Programmatic Agreement (PA)
Among the Federal Highway Administration, the Indiana Department of Transportation, the Advisory Council on Historic Preservation and the Indiana State Historic Preservation Officer Regarding the Implementation of the Federal Aid Highway Program In the State of Indiana

WHEREAS, the Federal Highway Administration (FHWA) administers the Federal Aid Highway Program in Indiana authorized by 23 U.S.C. §§ 101 et seq., through the Indiana Department of Transportation (INDOT) (23 U.S.C. § 315); and

WHEREAS, INDOT undertakes Federal minor highway projects that would qualify as Categorical Exclusions (CEs), including Local Public Agency Federal aid projects, as defined in 23 CFR 771, that do not individually or cumulatively have a significant impact on the environment, and therefore may not require the preparation of an environmental document; and

WHEREAS, FHWA has determined that certain types of minor highway projects typically have no effect upon historic properties included in or eligible for inclusion in the National Register and has consulted with the Advisory Council on Historic Preservation (Council), and the Indiana State Historic Preservation Officer (SHPO) pursuant to Section 800.14(b) of the regulations (36 CFR Part 800 Subpart C) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, INDOT participated in the consultation and has been invited to be a signatory to this PA; and

WHEREAS, INDOT maintains cultural resource staff and consultants meeting the Secretary of Interior's Professional Qualification standards (48 Federal Register (FR) 44716) and State of Indiana standards (Indiana Code 14-21-1 and 312 IAC 21) in the fields of archaeology, history and architectural history;

NOW, THEREFORE, FHWA, INDOT, the Council, and SHPO agree that the Federal Aid Highway Program shall be administered in accordance with the following stipulations to satisfy the FHWA Section 106 responsibility for all individual undertakings of the program.

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

1. **Purpose and Scope**

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A. This PA sets forth the process by which FHWA; with the assistance of INDOT; will meet its responsibilities for undertakings pursuant to Sections 106 and 110 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f).

B. FHWA Responsibilities - In compliance with its responsibilities under the NHPA, and as a condition of its award to INDOT of any assistance under the Federal Aid Highway Program, FHWA will ensure that INDOT carries out the requirements of this agreement and Council policies and guidelines for undertakings subject to this agreement.

C. INDOT Responsibilities

1. Pursuant to this agreement, INDOT will ensure that all cultural resource staff and/or consultants, employed under its contract to conduct work in the field of cultural resources, meet the qualifications set forth in the Secretary of Interior's Professional Qualification standards (48 FR 44716) and State of Indiana standards (IC 14-21-1 and 312 IAC 21) for such work. These qualified INDOT cultural resources personnel shall have the primary responsibility for implementing this PA.

2. Prior to December 31, 2007, and in consultation with SHPO and FHWA, INDOT will prepare a Cultural Resources Manual detailing the procedures for implementing this agreement. Upon approval of the Cultural Resources Manual by INDOT, SHPO, and FHWA, this programmatic agreement will be appended to the INDOT Cultural Resources Manual and be fully explained therein.

2. Minor Projects

The following types of undertakings, listed in Appendices A and B, are activities in which INDOT routinely utilizes Federal Aid highway funds and consist of minor projects that generally do not affect historic properties. None of the minor projects listed below will require consultation with or review by the SHPO, provided the undertaking:

- is limited to the activities specified
- is not part of a larger project
- is on an existing transportation facility
- if ground disturbance in previously disturbed soils is specified, occurs in soils previously disturbed by vertical and horizontal highway construction activities
- has no known public controversy based on historic preservation issues

Such minor projects fall into two categories: minor projects that do not require review by INDOT Cultural Resources staff (Category A; Appendix A), and minor projects that do require documentation and review by INDOT Cultural Resources staff to assess the likelihood that historic properties exist in the area of potential effects or determine the degree of existing soil disturbance within the project area (Category B; Appendix B).

For undertakings in Category B, or where questions arise about the need for review of an undertaking in Category A, INDOT Cultural Resources staff shall determine whether a

particular project should be exempt from SHPO review. If the SHPO specifically requests a copy of the documentation for a particular undertaking covered by this stipulation, INDOT will provide SHPO with the requested documentation and, if the project has not already been approved, will review the project in accordance with Stipulation 4 of this Agreement. All of the minor projects listed in Appendices A and B will be subject to regular internal audit by INDOT.

3. Documentation of Minor Projects

A. Any minor project listed in Appendices A or B shall be documented in the National Environmental Policy Act documentation. The documentation shall reference and include the description of the specific stipulation in the PA that qualifies the project as exempt from further Section 106 review.

B. INDOT Cultural Resources staff will utilize the County Interim Reports, most current Bridge Inventory, as well as additional documentation to assure projects are not adjacent to a National Register eligible property or district. Documentation may include construction plans, project area descriptions, soil survey data, photographs, and archaeological documentation.

4. Section 106 Consultation for FHWA Undertakings Not Exempt from Review

For those projects not exempt from review under terms of Stipulation 2, INDOT and FHWA shall review the undertakings in accordance with the procedures found in 36 CFR Part 800. Upon completion of the Cultural Resources Manual required in Stipulation 1, INDOT, using staff and/or consultants meeting the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), may independently perform the work and consultation described in the following sections of 36 CFR Part 800 (including any succeeding revisions to the regulations) on behalf of FHWA as follows:

36 CFR § 800.3

(1) Establish undertaking
(2) Coordinate with other reviews
(3) Identify the appropriate SHPO and/or THPO
(4) Plan to involve the public
(5) Identify other consulting parties
(6) Expediting consultation

36 CFR § 800.4

(1) Determine scope of identification
(2) Identify historic properties
(3) Evaluate historic significance

(4) Results of identification and evaluation

36 CFR § 800.5

(1) Apply criteria of adverse effect
(2) Finding of no adverse effect
(3) Consulting party review
(4) Results of assessment

In recognition of the unique government-to-government relationship between the Federal government and Indian tribes, FHWA shall take the lead in identifying and establishing consultation with the Indian tribes and Tribal Historic Preservation Officers (THPO) consistent with 36 CFR § 800.3(c) - (f). If the tribe is agreeable, further consultation may be conducted among the tribe and INDOT.

A. Finding of "No Historic Properties Affected"

If INDOT determines, in consultation with the SHPO and consulting parties, that no historic properties will be affected by the undertaking, INDOT will make a finding of "no historic properties affected," and documentation (800.11[d]) will be forwarded to the SHPO for concurrence. Copies of this documentation will be provided to all consulting parties and will be made available for public inspection. INDOT may proceed with the project if the SHPO has agreed, in writing, with the finding or if within 30 days of receipt neither SHPO nor another consulting party has objected to the finding. If the SHPO or any consulting party objects, in writing, to INDOT's finding within 30 days of receipt of an adequately documented finding, the documentation will be submitted to FHWA for resolution. If, through consultation, consensus can be reached, the process will move forward in accordance with this agreement. If consensus is not achieved, the undertaking will not be developed under this agreement, but instead will proceed in accordance with 36 CFR Part 800.3 through 800.6. If INDOT determines, in consultation with the SHPO and consulting parties, that historic properties may be affected by the undertaking, INDOT shall apply the Criteria of Adverse Effect, 36 CFR Part 800.5(a)(1).

B. Finding of "No Adverse Effect"

If INDOT determines, in consultation with the SHPO and consulting parties, that the undertaking will have no adverse effect on historic properties, it will make a finding of "no adverse effect," and documentation (800.11[e]) will be forwarded to the SHPO for concurrence. Copies of this documentation will be provided to all consulting parties and will be made available for public comment. INDOT may proceed with the project if the SHPO has agreed, in writing, with the finding or if within 30 days of receipt neither the SHPO nor another consulting party objects to the finding. If SHPO or any consulting party objects within 30 days of receipt of

adequate documentation, in writing, to INDOT's finding, the documentation will be submitted to FHWA for resolution. If, through consultation, consensus can be reached, the process will move forward in accordance with this agreement. If consensus is not achieved, the undertaking will not be developed under this agreement, but instead will proceed in accordance with 36 CFR Part 800.3 through 800.6.

C. Finding of "Adverse Effect"

If INDOT determines, in consultation with the SHPO and consulting parties, that the undertaking will have an adverse effect on historic properties, it will notify FHWA and FHWA will ensure the Section 106 process is completed in accordance with 36 CFR 800.6. FHWA will be responsible for making a finding of "adverse effect" and the resolution of those effects.

5. Unanticipated Discovery

If any unanticipated discoveries of historic properties, sites, artifacts, or objects are encountered during the implementation of any project exempted under this PA, INDOT and FHWA shall comply with 36 CFR 800.13 and IC 14-21-1-27 and 14-21-1-29 by stopping work in the immediate area and informing the SHPO, housed in the Indiana Department of Natural Resources ("DNR") of such unanticipated discoveries or effects within two (2) business days. Any necessary archaeological investigations will be conducted according to the provisions of IC 14-21-1 and 312 IAC 21.

If any unanticipated effects on historic properties are found to be occurring during the implementation of any project exempted under this PA, INDOT and FHWA shall comply with 36 CFR 800.13 and inform the SHPO immediately.

If any human remains are encountered during the implementation of any project exempted under this PA, work shall cease in the immediate area and the human remains left undisturbed. INDOT and FHWA will contact the county coroner and law enforcement officials immediately, and the discovery must be reported to the SHPO within two (2) business days. The discovery must be treated in accordance with IC 14-21-1 and 312 IAC 22. If the remains are determined to be Native American, FHWA will notify the appropriate federally recognized Indian Tribes.

Work at the site shall not resume until a plan for the treatment of the human remains is developed and approved in consultation with the SHPO and any appropriate consulting parties. The plan will comply with IC 14-21-1, 312 IAC 22, the current Guidebook for Indiana Historic Sites and Structures Inventory--Archaeological Sites, and all other appropriate federal and state guidelines, statutes, rules, and regulations.

6. Monitoring

A. INDOT, FHWA and the SHPO will consult as needed to review implementation of the terms of the PA.

B. FHWA and INDOT may monitor activities carried out pursuant with this agreement, and the SHPO will be invited to participate. INDOT shall cooperate in carrying out the monitoring effort. Should monitoring or other activities result in evidence that the requirements of this PA need modification or are not being met, FHWA, the SHPO, and INDOT will meet to develop and implement corrective measures.

7. Dispute Resolution

A. If the Indiana SHPO, INDOT, the Council, or a consulting party for an individual undertaking carried out under the terms of this agreement objects in writing to the FHWA regarding any action carried out or proposed with respect to the implementation of this PA, then FHWA shall consult with the objecting party to resolve this objection. If after such consultation FHWA determines that the objection cannot be resolved through consultation, then FHWA shall forward all documentation relevant to the objection to the Council, including FHWA's proposed response to the objection. Within fifteen (15) days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

1) Advise FHWA that the Council concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or

2) Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection.

B. Should the Council not exercise one of the above options within fifteen (15) days after receipt of all pertinent documentation, FHWA may assume the Council's concurrence with the proposed response to the objection.

8. Terminate, Modify, and Amend

A. Any party to this PA may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, FHWA shall conduct individual project review pursuant to 36 CFR Part 800.

B. FHWA, INDOT, and the SHPO will review this PA every ten (10) years from the date of execution for modifications or termination. If no changes are proposed and no party objects, the term of the PA will be extended automatically for another ten years without re-execution.

C. Any party to this agreement may request that it be amended, whereupon the parties shall consult to consider such amendment. The amendment will be effective on the date a copy is signed by all of the original signatories. The lists of minor projects in Appendices A and B may be modified by the mutual written agreement of FHWA, INDOT, and the SHPO, and shall not require a formal amendment to this agreement.

Execution and implementation of this PA evidences that the Federal Highway Administration has satisfied its Section 106 responsibilities for all individual undertakings of highway projects covered under this agreement.

SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

By: Robert F. Tally Jr. Date: 10/3/06
Robert F. Tally, Jr., P.E.
Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 10/12/06
John M. Fowler
Executive Director

INDIANA STATE HISTORIC PRESERVATION OFFICER

By: Date: 9/26/06
Kyle Hupfer
Director, Indiana Department of Natural Resources

INDIANA DEPARTMENT OF TRANSPORTATION

By: Date: 9/20/2006
Thomas O. Sharp
Commissioner

APPENDIX A

Category A (Minor Projects Requiring No Review by INDOT Cultural Resources Staff)

Category A consists of projects that, by their nature, have little to no potential to cause effect to historic properties and do not require review by INDOT Cultural Resources Staff.

1. All work to be done on bridges less than 45 years old and in previously disturbed soils, unless an inventory has shown the bridge to be eligible for or listed on the National Register.

2. All work within interchanges and within medians of divided highways in previously disturbed soils.

3. Replacement, repair, lining, or extension of culverts and other drainage structures which do not extend beyond or deeper than previous construction limits, and do not exhibit stone or brick structures or parts therein.

4. Roadway surface replacement, rehabilitation, resurfacing, or reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking within areas previously disturbed by construction where replacement, repair, or installation of curbs or sidewalks will not be required.

5. Repair or replacement of existing lighting, signals, and other traffic control devices in previously disturbed soils.

6. Repair or replacement of existing safety appurtenances such as guardrails, barriers, glare screens, and crash attenuators in previously disturbed soils.

7. Fencing and landscaping in previously disturbed soils.

8. Railway crossing signs and signal installation or modification and surface improvement in previously disturbed areas.

9. Erosion control within previously disturbed soils to prevent erosion of roadways, waterways and bridge piers.

10. Routine roadside maintenance activities necessary to preserve existing infrastructure and maintain roadway safety in previously disturbed areas.

11. Rehabilitation of existing rest areas and truck weigh stations within previously disturbed soils.

12. Hazardous waste removal and disposal constituting a public hazard and which require immediate removal.

APPENDIX B

Category B (Minor Projects Requiring Submittal of Documentation and Review by INDOT Cultural Resources Staff)

Category B consists of projects that do require documentation and review by INDOT Cultural Resources staff to assess the likelihood that historic properties exist in the area of potential effects or determine the degree of existing soil disturbance within the project area.

1. Roadway surface replacement, rehabilitation, resurfacing, or reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking within areas previously disturbed by construction where replacement, repair, or installation of curbs or sidewalks will be required when such activities do not take place adjacent to or within a National Register listed or eligible bridge, property or historic district.

2. Installation of new lighting, signals and other traffic control devices in previously disturbed soils when such activities do not take place adjacent to or within a National Register listed or eligible bridge, property or historic district.

3. Construction of turning and auxiliary lanes (e.g., truck climbing, acceleration and deceleration lanes) and shoulder widening in areas previously disturbed by vertical and horizontal construction activities except when adjacent to or within a National Register listed or eligible bridge, property or historic district.

4. Installation of new safety appurtenances such as guardrails, barriers, glare screens, and crash attenuators, when such activities do not take place adjacent to or within a National Register listed or eligible bridge, property or historic district.

5. Emergency repairs to maintain the integrity of bridges (except National Register listed or eligible bridges) and roadways.

6. Other minor actions if deemed appropriate for coverage under this PA, by consultation and mutual agreement between INDOT, FHWA, and the SHPO.