**MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND
THE INDIANA STATE HISTORIC PRESERVATION OFFICER
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 C.F.R. Section 800.6(b)(iv)
REGARDING THE \*\*(UNDERTAKING)\*\*
IN \*\*(CITY)\*\*, \*\*(NAME)\*\* TOWNSHIP, \*\*(NAME)\*\* COUNTY, INDIANA**

**DES. NO. \*\*(XXXXXXX)\*\***

**WHEREAS** the Federal Highway Administration ("FHWA") proposes to \*\*(action)\*\* for \*\*(undertaking)\*\* in \*\*(City)\*\*, \*\*(name)\*\* Township, \*\*(name)\*\* County, Indiana; and

**WHEREAS** the FHWA, in consultation with the Indiana State Historic Preservation Officer ("Indiana SHPO"), has defined the \*\*(undertaking)\*\*'s area of potential effects (“APE”), as the term is defined in 36 C.F.R. Section 800.16(d), to be the area within \*\*(boundaries)\*\*; and

**WHEREAS** the FHWA, in consultation with the Indiana SHPO, has found that \*\*(name of historic property or properties)\*\* is/are within the APE; and

**WHEREAS** the FHWA, in consultation with the Indiana SHPO, has determined, pursuant to 36 C.F.R. Section 800.4(c), that \*\*(name of historic property or properties)\*\* is/are eligible for inclusion in the National Register of Historic Places (“National Register”);

Or, **WHEREAS** the FHWA and the Indiana SHPO both recognize that \*\*(name of historic property or properties)\*\* is/are listed on the National Register of Historic Places (“National Register”); and

**WHEREAS** the FHWA, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. Section 800.5(a) that the \*\*(undertaking)\*\* will/may have an adverse effect on \*\*(name of historic property or properties)\*\*; and

**WHEREAS** the FHWA has consulted with the Indiana SHPO in accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and its implementing regulations (36 C.F.R. Section 800) to resolve the adverse effect on \*\*(name of historic property or properties)\*\*; and

**WHEREAS** the public was given an opportunity to comment on the undertaking's adverse effect in a notice published on \*\*( date(s) of publication)\*\* in the \*\*( name of publication)\*\*; and

**WHEREAS** the FHWA has notified the Advisory Council on Historic Preservation (“Council”) of the adverse effect and invited the Council's participation in the project, pursuant to 36 CFR Section 800.6(a)(1), in a letter dated \*\*(date of letter)\*\*; and

**WHEREAS** the Council declined to participate in consultation in a letter dated \*\*(date of letter)\*\*;

Or, **WHEREAS** the Council declined to participate in consultation through lack of response to the FHWA’s invitation within fifteen (15) days; and

**WHEREAS** the FHWA, in consultation with the Indiana SHPO, has invited the Indiana Department of Transportation (“INDOT”) to participate in the consultation and to become a signatory to this memorandum of agreement; and

Optional: **WHEREAS** the FHWA, in consultation with the Indiana SHPO, has invited \*\*(name or names—if an LPA project, the LPA will be an invited signatory; if any other parties have responsibilities to undertake per the MOA stipulations, include those parties as well)\*\* to participate in the consultation and to become a signatory/signatories to this memorandum of agreement; and

Optional: **WHEREAS** the FHWA, in consultation with the Indiana SHPO, has invited \*\*(name or names typically only added when the project has had very active consulting parties that provided input in the MOA process)\*\* to participate in the consultation and to become a concurring party to this memorandum of agreement; and

Optional: **WHEREAS** the FHWA has determined that with regard to Section 4(f) resources, a *net benefit* is achieved when the transportation use, the measures to minimize harm, and the mitigation incorporated into the project results in an overall enhancement of the Section 4(f) property when compared to both the future do-nothing or avoidance alternatives and the present condition of the Section 4(f) property, considering the activities, features and attributes that qualify the property for Section 4(f) protection; and

Optional: **WHEREAS** the FWHA has determined that this project has a *net benefit* on \*\*(name of historic property or properties)\*\*, a Section 4(f) resource/Section 4(f) resources from which a small amount of right-of-way will be required and of which a conversion to a transportation use will occur; and

Optional: **WHEREAS** the SHPO signature serves as a concurrence in the use of the Net Benefit Programmatic 4(f) for this resource; and

**WHEREAS** the FHWA has consulted with the Indiana SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations (36 C.F.R. Part 800) concerning the scope of work as presented in the materials and plans dated \*\*(date)\*\*[[1]](#footnote-1), and has agreed to proceed with the project as proposed (optional: with the recommendations provided by the Indiana SHPO in a letter dated \*\*(date)\*\*); and

**NOW, THEREFORE**, the FHWA and the Indiana SHPO agree that, upon the submission of a copy of this executed memorandum of agreement, as well as the documentation specified in 36 C.F.R. Section 800.11(e) and (f) to the Council pursuant to 36 C.F.R. Section 800.6[b][1][iv]) and upon the FHWA's approval of the \*\*(undertaking)\*\*, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effect of the \*\*(undertaking)\*\* on historic properties.

1. **Mitigation Stipulations**

The FHWA, in coordination with INDOT, shall ensure that the following measures are carried out:

* 1. List mitigation stipulation(s) here... …Be sure to clearly spell out roles, responsibilities, and timeframes. Use active tense. For example state “The County will create and install an interpretive sign at the project site within three years of execution of this agreement” instead of “An interpretive sign will be created.”
	2. Consider items that can be implemented before or during construction so that completion of the MOA does not linger. Items that are not completed before construction is completed are harder to track and implement.
	3. Before inclusion, carefully consider any items that would require property owner permission before they can be pursued (such as listing of a property in the National Register). If such an item is to be included, consider also outlining a “back-up” mitigation item that can be implemented, if necessary, to help avoid the need to re-open the Section 106 process to identify other mitigation measures.
1. **OBJECTION RESOLUTION PROVISION**

Disagreement and misunderstanding about how this memorandum of agreement is or is not being implemented shall be resolved in the following manner:

* 1. If the Indiana SHPO or any invited signatory to this memorandum of agreement should object in writing to the FHWA regarding any action carried out or proposed with respect to the \*\*(undertaking)\*\* or implementation of this memorandum of agreement, then the FHWA shall consult with the objecting party to resolve this objection. If after such consultation the FHWA determines that the objection cannot be resolved through consultation, then the FHWA shall forward all documentation relevant to the objection to the Council, including the FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
		1. Provide the FHWA with a staff-level recommendation, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
		2. Notify the FHWA that the objection will be referred for formal comment pursuant to 36 C.F.R. Section 800.7(c), and proceed to refer the objection and comment. The FHWA shall take into account the Council's comments in reaching a final decision regarding its response to the objection.
		3. If the ACHP does not provide its advice regarding the dispute within the 30-day time period, the FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
	2. If comments or recommendations from the Council are provided in accordance with this stipulation, then the FHWA shall take into account any Council comment or recommendations provided in accordance with this stipulation with reference only to the subject of the objection. The FHWA's responsibility to carry out all actions under the memorandum of agreement that are not the subjects of the objection shall remain unchanged.
1. **POST-REVIEW DISCOVERY**

In the event that one or more historic properties--other than \*\*(name or names of historic property or properties)\*\*-- are discovered or that unanticipated effects on historic properties are found during the implementation of this memorandum of agreement, the FHWA shall follow the procedure specified in 36 C.F.R. Section 800.13, as well as IC 14-21-1-27 and IC 14-21-1-29, by stopping work within 100 feet and informing the Indiana SHPO and the INDOT Cultural Resources Office 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, and the most current *Guidebook for Indiana Historic Sites and Structures Inventory – Archaeological Sites*.

1. **AMENDMENT**

Any signatory to this memorandum of agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 C.F.R. 800.6(c)(7) shall govern the execution of any such amendment.

1. **TERMINATION**
	1. If the terms of this memorandum of agreement have not been implemented by \*\*(Month)\*\* \*\*(Number of Day)\*\*, \*\*(Year)\*\*, then this memorandum of agreement shall be considered null and void. In such an event, the FHWA shall so notify the parties to this memorandum of agreement and, if it chooses to continue with the \*\*(undertaking)\*\*, then it shall reinitiate review of the \*\*(undertaking)\*\* in accordance with 36 C.F.R. Sections 800.3 through 800.7.
	2. Any signatory to this memorandum of agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the \*\*(undertaking)\*\*.
	3. In the event that the FHWA does not carry out the terms of this memorandum of agreement, the FHWA shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the \*\*(undertaking)\*\*.

The execution of this memorandum of agreement by the FWHA, the Indiana SHPO, and \*\*(name or names of any invited signatory or signatories)\*\*, the submission of it to the Council with the appropriate documentation specified in 36 C.F.R. Section 800.11(e) and (f), and the implementation of its terms evidence that the FHWA has afforded the Council an opportunity to comment on the \*\*(undertaking)\*\* and its effect on historic properties and that the FHWA has taken into account the effects of the \*\*(undertaking)\*\* on historic properties.

**SIGNATORIES** **(required):**

FEDERAL HIGHWAY ADMINISTRATION

INDIANA STATE HISTORIC PRESERVATION OFFICER

**INVITED SIGNATORIES:**

INDIANA DEPARTMENT OF TRANSPORTATION

Optional: PROJECT APPLICANT (WHEN NOT INDOT)

Optional: OTHER PARTIES WITH RESPONSIBILITIES SPECIFIED UNDER THE MOA

Optional: **CONCURRING PARTIES:**

CONCURRING PARTY NAMES

*\*\*Signature pages for each signatory are separate so that concurrent signatures may be obtained.\*\**

**SIGNATORY PAGE**

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**DES. NO. \*\*(XXXXXXX)\*\***

**REQUIRED SIGNATORY**

FEDERAL HIGHWAY ADMINISTRATION

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Jermaine R. Hannon, Division Administrator

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**DES. NO. \*\*(XXXXXXX)\*\***

**REQUIRED SIGNATORY**

INDIANA STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Beth K. McCord, Deputy State Historic Preservation Officer

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INDIANA DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Laura Hilden, Environmental Services Director

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**DES. NO. \*\*(XXXXXXX)\*\***

Optional: **INVITED SIGNATORY**

PROJECT APPLICANT (WHEN NOT INDOT)

\*\*For county commissioners, include the names of all three commissioners. Please check to ensure the information is current.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name, Title

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name, Title

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Optional: **INVITED SIGNATORY**

OTHER PARTIES WITH RESPONSIBILITIES SPECIFIED UNDER THE MOA

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name, Title

**CONCURRING PARTY PAGE**

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**DES. NO. \*\*(XXXXXXX)\*\***

Optional: **CONCURRING PARTY**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name, Title

1. Usually this date will be the date the finding of effect was signed as the most recent plans and materials are part of the 800.11 documentation. [↑](#footnote-ref-1)