the agreement was developed pursuant to Section 106 of the National Historic Preservation Act?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the responsible federal agency named?	<input type="checkbox"/>	<input type="checkbox"/>	
If there is a lead federal agency, has it been	<input type="checkbox"/>	<input type="checkbox"/>	If so, also identify the role(s) of other involved federal agencies

named?			[36 CFR §800.2(a)(1)]
Is an applicant for federal permits, licenses, grants, or other assistance involved?	<input type="checkbox"/>	<input type="checkbox"/>	If so, are the applicant's role and responsibilities described?
Is the appropriate SHPO/THPO(s) named?	<input type="checkbox"/>	<input type="checkbox"/>	
Are all other consulting parties listed, including any Indian tribes, Native Hawaiian organizations, and representatives of local governments?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.2(c)
In a Programmatic Agreement, is the reason why a programmatic approach is needed described?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.14(b)(1)
Has the Area of Potential Effects for the undertaking(s) been identified?	<input type="checkbox"/>	<input type="checkbox"/>	
Are historic properties affected by the undertaking listed?	<input type="checkbox"/>	<input type="checkbox"/>	If numerous, consider summarizing and referencing an appendix.
Does a clause acknowledge historic properties would or may be adversely affected?	<input type="checkbox"/>	<input type="checkbox"/>	If historic properties would be adversely affected by the undertaking, briefly describe how.
Is a clause stating that the ACHP has been notified of the finding of adverse effect included? If the ACHP is participating in the consultation, is this stated?	<input type="checkbox"/>	<input type="checkbox"/>	
Is a reference included to the agency's public involvement efforts?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the clause, "Now, therefore, [federal agency, SHPO/THPO....] agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties"	<input type="checkbox"/>	<input type="checkbox"/>	

included?			
STIPULATIONS			
	Yes	No	Comments
Are the stipulations preceded by a clear statement that <i>the federal agency shall ensure that these terms are carried out</i> ?	<input type="checkbox"/>	<input type="checkbox"/>	See the ACHP's template MOA
Are procedures for responding to the unanticipated discovery of historic properties or inadvertent adverse effects to identified historic properties included?	<input type="checkbox"/>	<input type="checkbox"/>	Where appropriate; see 36 CFR §800.6(c)(6). See also 36 CFR §800.13
Are procedures for responding to emergency situations included?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.12
Is the need for confidentiality of sensitive information identified where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.11(c)
Has the use of qualified professionals been stipulated where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	See the Secretary of the Interior's professional qualifications standards, and 36 CFR §800.2(a)(1)
If archaeological data recovery is stipulated, is a data recovery plan attached or referenced in the agreement?	<input type="checkbox"/>	<input type="checkbox"/>	See the ACHP's archaeological guidance at www.achp.gov/archguide
Are procedures for public involvement included for any ongoing reviews carried out according to the agreement's terms?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §800.2(d) and 800.6(a)(4)
Are procedures for monitoring and reporting on agreement implementation included as appropriate to the project?	<input type="checkbox"/>	<input type="checkbox"/>	Where appropriate; see 36 CFR §800.6(c)(4)

If other federal funds, permits, or licenses may be used or required in the future for the undertaking, is an “other federal involvement” stipulation included?	<input type="checkbox"/>	<input type="checkbox"/>	See Sample Stipulations Section
Is a dispute resolution procedure included?	<input type="checkbox"/>	<input type="checkbox"/>	
Are provisions for the amendment and termination of the agreement included?	<input type="checkbox"/>	<input type="checkbox"/>	See 36 CFR §§800.6(c)(7) and 800.6(c)(8)
Is the agreement’s duration specified?	<input type="checkbox"/>	<input type="checkbox"/>	Required by 36 CFR §800.6(c)(5)
Is compliance with the Anti-Deficiency Act recognized where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	
Is compliance with other federal laws, such as the Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act, and state and/or tribal laws, including state burial laws, acknowledged where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	While these other laws can be noted in an MOA/PA, Section 106 agreements are solely for documenting an agency’s compliance with Section 106 of the NHPA. As such, Section 106 agreement documents should not provide for an agency’s compliance with other statutes.
Do the stipulations conclude with an affirmation statement consistent with the template MOA?	<input type="checkbox"/>	<input type="checkbox"/>	
SIGNATURES			
	Yes	No	Comments
Are the signature blocks for signatories, invited signatories, and concurring parties clearly identified?	<input type="checkbox"/>	<input type="checkbox"/>	

Have all parties that are assigned responsibilities in the agreement been asked to be invited signatories?	<input type="checkbox"/>	<input type="checkbox"/>	
Does each signature line include a printed name, title, agency/organization, and date?	<input type="checkbox"/>	<input type="checkbox"/>	