

**MEMORANDUM OF AGREEMENT BETWEEN THE  
FEDERAL HIGHWAY ADMINISTRATION,  
THE OHIO DEPARTMENT OF TRANSPORTATION, AND  
THE OHIO STATE HISTORIC PRESERVATION OFFICE,  
REGARDING THE  
BRENT SPENCE BRIDGE REPLACEMENT/REHABILITATION PROJECT,  
HAM-71/75-0.00/0.22, PID 75119,  
HAMILTON COUNTY, OHIO AND KENTON COUNTY, KENTUCKY  
ADVERSE EFFECT TO THE  
B&O FREIGHT AND STORAGE BUILDING/LONGWORTH HALL,  
LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES (86003521)  
700 PETE ROSE WAY (SECOND STREET), CINCINNATI, OHIO  
(ODOT AGREEMENT NUMBER 16829)**

**WHEREAS**, the Federal Highway Administration (FHWA), the Kentucky Transportation Cabinet (KYTC), and the Ohio Department of Transportation (ODOT) propose to reconstruct a 7.8-mile segment of Interstate 71 (I-71) and Interstate (I-75) and construct a new bridge over the Ohio River in Kenton County, Kentucky and Hamilton County, Ohio, known as the Brent Spence Bridge Replacement/Rehabilitation Project, and hereby known as the undertaking (UNDERTAKING); and

**WHEREAS**, FHWA, with ODOT and KYTC as their agents, plan to fund the UNDERTAKING, thereby making the UNDERTAKING subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800; and

**WHEREAS**, FHWA, with ODOT and KYTC as their agents, have consulted with the Ohio State Historic Preservation Office (SHPO) and the Kentucky Heritage Council (KHC); and

**WHEREAS**, FHWA, with ODOT and KYTC as their agents, will consult with federally recognized Native American Indian Tribes that may attach religious and cultural significance to historic properties; and

**WHEREAS**, FHWA, with ODOT and KYTC as their agents, have identified and consulted with consulting parties through public meetings, direct notification, project website, and Section 106 consultation; and, have not denied any of the identified consulting parties such status for this UNDERTAKING; and

**WHEREAS**, FHWA, with ODOT and KYTC as their agents, in consultation with the SHPO, KYTC and other consulting parties, have identified the UNDERTAKING's area of potential effect (APE), as defined in 36 C.F.R. § 800.16(d); and

**WHEREAS**, FHWA with ODOT and KYTC as their agents, have incorporated avoidance and minimization measures into the project development process by incorporating noise walls, retaining walls, pedestrian facilities, and aesthetic treatments into the design where warranted; and

**WHEREAS**, FHWA, with ODOT and KYTC as their agents, will continue to incorporate avoidance and minimization measures into the UNDERTAKING; and

**WHEREAS**, FHWA, with ODOT as their agent, in consultation with the SHPO, and other consulting parties, determined the UNDERTAKING will have an adverse effect upon the B&O Freight and Storage Building/Longworth Hall, listed on the NRHP (86003521), located at 700 Pete Rose Way (Second Street), Cincinnati, Ohio, pursuant to Section 106 of the NHPA, 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. § 800; and

**WHEREAS**, FHWA, with KYTC as their agent, in consultation with the KHC, and other consulting parties, determined the UNDERTAKING will have an adverse effect upon the Lewisburg Historic District, listed on the NRHP (93001165), bounded by I-71/75 and the city limits of Covington, Kentucky, pursuant to Section 106 of the NHPA, 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. § 800; and

**WHEREAS**, FHWA, with ODOT and KYTC as their agents, have determined the agreed upon measures to resolve the adverse effects of the UNDERTAKING to historic properties, located in the State of Ohio and the Commonwealth of Kentucky, will be formalized by two separate Memoranda of Agreements; and

**WHEREAS**, FHWA, with ODOT as their agent, has initiated this Memorandum of Agreement (AGREEMENT) to build upon the identification and consultation efforts conducted thus far in the State of Ohio; and, to formalize measures to resolve the adverse effect to the B&O Freight and Storage Building/Longworth Hall, listed on the NRHP (86003521), located at 700 Pete Rose Way (Second Street), Cincinnati, Ohio; and

**WHEREAS**, FHWA, with ODOT as their agent, have invited the identified consulting parties to concur with this AGREEMENT and will continue to consult with the consulting parties as the UNDERTAKING progresses; and

**WHEREAS**, FHWA, with ODOT as their agent, in accordance with 36 C.F.R § 800.6(a)(1), has notified the Advisory Council on Historic Preservation (COUNCIL) of the adverse effect determination with specified documentation and the COUNCIL has chosen not to participate in the consultation pursuant to 36 C.F.R 800.6(a)(1)(iii); and

**NOW THEREFORE**, FHWA, with ODOT as their agent, agree that the UNDERTAKING shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the UNDERTAKING on the B&O Freight and Storage Building/Longworth Hall, listed on the NRHP (86003521), located at 700 Pete Rose Way (Second Street), Cincinnati, Ohio.

## **STIPULATIONS**

FHWA shall ensure that the following mitigation measures are carried out:

### **I. ARCHITECTURAL PROPERTIES**

A. In consultation with FHWA, SHPO, and other consulting parties, ODOT has identified architectural historic properties in the APE, as documented by the *Brent Spence Bridge Replacement/Rehabilitation Project Determination of Effects Report ODOT PID No. 75119, HAM-71/75-0.00/0.22, KYTC Project item No. 6-17*; and, has identified the effects to historic properties located within the APE.

B. ODOT proposes treatments commensurate with the level of impact and that are a reasonable public expenditure in light of the severity of the impact. ODOT will mitigate

the adverse effect to B&O Freight and Storage Building/Longworth Hall, listed on the NRHP (860003521), located at 700 Pete Rose Way (Second Street), Cincinnati, Ohio, using, but not limited to, one or more of the treatments on the following list:

1. Installation of exterior storm windows.
2. Restoration of the east wall, to an approximation of its original appearance, will include materials salvaged during demolition in accordance with the Secretary of Interior's Standards.
  - a. Plans will be developed for review and comment by the building owner, Cincinnati Preservation Association, and SHPO.
  - b. Windows, removed to accommodate the new roadway construction, will be restored and used in the east wall reconstruction.
  - c. Windows, removed and not used in the east wall reconstruction, will be restored and returned to the owner.
  - d. A cornerstone, commemorating the date of construction (1904) on one side, and the date of the renovation on the other side, will be included in the east wall reconstruction design.
3. Masonry repair will include: repair or replacement of bricks as warranted; tuck-pointing; and, brick cleaning of the west, north, and south walls.
4. Plaque/Interpretive signage will be constructed:
  - a. The original location of the east wall, prior to the construction of the Brent Spence Bridge, will be outlined by bricks and stone work.
  - b. An interpretive plaque, describing changes to the property that have occurred over time, will be placed near the original location of the east end wall.
5. The original lettering across the top of the building will be refurbished.
6. All materials removed, that retain historic integrity and nature, will be returned to the building owner to be used in future repairs or expansion.
7. ODOT will have follow up discussions with the owner regarding contracting methods and their request to either perform the construction themselves or provide project management control. If ODOT concurs in this approach, details will be outlined in a separate agreement.

Prior to commencement of the proposed treatment plans, ODOT will ensure right-of-way acquisition has been completed.

## **II. DURATION**

This AGREEMENT will be null and void if the UNDERTAKING is not implemented within five (5) years from the date of its execution. At such time, and prior to work continuing on the UNDERTAKING, FHWA shall either (a) execute a new agreement pursuant to 36 C.F.R. § 800.6; or (b) request, take into account, and respond to the comments of the COUNCIL under 36 C.F.R. § 800.7. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of this AGREEMENT and amend it in accordance with Stipulation VIII below. FHWA shall notify the signatories as to the course of action it will pursue.

### III. POST-REVIEW DISCOVERIES AND UNANTICIPATED DISCOVERY OF HUMAN REMAINS, OHIO

A. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after completion of Section 106 review, that portion of the project will stop immediately, pursuant to Section 203.04 of ODOT's *Construction and Material Specifications*. The ODOT project engineer will immediately contact ODOT-OES and/or the appropriate ODOT District Environmental Coordinator. No further construction in the area of discovery will proceed until the requirements of 36 C.F.R. § 800.13 have been satisfied, including consultation with federally recognized Native American Indian tribes that may attach traditional cultural and religious significance to the discovered property. ODOT will consult with SHPO and Indian tribes, as appropriate, to record, document and evaluate NRHP eligibility of the property and the projects effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property. If neither the SHPO nor a federally recognized Native American Indian Tribe file a timely objection to ODOT's Office of Environmental Services (ODOT-OES) plan for addressing the discovery, ODOT-OES may carry out the requirements of 36 C.F.R. § 800.13 on behalf of FHWA and the COUNCIL need not be notified. FHWA and ODOT-OES will conduct all review and consultation in accordance with *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Ohio Historical Society, State Historic Preservation Office, and the State of Ohio, Department of Transportation Regarding Implementation of the Federal-Aid Highway Program in Ohio (Agreement No.16734 )* (executed 11/30/2011).

B. Historic and prehistoric human remains are subject to protection under Ohio Revised Code Sections 2909.05 and 2927.11. As such, if previously unidentified human remains are discovered during construction, work in that portion of the project will stop immediately. The remains will be covered and/or protected in place in such a way that minimizes further exposure of and damage to the remains. The ODOT project engineer will immediately consult with ODOT-OES and the ODOT District Environmental Coordinator, and immediately notify local law enforcement and/or the County Coroner. If the project has a US Army Corps of Engineers (USACOE) permit issued, the ODOT District Environmental Coordinator must notify ODOT-OES and the USACOE. If the remains are found to be Native American Indian, a treatment plan will be developed by ODOT-OES and SHPO in consultation with FHWA and appropriate federally recognized Native American Indian Tribes.

FHWA and ODOT-OES will ensure that any treatment and reburial plan is fully implemented. If the remains are not Native American Indian, the appropriate local authority will be consulted to determine final disposition of the remains. Avoidance and preservation in place is the preferred option for treating human remains. FHWA and ODOT-OES will conduct all review and consultation in accordance with *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Ohio Historical Society, State Historic Preservation Office and the State of Ohio, Department of Transportation Regarding Implementation of the Federal-Aid Highway Program in Ohio (Agreement No. 16734)* (executed 11/30/2011).

C. For Native American Indian human remains 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* (PL 101-601). For skeletal remains discovered on property owned by the State of Ohio, ODOT will comply with Section 149.53 of the Ohio Revised Code. Under this section, the Director of the Ohio Historical Society shall determine final disposition of any discovered skeletal remains. FHWA and ODOT-OES will also follow the guidance issued by the COUNCIL, *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* (issued 2/23/07).

**IV. MONITORING AND REPORTING**

Each five (5) years following the execution of this AGREEMENT until it expires or is terminated, FHWA shall provide all parties to this AGREEMENT and the COUNCIL if desired, a summary report detailing work carried out pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in FHWA's efforts to carry out the terms of this AGREEMENT.

**V. DISPUTE RESOLUTION**

Should any signatory or concurring party to this AGREEMENT object at any time to any actions proposed or the manner in which the terms of this AGREEMENT are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the COUNCIL. The COUNCIL shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the COUNCIL, signatories and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.

B. If the COUNCIL does not provide its advice regarding the dispute within the thirty (30) day time period; FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to this AGREEMENT, and provide them and the COUNCIL with a copy of such written response.

C. FHWA's responsibilities to carry out all other actions subject to the terms of this AGREEMENT that are not the subject of the dispute remain unchanged.

**VI. AMENDMENTS**

This AGREEMENT may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the COUNCIL.

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**VII. TERMINATION**

If any signatory to this AGREEMENT determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment pursuant to Stipulation VI above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate this AGREEMENT upon written notification to the other signatories.

Once the AGREEMENT is terminated, and prior to work continuing on the UNDERTAKING, FHWA must either (a) execute a new agreement pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the COUNCIL under 36 C.F.R. § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

EXECUTION of this AGREEMENT by the FHWA, ODOT, and SHPO, and implementation of its terms, is evidence the FHWA has taken into account the effects of this UNDERTAKING on the B&O Freight and Storage Building/Longworth Hall, listed on the NRHP (86003521), located at 700 Pete Rose Way (Second Street), and has afforded the COUNCIL an opportunity to comment.

SIGNATORIES:

Mark L. Vander Embse Date 6/22/2012

802 Laura S. Leffler, Division Administrator  
Federal Highway Administration, Ohio Division.


Mark J. Epstein Date 6.28.12


Mark J. Epstein, Department Head, Resource Protection and Review  
Ohio State Historic Preservation Officer

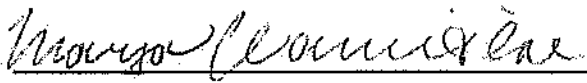
Jerry Wray Date 4.12.12

Jerry Wray, Director  
Ohio Department of Transportation

Concurring:

  
Date 5/8/12  
Michael W. Hancock, Secretary  
Kentucky Transportation Cabinet

  
Date 5/9/12  
Lindy Casebier  
Acting Kentucky State Historic Preservation Office

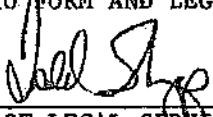
  
Date 6/18/12  
Margo Warminski  
Cincinnati Preservation Association

\_\_\_\_\_  
Date \_\_\_\_\_  
Michael Schweitzer  
Longworth Hall

  
Date 5/24/12  
Steve Schuckman  
Cincinnati Parks

\_\_\_\_\_  
Date \_\_\_\_\_  
Norman Kattelman  
Dayton Street Historic District

APPROVED AS TO FORM AND LEGALITY:

  
Date 5/9/12  
KYTC, OFFICE OF LEGAL SERVICES