

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 STATE BOULEVARD RECONSTRUCTION FROM SPY RUN TO CASS STREET

IN FORT WAYNE, WAYNE TOWNSHIP, ALLEN COUNTY, INDIANA

WHEREAS the Federal Highway Administration ("FHWA") proposes to widen and realign a portion of State Boulevard for the State Boulevard Reconstruction from Spy Run to Cass Street (Des No.: 0400587) in, Fort Wayne, Wayne Township, Allen County, Indiana ("Project"); and

WHEREAS the FHWA, in consultation with the Indiana State Historic Preservation Officer ("SHPO"), has defined this State Boulevard Reconstruction from Spy Run to Cass Street's area of potential effects, as the term defined in 36 C.F.R. Section 800.16(d), to be the area extending 250 feet from the alley west of Cass Street to the abandoned New York Central Railroad, encompassing the first properties on the west side of Cass Street, north and south of West State Boulevard. From the abandoned railroad it continues east to the west property line of the property at 2239 Westbrook Drive. Following the north property line of 2239 Westbrook Drive, the APE continues east, crossing Westbrook Drive, Spy Run Creek and Eastbrook Drive, turning north to follow the east side of Eastbrook Drive to the north property line of 2342 Eastbrook Drive and turning east along that property line, including the north line of the property at 2335 Oakridge Road and continuing west along the south side of Neva Avenue to its intersection with North Clinton Street. From North Clinton Street east to Spy Run Avenue, the APE will extend 250 feet from the centerline of the existing roadway; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has found that the Fort Wayne Park and Boulevard System, Brookview-Irvington Park Historic District, and the State Boulevard Bridge over Spy Run are within the area of potential effects; and

WHEREAS the FHWA and the Indiana SHPO both recognize that the Fort Wayne Park and Boulevard System and Brookview-Irvington Park Historic District are listed in the National Register of Historic Places; and

WHEREAS the FHWA and the Indiana SHPO both recognize that the State Boulevard Bridge over Spy Run has been determined eligible for listing in the National Register of Historic Places per the Indiana Statewide Historic Bridge Inventory; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. Section 800.5(a) that the State Boulevard Reconstruction from Spy Run to Cass Street will have an adverse effect on the Fort Wayne Park and Boulevard System, Brookview-Irvington Historic District, and the Bridge over Spy Run; and

WHEREAS the FHWA, Indiana Department of Transportation ("INDOT"), the Indiana SHPO, and the Advisory Council on Historic Preservation ("Council") have executed in 2006 a Programmatic Agreement on the Management and Preservation of Indiana's Historic Bridges and the FHWA has determined that the State Boulevard Bridge over Spy Run is "Non-Select" (not considered an excellent example of a given type or not suitable candidate for preservation); 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. Section 800) to resolve the adverse effect on the Fort Wayne Park and Boulevard System and Brookview-Irvington Historic District; and

WHEREAS the FHWA has consulted with the Indiana SHPO and both recognize that 2244 Eastbrook Drive is a non-contributing resource within the Brookview-Irvington Historic District and will be demolished as part of the project; and

WHEREAS the FHWA has consulted with the Indiana SHPO and both recognize that following properties are contributing resources within the Brookview-Irvington Historic District and will be demolished as part of this undertaking: 2221 Westbrook Drive; 112 East State Boulevard; 128 East State Boulevard; 134 East State Boulevard; 138 East State Boulevard; 142 East State Boulevard; 146 East State Boulevard; 154 East State Blvd; 158 East State Boulevard; 162 East State Boulevard; 2252 Eastbrook Drive; 2248 Eastbrook Drive; 2240 Eastbrook Drive; 2236 Eastbrook Drive; and the State Boulevard Bridge over Spy Run; and

WHEREAS the public was given an opportunity to comment on the undertaking's adverse effect in a notice published on Wednesday June 4, 2014 and June 11, 2014 in *The News-Sentinel* and *The Journal Gazette*; and

WHEREAS the FHWA has notified the 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 August 29, 2011 and in additional material conveyed on May 10, 2012; and

WHEREAS the Council declined to participate in consultation in a letter dated July 31, 2012; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has invited the INDOT and the City of Fort Wayne to participate in the consultation and to become a signatory/signatories to this memorandum of agreement; 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 on March 23, 2009; July 2, 2009; November 9, 2009; December 1, 2009; December 15, 2009; December 28, 2009; February 4, 2010; May 19, 2011; June 17, 2011; July 6, 2011; July 13, 2011; August 15, 2011; August 16, 2011; September 1, 2011; September 2, 2011; September 29, 2011; May 22, 2012; June 20, 2012; July 2, 2012; July 16, 2012, and December 18, 2012; and agreed to proceed with the project as proposed April 23, 2009; December 14, 2009; July 5, 2011; November 7, 2011; June 22, 2012; and August 13, 2012; 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 State Boulevard Reconstruction from Spy Run to Cass Street, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effect of the State Boulevard Reconstruction from Spy Run to Cass Street on historic properties.

Stipulations

FHWA will ensure that the following measures are implemented:

I. CONTEXT SENSITIVE SOLUTIONS

A. The City of Fort Wayne shall, where feasible, implement context sensitive solutions for this undertaking, including but not limited to the delineation of the former path of State Boulevard as a reminder of the former roadway; use of new, large scale, low-branched vegetation to emulate the street edge and the exterior walls of homes removed as a result of the undertaking in the Brookview plat; fill slopes leading to higher road elevations such that the slope is made gentle and obscured with low branched trees; medians planted with low shrubs to break roadways into smaller components that will be in scale with other neighborhood streets; use of retaining walls minimized but where used buffered by vegetation; design of present State Boulevard Bridge over Spy Run (NBI No. 0200273) recalled in the design of the new bridge; and use of streetscape elements such as historically scaled lighting, trees in parkstrips and other elements seen in the District neighborhoods in the new area to maintain continuity between the various elements.

B. The City of Fort Wayne shall, where feasible, salvage architectural details from homes demolished as a result of the undertaking for use in other District residences. The City of Fort Wayne shall provide the Indiana SHPO and consulting parties a dispensation plan for salvaged architectural details

C. The City of Fort Wayne will explore funding opportunities that will, if appropriate, provide low costs grants/loans to people in the neighborhood to improve/rehabilitate historic resources within the Brookview-Irvington Historic District. All improvements will be in compliance with, and with the oversight of, the Fort Wayne Historic Preservation Commission.

D. As soon as practical, FHWA and the City of Fort Wayne will convene an Advisory Team to ensure that the Project is designed in a manner that respects the historic qualities, landscapes, historic buildings, and features in the Brookview-Irvington Park Historic District and the Fort Wayne Park and Boulevard System Historic District. Responsibilities of and participation on the Advisory Team include the following:

1. The Advisory Team will function in an advisory capacity to assist FHWA and the City of Fort Wayne in developing Project design details to implement the measures stipulated in this MOA regarding the Brookview-Irvington Park Historic District and the Fort Wayne Park and Boulevard System Historic District.

2. Context sensitive solutions that may include but not be limited to: protecting existing character-defining landscape features, both created and natural; dealing with light, sound, and air quality issues; providing pedestrian access across the bridge; and maintaining pedestrian connections along the former Eastbrook and Westbrook drives shall be included among the measures considered.

3. The City of Fort Wayne and FHWA shall have the authority for final approval of actions regarding the implementation of measures to avoid, minimize, or mitigate effects to the Brookview-Irvington Park Historic District and the Fort Wayne Park and Boulevard System.

4. Representatives of the following jurisdictions and organizations will be invited by FHWA and the City of Fort Wayne to participate on the Advisory Team, based on their established geographic connection to or specific interest in the Brookview-Irvington Park Historic District, or expertise pertaining to the historic preservation area: City of Fort Wayne Parks & Recreation Department, City of Fort Wayne historic preservation planners, City of Fort Wayne Engineer, City of Fort Wayne Urban Designer (Community Redevelopment Department), INDOT, the Fort Wayne

Greenway Consortium, ARCH, Inc., Brookview Neighborhood Association, Friends of the Parks of Allen County, and Indiana Landmarks. The Indiana SHPO or representatives may participate in Advisory Team meetings at their discretion. The City of Fort Wayne shall provide a licensed landscape architect to attend the Advisory Team meetings.

5. Additional participants having geographic connection to, or specific interest in, the Brookview-Irvington Park Historic District or Fort Wayne Park and Boulevard Historic District or expertise pertaining to the historic preservation of the area may be invited to participate on the Advisory Team at the discretion of the City of Fort Wayne, FHWA, and the Indiana SHPO. In addition, the City of Fort Wayne shall invite the project managers of or representatives from the consultants for the other projects in the vicinity of the historic district (e.g., Pufferbelly Trail or US 27) to participate in the meetings of the State Boulevard Reconstruction from Spy Run to Cass Street Advisory Team.

6. As soon as practical, FHWA and the City of Fort Wayne will convene the Advisory Team for an initial organizational meeting to establish processes and procedures for operation of the Advisory Team will need to meet to ensure the timely completion of the project, and the number and dates of future meetings. The Advisory Team will review plans, comment, and make specific recommendations regarding Project design scopes of work and details for consideration by FHWA and the City of Fort Wayne. The Advisory Team will be chaired by a representative of the City of Fort Wayne's engineering and/or environmental consultant. The chair will be responsible for convening meetings of the Advisory Team, preparing and maintaining a summary of meetings, and preparing and submitting Advisory Team recommendations to FHWA and the City of Fort Wayne for consideration and action, in consultation with the Indiana SHPO.

7. The City of Fort Wayne's engineering and/or environmental consultant shall provide any materials needed for review by the Advisory Team at least fifteen (15) days before scheduled meetings. In addition to comments voiced in the meetings, the Advisory Team members may provide written comments to the chair within fifteen (15) days following the scheduled meeting.

8. Based on the comments provided by the Advisory Team members, the chair will develop recommendations and submit them to FHWA and the City of Fort Wayne for consideration and action, in consultation with the Indiana SHPO.

9. If other Federal undertakings planned in the vicinity of the Brookview-Irvington Park Historic District and Fort Wayne Park and Boulevard System Historic District are found to result in an adverse effect to the historic district, the City of Fort Wayne shall encourage the creation of Advisory Teams of the same composition of the State Boulevard Reconstruction from Spy Run to Cass Street Advisory Team available to guide the development of context sensitive design as part of the mitigation of such adverse effects. The City of Fort Wayne shall make meeting minutes and other pertinent records and materials from the State Boulevard Reconstruction from Spy Run to Cass Street Advisory Team available to other such Advisory Teams.

II. PHOTOGRAPHIC DOCUMENTATION

- A. Prior to commencement of the demolition of the existing historic State Boulevard Bridge over Spy Run (NBI No. 0200273) for this undertaking, the City of Fort Wayne will ensure that photographic documentation of the State Boulevard Bridge over Spy Run (NBI No. 0200273) will take place, as provided for in the 2006 “Programmatic Agreement Among the Federal Highway Administration, the Indiana Department of Transportation, the Indiana State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Management and Preservation of Indiana’s Historic Bridges.”
- B. Prior to the commencement of site preparation, demolition, or construction activities for this undertaking within the Brookview-Irvington Park Historic District, the City of Fort Wayne will ensure that photographic documentation of the part of the Historic District that will be altered by this undertaking will take place. The photographs will concentrate on the following subjects:
 - 1. The streetscape and setting, including broad views of the main facades of buildings facing the street, within the parts of the existing State Boulevard and Eastbrook Drive that will be altered; and
 - 2. Those houses that contribute to the significance of the Historic District and that will be demolished. At least two photographs of each of those houses will be taken, and they will be taken from oblique angles in order to document all four elevations of each house.
- C. This documentation will include black and white prints of digital photographs and a digital video disc (“DVD”) containing the photographs, recorded as closely as possible in keeping with the relevant standards of the version of the “Indiana DNR – Division of Historic Preservation and Archaeology Minimum Architectural Documentation Standards” that are in effect at the time.
 - 1. Separate sets of the photographs of the State Boulevard Bridge over Spy Run and of the photographs of the parts of the Brookview-Irvington Park Historic District will be prepared;
 - 2. The photography will be conducted by a professional photographer or a qualified professional who meets relevant professional qualification standards of the Secretary of the Interior;
 - 3. A draft set of photographs on DVD of the Bridge and a draft set of photographs on DVD of the Historic District will be submitted to the Indiana SHPO for review and approval within 30 days of receipt, and the Indiana SHPO has the discretion to require that photographs be retaken or that additional photographs be taken; and
 - 4. After the Indiana SHPO has approved the sets of photographs of the Bridge and of the Historic District, the City of Fort Wayne will provide duplicates of the photographic prints and digital video discs to the Indiana SHPO, for ultimate transmittal to the Indiana State Archives, and to one or more libraries or other not-for-profit institutions in Fort Wayne that will commit to retaining them permanently and to providing the public with access to them.

III. EDUCATIONAL PROGRAMMING

The City of Fort Wayne will fund the research, design, manufacture, and installation of a series of four interpretative plaques to be placed at accessible locations. The plaques may include, but not be limited to: 1) discussion of Brookview Plat, 2) information about George Kessler’s landscape design, 3) history of Vesey Park and Centlivre beer garden grounds, 4) the role of Civilian Conservation Corps or other WPA era programs in public projects.

The development of the proposed content and design of the plaques will be provided to the Indiana SHPO and consulting parties at ninety-five (95) percent completion for review and comment. If the Indiana SHPO does not respond within thirty (30) days, acceptance will be assumed. If the Indiana SHPO responds with recommendations, a

good faith effort to accommodate the recommendations will be made. The City of Fort Wayne will inform the SHPO and the consulting parties of its response to such recommendations and provide any revisions to the Indiana SHPO and consulting parties for their files.

IV. 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:

A. 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 State Boulevard Reconstruction from Spy Run to Cass Street 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 45 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.

B. 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.

V. POST REVIEW DISCOVERY

In the event that archaeological artifacts (sites), human remains, or one or more historic aboveground properties—other than Fort Wayne Park and Boulevard System Historic District, Brookview-Irvington Park Historic District, and the Bridge over Spy Run—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 and IC 14-21-1-27 and IC 14-21-1-29, by stopping work in the immediate area and informing the Indiana SHPO and the INDOT Cultural Resources Section 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.

IV. 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.

V. TERMINATION

A. If the terms of this memorandum of agreement have not been implemented within five years of the onset of construction, 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 State Boulevard Reconstruction from Spy Run to Cass Street, then it shall reinitiate review of the State Boulevard Reconstruction from Spy Run to Cass Street in accordance with 36 C.F.R. Sections 800.3 through 800.7.

B. Any signatory to the 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 State Boulevard Reconstruction from Spy Run to Cass Street.

C. 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 State Boulevard Reconstruction from Spy Run to Cass Street.

The execution of this memorandum of agreement by the FHWA, the City of Fort Wayne, and the Indiana SHPO, 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 State Boulevard Reconstruction from Spy Run to Cass Street and its effect on historic properties and that the FHWA has taken into account the effects of the State Boulevard Reconstruction from Spy Run to Cass Street on historic properties.

SIGNATORIES (required):

FEDERAL HIGHWAY ADMINISTRATION

Signed by: Joyce E. Newland Date: December 29, 2014

Name and Title: Joyce E. Newland
(Typed or printed) PLANNING & ENVIRONMENTAL SPECIALIST

INDIANA STATE HISTORIC PRESERVATION OFFICER


Signed by: *M. K. Zoll* Date: *12/29/2014*

Name and Title: *Mitchell K. Zoll*

(Typed or printed) *Deputy Historic Preservation Officer*

INVITED SIGNATORIES

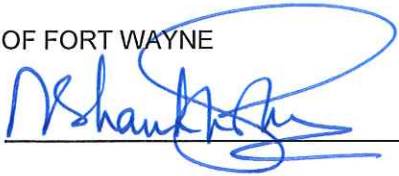
INDIANA DEPARTMENT OF TRANSPORTATION

Signed by:  Date: 12/29/2014

Name and Title: Laura Hilden, Director of Environmental Services.

THE CITY OF FORT WAYNE

Signed by:



Date:

12/29/2014.

Name and Title:

SHAN GUNAWARDENA, CITY ENGINEER

(Typed or printed)

(IF an entity has responsibilities under the MOA, include that entity's name here)