

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
OHIO'S STATE HISTORIC PRESERVATION OFFICE,
AND THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION
REGARDING IMPLEMENTATION OF
THE FEDERAL-AID HIGHWAY PROGRAM
IN OHIO
(Agreement No. 19319)
(Supersedes Agreement No. 16734)**

WHEREAS, the Federal Highway Administration (FHWA) provides funding assistance to the Ohio Department of Transportation (ODOT) through the Federal-Aid Highway Program (Program) which is subject to Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 306108), and the implementing regulations 36 CFR §800; and

WHEREAS, the State of Ohio, Department of Transportation (ODOT) administers Federal-Aid Highway Program projects throughout the State of Ohio as authorized by Title 23 U.S.C. 302 and Sections 5501.03, 5501.11 and Chapter 5531 of the Ohio Revised Code (ORC); and

WHEREAS, Title 23 United State Code Section 327 (23 U.S.C. 327) allows the U.S. Department of Transportation (USDOT) Secretary, acting through FHWA, to assign responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA) and other Federal environmental laws to a State Department of Transportation through a Memorandum of Understanding (MOU); and

WHEREAS, ODOT and FHWA entered into a NEPA Assignment Memorandum of Understanding (MOU) concerning the state of Ohio's participation in the Program in which FHWA assigned and ODOT assumed FHWA's responsibilities under NEPA and Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) and associated implementing regulations at 36 CFR § 800; and

WHEREAS, pursuant to the MOU, ODOT is deemed to be a Federal agency for all Federal-Aid Highway projects it has assumed, and in that capacity ODOT assigned the role of "agency official" to the ODOT Office of Environmental Services (ODOT-OES) for the purpose of compliance with 36 CFR §800, and to provide for effective compliance; and

WHEREAS, ODOT has determined that certain transportation projects constitute "undertakings" as defined in 36 CFR § 800.16(y) which may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, ODOT is committed to the design of transportation systems that: (1) achieve a safe and efficient function in the State of Ohio; (2) avoid, minimize, and mitigate adverse effects on historic properties; (3) respond to the needs of Ohio's citizens and communities, including strategies that enhance the preservation of historic properties; and (4) are developed in collaboration with stakeholders to fit within the context of their settings; and

WHEREAS, FHWA, SHPO, and ODOT cooperate in meaningful, long-term planning for the protection of historic properties (in compliance with 36 CFR §800) and, toward that end, desire

to: (1) devote a larger percentage of time and energy to identifying transportation-related concerns threatening historic properties; (2) create innovative programs to address those problems; (3) provide public education and interpretation when appropriate; (4) provide for long-term planning for and effective stewardship of historic bridges; (5) develop a comprehensive and efficient Section 106 process that would: (a) simplify procedural requirements, (b) eliminate unnecessary paperwork, and (c) reduce the project-by-project review role of SHPO by focusing the time and attention of the SHPO on projects that warrant their oversight and attention; and

WHEREAS, FHWA, as a Federal agency, has a unique legal relationship with Indian tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions, and while an Indian tribe may agree to work directly with ODOT as part of the 36 CFR §800 compliance process, the FHWA remains legally responsible for government-to-government consultation with Indian tribes; and

WHEREAS, FHWA and ODOT agree that ongoing consultation with federally recognized tribes may lead to modifications of the consultation process with Indian tribes over time; and

WHEREAS, FHWA and ODOT understand that the list of federally recognized tribes who wish to participate in consultation may change over time based on consultation with those tribes; and

WHEREAS, FHWA has notified the following Indian tribes that may ascribe traditional religious and cultural significance to historic properties that may be affected by the undertakings covered by this PA: Absentee-Shawnee Tribe of Oklahoma, Citizen Potawatomi Nation, Delaware Tribe of Indians, The Delaware Nation, Eastern Shawnee Tribe of Oklahoma, Forest County Potawatomi, Miami Tribe of Oklahoma, Ottawa Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, Pokagon Band of Potawatomi, Turtle Mountain Band of Chippewa Indians, Prairie Band of Potawatomi Nation, Seneca-Cayuga Tribe of Oklahoma, Seneca Nation of Indians, The Shawnee Tribe, Wyandotte Nation, and the Tonawanda Band of Seneca; and

WHEREAS, FHWA Ohio Division Administrator retains responsibility as “agency official” for environmental review, consultation, and decision-making for projects crossing state lines pursuant to the MOU; and

WHEREAS, this agreement has been developed by FHWA, ODOT, SHPO, and the ACHP pursuant to the regulations implementing Section 106 of the National Historic Preservation Act; and

WHEREAS, ODOT and FHWA have consulted with Ohio’s State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR § 800.14(b) of the regulations; and

WHEREAS, this amended programmatic agreement supersedes the *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the State Historic Preservation Office, and the State of Ohio, Department of Transportation Regarding Implementation of the Federal-Aid Transportation Program in Ohio (Agreement No. 16734, executed November 30, 2011, amended June 7, 2016)*; and

WHEREAS, the Interstate Highway System, except for certain elements identified as exceptional, is exempt from consideration as a historic property under Section 106 by the “Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System,” approved by the ACHP and published in the Federal Register on March 10, 2005 (Vol 70, No. 46). In Ohio, only three individual elements on the Interstate System are subject to Section 106

consideration: (a) the 'Welcome to Ohio' arch structure over I-70 in Preble County at the Ohio/Indiana state line (Structure File Number (SFN) 6800087) and (b and c) the I-80 twin bridges on the Ohio Turnpike over the Cuyahoga River in Summit County (SFN 7729642 and SFN 7729618); and

WHEREAS, the *Program Comment* issued by the Advisory Council on November 2, 2012, Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges will be applied to undertakings on common concrete and steel bridges lacking distinction, not previously listed in or determined eligible for listing in the National Register of Historic Places, and therefore exempt from individual consideration under the Section 106 process; and

WHEREAS, in compliance with The Federal Highway Administration's Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Section 123(f), which required each state to complete an inventory of bridges on and off the Federal-aid system and determine their historic significance, FHWA, SHPO, and ODOT completed historic bridge inventories in 1983, 1990, 1994, 2004, and 2010; and

WHEREAS, FHWA, SHPO, and ODOT agree that the STURRA inventories are consensus state-wide National Register Determination of Eligibility (DOE) findings based on requirements set forth in 23 U.S.C. § 144 National Bridge and Tunnel Inventory and Inspection Standards (NBI) which requires DOTs to "identify historically significant bridges approaching 50 years of age"; and

WHEREAS, SHPO and ODOT concurred via letter agreement dated July 11, 2001 that all continuous steel beam and continuous steel girder deck bridges constructed in Ohio after the issuance of standardized plans in 1939 are not eligible for the NRHP and therefore are not subject to consideration as historic properties; and

WHEREAS, ODOT-OES and SHPO agree that the historic status of a bridge may be changed, based on significant new information not known during previous evaluations, the passage of time, or the status of similar type bridges; and

WHEREAS, surveys to identify significant bridges that meet or are approaching the 50 year threshold for NRHP consideration, will be completed at the discretion of the signatories of this agreement. New bridge research may be conducted on an individual, regional, and national basis. Efforts to identify patterns in history within the national context of transportation development will focus on bridge design trends; e.g., technological breakthroughs; materials; aesthetics; context sensitive design; and signature bridges. The scope, objectives, and format of any future studies will be established by ODOT and SHPO, and will include provisions for public involvement comment; and

WHEREAS, FHWA, ACHP, SHPO, and ODOT agree that the goal of the STURRA inventories was to make a reasonable and good faith effort to identify and preserve bridges listed on or eligible for listing on the National Register; and

WHEREAS, the signatories of this Agreement consider historic bridges an important component to Ohio's transportation engineering heritage and historic tourism; and therefore encourage and support rehabilitation through several Federal-aid programs, e.g. the Transportation Alternatives Program and the Surface Transportation Program, or their successors, provided the appropriate program eligibility criteria are satisfied; and

WHEREAS, historic bridges are subject to the Section 106 Consultation Process when part of a federal undertaking or approval, except for items listed in Appendix A of this agreement, ODOT will ensure that through ODOT's Project Development Process (PDP) and Performance Based Project Development (PBPD), all feasible and prudent alternatives to replacement of a historic bridge are explored in the project scoping phase of the undertaking; and

WHEREAS, flexibility in highway design standards recognized by the American Association of State Highway and Transportation Officials (AASHTO) and ODOT will be considered when a historic bridge is part of a federal undertaking or approval; and

WHEREAS, SHPO and ODOT-OES staff agree that participation in programs and activities related to historic and archaeological preservation are important SHPO and ODOT-OES will work collaboratively to establish and promote programs and activities of mutual interest and benefit. Programs and activities should include, but not be limited to, the following: (a) Hosting periodic meetings with preservation-type themes. Themes might include recent National Register listings, updates to ODOT's processes, examples of difficult eligibility questions as seen in National Register Questionnaires, and other topics of mutual interest; (b) participation in relevant professional conferences and organizations; (c) periodic refresher training provided by the Advisory Council and/or appropriate preservation institutions, subject to funding and course availability; (d) presentation and/or publication of relevant research, project reports, or other cultural resources-related topics. This may include, but is not limited to, publication in peer-reviewed and non-peer-reviewed journals, web articles, and presentations at professional conferences/meetings or to the public; and

WHEREAS, ODOT-OES and SHPO agree that, through consultation, future thematic studies similar to the Interstate Highway System Exemption and ODOT's Historic Bridge Database may be conducted. Such studies may result in concurrence that certain types of properties are or are not eligible for listing on the NRHP and require no further consultation on eligibility. Such studies may also result in concurrence that that specific properties identified within a thematic study are or are not eligible for listing on the NRHP and no further consultation on eligibility is required; and

WHEREAS, this Agreement sets forth the process by which ODOT will meet its responsibilities under Section 106 of the NHPA and the implementing regulations set forth in 36 CFR §800. For purposes of this Agreement, the definitions for terms appearing in 36 CFR § 800.16 (a) through (y) inclusive shall be employed whenever applicable.

NOW THEREFORE, FHWA, ACHP, SHPO, and ODOT hereby agree that the review of Federal-aid highway undertakings in the State of Ohio shall be administered according to the following stipulations in order to take into account the effects of the Program on historic properties in Ohio and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this agreement expires or is terminated.

STIPULATIONS

ODOT, as assigned by FHWA under the NEPA Assignment MOU, shall ensure that the following measures are carried out.

I. **Applicability**

This Agreement shall apply to all undertakings administered under the Federal-Aid Highway Program in Ohio as specified in the NEPA Assignment MOU.

II. **General Requirements**

In compliance with its assigned responsibilities for compliance with Section 106 of the NHPA and 36 CFR §800, and as a condition of the award of any assistance under the Program to ODOT, ODOT shall carry out the requirements of this Agreement consistent with all applicable FHWA and ACHP policies and guidelines, including the requirements set forth in 36 CFR §800. ODOT commits to the following:

(A) Employment of Qualified Personnel at ODOT

- (1) For the purpose of implementing this Agreement, ODOT's Office of Environmental Services (ODOT-OES) shall employ permanent professional staff in the fields of History, Archaeology, and Architectural History (or closely related field) who meet the requirements of the Secretary of Interior's Professional Qualifications Standards (https://www.nps.gov/history/local-law/arch_stnds_9.htm) and the Personnel Qualifications in the SHPO's Archaeology Guidelines (1994).
- (2) Consultants working on ODOT projects in the fields of History, Archaeology, and Architectural History must be prequalified by ODOT for such work. As such, these employees must meet the requirements of the Secretary of Interior's Professional Qualifications Standards (https://www.nps.gov/history/local-law/arch_stnds_9.htm) and the Personnel Qualifications in the SHPO's Archaeology Guidelines (1994).

(B) Employment of Personnel at SHPO

For the purpose of implementing this Agreement and streamlining the Section 106 consultation process, ODOT will enter into an agreement with the Ohio History Connection every two years, coinciding with the State of Ohio's biennium, to fund two (2) review positions at the SHPO, a division of the Ohio History Connection, or to fund other initiatives agreed upon by SHPO and ODOT. These positions will be filled by individuals who meet the Secretary of Interior's Professional Qualifications Standards (https://www.nps.gov/history/local-law/arch_stnds_9.htm), the Personnel Qualifications in the SHPO's Archaeology Guidelines (1994), and ODOT's prequalification criteria for cultural resources.

(C) Assumption of Responsibilities

- (1) ODOT, as the Agency Official for projects assigned under the MOU, has the responsibility for compliance with Section 106 of the NHPA and the requirements of this Agreement with the exception of government-to-government consultation with federally recognized Indian tribes.
- (2) This authority may not be re-delegated to project sponsors, other ODOT offices (with the exception of projects that meet the criteria listed in Appendix A of this agreement), or any other party.
- (3) ODOT is solely responsible and liable for all project-level Section 106 decisions,

with the exception of government-to-government consultation with federally recognized Indian tribes as detailed in Stipulation IV.

- (4) ODOT-OES will assist FHWA with tribal consultation as detailed in Stipulation IV below.
- (5) FHWA will retain responsibility as the federal Agency Official for highway projects that cross state boundaries or any project that is adjacent to an international border. Such projects would be subject to review under 36 CFR §800.

(D) ODOT Cultural Resources Manual and procedures

- (1) ODOT-OES will coordinate with SHPO on proposed substantial changes to ODOT's *Cultural Resources Manual* (2012), and on any successor(s).
- (2) ODOT-OES and SHPO will continue to collaborate on and develop Best Practices. Best Practices document "standard procedures" for conducting various cultural resources-related activities (e.g. establishing boundaries for historic properties, etc.). Best Practices are identified and discussed as needs are perceived and serve as guidance for all parties. Best practices can be updated as processes change. The documents are maintained electronically by ODOT-OES.

(E) Training

- (1) ODOT-OES and SHPO will partner to jointly conduct a Section 106/NRHP training class for ODOT staff, consultants, project managers, and local public agencies, which includes a testing component. The class will be offered at least twice a year but may be offered more frequently depending on demand. ODOT is in the process of implementing an Online Training program, which will replace the current training class. When this course is available online, participants will have the ability to enroll and complete the course (and required test) at any time.
 - (a) All ODOT environmental staff are required to successfully complete the Section 106 class including receiving a passing grade on the test ($\geq 75\%$). The course must be successfully completed every five years.
 - (b) All cultural resources consultants intending to conduct cultural resources work on ODOT transportation program projects must also successfully complete the course including obtaining a passing grade on the test ($\geq 75\%$) to be considered for pre-qualification. All pre-qualified cultural resources consultants must successfully complete the training every five years in order to maintain their pre-qualified status.
 - (c) ODOT shall encourage others who have involvement with ODOT projects, such as local public agencies and project managers, to attend these classes as well.
- (2) ODOT will conduct a training class on the National Environmental Policy Act (NEPA) process and a class specific to the Categorical Exclusion class of action for ODOT staff, consultants, project managers, and local public agencies. Typically, classes are offered at least twice a year but may be offered more frequently based on demand. ODOT is in the process of implementing an Online Training program which will partially replace the current training courses. CE and NEPA courses will be structured to include online prerequisite courses/modules as well as required in-person training.
 - (a) Both of these classes contain a Section 106 and NRHP training component.
 - (b) Both classes have testing components, are requirements for all ODOT environmental staff, and are pre-qualification requirements for consultants

who wish to prepare environmental documents. ODOT environmental staff in OES and Districts as well as consultants pre-qualified to prepare CE documents are required to successfully complete the Categorical Exclusion class every five years. ODOT environmental staff in OES and Districts as well as consultants pre-qualified to prepare Environmental Assessments and Environmental Impact Statements must successfully complete the NEPA course every ten years.

(F) Documentation Requirements

- (1) ODOT-OES shall coordinate with the SHPO electronically via the EnviroNet system in accordance with the Best Practice document titled "Electronic Submission Protocol". Hard copies of documentation will be provided in the cases specified in the Best Practice document. ODOT and SHPO will collaborate if changes to the Best Practice document are needed.
- (2) The general public will be afforded the opportunity to comment on projects through the NEPA public involvement process.
- (3) If Consulting Parties are identified for a project, ODOT-OES shall make information available either electronically or, if requested, in hard copy format.

III. Historic Bridges

- (A)** Bridges in ODOT's Historic Bridge Database that have been evaluated as eligible for the NRHP or which are listed in the NRHP, either individually or as a contributing resource to a historic district, are herein referred to as "historic bridges".

(B) Projects that Involve a Historic Bridge

On all Federal-aid historic bridge projects, rehabilitation is the preferred alternative unless demonstrated not to be feasible and a prudent use of public funding. Rehabilitation for vehicular use must be thoroughly evaluated before other alternatives are considered. Rehabilitation alternatives must consider a one-way pair alternative that involves rehabilitating the existing bridge and constructing a new parallel bridge, when applicable. If rehabilitation is not feasible and prudent as determined by ODOT, then bypassing it with an agreement to maintain the bridge, or relocation for another use must also be considered. Please refer to AASHTO's *Guidelines for Historic Bridge Rehabilitation and Replacement* (2008) and ODOT's *Ohio Historic Bridge Maintenance and Preservation Guidance* (2010).

(C) Change in Historic Status of Bridges

Bridge eligibility status may change based on new information, passage of time, and change in status of similar type bridges. The process for formalizing changes in eligibility status will be as follows:

- (1) For bridges associated with an ODOT Project Identification Number (PID) (i.e. a current project) the project will be coordinated with SHPO through the Section 106 process and any changes to bridge eligibility will be addressed through that process.
- (2) Bridges not associated with a PID can be elevated from Non-Historic to Eligible (or vice versa) by the following means:
 - (a) On an annual basis as part of the compliance review of this agreement and tracked under fulfillment of this stipulation. The database record will be

- updated by ODOT in conjunction with annual compliance review meeting in which all of the recommended eligible bridges will be presented at one time. (Example: information submitted by interest groups for consideration).
- (b) New, historical information may also be recorded in the historic bridge database "Notes" field for consideration if a bridge becomes part of a federal undertaking or inventory reevaluation. A notification email will be sent to SHPO, the bridge owner, and Historic Bridge Consulting Parties with the updated inventory form.
 - (c) On an annual basis, as part of the compliance review of this agreement, ODOT and SHPO will review the historic bridge database to identify bridges or bridge types that require re-evaluation as a result of new information or changes that have occurred to the historic bridge population over the past year.
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(D) System Preservation and Environmental Stewardship

- (1) ODOT-OES and SHPO will continue to complete management plans for historic bridges and/or culverts with a high level of significance as needed; e.g., endangered; one of a kind; associated with a regional or national historic context, engineering trend, or prolific designer. Completed management plans will be forwarded to their respective bridge owners to be used in local and regional transportation plans and by ODOT under Stipulation VI (B)(3) of this agreement. ODOT and SHPO will review management plans developed in the prior year and will develop a list of bridges to receive management plans in the following year as part of the compliance review.
- (2) ODOT and FHWA will promote routine maintenance, proper treatments of materials, and rehabilitation and reuse, of historic bridges based on guidance established by AASHTO, the National Park Service (NPS), and ODOT's *Ohio Historic Bridge Maintenance and Preservation Guidance*, and recommendations outlined in ODOT's Historic Bridge Management Plans.
- (3) ODOT will encourage the use of ODOT's *Ohio Historic Bridge Maintenance and Preservation Guidance* (and its amended or updated successors) for undertakings affecting historic types of bridges, even if they are not eligible for, or listed on the NRHP.
- (4) ODOT will maintain a website that advertises bridges and salvaged bridge components for reuse on roads, multiuse trails, parks, or other applications that will preserve and maintain them.
- (5) ODOT and SHPO will contact parties that may have an interest in reusing historic bridges; e.g., state and local parks; golf courses; multipurpose trails; and municipal and regional planners. Information will be provided on sources of funding to preserve historic bridges such as provisions in 23 USC §144(g)(4)(A) and (B), §144(5)(A)(B), and §144(6)(A). And periodically update them on the structures that are currently available for reuse.
- (6) When ODOT or SHPO are notified of a bridge owner's intent to replace a historic bridge using local government funds and no federal approvals are required, ODOT and SHPO will encourage rehabilitation as partners in the stewardship of Ohio's historic bridges, promoting AASHTO's guidelines, which encourage the use of design exceptions, where applicable, adaptive reuse of the structure if it's not feasible to remain in place. ODOT may offer to advertise the bridge for reuse on its website and recommend documentation before a structure is demolished. ODOT will provide a discussion of how this stipulation was implemented at the annual review.

- (7) ODOT will explore opportunities to incorporate sustainable practices and context-sensitive design elements by reusing existing bridges, structural elements, materials and aesthetics. ODOT will provide a discussion of how this stipulation was implemented at the annual review.
- (8) SHPO and ODOT will present awards for rehabilitation, preservation, reuse, sustainable design, and context sensitive design of historic bridges each year. The recipients of the awards will be selected by a panel of reviewers from each agency and presented at the County Engineers Association of Ohio (CEAO) Ohio Bridge Conference and Trade Show or other annual event. A copy of the bridge awards document will be provided to the ACHP. ODOT will provide a list of awards given in the prior year at the annual review and add them to ODOT's existing Historic Bridge Awards webpage.
- (9) Working in partnership with ODOT's Office of Local Projects, ODOT District staff, and SHPO, ODOT-OES will assist in the facilitation of available reimbursable project costs to preserve historic bridges pursuant to 23 USC § 144(g)(6)(A), and encourage local agencies and bridge owners to apply for available funding to preserve historic bridges; e.g., TAP; Credit Bridge Program; municipal bridge programs; and general bridge funds. ODOT will provide a discussion of how this stipulation was implemented at the annual review.
- (10) ODOT will continue to explore funding sources to apply toward maintenance and preservation of historic bridges, historic bridge research, and bridge update studies. ODOT will provide a discussion of how this stipulation was implemented at the annual review.
- (11) ODOT will explore appropriate events and organizations to share data and promote the ODOT Historic Bridge Inventory's research findings, program objectives, and publicize Ohio's extensive bridge-engineering heritage; e.g., the Ohio Transportation & Engineering Conference (OTEC); the CEAO Ohio Bridge Conference & Trade Show; Professional Engineers' meetings; ODOT District Environmental Coordinator meetings; ODOT training courses; and historical organizations. ODOT will provide a list of activities conducted to fulfill this stipulation at the annual review.
- (12) ODOT will ensure the historic bridge inventory data is updated annually for the compliance review, and made available to the public and partner agencies on ODOT's web site, TIMS, and www.buckeyassets.org.

IV. Consultation with Federally Recognized Indian Tribes

- (A)** As discussed in the preamble of this agreement, while ODOT-OES may consult with tribes, FHWA remains legally responsible for government-to-government consultation with Indian tribes.
- (B)** As decided during the 2016 Tribal Summit, ODOT-OES will initiate and conduct consultation with federally recognized Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects on behalf of FHWA unless otherwise requested by the tribe.
- (C)** ODOT and FHWA will continue to follow protocols established during the tribal consultation workshop held in 2005 and outlined in the 2014 FHWA/ODOT Letter Agreement on tribal consultation until such time individualized consultation protocols can be developed. FHWA and ODOT are in the process of working with the federally recognized Indian tribes to develop updated protocols. When individual tribal protocols are established, consultation with Indian tribes will follow those procedures.

- (D)** For any undertaking, if any Indian tribe or officially designated representative of an Indian tribe requests to consult with FHWA in lieu of, or in addition to ODOT-OES, ODOT-OES shall forward the request to FHWA. When an Indian tribe makes such a request, FHWA will consult with that Indian tribe in coordination with ODOT-OES. Tribal consultation materials will include both FHWA Ohio Division and ODOT-OES contact information.
- (E)** ODOT-OES will maintain an updated list of tribes that wish to be contacted and will update contact information for those tribes as new information becomes available. The list will be available to both ODOT-OES and FHWA on the O:/ drive or other mutually agreed upon location.

V. The Section 106 Process

For all undertakings conducted pursuant to this Agreement, ODOT, in its role as agency official as assigned in the NEPA Assignment MOU, shall carry out the following requirements:

(A) Initiation of Section 106 Process (36 CFR § 800.3)

During the early stages of Section 106 review, ODOT shall follow the procedures in 36 CFR § 800.3 in order to establish the undertaking, identify consulting parties, coordinate with other reviews, and plan to involve the public.

(1) No Potential to Cause Effects (36 CFR § 800.3(a))

- (a) Once an undertaking has been established, ODOT will determine if the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming they are present, pursuant to 36 CFR § 800.3(a)(1).
- (b) ODOT-OES and SHPO have jointly concurred that the starred items on the list of project actions in Appendix A have no potential to cause effects to historic properties, if present. These projects are limited to the activities defined in Appendix A, which based on the signatories' past experience with similar actions will not result in any significant impacts to the human or natural environment. These actions (project types) meet the criteria for CEs in the CEQ regulation (Section 1508.4) and 23 CFR 771.117 (a) and under 23 CFR 771.117(c) and do not normally require any further NEPA approvals by the Administration.
- (c) The ODOT district staff may determine that an undertaking meets the definition of a starred action in Appendix A and that the Section 106 is complete.

(2) Plan to Involve the Public and Other Consulting Parties ((36 CFR § 800.3(e-f))

If the undertaking is a type that has potential to cause effects to historic properties, if present, ODOT shall, through opportunities afforded by the ODOT project development process under NEPA, ODOT's Section 106 Public Involvement Guidelines (2017) (and any successors to those guidelines), and ODOT's Consulting Party Consultation guidelines to seek and consider the views of the public in a manner that remains consistent with 36 CFR §800.3(e) and 800.3(f)(3). Any comments or questions received from a consulting party or relating to historic properties will be uploaded by the ODOT District office to the appropriate project file in EnviroNet within one week of receipt.

(B) Identification of Historic Properties (36 CFR § 800.4)

(1) Determine Area of Potential Effects

ODOT-OES shall determine and document an undertaking's Area of Potential Effects (APE). Notwithstanding the requirements in 36 CFR § 800.4(a-c), ODOT-OES shall not be required to consult with SHPO on a project by project basis in identifying and evaluating historic properties within the APE of projects identified in Appendices A and B of this Agreement. ODOT-OES shall consult on projects not listed in Appendices A or B or as agreed to in any amendments to this agreement.

(2) Identify and Evaluate Historic Properties

ODOT-OES shall ensure the identification of historic properties within the APE that may be affected by an undertaking and gather information to evaluate the eligibility of these properties for the NRHP.

- (a) Information shall be obtained through cultural resource surveys or other appropriate methods consistent with the provisions of 36 CFR 800.4.
- (b) Identification of historic and archaeological properties shall follow Archaeology and Historic Preservation: Secretary of Interior's Standards and Guidelines (48 FR 44716), as well as applicable SHPO and ODOT guidelines and manuals.
- (c) Except for properties already determined eligible for listing or already listed in the NRHP, ODOT-OES shall apply the National Register Criteria (36 CFR §63) and shall make an appropriate finding regarding eligibility.
- (d) For properties that are determined by ODOT-OES not to be eligible for inclusion in the NRHP, no further review shall be required provided that any objection to ODOT-OES' determination raised by either SHPO, ACHP, or federally recognized tribe is resolved in accordance with 36 CFR § 800.4(c)(2).

(3) Public Involvement when Undertakings Have the Potential to Effect Historic Properties

- (a) Since concerns regarding historic properties can be identified during NEPA Public Involvement activities, ODOT will incorporate Section 106 Public Involvement into NEPA Public Involvement opportunities.
- (b) Additional public involvement may be warranted to consult with the public and/or consulting parties (including federally recognized Indian tribes) to identify, determine eligibility, assess effects, and resolve adverse effects on historic properties (see ODOT's 2014 Public Involvement Manual (or subsequent versions), ODOT's 2012 Cultural Resources Manual (or subsequent versions), and ODOT's Section 106 PI Guidance.
- (c) The 2016 AASHTO publication *Practitioner's Handbook 06: Consulting Under Section 106 Of The National Historic Preservation Act* (and any related successors to those guidelines), as well as relevant information guidance provide by the ACHP and the National Park Service, shall be used for reference and guidance in developing consultation materials for use with both the public and Section 106 consulting parties.

(C) Determining Effects on Historic Properties

(1) Finding of Minimal Potential to Cause Effects

- (a) ODOT-OES and SHPO have jointly concurred that the lists of project types/actions in Appendices A (unstarred actions) and B have minimal

potential to cause effects to properties eligible for or listed on the NRHP.
Application of Appendices A and B:

1. Appendix A:

- a. Appendix A lists activities that are not required to be submitted to ODOT-OES or SHPO by the District environmental staff. Appendix A is a list of projects types that have no potential to cause effects to historic properties (starred items) and projects that have a minimal potential to cause effects to historic properties (unstarred items). Projects on this list are limited to the activities defined within the appendix and based on the signatories' past experience with similar actions will not result in any significant impacts to the human or natural environment. These actions (project types) meet the criteria for CEs in the CEQ regulation (Section 1508.4) and 23 CFR 771.117(a) and (c) and do not normally require any further NEPA analysis or approvals.
- b. To be applicable, an undertaking must be limited entirely to any one or a combination of the actions specified in Appendix A. These projects must occur within existing right-of-way or easement and cannot involve impacts to historic properties or historic districts.
- c. By referencing Appendix A of this Agreement, the ODOT District environmental staff may make a determination that an undertaking is a type of activity(ies) which has a "minimal potential to cause effects" to historic properties. However, districts work in consultation with ODOT-OES cultural resources staff as necessary.
- d. When appropriate, supporting documentation for findings under Appendix A shall be recorded in the appropriate electronic project file of the EnviroNet system.

2. Appendix B:

- a. ~~Appendix B lists activities that require coordination with ODOT-OES to determine that there will be no impacts to historic properties. However, no coordination with the SHPO is required for project types on this list.~~
- b. To be applicable, an undertaking must be limited entirely to any one or a combination of the actions specified in Appendix B. .
- c. By referencing Appendix B of this Agreement, ODOT-OES Cultural Resources staff may make a determination that an undertaking is a type of activity(ies) which has a "minimal potential to cause effects" to historic properties.
- d. Supporting documentation for findings under Appendix B shall be recorded in the appropriate environmental document, citing this stipulation of this Agreement [Stipulation V(C)] and included in the appropriate electronic project file of the EnviroNet system.

3. Identification of additional project actions with minimal potential to cause effects to historic properties:

ODOT, FHWA, SHPO, and ACHP may consult to identify other undertakings with minimal potential to cause effects to historic properties, and may jointly agree in writing that those qualify for processing under this Stipulation. Upon making any revisions to Appendix A or Appendix B, ODOT-OES will transmit an updated copy of the appendix to the parties to this Agreement.

(2) Finding of No Historic Properties Affected

- (a) If the project is not limited to activities defined in Appendix A or B and if ODOT-OES finds that there are either no historic properties present within the APE or historic properties are present, but the undertaking will have no effect on them as defined in 36 CFR § 800.16(i), ODOT-OES shall make a finding of “no historic properties affected” (36 CFR § 800.4(d)(1)) and specify any commitments that shall be imposed to secure that finding. In general ODOT-OES shall ensure documentation as set forth in 36 CFR § 800.11(d) is prepared to support the finding and included in the project file.
 - 1. ODOT-OES notifies the SHPO via EnviroNet that a finding of No Historic Properties Affected has been made.
 - a. If the SHPO objects or comments within 15 days of notification of the ODOT-OES finding, ODOT-OES and SHPO will consult to resolve the objection or comment.
 - b. If SHPO does not respond by the end of the 15-day notification period, then ODOT-OES may proceed.
 - 2. At the end of one year, at the annual review, ODOT and SHPO will review projects with No Historic Properties Affected findings made during the previous year. At that time ODOT and SHPO will discuss streamlining opportunities such as reduction of project-by-project review of such projects. Any changes made to the process described in Stipulation V(C)(2)(a)(1) will be included in an amendment to this agreement.

(3) Finding of No Adverse Effect

- (a) For any undertaking that includes within the APE, NRHP listed or eligible properties that will not be adversely affected by the undertaking, as defined by the Criteria of Adverse Effect set forth in 36 CFR § 800.5(a), ODOT-OES shall make a finding of “no adverse effect” and specify those commitments, if any, that shall be imposed to secure that finding.
- (b) In general:
 - 1. ODOT-OES may consult at any time, either formally or informally, with SHPO regarding application of the criteria.
 - 2. ODOT-OES shall ensure the supporting documentation for the finding, as set forth in 36 CFR § 800.11(e), is completed.
 - 3. ODOT-OES shall upload the finding of no adverse effect to the EnviroNet system and notify the ODOT district office and SHPO. ODOT will notify Consulting Parties (including federally recognized Indian tribes, if appropriate) and interested members of the public that this finding of no adverse effect has been made. ODOT will clearly communicate the length of review periods to Consulting Parties, which will typically be consistent with the length SHPO’s review period (15 or 30 days).
 - 4. ODOT shall include a record of that finding in the annual report prepared pursuant to Stipulation VI of this Agreement.

5. If neither SHPO nor a consulting party objects within the 15-day review period, ODOT-OES may proceed with the undertaking as proposed.
6. If the ACHP has chosen to participate in the consultation the ACHP may provide a written opinion commenting on or objecting to the finding within the 15-day review period. ODOT-OES shall then take into account the ACHP's opinion in reaching a final decision on the finding.
7. If the SHPO or any other consulting party objects or comments within 15 days of receipt of an ODOT-OES finding of "no adverse effect", ODOT-OES and SHPO will consult to resolve the objection or comment and may review the finding pursuant to 36 CFR § 800.5(c)(3)(ii) of the Section 106 regulations.

(c) When conditions are imposed to avoid adverse effects (Conditional No Adverse Effect):

1. If there are any conditions imposed to secure the "no adverse effect" finding, then ODOT-OES shall upload to EnviroNet a formal letter to SHPO including a signature line for concurrence with a 15-day review specifying, in detail, the condition(s).
2. ODOT-OES shall notify consulting parties (including federally recognized Indian tribes, if appropriate) and interested members of the public of the finding. ODOT will clearly communicate the length of review periods to Consulting Parties, which will typically be consistent with the length SHPO's review period (15 or 30 days).
3. ODOT-OES shall ensure that the condition(s) have been fulfilled as part of the project implementation.
4. Upon completion/implementation of a condition, ODOT-OES shall provide the appropriate documentation to SHPO indicating that the condition/commitment has been fulfilled. If the original condition is written such that it requires a response from SHPO, the cover letter will include a concurrence line for SHPO to sign. If the original condition does not require a response from SHPO, a concurrence line is not required.

(4) **Finding of Adverse Effect**

- (a) For any undertaking that includes within the APE, NRHP listed or eligible properties that will or may be adversely affected by the undertaking, as defined by the Criteria of Adverse Effect set forth in 36 CFR § 800.5(a), ODOT-OES shall make a finding of "adverse effect" and upload to EnviroNet a formal letter to SHPO including a signature line for concurrence with a 30-day review period. ODOT will comply with 36 CFR § 800.5 and 800.6 as laid out in the regulations.
- (b) **National Historic Landmarks**
If ODOT-OES determines that an undertaking may adversely affect a National Historic Landmark, ODOT-OES shall request the SHPO, the ACHP and the Secretary of the Interior to participate in consultation to resolve any adverse effects, as outlined in 36 CFR § 800.10.
- (c) **Failure to resolve Adverse Effects**
If there is a failure to resolve adverse effects or ODOT-OES is unable to execute an MOA pursuant to 36 CFR § 800.6(c), ODOT-OES will request ACHP comment in accordance with 36 CFR § 800.7.

VI. Monitoring/Reporting

- (A)** ODOT-OES and SHPO shall meet annually to evaluate the agencies' joint functioning under the Agreement. FHWA and ACHP will be invited to participate in these annual meetings if they so choose.
- (B)** Prior to the annual evaluation, ODOT-OES shall prepare a report of the activities conducted under this agreement during the review year. The report will be made available to SHPO, FHWA, and ACHP at least 30 days prior to the meeting. This report shall include, but is not limited to,
 - (1) a table identifying all undertakings and specifying project names (i.e. county, route, section and project identification numbers), towns, any other pertinent information, and all findings pursuant to 36 CFR §800 that were processed by ODOT-OES during the year under review pursuant to this Agreement.
 - (2) a reporting of ODOT's efforts related to historic bridges and ODOT's historic bridge program as described in Stipulation III(C and D) during the year under review.
 - (3) any other information that is requested by FHWA, SHPO, or the ACHP.
- (C)** As part of the annual review and at any other time SHPO and ODOT will identify special needs that could be addressed through programs and activities and activities of mutual interest and benefit. ODOT and SHPO will jointly prioritize these needs and establish a yearly workplan to address them. The previous year's workplan will be evaluated at each annual review to assess status and success of tasks and identify new activities to be completed for the following year.
- (D)** Following the annual review meeting ODOT-OES will submit meeting minutes summarizing the results of the annual review.
- (E)** The updated Historic Bridge Database will be uploaded to ODOT's website for public access SHPO, and ODOT IT in conjunction with the annual compliance review meeting.

VII. Additional Provisions

(A) Emergency Situations

- (1) In accordance with 36 CFR § 800.12(a), this section lays out the procedures for taking into account historic properties during operations that respond to a disaster or emergency declared by the President or the Governor of the State of Ohio or which respond to other immediate threats to life or property.
- (2) FHWA defines Emergency Repairs as repairs undertaken during or immediately after a disaster to restore essential traffic, to minimize the extent of damage, or to protect remaining facilities.
- (3) To qualify as an Emergency Relief project, an approved Damage Survey Report (DSR) must be completed and approved by FHWA. After a DSR has been approved by FHWA, the State is authorized to proceed with any necessary design, right-of-way acquisition or construction. Any necessary agency coordination may occur after the repair work has been completed. If possible, ODOT will conduct agency coordination prior to construction; however, because of the nature of this program, this may not be possible.
- (4) ODOT is responsible for appropriate Section 106 documentation. This shall be embodied in an appropriate NEPA Action, where ODOT has assumed the responsibilities of FHWA pursuant to NEPA Assignment. ODOT shall provide FHWA verification of the NEPA approval for the emergency project.
- (5) The work required to restore the damaged facility to its original condition that is beyond the scope of Emergency Repair will comply with the procedures in

Stipulation IV of this Agreement. In these situations, ODOT-OES may request an expedited review by the SHPO, consulting parties (including federally recognized Indian tribes), and the public.

(B) Post-review Discoveries

- (1) Discoveries Made Prior to Project Construction:
 - (a) If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after ODOT-OES has completed a good faith effort to identify properties and carry out its review under this Agreement and prior to commencement of project construction, ODOT-OES, in consultation with SHPO, shall carry out the applicable requirements of 36 CFR § 800.13 and the ACHP need not be notified unless they participated in the project originally or at the request of federally recognized Indian tribes or consulting parties.
- (2) Discoveries Made After Project Construction Begins:
 - (a) If previously unidentified archaeological or historic properties, or unanticipated effects on such properties, are discovered after project construction begins, that portion of the project will stop immediately pursuant with Section 203.04 of ODOT's Construction and Material Specifications (and any successors to those specifications).
 - (b) The project engineer will immediately contact ODOT-OES and/or the appropriate ODOT District Environmental Coordinator. FHWA will be notified if consultation with federally recognized tribes is warranted. If a person or entity other than the project engineer (e.g. a local resident) reports the discovery, the notified entity will notify the project engineer, ODOT-OES, and the ODOT District Environmental Coordinator immediately. The project engineer will stop work immediately. No further construction in the area of discovery will proceed until the requirements of 36 CFR § 800.13 have been satisfied, including consultation with consulting parties and/or federally recognized Indian tribes that may attach traditional cultural and religious significance to the discovered property, as appropriate.
 - (c) Within two business days ODOT-OES shall assess the discovery and if it is determined to be potentially eligible, provide notification to SHPO, FHWA, consulting parties, and/or Indian tribes, as appropriate. Notification shall include, to the extent such information is available: description of the nature and extent of the property or properties, assessment of NRHP eligibility of any properties, the type and extent of any damage to the property, the proposed action, any prudent and feasible treatment measures that would take any effects into account, and a request for comments.
 - (d) Should any of the notified parties respond with comments within three business days of the initial notification of the discovery or indicate that they wish to be involved in resolving the situation, ODOT-OES shall take into account their comments or continue consultation with any commenting parties. ODOT-OES shall determine the time frame for any further consultation, taking into account the qualities of the property, consequences of construction delays, and interests of the parties. Following the conclusion of any further consultation, ODOT-OES shall take all comments received into account and may carry out actions to resolve any effects. Failure of any notified party to respond within three business days of notification shall not preclude ODOT from proceeding with their proposed actions.

(C) Treatment of Human Remains

It is the preference of FHWA and ODOT to avoid impacts to human remains by preserving them in place whenever possible. In the event that human remains are discovered at any point during an undertaking, FHWA and ODOT are committed to treating them with the utmost respect and dignity at all times.

- (1) Historic and prehistoric human remains are subject to protection under ORC Sections 2909.05 and 2927.11. As such, if previously unidentified human remains are discovered at any point during an undertaking (during environmental studies, pre-construction activities, or construction), work in that portion of the project will stop immediately.
 - (a) The remains will be covered and/or protected in place in such a way that minimizes further exposure of and damage to the remains.
 - (b) The ODOT project manager or project engineer will immediately consult with the ODOT District Environmental Coordinator and the ODOT-OES Cultural Resources Section, and immediately notify local law enforcement and/or the County Coroner and FHWA.
 - (c) If the project has had a US Army Corps of Engineers (USACOE) permit issued, the ODOT District Environmental Coordinator must notify the ODOT-OES Permits Section and the USACOE.
- (2) If the remains are found to be of American Indian origin, a treatment plan will be developed by ODOT-OES and SHPO in consultation with FHWA and appropriate federally recognized Indian tribes.
 - (a) Avoidance and preservation in place is the preferred option for treating human remains.
 - (b) If avoidance and preservation in place is not possible, FHWA and ODOT-OES will ensure that any agreed upon treatment and reburial plan is fully implemented.
- (3) If the remains are not American Indian, the appropriate local authority will be consulted to determine final disposition of the remains.
 - (a) Avoidance and preservation in place is the preferred option for treating human remains.
 - (b) If avoidance and preservation in place is not possible, ODOT-OES will ensure that any agreed upon treatment and reburial plan is fully implemented.
- (4) For human remains of American Indian origin discovered on federal lands, the federal land managing agency will be responsible for consultation under the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (PL 101-601).
- (5) For human remains discovered on property owned by the State of Ohio, ODOT will comply with Section 149.53 of the ORC.
 - (a) Under this section, the Director of the Ohio History Connection shall determine final disposition of any discovered human remains.

VIII. Administrative Provisions

(A) Dispute Resolution

- (1) Should any party to this agreement object in writing to the manner in which this PA is implemented, ODOT shall consult with the objecting party to resolve the objection. ODOT-OES and SHPO have developed specific escalation procedures for the Section 106 process, which are posted on ODOT-OES's website. ODOT-OES and the ACHP have also developed draft escalation procedures and will

work to finalize them within one year of the execution of this agreement.

- (2) For project-specific disagreements related to the Section 106 process (e.g. disagreement related to determination of eligibility, determination of effect, etc.), ODOT and SHPO will follow the procedures set forth in 36 CFR §800.4(d)(1)(ii-iv); 800.5(c)(2-3); 800.6(b); and 800.7

(B) Amendment

- (1) This Agreement may be amended when such an amendment is agreed to in writing by all signatories.
- (2) The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

(C) Right to Terminate

- (1) Any signatory to this Agreement may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties will consult during the period before termination to seek agreement on amendments or other action that would avoid termination.
- (2) In the event of termination, the ODOT shall comply with 36 CFR §800 with regard to the individual undertakings covered by this Agreement.

(D) Duration

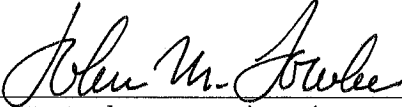
- (1) This Agreement will be reviewed by all parties every five (5) years from the date of execution for modifications or termination. ODOT will consult with the signatories and consulting parties to determine whether to develop a new Programmatic Agreement, amend the existing agreement, extend it for an additional five (5) year period, or let the agreement expire and review undertakings on a case-by-case basis in compliance with 36 CFR § 800.3 to § 800.6.
- (2) If no changes are proposed and no party objects, the term of the agreement will be extended automatically for another five (5) years without re-execution. At the end of the second five (5) year period, the parties will review the terms of the Agreement and determine what changes should be made.

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE STATE HISTORIC PRESERVATION OFFICE,
AND THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION
REGARDING IMPLEMENTATION OF
THE FEDERAL-AID HIGHWAY PROGRAM
IN OHIO
(Agreement No. 19319)**

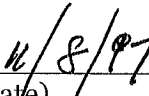
Execution and implementation of this Agreement (No. 19319) evidence that the ODOT, when acting as the Agency Official, has afforded the ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Ohio and that ODOT has taken into account the effects of the Program and its individual undertakings on historic properties, and that ODOT has complied with Section 106 of the NHPA and 36 CFR §800 for the Program and its individual undertakings.

The parties hereby acknowledge and reaffirm their commitment to perform all duties set forth in this Agreement.

ADVISORY COUNCIL ON HISTORIC PRESERVATION



John M. Fowler, Executive Director



(Date)

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE STATE HISTORIC PRESERVATION OFFICE,
AND THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION
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The parties hereby acknowledge and reaffirm their commitment to perform all duties set forth in this Agreement.

FEDERAL HIGHWAY ADMINISTRATION



Laura S. Leffler, Division Administrator

10-30-17

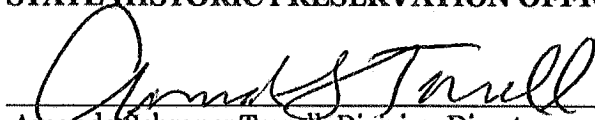
(Date)

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
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The parties hereby acknowledge and reaffirm their commitment to perform all duties set forth in this Agreement.

STATE HISTORIC PRESERVATION OFFICE


Amanda Schraner Terrell, Division Director,
Deputy State Historic Preservation Officer

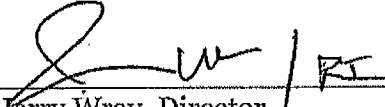
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(Date)

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
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Execution and implementation of this Agreement (No. 19319) evidence that the ODOT, when acting as the Agency Official, has afforded the ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Ohio and that ODOT has taken into account the effects of the Program and its individual undertakings on historic properties, and that ODOT has complied with Section 106 of the NHPA and 36 CFR §800 for the Program and its individual undertakings.

The parties hereby acknowledge and reaffirm their commitment to perform all duties set forth in this Agreement.

OHIO DEPARTMENT OF TRANSPORTATION



Jerry Wray, Director

10/24/17

(Date)

APPENDIX A

Agreement No. 19319

Undertakings with No Potential to Cause Effects or Minimal Potential to Cause Effects to Historic Properties That May be Processed by ODOT District Environmental Staff

ODOT-OES and SHPO have jointly concurred that the following list is comprised of project actions that have no potential to cause effects to historic properties, if present (starred items below) or minimal potential to cause effects to historic properties. Projects are limited to the activities defined in Appendix A, based on the signatories' past experience with similar actions, will not result in any significant impacts to the human or natural environment. These actions (project types) meet the criteria for CEs in the CEQ regulation (Section 1508.4) and 23 CFR 771.117 (a) and under 23 CFR 771.117(c) and do not normally require any further NEPA approvals by the Administration.

In accordance with Stipulation V(C)1 of this Agreement, an ODOT district office may determine that an undertaking will not require coordination with ODOT-OES or the SHPO if the undertaking only involves activities as defined in Appendix A. To be applicable, an undertaking must be limited entirely to any one or a combination of the actions specified below. For projects with minimal potential to cause effects, a copy of the SHPO GIS map must be included in the environmental project file in EnviroNet.

These undertakings do not have to be coordinated with or reviewed by ODOT-OES. **These projects must occur within existing right-of-way or easement and cannot involve impacts to historic properties or historic districts.**



- (1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system. Examples include:
 - Study type projects (i.e. feasibility studies, etc.).
 - Land donations to ODOT associated with ROW permits (non-NHS/non-Limited Access right-of-way).
 - Early right-of-way acquisition in accordance with 23 CFR 710.501(e)
- (2) Approval of utility installations along or across a transportation facility. Examples include:
 - Utility tower lighting and street lighting projects.
- (3) Construction of bicycle and pedestrian lanes, paths, and facilities. Examples include:
 - Walkways, sidewalks, shared-use paths, and facilities, small passenger shelters, (i.e. construction of a bike path on an existing railroad bed, designations of certain highways as bike routes, painting of existing paved shoulders as bike lanes, ADA ramps, etc.) provided that no new disturbance will occur.



(4) Activities included in the State's "highway safety plan" under 23 U.S.C. 402.



(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction. Examples include:

- Maintenance and/or replacement of existing noise wall panels and/or posts

(7) Landscaping. Examples include:

- Herbicidal spraying;
- Mowing or brush removal/trimming projects;
- Beautification or facility improvement projects (i.e. landscaping, curb and gutter replacement, installation of park benches, decorative lighting, etc.).

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur. Examples include:

- The installation or maintenance of signs, pavement markings/raised pavement markers/sensors, traffic calming activities, and/or new or replacement fencing (right-of-way, vandal, etc.).
- General pavement marking or "line painting" projects.

(9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

- (i) Emergency repairs under 23 U.S.C. 125; and
- (ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.



(10) Acquisition of scenic easements. Examples include:

- Conservation/mitigation easements and fee simple.
- Land acquisition by a public agency/public park entity for passive recreational use.



(11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.



- (12) Improvements to existing rest areas and truck weigh stations. Examples include:
- Improvements to existing rest areas and weigh stations for minor maintenance (i.e. mill and resurfacing of existing parking areas). Projects involving major construction may require a higher level of documentation.
 - Truck stop electrification and construction/installation of alternative energy facilities (CNG, solar, etc.) at existing facilities.

- (13) Ridesharing activities. Examples include:

- Transportation corridor fringe parking facilities, park-and-ride lots and ridesharing activities



- (14) Bus and rail car rehabilitation.



- (15) Alterations to facilities or vehicles in order to make them accessible for older adults and handicapped persons.



- (16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.



- (17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE. Examples include:

- Purchase or conversion of vehicles to alternative fuel uses (CNG, E-85, etc.)



- (18) Track and railbed maintenance and improvements when carried out within the existing right-of-way. Examples include:

- Track and railbed acquisition.



- (19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

- (20) (Not applicable to ODOT)

- (21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses. Examples include:

- Replacement of existing or installation of new traffic signals, flashing beacons, railroad warning devices and the installation of ITS system components
- Upgrade of existing tower lighting to new technologies that ensure a lesser impact than the current system.
- Implementation of other new safety or operations technologies (must be approved by OES).

- (22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, non-historic culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way. Examples include:
- Tower lighting within the existing operational right-of-way.
 - Guardrail installation and replacement (including median cable barriers) where roadway ditches and backslopes will not be relocated
 - Improvements to existing ODOT/County maintenance facilities*.
 - Construction of new ODOT/County maintenance facilities within existing operational right-of-way*.
 - Environmental mitigation activities within existing operational right-of-way.
 - Work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals within existing operational right-of-way.
 - Construction of alternative energy facilities (fuel tank farms, wind turbines, etc.)
- (23) Projects that receive less than \$5,267,324.01 of Federal funds **or** with a total estimated cost of not more than \$31,603,944.06 (or as amended) **and** with Federal funds that comprise less than 15 percent of the total estimated project cost. **Reminder: must** be within the existing right-of-way and **cannot** have impacts to historic properties or historic districts.
- (24) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archaeological investigations for archaeology resources assessment or similar survey; and wetland surveys. (This only applies to stand alone projects, not for environmental surveys being conducted as part of a project with an environmental document)
- (25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation. Examples include:
- Related environmental mitigation activities (wetland, stream, upland, etc.).
- (26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes). Examples include:
- Joint or limited use of right-of-way where the proposed use would have minimal or no adverse social (including highway safety), economic or environmental impacts.

- Installation of new noise walls and other new noise mitigation projects.
- Construction of highway safety and truck escape ramps.
- Construction of bicycle lanes and pedestrian walkways, sidewalks, shared-use paths, or facilities and trailhead parking.
- Beautification or facility improvement projects (i.e. landscaping, curb and gutter installation and replacement, ADA ramps/curb ramps, installation of park benches, decorative lighting, etc.).
- Installation of traffic signals and lighting.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section. Examples include:

- Lane reduction (“road diet”)
- Railroad projects that close at-grade crossings to improve safety or traffic operations.

(28) This item number pertains to bridges, which are covered elsewhere in this agreement.



(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.



(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility’s capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

(31) Activities that do not utilize federal monies or require federal actions.*

*Projects with only State funding will be processed under the applicable state-funded letter agreement between ODOT and SHPO.



Project type with No Potential to Cause Effects to historic properties, if present.

APPENDIX B

Agreement No. 19319

Undertakings with Minimal Potential to Cause Effects to Historic Properties That Must be Coordinated with ODOT-OES

ODOT-OES and SHPO have jointly concurred that the following list is comprised of project types that have minimal potential to cause effects to properties eligible for or listed on the NRHP. In accordance with Stipulation V(C)1 of this Agreement, ODOT-OES may determine that an undertaking will require no coordination with the SHPO if the undertaking only involves activities as defined in Appendix B.

To be applicable, an undertaking must be limited entirely to any one or a combination of the actions specified below. *A records check of known historic properties and historic districts must be conducted prior to application of Appendix B.*

These undertakings MUST be coordinated with and reviewed by ODOT-OES.

Highway & Roadway Improvement Project Types

- (1) Modernization and general highway maintenance **that requires additional highway right-of-way or easement**, and which is **not within the boundaries of a historic property or district**, including:
 - (a) Areas where the work is an in-kind replacement of modern facilities including driveway reconstruction, re-installation of utilities, grading to re-establish slopes, seeding and ditch enclosure, driveway underdrain installations and replacements.
 - (b) Widening less than the width of a full travel lane.
 - (c) Providing driveway and street connections.
 - (d) Improvements to interchanges and divided highways.
 - (e) Enhancement/beautification projects, including but not limited to, landscaping, street tree planting, decorative pavers, decorative street lighting, and traffic calming measures.
 - (f) Installation of solar or alternative energy devices.
 - (g) Placement of riprap and/or other erosion control measures to prevent erosion of waterway banks and bridge piers provided no excavation is required.
 - (h) Installation of erosion, drainage or flood control measures requiring new right-of-way from areas no more than 15 feet wide immediately adjacent to the feature to be improved provided no deep excavation is required.
 - (i) Slip repair projects, rural widening projects, and relocation projects where the proposed right-of-way will be taken from former surface mining areas; reclaimed strip mine lands; construction borrow areas where natural soil deposits have been removed, or vacant ground in failed slope and/or in slope greater than 15 degrees.
 - (j) Installation/replacement of retaining walls.
 - (k) Work related to a limited access highway permit for improvements/maintenance.
 - (l) School safety crossing installations/modernization.
 - (m) Installation or modernization of pedestrian facilities to improve safety, walkability, or access to transit facilities including bikeways, such as Safe Routes to School projects.

- (2) Replacement, restoration, rehabilitation, and/or maintenance **within a historic district or historic property where no new permanent right-of-way will be acquired and no contributing components will be removed or altered,** including:
- (a) Historic lighting
 - (b) Installation of ADA ramps.
 - (c) Repair/replacement of existing sidewalks and curbs (i.e. in-kind).
 - (d) Asphalt repair/paving.
 - (e) In-kind repair/replacement of existing traffic signals or replacement of existing traffic signals with mast arms.
 - (f) Modernization of pedestrian safety devices and any non-permanent facilities (e.g. bicycle racks, trash receptacles, etc.).
 - (g) Infrastructure repairs (i.e. water main/utility repairs).
 - (h) Modernization and maintenance to help carry out pre-existing or previously agreed upon aesthetic designs including miscellaneous landscaping features (plantings, trash receptacles, pedestrian benches, etc.), etc.

Bridge and Culvert Improvement Project Types

- (3) Non-historic bridge and culvert maintenance, renovation, or total replacement **that requires minor adjacent areas of additional highway right-of-way or easement** and which is **not within the boundaries of a historic property or district,** including:
- (a) Replacement or maintenance of drainage pipes and culverts made of steel, plastic, and concrete that are less than 10 feet in span, do not have a structure file number, and have no stone or timber segments or features.
 - (b) Replacement or maintenance on non-historic bridges.
 - (c) The installation of vandal fencing, vandal protection lighting and/or cameras, suicide fencing, and/or suicide netting.
- (4) Historic bridge maintenance activities* **within existing right-of-way,** including:
- (a) **General Historic Bridge Safety, Load, and Maintenance***
 - 1. Repaving/mill & fill limited to modern concrete or asphalt deck surface.
 - 2. Non-destructive testing or load testing
 - 3. Installation of load and height restriction barriers.
 - 4. Placement of rip rap and channel work.
 - 5. Drainage improvements including but not limited to scupper installation and repair.
 - 6. Replacing or repair of expansion joints, bearings, bearing devices, and sealing deck joints.
 - 7. Debris removal and material-specific cleaning or washing methods
 - 8. Maintenance or in-kind replacement of noncontributing lighting, poles, fixtures and conduit.
 - 9. Safety devices and pavement markings as required by RLFD.
 - 10. Repair or in-kind replacement of railing. (e.g. parapet, traffic guardrail or standard highway bridge rail).
 - 11. Non-destructive graffiti removal.
 - 12. Maintenance or replacement of substructure elements matching existing historic materials (e.g., abutment, bent, footings, pile, pier, column and caps).

13. Bikeway or walkway easements and nondestructive installations of walkways or platforms (e.g. along the abutment substructure base).
14. The installation of vandal fencing, vandal protection lighting and/or cameras, suicide fencing, and/or suicide netting.

(b) Historic Concrete

1. Patching with compatible materials.
2. Concrete sealing.
3. In-kind replacement of existing historic I-beam and Box-beam of identical scale and type.
4. (See 3a.)

(c) Historic Metal Truss and Steel Girders

1. Heat straightening or replacement of damaged structural steel and iron components matching existing historic appearance (replacement can only occur if damaged beyond repair).
2. Replacing loose fasteners or hardware with in-kind materials. (Rivets should be replaced in accordance with ODOT's Riveting Guidance**).
3. Replacement of matching existing girders, stringers, crossframes, and floorbeams.
4. Surface preparation, cleaning, and painting surfaces of structures.
5. (See 3a)

(d) Historic Stone Bridges and Culverts

1. (See 3a.*)

(e) Wood and Covered Bridges

1. Installing fire prevention systems, including sealants, nonintrusive lighting, and/or monitoring equipment on covered bridges.
2. (See 3a. 1-12)

(f) Bascule and Movable Bridges

1. Required routine maintenance activities, and replacement of electromechanical systems.
2. In-kind repair or replacement of bascule leaf members. (See 3c. 1-4).
3. (See 3a.)

* Ohio Historic Bridge Maintenance & Preservation Guidance

** Ohio Department of Transportation Historic Bridge Riveting Guidance

Bicycle and Pedestrian Project Types

- (5) Construction of bicycle lanes and pedestrian walkways, sidewalks, shared-use paths and facilities, small passenger shelters, and alterations to facilities or vehicles in order to make them accessible for older adults and handicapped persons, **that may require additional highway right-of-way or easement** and which is **not within the boundaries of a historic property or district.**

Railroad Project Types

- (6) Modernization, maintenance, and safety improvements of railroad facilities, **that may require additional highway right-of-way or easement** and which is, **not within the boundaries of a historic property or district**, including:
- (a) Construction of railroad spurs and sidings.
 - (b) Modernization of existing railroad crossing safety equipment
 - (c) Removal of abandoned rail line bridge (no new right-of-way).

Other Project Types

The following undertakings involve facility modernization and property acquisition projects that are **not within the boundaries of a historic property or district**:

- (7) Modernization of a port facility within its existing property boundaries by roadway resurfacing, dock/facility/equipment restoration, rehabilitation and reconstruction.
- (8) Modernization of a transit or intermodal facility within its existing property boundaries by roadway resurfacing, facility/equipment restoration, rehabilitation and reconstruction.
- (9) Sustainability initiatives in areas of previously disturbed state owned property or within previously disturbed existing highway right-of-way, including but not limited to installation of rain gardens/vegetated biofilters/bio-cells, Truck Stop Electrification, electric vehicle charging systems, and pavement based kinetic energy collectors.
- (10) Acquisition of scenic, conservation or other habitat or land preservation easements where no construction activities will occur.
- (11) Construction of wind turbines.
- (12) Disposal of excess right-of-way.
- (13) Actions described in Appendix A that exceed the thresholds listed in Appendix A.

