

DRAFT PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, HUNTINGTON DISTRICT
AND
THE OHIO HISTORIC PRESERVATION OFFICE
REGARDING PROJECTS
IN THE MUSKINGUM BASIN FLOOD CONTROL PROJECTS ,
SOUTH-CENTRAL, OHIO

WHEREAS, the Huntington District of the U.S. Army Corps of Engineers (District) proposes to complete several improvements (PROJECTS) to its FACILITIES in the Muskingum Basin Flood Control Project (MUR) as part of, but not limited to, Dam Safety Assurance Measures, Interim Risk Reduction Measures, Major Rehabilitation, Dam Safety Modification programs, and operations and maintenance activities; and

WHEREAS, while the final array and extent of these PROJECTS has not yet been established, the District has determined that their completion may affect properties (historic properties) that are eligible for listing in the National Register of Historic Places (NRHP), at the District's FACILITIES in the MUR; and

WHEREAS, the District has consulted with the Ohio Historic Preservation Office (OHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act of 1966 (NHPA) (16 USC 470f), as amended; and

WHEREAS, the District has determined that the proposed improvements are needed to help preserve the operational condition of its FACILITIES in the MUR, thereby protecting residents and property within the Muskingum Watershed; and

WHEREAS, the District and the OHPO agree that the PROJECTS can be most efficiently implemented if, pursuant to 36 CFR Section 800.14(b) and Appendix C-4(d)(5)(d)(2) of ER 1105-2-100 the agencies execute a Programmatic Agreement (PA) that establishes a streamlined process for consulting about effects of the PROJECTS on historic properties; and

WHEREAS, the District recognizes the need to systematically evaluate and document FACILITIES within the MUR to comply with 16 USC 470f, 16 USC 470h-2(f), and 36 CFR 800.

WHEREAS, some of proposed PROJECTS may be cost-shared with a Non-Federal Sponsor.

WHEREAS, it is likely that the Muskingum Watershed Conservancy District (MWCD) would be the Non-Federal Sponsor on those proposed PROJECTS requiring a cost sharing agreement.

WHEREAS, the MWCD has been consulted and decided not to be a signatory to this agreement,

WHEREAS, any costs incurred by the U.S. Government (Government) for the identification, survey, evaluation, or mitigation, with the exception of data recovery activities, of historic properties associated with this agreement shall be included in the total PROJECT costs and, if subject to a cost-share agreement, the costs of these activities shall be shared by the Non-Federal Sponsor in accordance with that agreement.

WHEREAS, the Government has sole authority to determine what mitigation activities qualify as data recovery.

WHEREAS, any costs incurred by the Government for data recovery activities associated with this agreement shall be borne entirely by the District and not included in the total PROJECT costs, up to one percent of the total amount authorized to be appropriated by the Government for the PROJECT.

WHEREAS, the Government shall not incur costs for data recovery activities associated with this agreement that exceed the one percent limit specified above, unless the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver.

WHEREAS, in those instances where a Non-Federal Sponsor is cost sharing a proposed PROJECT, any costs of data recovery activities associated with this agreement that exceed the one percent limit shall not be included in the total PROJECT costs, but shall be shared between the Non-Federal Sponsor and the Government consistent with whatever cost share agreement is in place.

NOW, THEREFORE, the District and the OHPO agree that the PROJECTS will be administered in accordance with the following stipulations to satisfy the District's Section 106 responsibilities.

STIPULATIONS

I. Identification of RESOURCES That Are Historic Properties

The District shall sponsor a baseline cultural historic study that evaluates the eligibility of RESOURCES throughout the MUR for listing in the NRHP by applying the National Register Criteria for Evaluation (36 CFR Section 60.4). The study shall evaluate RESOURCES individually and as contributing/non-contributing resources within a possible historic district. Nothing in Stipulation I is considered a data recovery activity associated with the mitigation of historic properties.

- A. Qualifications: The District shall retain a Preservation Professional meeting Professional Qualification Standards as set forth in the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716) in history, architectural history, or historic architecture and with extensive experience completing similar survey work.
- B. Background Research: The Preservation Professional shall complete a search of records on file with the District, field offices in the MUR, OHPO, and local and regional repositories to collect information from previous studies or previously documented RESOURCES.

Collected data shall include period photographs, sketches, accounts, descriptions, and as-built drawings (PERIOD DATA) that document the intent, design, setting, and alterations of all RESOURCES. PERIOD DATA shall be digitized according to guidance prepared by the National Archives and issued on November 12, 2003, entitled *Expanding Acceptable Transfer Requirements: Transfer Instructions for Permanent Electronic Records, Digital Photographic Records* (Attachment A), or the *Proposed Updated Photograph Policy, National Register of Historic Places* (Revised March 2008) (Attachment B) and saved as Tagged Image File Format (.tiff or .tif) files as required by Attachment B. Large format drawings can be scanned .tiff or .tif files as required by Attachment B. It is possible that some PERIOD DATA will be available only on microfilm or digitally. In these instances, PERIOD DATA is to be digitized utilizing an appropriate method to capture .tiff or .tif files. All PERIOD DATA shall be burned to archival gold CD-Rs or DVD-Rs required by Stipulation I.E.4.a.

All data obtained during Background Research shall be utilized throughout the technical report required by Stipulation I.G. and its appendices. Select PERIOD DATA shall also be utilized as figures to supplement the text of the report.

- C. Historic Context and FACILITY Descriptions: In addition, the Preservation Professional shall develop a historic context for the MUR. The historic context

shall (1) describe the location, extent, history, and significance of the MUR collectively and of its individual FACILITIES, (2) identify all periods of significance associated with the MUR, and (3) define and characterize all RESOURCES and SUB-TYPES at FACILITIES within the MUR. The historic context shall be enhanced by PERIOD DATA obtained during background research. The historic context shall be included in the main text of the report required by Stipulation I.G.

- D. Resource Descriptions: The Preservation Professional shall draft an architectural and/or engineering description of each RESOURCE that includes information on age, location, design, setting, material, workmanship, feeling, association, and alterations. Information gathered during background research, the historic context, and digital photography shall be utilized to supplement descriptions. RESOURCE descriptions shall be included in the report as an appendix that organizes data by FACILITY in accordance with Stipulation I.G.
1. Each RESOURCE shall be assigned a unique inventory number which signifies the FACILITY with which it is associated, its RESOURCE type, its SUB-TYPE, and the RESOURCE name (e.g., Dover Dam, Attwood Field Office).
 2. The boundary of U.S. Government owned land at each FACILITY and all RESOURCES within FACILITIES shall be charted and labeled on appropriate USGS 7.5' mapping for inclusion in the technical report required by Stipulation I.G.
- E. Digital Photographs: The Preservation Professional shall take high-resolution digital photographs documenting existing conditions at each FACILITY and RESOURCE, including interior views of all BUILDINGS, where possible. If the District determines that security concerns cannot allow interior views of BUILDINGS, descriptions adequately documenting whether interior spaces qualify as character defining features shall suffice.
1. The number and nature of photographs taken of each RESOURCE shall adequately document and support: (1) the current appearance and condition of each RESOURCE, including one view of each elevation; (2) significant features of each RESOURCE; (3) the setting of each RESOURCE; (4) the relationship of each RESOURCE to its surrounding environment; and (5) written descriptions of each RESOURCE.
 2. Overview photographs displaying the overall extent and nature of each FACILITY shall be taken.
 3. All photographs must conform to the *Proposed Updated Photograph*

Policy, National Register of Historic Places (Revised March 2008) and be saved as .tiff or .tif files (Attachment B).

4. The survey shall include both (1) disks (archival gold CD-R or DVD-R) containing all electronic images and (2) black-and-white, 5" x 7" prints of digital photographs.

- a. Digital photographs on archival gold CD-Rs or DVD-Rs

- i. Naming of electronic images shall conform to the standards established in Attachment B.
- ii. A photograph log containing a description of each print, including its direction, the name of the electronic image as defined in Stipulation I.E.4.a.i, the RESOURCE inventory number required by Stipulation I.D.1., and the subject of the photograph (e.g. façade, detail of fencing) shall be placed on the archival gold CD-Rs or DVD-Rs.

- b. Black-and-white 5" x 7" prints of digital photographs

- i. Prints of all digital photographs shall be developed using methods specified in Attachment B. Inks and paper used for digital prints must be archivally stable. A non-comprehensive list of acceptable ink and paper combinations is maintained by the National Park Service at [www.cr.nps.gov/nr/policyexpansion.htm# acceptable](http://www.cr.nps.gov/nr/policyexpansion.htm#acceptable). The type of inks and paper used must be declared.
- ii. Prints shall be stored in bound archival sleeves. Each sleeve shall contain prints documenting a single RESOURCE.
- iii. Each print shall be labeled utilizing the standards set forth in Attachment B. In addition to the information required by Attachment B, the label on each photograph shall include a unique photograph inventory number, the RESOURCE inventory number required by Stipulation I.D.1. A hard copy of the digital log created in Stipulation II.E.4.a.ii shall be placed in the front of each binder.

- F. Inventory Forms: The Preservation Professional shall prepare an Ohio Historic Inventory (OHI) form for a representative example of each RESOURCE type in

the MUR using the OHPO's I-Form application. When determining which RESOURCE shall serve as the representative example of a type, the Preservation Professional shall give primary consideration to historic integrity. Each OHI form shall summarize the age, integrity, and significance of the RESOURCE it documents as well as provide contextual data regarding the number of similar RESOURCES within the MUR by FACILITY. A hard copy of each form shall be included in the Technical Report required by Stipulation I.G.

- G. Technical Report: The final results of the cultural historic study shall be incorporated into a full technical report meeting the Secretary of the Interior's Standards for Historical Documentation (http://www.nps.gov/history/local-law/arch_stnds_5.htm). Minimally, the report shall include sections with the following data.
1. Description of the study, its background, regulatory affiliations, and purpose.
 2. Maps and photographs charting and describing the extent of the District's FACILITIES in the MUR.
 3. Historic context required by Stipulation I.C.
 4. Conclusion regarding the NRHP eligibility of the District's FACILITIES and associated RESOURCES in the MUR
 5. An appendix for each FACILITY containing the following documentation:
 - a. RESOURCE descriptions required by Stipulation I.D.
 - b. 5" x 7" prints of each FACILITY and RESOURCE as required by Stipulation I.E.
 - c. A summary of the NRHP eligibility of each RESOURCE and FACILITY. Each may be individually eligible and/or a contributing element to a historic district.
 6. An appendix containing the archival gold CD-Rs or DVD-Rs containing digital PERIOD DATA required by Stipulation I.B.
 7. An appendix containing the archival gold CD-Rs or DVDs containing digital photograph required by Stipulation I.E

8. An appendix with reproduced OHI forms required in Stipulation I.F.

Any data collected under Stipulation I included in the report that is determined by the District to be classified, sensitive but unclassified, or critical infrastructure data shall be removed from publically accessible copies and so noted in those copies of the report. Information on how to request copies of that data shall be provided in all copies of the report where data was removed.

H. Schedule for Production, Review, and Distribution of Technical Report:

The production, review, and distribution of the Technical Report required by Stipulation I.G. shall occur as follows:

1. The District shall retain a Preservation Professional to begin the cultural historic study required by Stipulation I.
2. The District shall submit a draft of the technical report required under Stipulation I.G to OHPO and for review and comment. OHPO shall have thirty (30) days from receipt of the draft to provide comments and request revisions. The 5-x-7 prints required in Stipulation I.E.4.b are not required for draft submissions. Digital photographs shall suffice for draft submissions.
3. After making revisions to the draft technical report that take into account comments provided by the OHPO, the District shall submit three archival copies of the final technical report (including 5-x-7 prints required in Stipulation I.E.4.b) – two bound copies and one unbound copy – to the State Library of Ohio at the following address:

Ms. Audrey L. Hall
Government Information Services
The State Library of Ohio
274 E. First Avenue
Columbus, OH 43201

The phrase “Submitted by the Ohio Historic Preservation Office” must appear on the title page of the technical report to allow library staff to identify OHPO as the state agency from which the document originated and process it for entry into the collections.

The State Library will catalog the recordation package on the Online Computer Library Center (OCLC) system. This will make the recordation package available to anyone using WorldCat, FirstSearch, or the State Library’s catalog. The unbound copy of the recordation

package will be placed in the State Library's rare book room. Of the two bound copies, one may be circulated through OhioLink or according to the State Library's policy while the other will be non-circulating.

4. The District shall submit two additional bound archival copies of the final technical report to OHPO.
5. The District shall maintain no less than two copies of the final technical report in the Planning Branch. At least one copy of the final technical report shall also be placed in the District's Muskingum Area Office at Dover Dam. The District shall also have two copies of the final technical report archived for no less than 50 years at the Washington National Records Center (WNRC) in Suitland, Maryland.

II. Identification and Treatment of Archeological Resources That Are Historic Properties

The District shall carry out the necessary investigations to determine if PROJECTS will have an effect on archeological resources that are listed in or eligible for listing in the NRHP. When signatories agree that scientific archeological data recovery is an appropriate mitigation under Stipulation II.E, those efforts will be defined as data recovery activities associated with the mitigation of historic properties. All other activities described under Stipulation II do not qualify as data recovery.

The District shall carry out these investigations on areas proposed for ground disturbance in the MUR. Management summaries can be prepared following the completion of field work during all phases of archeology. These documents can be utilized to consult in the interim while awaiting receipt of final reports.

Areas where the extent depth and nature of previous disturbance can be demonstrated to have previously disturbed soils and sediments that would be affected by the proposed action need not be investigated for archeological sites as described below. Instead, the District may submit this documentation to the OHPO for review and comment.

- A. Qualifications: The District shall require that all work be supervised by persons meeting Professional Qualification Standards in archeology as set forth in the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716).
- B. Phase I Archeological Survey. Phase I work will be designed to provide information regarding the significance of all identified archeological sites as "site is eligible," "site is not eligible," or "eligibility of site is not determined" to the

NRHP. This work shall be performed in accordance with professionally accepted methods and will be consistent with OHPO guidelines. The level of effort will depend on existing conditions, archeological potential, consultation with local experts and readily available local information, and professional judgment. Reports documenting the results of this work shall be submitted to OHPO for review and comment.

1. If the District and OHPO agree that a “site is not eligible,” then no further investigations of that site shall be conducted.
2. If the District and OHPO agree that a site with undetermined eligibility can and shall be avoided, which would be the preferred option, then no further investigation of that site shall be conducted, unless avoidance becomes infeasible. If avoidance is practical, then the District will consult with OHPO to explain and describe how the work will be conducted to avoid effects and the methods that the District will employ before, during, and after construction to ensure that the avoidance of the site or sites is consistent with the spirit of this agreement.

C. Phase II Archeological Testing: If the District and OHPO agree that the “eligibility of a site is not determined” and avoidance is not feasible, the District shall ensure that a Phase II Research Design will be developed in consultation with the OHPO. This document will be consistent with OHPO guidelines. Phase II work will be designed to provide information regarding the significance of an archeological site as “site is not eligible” or “site is eligible” to the NRHP. Reports of Phase II work shall be submitted to the OHPO for review and comment.

1. If the District and OHPO agree that “site is not eligible,” then no further investigations of that site will be conducted.
2. If the District and OHPO agree that an eligible site can and will be avoided, which would be the preferred option, then no further investigation of that site shall be conducted, unless avoidance becomes infeasible. If avoidance is practical, then the District will consult with OHPO to explain and describe how the work will be conducted to avoid effects and the methods that the District will employ before, during, and after construction to ensure that the avoidance of the site or sites is consistent with the spirit of this agreement.

D. Criteria of Adverse Effects: If the District and OHPO agree that the “site is eligible” and avoidance is not a feasible alternative, the District shall apply the criteria of adverse effect [36 CFR Section 800.5(a)(1)]. This work shall be designed to determine if the proposed action will have “no effect,” “no adverse

effect,” or “adverse effect” on the eligible site. Results of this work shall be submitted to OHPO for review and comment.

1. If, following the application of the criteria of adverse effect, the District and OHPO agree that the proposed actions will have “no effect” or “no adverse effect” on an eligible site, then no further investigations of that site shall be conducted, unless future disturbances are proposed.
2. If the District and OHPO agree that proposed actions will have an “adverse effect” on an eligible site, but the action is subsequently redesigned to avoid adverse effects, which would be the preferred option, then the finding would be changed to “no adverse effect,” unless avoidance is or becomes infeasible.
3. If there is disagreement over the application of the criteria of adverse effect, the disagreeing parties shall consult to attempt to resolve the disagreement in accordance with Stipulation IX. If the disagreement cannot be resolved, it shall be handled in accordance with Stipulation IX.A.

E. Phase III Archeological Data Recovery: If all parties agree proposed actions will have an “adverse effect” on an eligible site and avoidance is or becomes infeasible, the District shall consult with OHPO to determine measures to minimize or mitigate the adverse effect to the site. The District shall consider that the archeological site and the effects on the archeological site may include more than the information that may be recovered from scientific archeological investigations and mitigation may involve efforts other than data recovery. To the extent that the District and OHPO agree that the mitigation emphasizing scientific archeological data recovery is appropriate:

1. The District shall ensure that a Data Recovery Plan be developed in consultation with OHPO. The plan shall be consistent with OHPO guidelines. The Phase III work shall be designed to recover, interpret, and disseminate significant data for eligible sites.
2. OHPO shall have 45 days from receipt to review and comment on plan.
3. If there is a disagreement over the adequacy, appropriateness, or extent of a data recovery plan, the disagreeing parties shall consult to resolve the disagreement in accordance with Stipulation IX. If the disagreement cannot be resolved, it shall be handled in accordance with Stipulation IX.A.

4. Following OHPO review and consultation on the Phase III data recovery results, no further investigation of that site shall be conducted, unless an unanticipated post-review discovery is made.
- F. Reporting: The District shall ensure that reports adequately documenting all archeological investigations, recommendations and conclusion are produced for review by the OHPO.
1. Management Summaries of the results and interpretations of background research and field work can be prepared for use in interim consultation. If written, Management Summaries shall briefly describe and chart the location of investigations, the methods used, encountered archeological sites, and/or negative findings by PROJECT. Summary recommendations and preliminary conclusions shall also be provided.
 2. The final results of background research, field work, and data analysis shall then be incorporated into a full technical report meeting professional standards. Minimally, full technical reports shall:
 - a. Describe and chart project locations and elements
 - b. Provide summary information from the background research
 - c. Provide a clear and comprehensive discussion of methods utilized
 - d. Provide a justifiable research design
 - e. Provide precise locational information on all investigations and reported archeological sites
 - f. Provide detailed descriptions of project conditions, exposed sediments/soils, and of any archeology investigated. Measured drawings and photography shall be utilized to enhance these descriptions
 - g. Adequately describe (and illustrate if necessary) observed or recovered material during archeological investigations so that a reader can fully appreciate the author's interpretations and conclusions
 - h. Provide justifiable conclusions concerning the NRHP eligibility of documented sites, the effects to eligible sites, and/or the

significant data recovered from eligible site

- i. Provide concluding statements concerning the need for, if any, additional archeological study.

G. Post-Review Discoveries: In the event of any unanticipated discoveries of archeological sites during the implementation of any proposed action, all activities will be suspended in the area of discovery. The District shall contact the ACHP and OHPO within 5 days of the discovery. The District shall ensure that, if necessary, a qualified archaeologist will visit and assess the discovery within 2 days of the discovery. Through consultation, the District and the ACHP and OHPO shall agree upon the appropriate treatment of the discovery prior to the resumption of construction activities in the area of discovery. If human remains are encountered they shall be handled in accordance with Stipulation II.H.

H. Human Remains: If any human remains and/or grave-associated artifacts are encountered during construction activities and/or archeological investigations, work in the immediate area shall cease immediately and the District archaeologist shall be informed. The Ohio State Police and appropriate sheriff shall also be notified immediately. The ACHP and OHPO shall also be notified within 5 days of discovery. Consultation with OHPO will be based on the OHPO 1997 policy statement on Treatment of Human Remains. If remains have the potential to be Native American, federally recognized tribes shall also be notified of the find. If Native American human remains or associated grave goods are found on U.S. Government property all procedures shall comply with the applicable provisions of the Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-106). Applicable provisions of the National Park Service Bulletin 41 Guidelines for Evaluation and Registering Cemeteries and Burial Places (Washington DC 1992) shall be followed for any human remains or cemeteries discovered.

III. Continued Use of Technical Reports by the District

The District shall utilize the cultural historic study required by Stipulation I and the archeological reports required by Stipulation II to guide the management of its historic properties within the MUR. Technical reports required by Stipulation I and Stipulation II shall be placed in the Environmental Analysis Section of the Planning Branch in Huntington, West Virginia and the Muskingum Area Office at Dover Dam and shall be consulted during project planning and development in an effort to avoid or minimize adverse effects on historic properties resulting from District undertakings and to facilitate Section 106 consultation regarding those undertakings. In addition, the District shall use these reports to fulfill its obligations under Section 110 of the NHPA (16 U.S.C. 47-h-2). In addition, the District shall archive at least two copies of the technical report

completed under Stipulation I at the (WNRC) in Suitland, Maryland or no less than 50 years.

Nothing in Stipulation III is considered a data recovery activity associated with the mitigation of historic properties.

IV. Review of District PROJECTS within the MUR

Nothing in Stipulation IV is considered a data recovery activity associated with the mitigation of historic properties. However, Stipulation IV.C does refer to Stipulation II, which discusses the possibility for data recovery activities to mitigate adverse effects to archeological sites qualifying as historic properties.

- A. The District and OHPO acknowledge that documentation of built resources throughout the MUR prescribed in Stipulation I goes beyond the effort to identify historic properties required by 36 CFR Section 800.4 and Section 110(a)(2)(A) of the NHPA. The District and OHPO agree on the scope of this documentation with the intent of having it serve a secondary purpose as mitigation for many District PROJECTS. District and OHPO agree that the following PROJECTS will require no review regarding effects to built resources either because these activities will generally not affect built historic properties, or because documentation prepared under Stipulation I mitigates any effects:
1. Maintenance, alteration, replacement, abandonment, or removal of non-historic elements such as parking lots, sidewalks, driveways, trails/paths, and lighting. For example:
 - a. Installation, maintenance, alteration, replacement, abandonment, or removal of any non-historic element or parking lots, sidewalks, driveways, trails/paths, and lighting.
 - b. Paving existing driveway or parking lot
 - b. Removal or replacement of a sidewalk
 - c. Installation of new security lights or cameras
 - d. Alteration of any non-historic element or a RESOURCE recommended as not eligible for listing in the NRHP in the baseline cultural historic study required by Stipulation I, once the study has been reviewed and accepted by both the District and OHPO

- e. Installation of security gates and/or fencing
2. Maintenance or alteration (excluding abandonment, breaching, or removal) of an earthen dam, levee or dike. For example:
 - a. Mowing
 - b. Alteration of abutments
 - c. Extension or reduction in width or height of earthen structure
 - d. All activities covered by Stipulations IV.A.3-7
 3. Routine maintenance and repair activities that have no potential to alter the characteristics of properties that qualify them for listing in the NRHP. For example:
 - a. Bank stabilization activities, such as stone bank protection and longitudinal dikes
 - b. Dredging of channels
 - c. Re-grouting concrete seams
 - d. Painting
 - e. Cleaning or clearing debris
 4. Installation, maintenance, alteration, replacement, abandonment, or removal of Cut-Off Walls / Seepage Barriers, or Seepage/Filter Blankets, Grout Curtains, or steel bar/cable anchors.
 - a. Cut-Off Walls/ Seepage Barrier: Installation of an impervious material wall or barrier in the interior of an earthen dam, levee, or dike which blocks water from seeping through the structure. These interior walls or barriers require the excavation of a trench along the earthen structure, the placement of impervious material and the spoil of excavated material. Platforms are built to support hydro-mills or excavators. Temporary concrete batch plants and slurry ponds are also required in some instances. These activities require very little, if any, permanent exterior alteration to earthen structures.

- b. Seepage/Filter Blankets: Installation of granular fill material at the toe of an earthen dam, levee, or structure to re-enforce the structure and reduce seepage gradients that cause internal erosion (“piping”). Implementation requires the addition of earthen fill to an earthen structure.
 - c. Grout Curtains: Injecting grout into boreholes in rock in the abutments or foundations of a dam, levee, or dike. These activities require little if any permanent exterior alteration to earthen structures.
 - d. Steel Bar / Cable Anchors: Installation of steel bar or cable anchors to a concrete structure to help anchor it to bedrock. Anchors can be driven into the interior or exterior of a concrete structure through small holes usually not exceeding 12 inches in width. The holes are then re-grouted.
5. Installation, maintenance, alteration, replacement, abandonment, or removal of instrumentation, utilities, and machinery. For example:
- a. Installation of piezometers, surface displacement monuments, and inclinometers. These are all small gages and instruments used to gage water pressure and movement.
 - b. Installation or modernization of new water, sewer, or electrical utilities or equipment within previously disturbed areas.
 - c. Replacement of riveted steel operating gates with welded one to reduce failure potential.
6. Installation, maintenance, alteration, replacement, abandonment, or removal of Relief/Monitoring Wells.
- a. Relief/Monitoring Wells: Sub-surface pipes and wells constructed to monitor and control groundwater levels at the downstream side of an earthen dam, levee, or dike, and provide water pressure relief when necessary. The only above-ground manifestation associated with the structures are manholes and outlet pipe headwalls.
7. Maintenance or alteration of spill ways, excluding removal. For example:

- a. Placing a seepage barrier in a spillway
 - b. Installing a control section in the spillway to prevent head cutting from erosion
 - c. Widening earthen spillway
8. Installation, maintenance, alteration, replacement, abandonment, removal or out-granting of Recreation Facilities. For example:
- a. Improving ADA access
 - b. Upgrading electrical outlets
 - c. Replacing a playground
 - d. Installing a new boat launch ramp
 - e. Executing a new lease to operate a campground
 - f. Replacing a canoe portage
 - g. Constructing new picnic shelters
9. Planting, maintaining, clearing and or grubbing of vegetation. For example:
- a. Mowing grass, raking leaves, or trimming bushes
 - b. Clearing and grubbing vegetated tracts to increase downstream visibility
 - c. Planting new trees, shrubs, or flowers
- B. For each PROJECT that the District proposes to carry out at its FACILITIES in the MUR that is not included in Stipulation IV.A, the District shall submit the following information to OHPO to facilitate consultation regarding the effects of the PROJECT on built historic properties in the MUR, in addition to any archeological documentation required under Stipulation II:
1. A written description of the PROJECT
 2. Mapping (USGS quadrangle) showing:

- a. PROJECT location
 - b. Delineated boundaries of the Area of Potential Effects (APE)
 - c. Location of RESOURCES in the APE documented in the technical report required by Stipulation I.G.
3. Architectural plans and/or engineering drawings documenting the proposed PROJECT
 4. Photographs of the PROJECT area, including views from the RESOURCES in the APE documented in the technical report required by Stipulation I.G towards the PROJECT area
 5. Analysis documenting the District's application of the criteria of adverse effect [36 CFR Section 800.5(a)(1)] for historic properties in the APE
 6. District's finding regarding the effects of the PROJECT on historic properties ("no historic properties affected," "no adverse effect," or "adverse effect")
- C. Irrespective of any of exceptions provided in Stipulation IV.A., for each PROJECT the District proposes to carry out at its FACILITIES in the MUR that requires new ground disturbance, Stipulation II shall be followed. When the District and OHPO agree that scientific archeological data recovery is an appropriate mitigation under Stipulation II.E, those efforts will be defined as data recovery activities associated with the mitigation of historic properties.
- D. OHPO shall have thirty (30) days from receipt of the information required by Stipulation IV.B. to conduct its review. OHPO may concur with the District's finding, request additional information/analysis, or disagree with the District's finding.
1. If OHPO concurs with the District's finding of "no historic properties affected" or "no adverse effect," the review process will be completed.
 2. If OHPO concurs with the District's finding of "adverse effect", the adverse effect shall be resolved in accordance with Stipulation V.
 3. If requesting additional information/analysis, OHPO shall specify and justify what is needed for review to continue. The review process established in Stipulations IV.B and C. shall begin again upon receipt of

this information by OHPO from the District.

4. If OHPO disagrees with the District's finding, the parties shall consult to resolve the disagreement in accordance with Stipulation IX.

V. Resolution of Adverse Effects

- A. The District shall follow the process established at 36 CFR Part 800 to resolve adverse effects on historic properties that result from its PROJECTS. The goal of this process shall be to develop and evaluate alternatives or modifications to avoid, minimize, or mitigate adverse effects on historic properties identified through consultation carried out under the agreement.
 1. Mitigation of adverse effects to archeological historic properties shall follow the process established in Stipulation II.E. When the District and OHPO agree that scientific archeological data recovery is an appropriate mitigation under Stipulation II.E, those efforts will be defined as data recovery activities associated with the mitigation of historic properties.
 2. The District and OHPO acknowledge that the documentation of built resources throughout the MUR prescribed in Stipulation I goes beyond the effort to identify historic properties required by 36 CFR Section 800.4 and Section 110(a)(2)(A) of the NHPA. The District and OHPO agreed on the scope of this documentation with the intent of having it serve a secondary purpose as mitigation for many District PROJECTS resulting in adverse effects on built historic properties. For PROJECTS reviewed under Stipulation IV.B where a finding of adverse effect is made, the District and OHPO shall consult to determine whether the documentation prescribed in Stipulation I is appropriate mitigation for an adverse effect to built historic properties on a PROJECT-specific basis.
- B. This Programmatic Agreement is limited to effects PROJECTS may have on RESOURCES eligible for inclusion in the NRHP that are elements of the MUR or archeological sites located in or outside of the MUR.

This Programmatic Agreement does not consider effects to built historic properties not associated with the MUR or located outside of the MUR.

The District and OHPO agree that the geographic isolation of the majority of the District's FACILITIES significantly reduces the potential that effects to built historic properties will occur outside of the MUR. However, this is not true in all cases. For example, some FACILITIES are located directly adjacent to

communities that may or do contain historic properties (e.g. Zoar). If PROJECTS are proposed that have the potential to affect built historic properties located outside of the MUR, the District shall follow the process established in 36 CFR 800 to consider effects on historic properties that may occur outside of the MUR.

VI. Definitions

The definitions provided in the National Historic Preservation Act and the regulations at 36 CFR Part 800 apply to terms used throughout this agreement, such as “historic property” and “effect.” In addition, the following agreement-specific definitions are provided:

- A. District = Huntington District of the U.S. Army Corps of Engineers
- B. MUR = U.S. Government land owned in fee and managed by the District in the Muskingum Watershed Conservation District.
- C. OHPO = Ohio Historic Preservation Office
- D. MWCD = Muskingum Watershed Conservancy District
- E. PROJECT = Action or Undertaking sponsored by the District.
- F. FACILITIES = Portions of MUR (e.g., Atwood or Mohawk) that are owned in fee by the U.S. Government and managed by the District.
- G. RESOURCE = Historic-period (~50 years of age or older) built element at the FACILITIES in the MUR (e.g., field office, dam tender house, dam, levee, dike, outlet works, spillways, pools, or recreational resource) that are owned in fee by the U.S. Government and managed by the District.
- H. SUB-TYPE = Sub-type of RESOURCE (e.g., for dams: rolled-earth dam with impervious core or concrete gravity dam).
- I. PERIOD DATA = Period photographs, sketches, accounts, descriptions, and as-built drawings of FACILITIES AND RESOURCES.
- J. BUILDING = RESOURCE such as a house, workshop, garage, office, or similar construction created principally to shelter any form of human activity.

VII. Duration

This Programmatic Agreement shall expire five years after the date of its execution. Prior to such time, the District may consult with OHPO to reconsider the terms of the agreement or to amend it in accordance with Stipulation X. If neither party objects, this

Programmatic Agreement shall automatically be extended for another five years.

VIII. Monitoring

- A. The District and OHPO shall consult no later than one year after the date of execution of this Programmatic Agreement to review the implementation of its terms. If revisions to this agreement are needed, the District and OHPO shall consult to make such revisions in a manner consistent with U.S.C. 470f, 16 U.S.C. 470h-2(f), and 36 CFR Part 800 and in accordance with Stipulation X.
- B. Within 60 days after the end of each calendar year that this agreement is in force, the District shall submit to OHPO a list of PROJECTS exempted from review under Stipulation IV.A. of this agreement.
 - 1. For each exempted PROJECT the list will include the name of the FACILITY at which the PROJECT occurred, a brief description of the work completed, and the specific stipulation in this agreement used to exempt the PROJECT from review.
- C. The ACHP and OHPO may monitor activities carried out pursuant to this agreement, and the ACHP shall review such activities if so requested.

IX. Dispute Resolution

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

- A. Forward all documentation relevant to the dispute, including the District's proposed resolution, to the ACHP. The ACHP shall provide the District 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, the District shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, OHPO and consulting parties, and provide them with a copy of this written response. The District shall then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the District may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the District shall prepare a written response that takes into account any timely comments regarding the dispute from OHPO and consulting parties and provide them and

the ACHP with a copy of such written response.

- C. The District's responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.

X. Amendments

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

The District and OHPO agree to consult within one year following the acceptance of the final technical report required by Stipulation I.G to define other PROJECTS that can be added to the list of exempt activities established in Stipulation IV.A. If agreed upon, the District and OHPO agree to consult to amend this agreement to list newly exempt activities in Stipulation IV.A.

The District and OHPO agree to consult within one year following the acceptance of the final technical report required by Stipulation I.G. to identify RESOURCES and/or FACILITIES eligible for inclusion in the NRHP with outstanding integrity and/or significance at which the DISTRICT should consider preservation a priority during its planning process for any future PROJECT. If agreed upon, the District and OHPO shall consult to amend this agreement to include a process that will prioritize preservation of those highly significant RESOURCES and/or FACILITIES.

XI. Termination

If any signatory of 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 per Stipulation IX, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, the District must either (a) execute a PA pursuant to 36 CFR Section 800.14 or (b) follow the process outlined in 36 CFR Section 800.3 through 800.6 to consider the effects of PROJECTS within the MUR on historic properties. The District shall notify the signatories as to the course of action it will pursue.

Execution of this agreement and implementation of its terms evidences that the District has afforded the ACHP a reasonable opportunity to comment on PROJECTS within the MUR and that the District has taken into account the effects of the PROJECTS on historic properties within the MUR.

XII. Anti-Deficiency Act Compliance

All stipulations requiring expenditure of funds are subject to the availability of funds. If sufficient funds are not made available to fully execute this agreement, the District shall consult with other signatories to either amend or terminate this agreement per Stipulations X and X.I.

Signatories:

THIS IS A DRAFT ONLY AND IS NOT INTENDED FOR SIGNATURE OR EXECUTION

DRAFT