

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE FEDERAL RAILROAD ADMINISTRATION AND THE
OHIO DEPARTMENT OF TRANSPORTATION CONCERNING THE
STATE OF OHIO'S PARTICIPATION IN THE SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM
PURSUANT TO 23 U.S.C. 327**

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") entered into by and between the FEDERAL RAILROAD ADMINISTRATION (hereinafter "FRA"), an administration in the UNITED STATES DEPARTMENT OF TRANSPORTATION (hereinafter "USDOT"), and the State of Ohio, acting by and through its OHIO DEPARTMENT OF TRANSPORTATION (hereinafter "ODOT"), for the State of Ohio's participation in the Surface Transportation Project Delivery Program pursuant to 23 U.S.C 327 and hereby provides as follows:

WITNESSETH

Whereas, Section 327 of Title 23 of the U.S. Code (U.S.C.) establishes the Surface Transportation Project Delivery Program (hereinafter "Program") that allows the Secretary of the United States Department of Transportation (hereinafter "USDOT Secretary") to assign and States to assume the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (hereinafter "NEPA"), and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to highway, public transportation, railroad, and multimodal projects within the State; and

Whereas, the USDOT Secretary's responsibilities to administer the Project Delivery Program have been delegated to the Administrators of the Federal Highway Administration (FHWA) (49 CFR 1.85(a)(21)), FRA (49 CFR 1.89(q)), and the Federal Transit Administration (49 CFR 1.91(c)); and

Whereas, Section 1313 of the Moving Ahead for Progress in the 21st Century Act (Pub. L 112141, July 6, 2012) made the Pilot Program permanent and expanded its scope to include railroad, public transportation, and multimodal projects; and

Whereas, 23 U.S.C. 327(a)(2)(B)(ii) authorizes USDOT to assign the duties and responsibilities of the FRA under NEPA and other Federal environmental laws to a State for one or more railroad projects if the State has been assigned such duties and responsibilities for highway projects; and

Whereas, 23 U.S.C. 327(b)(2) requires a State to submit an application in order to participate in the Program; and

Whereas, the State of Ohio has expressed its interest in participating in the Program with respect to railroad projects, and its legislature has enacted laws to allow the State to participate in the Program; and

Whereas, on December 28, 2015, USDOT originally assigned to ODOT the duties and responsibilities

under NEPA and other Federal environmental laws for highway projects; and

Whereas, on December 14, 2020, USDOT renewed the assignment to ODOT of the duties and responsibilities under NEPA and other Federal environmental laws for highway projects; and

Whereas, on June 2, 2024, prior to submittal of its application to FRA, ODOT published notice of and solicited public comment on its intended application to the Program as required by 23 U.S.C. 327(b)(3), and revised the application based on comments received; and

Whereas, on July 22, 2024, the State of Ohio, acting by and through ODOT, submitted its application to FRA for participation in the Program with respect to railroad projects; and

Whereas, on September 9, 2024, FRA published a notice and provided an opportunity for comment on its preliminary decision to approve ODOT's request and solicited the views of other appropriate Federal agencies concerning ODOT's application as required by 23 U.S.C. 327(b)(5); and

Whereas, the USDOT Secretary, acting by and through FRA, has determined that ODOT's application meets all of the requirements of 23 U.S.C. 327 with respect to the Federal environmental laws and railroad projects.

Now, therefore, FRA and ODOT agree as follows:

PART 1. PURPOSE OF MEMORANDUM OF UNDERSTANDING

1.1 Purpose

- 1.1.1 This MOU officially approves ODOT's application to participate in the Program and is the written agreement required pursuant to 23 U.S.C. 327(a)(2)(A) and 327(c) under which the USDOT Secretary may assign, and ODOT may assume, the responsibilities of the USDOT Secretary for Federal environmental laws with respect to one or more railroad projects within the State of Ohio.
- 1.1.2 FRA's decision to execute this MOU is based upon the information, representations, and commitments contained in ODOT's July 22, 2024, application. As such, this MOU incorporates the Application Package. However, this MOU shall control to the extent there is any conflict between this MOU and the Application Package.
- 1.1.3 The assignment of responsibilities under this MOU is made pursuant to the authority granted to the Secretary under 23 U.S.C. 327. Any provision of this MOU, or any portion of any provision, that is deemed to be illegal, unenforceable, or beyond the scope of the Secretary's authority shall be severed from this MOU, without affecting the validity of the remainder of the MOU. In such event, all other provisions or parts of provisions of this MOU shall remain in full force and effect.

PART 2. EFFECTIVE DATE

- 2.1 This MOU shall be effective upon execution by both parties (hereinafter the "Effective Date").

PART 3. ASSIGNMENTS AND ASSUMPTIONS OF RESPONSIBILITY

3.1 Assignments and Assumptions of NEPA Responsibilities

- 3.1.1 Pursuant to 23 U.S.C. 327(a)(2)(A), on the Effective Date, FRA assigns, and ODOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the USDOT Secretary's responsibilities for compliance with NEPA, 42 U.S.C. 4321 et seq. with respect to the railroad projects specified under subpart 3.3 below. This assignment includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for Federal railroad projects such as 23 U.S.C. 139, 40 C.F.R. parts 1500-1508, USDOT Order 5610.1 C (Jul. 30, 1985), and 23 C.F.R. part 771, and FRA's Procedures for Considering Environmental Impacts (published at 64 Fed. Reg. 28545 (May 26, 1999) and 78 Fed. Reg. 2713 (Jan. 14, 2013)), as applicable.
- 3.1.2 On the cover page of each environmental assessment (EA), finding of no significant impact (FONSI), environmental impact statement (EIS), and record of decision (ROD) prepared under the authority granted by this MOU, and for any memorandum corresponding to any categorical exclusion (CE) determination it makes, ODOT shall insert the following language in a way that is conspicuous to the reader or include it in a CE project record:

"The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by ODOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 3, 2024, and executed by FRA and ODOT."

3.1.3 ODOT shall disclose to the public and agencies, as part of agency outreach and public involvement procedures, including any notice of intent or scoping meeting notice, the disclosure in subpart 3.1.2 above.

3.2 Assignments and Assumptions of Responsibilities to Comply with Federal Environmental Laws Other Than NEPA

3.2.1 Pursuant to 23 U.S.C. 327(a)(2)(B), on the Effective Date, FRA assigns and ODOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the USDOT Secretary's responsibilities for environmental review, reevaluation, consultation, or other action pertaining to the review or approval of railroad projects specified under subpart 3.3 below required under the following Federal environmental laws and executive orders related to railroad projects:

Environmental Review Process

- Efficient environmental reviews for project decision-making, 23 U.S.C. 139
- Efficient environmental reviews, 49 U.S.C. 24201

Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401-7671q. *with the exception of any project level conformity determinations (42 U.S.C 7506).*

Noise

- Noise Control Act of 1972, 42 U.S.C. 4901-4918

Wildlife

- Endangered Species Act of 1973, 16 U.S.C. 1531-1544
- Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d
- Bald and Golden Eagle Protection Act, 16 U.S.C 668-688d
- Migratory Bird Treaty Act, 16 U.S.C. 703-712

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 et seq. except to the extent 23 CFR 773.105(b)(4) requires FRA to retain responsibility for government-to-government consultation with Indian tribes
- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774
- Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469-469c
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa-470mm, Title 54, Chapter 3125
- Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508.
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-3013; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201-4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251-1387 (Section 401, 402, 404, 408, and Section 319)
- Coastal Barrier Resources Act, 16 U.S.C. 3501-3510

- Coastal Zone Management Act, 16 U.S.C. 1451-1466
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Flood Disaster Protection Act, 42 U.S.C. 4001-4130
- General Bridge Act of 1946, 33 U.S.C. 525 - 533
- Rivers and Harbors Act of 1899, 33 U.S.C. 401-406
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f - 300j-26
- Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)(14)
- Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287

Parklands

- 49 U.S.C. 303 (Section 4(f)) and implementing regulations at 23 C.F.R., part 774
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302 - 200310

Executive Orders (E.O) Relating to Railroad Projects

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 C.F.R. sections 650.113 and 650.115)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species
- E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

- E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
- E.O. 14008, Tackling the Climate Crisis at Home and Abroad
- E.O. 14096, Revitalizing Our Nation’s Commitment to Environmental Justice for All
- Other Executive Orders not listed, but related to railroad projects

3.2.2 In accordance with 23 U.S.C. 327(a)(2)(D), any FRA environmental review responsibility not explicitly listed above and assumed by ODOT shall remain the responsibility of FRA unless the responsibility is added by written agreement of the parties through the amendment process established in Part 14 and pursuant to 23 CFR 773.113(b). This provision shall not be interpreted to abrogate ODOT’s responsibilities to comply with the requirements of any Federal environmental law that applies directly to ODOT independent of FRA’s involvement (through Federal assistance or approval).

3.2.3 The USDOT Secretary’s responsibilities for government-to-government consultation with Indian tribes as defined in 36 CFR 800.16(m) are not assigned to or assumed by ODOT under this MOU per 23 CFR 773.105(b)(4). FRA remains responsible for all government-to-government consultation, including initiation of government-to-government consultation consistent with E.O. 13175 - Consultation and Coordination with Tribal Governments, unless otherwise agreed as described in this Part. A notice from ODOT to an Indian tribe advising the tribe of a proposed activity is not considered "government-to-government consultation" within the meaning of this MOU. If a project-related concern or issue is raised in a government-to-government consultation process with an Indian tribe, as defined in 36 C.F.R. 800.16(m), and is related to NEPA or another Federal environmental law for which ODOT has assumed responsibilities under this MOU, and either the Indian tribe or FRA determines that the issue or concern will not be satisfactorily resolved by ODOT, then FRA may withdraw the assignment of all or part of the responsibilities for processing the project. In this case, the provisions of subpart 9.1 concerning FRA initiated withdrawal of assignment shall apply.

This MOU is not intended to abrogate, or prevent future entry into, any agreement among ODOT, FRA, and a tribe under which the tribe agrees to permit ODOT to administer government-to-government consultation activities for FRA. However, such agreements are administrative in nature and do not relieve the FRA of its legal responsibility for government-to-government consultation.

3.2.4 In accordance with 23 U.S.C. 327(a)(2)(B)(iv), nothing in this MOU shall be construed to permit ODOT’s assumption of the USDOT Secretary’s responsibilities for conformity determinations required under Section 176 of the Clean Air Act (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304. In addition, FRA remains responsible for implementing other laws, requirements, and policies that are not assumed by ODOT under this MOU, or other

MOUs and agreements, with respect to railroad projects. Those items not assumed by ODOT include, but are not limited to, laws, requirements, and policies related to right-of-way, value engineering, and design.

- 3.2.5 On the cover page of each biological assessment, historic properties or cultural resources report, Section 4(f) evaluation, feasibility study, underserved populations impact analysis report, alternative evaluation report, or other decision-making document made available to the public, ODOT shall insert the following language in a way that is conspicuous to the reader or include in the project record:

"The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by ODOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 3, 2024, and executed by FRA and ODOT."

- 3.2.6 ODOT shall disclose to the public and agencies, as part of the NEPA approval document (CE, EA, EIS), the disclosure in subpart 3.2.5 above.
- 3.2.7 ODOT will continue to adhere to the original terms of Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS) or both USFWS and NMFS prior to the effective date of this MOU, so long as the original BO terms are not amended or revised. Any revisions or amendments to a BO made after the effective date of this MOU would be ODOT's responsibility. ODOT agrees to assume FRA's environmental review role and responsibilities as identified in existing interagency agreements among ODOT, USFWS, and FRA, such as the Programmatic Agreement for Biological Evaluations, or negotiate new agreements with USFWS, if needed. ODOT agrees to assume FRA's ESA Section 7 responsibilities of consultations (formal and informal) ongoing as of the date of the MOU execution.
- 3.2.8 ODOT will not make any determination that an action constitutes a constructive use of a publicly owned park, public recreation area, wildlife refuge, waterfowl refuge, or historic site under 49 U.S.C. 303/ 23 U.S.C. 138 (Section 4(f)) without first consulting with FRA and obtaining FRA's approval of such determination. ODOT will provide FRA written notice of any proposed constructive use determination, and FRA will have thirty (30) calendar days to review and provide comment. If FRA objects to ODOT's proposed constructive use determination, ODOT will not proceed with the determination.

3.3 Assigned Railroad Projects

- 3.3.1 Except as provided by subpart 3.3.2 below or otherwise specified in this subpart, the assignments and assumptions of the USDOT Secretary's responsibilities under subparts 3.1 and 3.2 above shall apply to the environmental review, consultation, or other action pertaining to the environmental review or approval of railroad projects sponsored or assumed by ODOT/Ohio Rail Development Commission (ORDC) located within the State of Ohio. ODOT shall conduct any reevaluations required under 23 C.F.R. 771.129 for projects for which construction is not completed prior to the date of this MOU, in accordance with the provisions of this MOU.

- 3.3.2 Projects that cross state boundaries or that cross or are adjacent to international boundaries are excluded from the railroad projects for which FRA environmental review responsibilities are being assumed by ODOT. For purposes of this MOU, a project is considered “adjacent to international boundaries” if it requires the issuance of a new, or modification of an existing, Presidential Permit.
- 3.3.3 As provided in 23 U.S.C. 327(a)(2)(D), any railroad project that is not assumed by ODOT under this subpart 3.3 remains the responsibility of FRA.

3.4 Limitations

- 3.4.1 For purposes of carrying out the responsibilities assigned under this MOU, and subject to the limitations contained in 23 U.S.C. 327 and this MOU, following the Effective Date, ODOT will be deemed to be acting as FRA with respect to the environmental review, consultation, and other action required under those responsibilities.
- 3.4.2 Pursuant to 23 U.S.C. 327(c)(3)(B)-(C) and subpart 4.3 of this MOU, third parties may challenge ODOT’s actions in carrying out environmental review responsibilities assigned under this MOU. Except as provided in 23 U.S.C. 327(c)(3)(B)-(C) and subpart 4.3 of this MOU, this MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any third party against ODOT, its departments, agencies, or entities, its officers, employees, or agents. This MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any third party against the United States or its departments, agencies, entities, officers, employees, or agents.

PART 4. CERTIFICATIONS AND ACCEPTANCE OF JURISDICTION

4.1 Certifications

- 4.1.1 ODOT hereby makes the following certifications in accordance with 23 U.S.C. 327(c)(3)(C):
 - A. ODOT has the legal authority to accept all the assumptions of responsibility identified in Part 3 of this MOU;
 - B. ODOT has the legal authority to take all actions necessary to carry out all of the responsibilities it has assumed under this MOU;
 - C. The Governor of the State has the legal authority to execute this MOU on behalf of the State;
 - D. The State of Ohio currently has laws in effect that are comparable to 5 U.S.C. 552, and those laws are located at Ohio Revised Code § 149.43, et seq. (the Ohio Public Records Act); and
 - E. The Ohio Public Records Act provides that any decision regarding the public availability of a document under that Act is reviewable by an Ohio court of competent jurisdiction.

4.2 State Commitment of Resources

4.2.1 The State will exercise the powers and authorities granted under this MOU through ODOT, as appropriate.

4.2.2 As provided at 23 U.S.C. 327(c)(3)(D), ODOT has committed to maintaining the financial resources necessary to carry out the responsibilities it is assuming. A summary of financial resources is contained in ODOT's application, Section 773.109, p. 50, dated July 24, 2024. Should FRA determine, after consultation with ODOT, that ODOT's financial resources are inadequate to carry out the USDOT Secretary's responsibilities, ODOT will take appropriate action to obtain the additional financial resources needed to carry out these responsibilities. If ODOT is unable to obtain the necessary additional financial resources, ODOT shall inform FRA, and this MOU will be amended to assign only the responsibilities that are commensurate with ODOT's financial resources, as determined appropriate by FRA.

4.2.3 ODOT will maintain adequate organizational and staff capability, including competent and qualified consultants and outside counsel where necessary or desirable, to effectively carry out the responsibilities it has assumed under this MOU. Should ODOT choose to meet these requirements, in whole or in part, with consultant services and/or outside counsel, ODOT will maintain an adequate number of trained and qualified state employees, including counsel, to oversee the consulting work. This includes, without limitation:

A. Using appropriate environmental, technical, legal, and managerial expertise;

B. Devoting adequate staff resources; and

C. Demonstrating, in a consistent manner, the capacity to perform ODOT's assumed responsibilities under this MOU and applicable Federal laws.

In approving ODOT's application for NEPA assignment, FRA relied upon ODOT's representations in Section 3.3 of the assignment application regarding ODOT's current organizational structure related to NEPA assignment, and ODOT's representations in Section 3.4 of the application regarding changes to the organizational structure related to NEPA assignment to be adopted prior to the Effective Date (NEPA Assignment Organizational Structure).

Upon completion of any required auditing or monitoring event, should FRA determine, after consultation with ODOT, that ODOT's organizational and staff capability is inadequate to carry out the USDOT Secretary's responsibilities, ODOT will take appropriate action to obtain adequate organizational and staff capability to carry out these responsibilities. If ODOT is unable to obtain adequate organizational and staff capability, ODOT shall inform FRA and the MOU will be amended to assign only the responsibilities that are commensurate with ODOT's available organizational and staff capability.

4.2.4 When carrying out the requirements of Section 106 of the National Historic Preservation Act, as amended, ODOT staff (including consultants) shall comply with 36 CFR 800.2(a)(1). All actions that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of

reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meet the Secretary of Interior's Professional Qualifications Standards (published at 48 FR 44738-39, Sept. 29, 1983). ODOT shall ensure that all documentation required under 36 C.F.R. 800.11 is reviewed and approved by a staff member or consultant who meets the Professional Qualifications Standards.

4.3 Federal Court Jurisdiction

- 4.3.1 As provided at 23 U.S.C. 327(c)(3)(B), and pursuant to Ohio Revised Code 5531.30(B), ODOT hereby expressly consents, on behalf of the State of Ohio, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the USDOT Secretary assumed by ODOT under this MOU. This consent to Federal court jurisdiction shall remain valid after termination of this MOU, or FRA's withdrawal of assignment of the USDOT Secretary's responsibilities for any decision or approval made by ODOT pursuant to an assumption of responsibility under this MOU. ODOT understands and agrees that, in accordance with 23 U.S.C. 327, this acceptance constitutes a waiver of the State of Ohio's immunity under the Eleventh Amendment to the U.S. Constitution for the limited purposes of carrying out the USDOT Secretary's responsibilities that have been assumed under this MOU.

PART 5. APPLICABILITY OF FEDERAL LAW

5.1 Procedural and Substantive Requirements

- 5.1.1 As provided at 23 U.S.C. 327(a)(2)(C), in assuming the USDOT Secretary's responsibilities under this MOU, ODOT shall be subject to the same procedural and substantive requirements that apply to the USDOT Secretary in carrying out these responsibilities. Such procedural and substantive requirements include, but are not limited to, Federal statutes and regulations, EOs issued by the President of the United States, USDOT Orders, Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 C.F.R. parts 1500 - 1508), Environmental Impact and Related Procedures (23 C.F.R. part 771), official guidance and policy issued by the CEQ, Office of Management and Budget, USDOT, or the FRA (e.g. Guidance Establishing Metrics for the Permitting and Environmental Review of Infrastructure Projects), and any applicable Federal court decisions, and, subject to subpart 5.1.4 below, interagency agreements such as programmatic agreements, memoranda of understanding, memoranda of agreement, and other similar documents that relate to the environmental review process [e.g., the 2015 Red Book - Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects, etc.].
- 5.1.2 After the Effective Date of this MOU, FRA will use its best efforts to ensure that any new or revised Federal policies and guidance that are final and applicable to FRA's responsibilities under NEPA and other environmental laws that are assumed by ODOT under this MOU are communicated to ODOT within ten (10) calendar days of issuance. Delivery may be accomplished by e-mail, web posting (with email or regular mail to ODOT notifying of web posting), regular mail, or publication in the Federal Register (with email or regular mail to ODOT notifying of publication). If communicated to ODOT by email or regular mail, such material will be sent to ODOT's Administrator of Environmental Services. In the event that a new or revised FRA policy or guidance is not made

available to ODOT as described in the preceding sentence, and if ODOT had no actual knowledge of such policy or guidance, then a failure by ODOT to comply with such Federal policy or guidance will not be a basis for termination under this MOU.

5.1.3 ODOT will coordinate with all other appropriate Federal agencies concerning the laws, guidance, and policies that such other Federal agencies are responsible for administering and which relate to ODOT's responsibilities under this MOU. For interagency agreements that involve signatories in addition to FRA and ODOT, within six months after the Effective Date of this MOU, FRA and ODOT will contact the relevant third party or parties to determine whether any action should be taken with respect to such agreement. Such actions may include:

- A. Consulting with the third party to obtain written consent to the continuation of the interagency agreement in its existing form, but with the substitution through assignment of ODOT for FRA; or
- B. Negotiating with the third party to amend the interagency agreement as needed so that the interagency agreement continues but that ODOT assumes FRA's responsibilities.

If a third party does not agree to the assignment or amendment of the interagency agreement, then to the extent permitted by applicable law and regulation, ODOT will carry out the assumed environmental review, consultation, or other related activity in accordance with applicable laws and regulations but without the benefit of the provisions of the interagency agreement.

5.1.4 Upon termination of this MOU, FRA and ODOT shall contact the relevant third party to any interagency agreement and determine whether the interagency agreement should be amended or reinstated as appropriate.

5.2 Rulemaking

5.2.1 As provided at 23 U.S.C. 327(f), nothing in this MOU permits ODOT to assume any rulemaking authority of the USDOT Secretary. Additionally, ODOT may not establish policy and guidance on behalf of the USDOT Secretary or FRA for railroad projects covered in this MOU. ODOT's authority to establish State regulations, policy, and guidance concerning ODOT's environmental review of railroad projects shall not supersede applicable Federal environmental review regulations, policy, or guidance established by or applicable to the USDOT Secretary or FRA.

5.3 Effect of Assumption

5.3.1 For purposes of carrying out the responsibilities assumed under this MOU, and subject to the limitations contained in 23 U.S.C. 327 and this MOU, ODOT shall be deemed to be acting as FRA with respect to the environmental review, consultation, and other action required under those responsibilities.

5.4 Other Federal Agencies

5.4.1 As provided at 23 U.S.C. 327(a)(2)(E), nothing in this MOU preempts or interferes with any power,

jurisdiction, responsibility, or authority of an agency other than the USDOT (including FRA), under applicable statutes and regulations with respect to a project.

PART 6. LITIGATION

6.1 Responsibility and Liability

6.1.1 As provided in 23 U.S.C. 327(e), ODOT shall be solely liable and solely responsible for carrying out the responsibilities assumed under this MOU, in lieu of and without further approval of the USDOT Secretary. FRA and USDOT shall have no responsibility or liability for the performance of the responsibilities assumed by ODOT, including any decision or approval made by ODOT in the course of participating in the Program.

6.2 Litigation

6.2.1 Nothing in this MOU affects the United States Department of Justice's (hereinafter "USDOJ") authority to litigate claims, including the authority to approve a settlement on behalf of the United States if either FRA or another agency of the United States is named in such litigation or if the United States intervenes pursuant to 23 U.S.C. 327(d)(3). In the event FRA or any other Federal agency is named in litigation related to matters under this MOU or the United States intervenes in the litigation, ODOT agrees to coordinate with FRA and the USDOJ in the defense of that action.

6.2.2 ODOT shall defend all claims brought in connection with its discharge of any responsibility assumed under this MOU. In the event of litigation, ODOT shall provide qualified and competent legal counsel, including outside counsel if necessary. ODOT shall provide the defense at its own expense, subject to 23 U.S.C. 327(a)(2)(G) concerning Federal-aid participation in attorney's fees for ODOT's counsel. ODOT shall be responsible for the opposing party's attorney's fees and court costs if a court awards those costs to an opposing party, or in the event those costs are part of a settlement agreement.

6.2.3 ODOT will notify the FRA and USDOJ's Assistant Attorney General for the Environment and Natural Resources Division, within seven (7) calendar days of ODOT's receipt of service of process of any complaint, concerning discharge of any responsibility assumed under this MOU. ODOT's notification to FRA and USDOJ shall be made prior to its response to the complaint. In addition, ODOT shall notify FRA within seven (7) calendar days of receipt of any notice of intent to sue concerning its discharge of any responsibility assumed under this MOU.

6.2.4 ODOT will provide FRA and USDOJ copies of any motions, pleadings briefs, or other such documents filed in any case concerning its discharge of any responsibility assumed under this MOU. ODOT will provide such copies to FRA and USDOJ within seven (7) calendar days of service of any document, or in the case of any documents filed by or on behalf of UDOT, within seven (7) calendar days of the date of filing. Without amending this MOU, FRA or USDOJ may agree to lengthen this notification period.

- 6.2.5 ODOT will notify FRA and USDOJ prior to settling any lawsuit, in whole or in part, and shall provide FRA and USDOJ with a reasonable amount of time of at least ten (10) calendar days, to be extended, if feasible based on the context of the lawsuit, up to a maximum of thirty (30) total calendar days, to review and comment on the proposed settlement. ODOT will not execute any settlement agreement until: (1) FRA and USDOJ have provided comments on the proposed settlement; (2) FRA and USDOJ have indicated that they will not provide comments on the proposed settlement; or (3) the review period has expired, whichever occurs first.
- 6.2.6 Within seven (7) calendar days of receipt by ODOT, ODOT will provide notice to FRA and USDOJ of any court decision on the merits, judgment, and notice of appeal arising out of or relating to the responsibilities ODOT has assumed under this MOU. ODOT shall notify FRA and USDOJ within five (5) days of filing a notice of appeal of a court decision. ODOT shall confer with FRA and USDOJ regarding the appeal at least forty-five (45) days before filing an appeal brief in the case.
- 6.2.7 ODOT's notification to FRA and USDOJ in subparts 6.2.3, 6.2.4, 6.2.5, and 6.2.6, shall be made by electronic mail to FRALegal@dot.gov and NRS DOT.enrd@doj.gov, unless otherwise specified by FRA and USDOJ. For copies of motions, pleadings, briefs, and other documents filed in a case, as identified in subpart 6.2.4, ODOT may opt to either send the materials to the email addresses identified above, send hardcopies to the mail address below, or add to the distribution list in the court's electronic filing system (e.g., PACER) the following two email addresses: FRALegal@dot.gov and efile_nrs.enrd@usdoj.gov. FRA and USDOJ's comments under subpart 6.2.5 and 6.2.6 shall be made by email to Tim.Hill@dot.ohio.gov unless otherwise specified by ODOT. In the event that regular mail is determined necessary, mail should be sent by overnight mail service to:

For USDOJ: Assistant Attorney General for the Environment and Natural Resources Division, 950 Pennsylvania Avenue, NW, Room 2143, Washington, DC, 20530.

For FRA: Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE, West Building, Washington, DC 20590.

For the State: Administrator, Office of Environmental Services, Ohio Department of Transportation, 1980 West Broad Street, Mail Stop 4170, Columbus, OH 43223

6.3 Conflict Resolution

- 6.3.1 In discharging any of the USDOT Secretary's responsibilities under this MOU, ODOT agrees to comply with any applicable requirements of USDOT and FRA statute, regulation, guidance or policy regarding conflict resolution.
- 6.3.2 ODOT agrees to follow 40 CFR part 1504 in the event of pre-decision referrals to CEQ for Federal actions determined to be environmentally unsatisfactory. ODOT also agrees to coordinate and work with CEQ on matters brought to CEQ with regards the environmental review responsibilities for railroad projects ODOT has assumed.
- 6.3.3 Any provision of this MOU, or any portion of any provision, that is deemed to be illegal and/or

unenforceable shall be severed from this MOU, without affecting the validity of the remainder of the MOU. In such event, all other provisions, or parts of provisions of this MOU shall remain in full force and effect.

PART 7. INVOLVEMENT WITH OTHER AGENCIES

7.1 Coordination

7.1.1 ODOT agrees to seek early and appropriate coordination with all appropriate Federal, State, and local agencies in carrying out any of the responsibilities for railroad projects assumed under this MOU.

7.2 Processes and Procedures

7.2.1 ODOT will ensure that it has appropriate processes and procedures in place that provide for proactive and timely consultation, coordination, and communication with all appropriate Federal agencies in order to carry out any of the responsibilities assumed under this MOU, including the submission of all EISs together with comments and responses to the Environmental Protection Agency (EPA) as required at 40 CFR 1506.9 and for EPA's review as required by section 309 of the Clean Air Act. These processes and procedures shall be formally documented. Such formal documentation may be in the form of a formal executed interagency agreement or in other such form as appropriate.

7.2.2 ODOT will submit EISs together with comments and responses to the Environmental Protection Agency (EPA) as required by 40 CFR 1506.10, and for EPA's review as required by Section 309 of the Clean Air Act (42 U.S.C. 7609).

PART 8. INVOLVEMENT WITH FRA

8.1 Generally

8.1.1 Except as specifically provided otherwise in this MOU, FRA will not provide any project-level assistance to ODOT in carrying out any of the responsibilities it has assumed under this MOU. Project-level assistance shall include any advice, consultation, or document review with respect to the discharge of such responsibility for a particular railroad project. However, project-level assistance does not include process or program level assistance as provided in subpart 8.1.5, discussions concerning issues addressed in prior projects, interpretations of any applicable law contained in 23 U.S.C. or 49 U.S.C, interpretations of any FRA or USDOT regulation, or interpretations of FRA or USDOT policies or guidance.

8.1.2 FRA will not intervene, broker, act as intermediary, or be otherwise involved in any issue involving ODOT's consultation or coordination with another Federal agency with respect to ODOT's discharge of any of the responsibilities assumed under this MOU for any particular railroad project. However, FRA may attend meetings between ODOT and other Federal agencies. Further, FRA may submit comments to ODOT and the other Federal agency in the following extraordinary circumstances:

- A. FRA reasonably believes that ODOT is not in compliance with this MOU;
- B. FRA determines that an issue between ODOT and the other Federal agency concerns emerging national policy issues under development by the USDOT; or
- C. Upon request by either ODOT or the Federal agency and agreement by FRA.

The FRA will notify both ODOT and the relevant Federal agency prior to attending any meetings between ODOT and such other Federal agency.

- 8.1.3 Other Federal agencies may raise concerns regarding the compliance with this MOU by ODOT and may communicate these concerns to FRA. FRA will review the concerns and any information provided to FRA by such other Federal agency. If, after reviewing these concerns, FRA and such other Federal agency still have concerns regarding ODOT's compliance, FRA will notify ODOT of the potential compliance issue and will work with both ODOT and the relevant Federal agency to resolve the issue and, if necessary, take appropriate action to ensure compliance with this MOU.
- 8.1.4 At ODOT's request, FRA may assist ODOT in evaluating its environmental program and developing or modifying any of its processes or procedures to carry out the responsibilities it has assumed under this MOU, including, but not limited to, those processes and procedures concerning ODOT's consultation, coordination, and communication with other Federal agencies.

8.2 Record Retention

- 8.2.1 ODOT will retain project files and general administrative files pertaining to its discharge of the responsibilities it has assumed under this MOU in accordance with applicable legal requirements (e.g., 2 CFR 200.334, 49 CFR Part 182), and the provisions below.
- 8.2.2 ODOT will maintain copies of all RODs, Draft and Final EISs, EAs, FONSI, CE determinations, and Section 4(f) evaluations and determinations issued or approved by ODOT as lead agency under this assignment MOU for a period of eight (8) years after approval of the document. After eight (8) years, ODOT will transmit such documents (in paper or electronic form, at ODOT's discretion) to FRA to be managed in accordance with FRA records retention and disposal policies and procedures.
- 8.3.3 Nothing contained in this MOU is intended to relieve the State of its recordkeeping responsibilities under 2 CFR §§ 200.334-200.338 or other applicable laws or regulations.

8.3 Federal Register

For any documents that are proposed by ODOT to be published by FRA in the *Federal Register*, such as a Notice of Intent under 40 CFR § 1501.7 or a Notice of Final Agency Action under § 23 U.S.C. 139(l) (to the extent applicable), ODOT will transmit such document to the FRA. FRA will promptly submit such document to be published in the Federal Register on behalf of ODOT. ODOT will, upon request by FRA, reimburse FRA for the expenses associated with publishing such documents in the *Federal Register* (excluding FRA's overhead). If and when permitted by the

operating procedures of the Government Printing Office and the *Federal Register*, ODOT will take over the procedures described above from the FRA.

8.4 Participation in Resource Agency Reports

- 8.4.1 ODOT will provide all reasonable data and information requested by FRA and resource agencies for the preparation of national reports, the Federal Permitting Dashboard, and other purposes that the Secretary considers necessary to ensure that ODOT is adequately carrying out the responsibilities assigned to ODOT in a timely manner, and to the extent that the information relates to determinations, findings, and proceedings associated with projects assumed under this MOU. Such data and information requests may include, but are not limited to:
- A. Information on the completion of and duration to complete environmental documentation for EIS, EA, and documented CE projects assumed under this MOU;
 - B. Archeology reports requested by the National Park Service.
 - C. ESA Expenditure Reports requested by the USFWS;
 - D. NEPA litigation reports requested by CEQ.
 - E. Environmental conflict resolution reports requested by OMB and CEQ.
 - F. Project status and information for EAs and EISs for use on the searchable website maintained under section 41003(b) of the Fixing America's Surface Transportation Act [FAST Act], 42 U.S.C. 4370m-2(b) and 23 U.S.C. 139(o)] (Federal Permitting Dashboard) to be submitted in accordance with current and any future reporting standard issued by USDOT pursuant to such provisions.
 - G. Environmental information for all EAs and EISs subject to this MOU. Such information shall include, but is not limited to, all known environmental justice concerns identified during the environmental process.
 - H. Any such information that may be requested by FRA Administrator.

- 8.4.2 ODOT will directly submit project schedules and any other required data regarding EAs and EISs for posting on the searchable website maintained under Section 41003(b) of the Fixing America's Surface Transportation Act (42 U.S.C. 4370m-2(b)) and 23 U.S.C. 139(o), commonly known as the "Federal Permitting Dashboard."

8.5 Conformity Determinations

ODOT will, for any railroad project located in an air quality nonattainment and maintenance area, with respect to the National Ambient Air Quality Standards, and prior to approving any CE determination, FONSI, or ROD, ensure and document that the project satisfies air quality conformity requirements under 42 U.S.C. 7506(c) and 40 CFR Part 93, Subpart B. Pursuant to 23 U.S.C. 327(a)(2)(B)(iv)(II), for any project requiring a project-level conformity determination under the Federal Clean Air Act and its implementing regulations, FRA will make the project-level

conformity determination. FRA will also determine whether a project requires a project-level conformity determination. FRA will restrict its review to data, analyses, applicable comments and responses, and other relevant documentation that enable FRA to make the project-level conformity determination. FRA may request that ODOT consolidate this information and documentation in a memorandum to facilitate FRA's decision-making.

8.6 Enforcement

If FRA determines that ODOT is not in compliance with this MOU, then FRA will take appropriate action to ensure ODOT's compliance, including withdrawing assignment of any responsibilities that have been assumed as provided in Part 9 of this MOU, or terminating ODOT's participation in the Project Delivery Program as provided in Part 13 of this MOU.

8.7 Certification of NEPA Compliance

8.7.1 For projects funded by FRA, ODOT shall ensure that a certification is included with each NEPA approval specifying that ODOT has fully carried out all responsibilities assumed under this MOU in accordance with this MOU and all applicable Federal laws, regulations, E.O., and policies. ODOT shall ensure that this certification is made prior to the execution of any future FRA funding or action. ODOT agrees to provide FRA access to NEPA approvals and certifications.

PART 9. WITHDRAWAL OF ASSIGNED RESPONSIBILITIES

9.1 FRA-Initiated Withdrawal of Assigned Projects

9.1.1 FRA may, at any time, withdraw the assignment of all or part of the USDOT Secretary's responsibilities that have been assumed by ODOT under this MOU for any railroad project or railroad projects upon FRA's determination that:

- A. With respect to that particular railroad project or those particular railroad projects, ODOT is not in compliance with a material term of this MOU or applicable Federal laws or policies, and ODOT has not taken sufficient corrective action to the satisfaction of FRA;
- B. The railroad project or railroad projects involve significant or unique national policy interests, for which ODOT's assumption of the USDOT Secretary's responsibilities would be inappropriate; or
- C. ODOT cannot satisfactorily resolve an issue or concern raised in a government-to-government consultation process, as provided in subpart 3.2.3.

9.1.2 Upon FRA's determination to withdraw assignment of the USDOT Secretary's responsibilities under subpart 9.1.1, FRA will informally notify ODOT of FRA's determination. After informally notifying ODOT of its determination, FRA will provide ODOT written notice of its determination including the reasons for its determination. Upon receipt of this notice, ODOT may submit any comments or objections to FRA within thirty (30) calendar days, unless FRA agrees to an extended period of

time. Upon receipt of ODOT's comments or objections, FRA will make a final determination within thirty (30) calendar days, unless extended by FRA for cause and notify ODOT of its decision. In making its determination, FRA will consider ODOT's comments or objections, the effect the withdrawal of assignment will have on the Program, the amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest. Following its final determination, when FRA withdraws assignment for any project or projects, FRA will assume sole responsibility and liability for the decisions and approvals it has re-assumed for the project or projects based on such determination. However, ODOT will remain responsible for other decisions and approvals for the project or projects, which FRA has not reassumed responsibility or liability for, such as decisions and approvals beyond the scope of the USDOT Secretary's responsibilities under NEPA and related Federal environmental laws.

9.1.3 The FRA shall withdraw assignment of the responsibilities ODOT has assumed for any railroad project when the preferred alternative that is identified in the CE, EA, or final EIS is a railroad project that is specifically excluded in subpart 3.3.2. In such case, subpart 9.1.2 shall not apply.

9.2 ODOT-Initiated Withdrawal of Assignment of Projects

9.2.1 ODOT may, at any time, request FRA to withdraw all or part of the USDOT Secretary's responsibilities ODOT has assumed under this MOU for any existing or future railroad project or railroad projects.

9.2.2 Upon ODOT's decision to request FRA withdraw the assignment of the USDOT Secretary's responsibilities under subpart 9.2.1, ODOT shall informally notify FRA of its desire for FRA to withdraw assignment of its responsibilities. After informally notifying FRA of its desire, ODOT will provide FRA written notice of its desire, including the reasons for wanting FRA to withdraw assignment of the responsibilities. Upon receipt of this notice, FRA will have 30 calendar days, unless extended by FRA for cause, to determine whether it will withdraw assignment of the responsibilities requested. In making its determination, FRA will consider the reasons ODOT desires FRA to withdraw assignment of the responsibilities, the effect the withdrawal of assignment will have on the Program, amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest. Following its final determination, when FRA withdraws assignment for any project or projects, FRA will assume sole responsibility and liability for the decisions and approvals it has re-assumed for the project or projects of such determination. However, ODOT will remain responsible for other decisions and approvals for the project or projects, which FRA has not reassumed responsibility or liability for, such as decisions and approvals beyond the scope of the USDOT Secretary's responsibilities under NEPA and related Federal environmental laws.

9.3 Effect of Withdrawal on the Right to Terminate

FRA and ODOT agree that (1) nothing in this Part shall affect either party's ability to terminate this MOU in accordance with Part 13; and (2) the withdrawal of all or part of FRA's responsibilities under this Part does not effectuate termination of this MOU.

PART 10. PERFORMANCE MEASURES

10.1 General

- 10.1.1 Both FRA and ODOT have determined that it is desirable to mutually establish a set of performance measures that FRA can take into account in its evaluation of ODOT's administration of the responsibilities it has assumed under this MOU.
- 10.1.2 ODOT's attainment of the performance measures indicated in this Part 10 will be considered during the FRA audits, which are required under 23 U.S.C. 327(g).
- 10.1.3 ODOT shall collect and maintain all necessary and appropriate data related to the attainment of the performance measures. In collecting this data, ODOT shall monitor its progress toward meeting the performance measures and include its progress in the self-assessment summary provided under subpart 11.1.5 below in this MOU. The summary shall be made available to the FRA as provided in subpart 11.1.5 below.

10.2 Performance Measures

- 10.2.1 The performance measures applicable to ODOT in carrying-out the responsibilities it has assumed under this MOU are as follows:

A. Compliance with NEPA and other Federal environmental statutes and regulations:

- i. Maintain documented compliance with procedures and processes set forth in this MOU for the environmental responsibilities assumed under the Program.
- ii. Maintain documented compliance with requirements of all applicable Federal statutes and regulations for which responsibility is assumed (Section 106, Section 7, etc.).

B. Quality Control and Assurance for NEPA decisions:

- i. Maintain and apply internal quality control and assurance measures (QA/QC) and processes, including a record of:
 - a. Legal sufficiency determinations made by counsel; this shall include the legal sufficiency reviews of Notices of Intent and Notices of Final Agency Action as required by law, policy, or guidance; and,
 - b. Compliance with FRA's and ODOT's environmental document content standards and procedures, including those related to QA/QC; and,
 - c. Completeness and adequacy of documentation of project records for projects done under the Program.

C. Relationships with agencies and the general public:

- i. Assess change in communication among ODOT, Federal and State resource agencies and the public resulting from assumption of responsibilities under this MOU.
- ii. Maintain effective responsiveness to substantive comments received from the public agencies, and interest groups on NEPA documents and environmental concerns.
- iii. Maintain effective NEPA conflict resolution processes whenever appropriate.

D. Increased efficiency in completion of the NEPA process:

- i. Track completion time of environmental document approvals and compare to national averages.

PART 11. AUDITS AND MONITORING

11.1 General

- 11.1.1 FRA will provide necessary and appropriate monitoring and oversight of ODOT's compliance with this MOU. FRA's monitoring and oversight activities under this MOU in years one (1) through four (4) of this MOU's term will primarily consist of auditing as provided at 23 U.S.C. 327(g) and Part 11 of this MOU and evaluating attainment of the performance measures listed in Part 10 of this MOU. After the fourth year of ODOT's participation in the Project Delivery Program, FRA will monitor ODOT's compliance with the MOU, including the provision by ODOT of financial resources to carry out the MOU. FRA's monitoring and oversight may also include submitting requests for information to ODOT and other relevant Federal agencies, verifying ODOT's financial and personnel resources dedicated to carrying out the responsibilities assumed, and reviewing documents and other information.
- 11.1.2 Pursuant to 23 U.S.C. 327(c)(4), ODOT is responsible for providing FRA any information FRA considers necessary to ensure that ODOT is adequately carrying out the responsibilities assigned. When requesting information subject to section 327(c)(4), FRA will provide the request to ODOT in writing, and the request will identify with reasonable specificity the information required. FRA will also indicate in the request a deadline for the information to be provided. ODOT will, in good faith, work to ensure the information requested is provided by the deadline. ODOT's response to an information request under this paragraph will include, where appropriate, making relevant employees and consultants available at their work location (including in-person meeting, teleconference, videoconference, or other electronic means as may be available).
- 11.1.3 ODOT shall make project files and general administrative files pertaining to its discharge of the responsibilities it has assumed under this MOU reasonably available for inspection by FRA at the files' locations upon reasonable notice, which is not less than five (5) business days. These files shall include, but are not limited to, all letters and comments received from governmental agencies, the public, and others with respect to ODOT's discharge of the responsibilities assumed

under this MOU. As used in this paragraph, the terms “project files” and “general administrative files” include only documents in the custody and control of ODOT (whether paper or electronic).

11.1.4 In carrying out the responsibilities assumed under this MOU, ODOT agrees to carry-out regular quality control and quality assurance activities to ensure that the assumed responsibilities are being conducted in accordance with applicable law and this MOU. At a minimum, ODOT's quality control/quality assurance activities will include the review and monitoring of its processes and performance relating to project decisions, environmental analysis, project file documentation, checking for errors and omissions, legal sufficiency reviews, and taking appropriate corrective action as needed.

11.1.5 ODOT shall perform regular self-assessments of its QA/QC process and performance to determine whether its process is working as intended, to identify any areas needing improvements in the process, and to timely take any corrective actions necessary to address the areas needing improvement. ODOT will transmit a summary of its self-assessment to the FRA in accordance with the mutually agreed upon monitoring review schedule. The summary shall include a description of the scope of the self-assessment(s) conducted and the areas reviewed, a description of the process followed in conducting the self-assessment, a list of the areas identified as needing improvement, any corrective actions that have been or will be implemented, a statement from the Administrator of ODOT's Office of Environmental Services concerning whether the processes are ensuring that the responsibilities ODOT has assumed under this MOU are being carried-out in accordance with this MOU and all applicable Federal laws and policies, and a summary of ODOT's progress toward attaining the performance measures listed in Part 10 of this MOU. ODOT will conduct its self-assessments at least once annually.

11.1.6 ODOT will provide FRA with access to its electronic system for environmental documentation and develop a query that creates a report of real time data, the listing of any approvals and decisions ODOT has made with respect to the responsibilities ODOT has assumed under this MOU, and as requested by FRA.

11.2 Auditing

11.2.1 Pursuant to 23 U.S.C. 327(g)(3), each audit carried out under this MOU will be carried out by an audit team, consisting of members that FRA designates in consultation with ODOT. Such consultation will include a reasonable opportunity for ODOT to review and provide comments on the proposed members of the audit team.

11.2.2 Pursuant to 23 U.S.C. 327(g)(1)(A), FRA and ODOT will meet, no later than 180 days after the Effective Date, to review implementation of the MOU and discuss plans for the first annual audit.

11.2.3 Pursuant to 23 U.S.C. 327(c)(4), ODOT will provide FRA any information FRA reasonably considers necessary to ensure that the ODOT is adequately carrying out the responsibilities assigned. In accordance with this Part, ODOT will make documents and records available for review by FRA and will provide FRA with copies of any such documents and records as may be requested by FRA.

- 11.2.4 ODOT will cooperate with FRA in conducting audits, including providing FRA with information consistent with this Part and making all employees (including consultants) available at reasonable times. ODOT will make employees (including consultants) available either in person at their normal place of business or by telephone, at the discretion of FRA.
- 11.2.5 ODOT and the FRA will each designate an audit coordinator who will be responsible for coordinating audit schedules, requests for information, and arranging audit meetings.
- 11.2.6 FRA audits will include, but not be limited to, consideration of ODOT's technical competency and organizational capacity, compliance with the commitments in subpart 4.2, the adequacy of the financial resources committed by ODOT to administer the responsibilities assigned, QA/QC process, attainment of performance measures, compliance with this MOU's requirements, and compliance with applicable Federal laws and policies in administering the responsibilities assigned.

11.3 Scheduling of Audits

- 11.3.1 For each annual audit, the designated audit coordinators for FRA and ODOT will work to establish a general audit schedule at least three (3) months prior to the semiannual or annual anniversary dates of the Effective Date. The general audit schedules will include the dates that FRA will conduct the audit.
- 11.3.2 ODOT's NEPA Assignment Manager will make all reasonable efforts to ensure all necessary employees (including consultants) are available to FRA during the specified dates on the general audit schedule. ODOT will also ensure that all of its documents and records are made reasonably available to FRA as needed during the general schedule.
- 11.3.3 After the general schedule is established, the audit coordinators will work to establish specific audit schedules at least 2 weeks prior to the scheduled audit. The specific audit schedule will include the dates, times, and locations during which FRA will meet with ODOT's employees (including consultants) and review documents and records.
- 11.3.4 To the maximum extent practicable, the specific audit schedule will identify all employees (including consultants) and documents and other records that ODOT will make available to FRA during the audit. With respect to employees, ODOT will work with FRA to specifically identify each employee. With respect to documents and other records, ODOT and FRA will try to be as specific as possible, although a general description of the types of documents will be acceptable.
- 11.3.5 Should FRA determine that it needs access to an employee or a document or other record that is not identified in the specific audit schedule, ODOT will make reasonable efforts to produce such employee or document or other record on the specified dates.

11.4 Other Federal or State Agency Involvement

FRA may invite other Federal or State agencies as deemed appropriate, including State Historic Preservation Officers (SHPOs), to assist FRA in conducting an audit under this MOU by sitting in on

interviews, reviewing documents obtained by FRA, and making recommendations to FRA. FRA will advise ODOT of the Federal or State agency's role in the audit.

11.5 Audit Report and Findings

- 11.5.1 Upon completing the audit, FRA will transmit to ODOT a draft of the audit report and allow ODOT a period of fourteen (14) calendar days within which to submit written comments to FRA. FRA will grant any reasonable request by ODOT to extend the deadline to comment on the draft audit report. That extension will not exceed a total of thirty (30) calendar days. FRA will review the comments and revise the draft audit report as may be appropriate.
- 11.5.2 As required by 23 U.S.C. 327(g)(2), FRA will make the draft audit report available for public comment. In carrying out this requirement and following the process described in section 11.5.1, FRA will publish the audit report in the *Federal Register* and allow a comment period of thirty (30) calendar days. The FRA will then respond to the public comments by incorporating the comments and responses into the final audit report. FRA will publish the final audit report in the *Federal Register* not later than sixty (60) calendar days after the comment period closes.
- 11.5.3 As required by 23 U.S.C. 327(g)(1)(C), FRA will ensure that the time period for completing an annual audit, from initiation to completion (including public comment and responses to those comments), does not exceed 180 days. The schedule prepared pursuant to section 11.3.1 will identify the date the audit is initiated.

PART 12 TRAINING

- 12.1 FRA will provide ODOT available training, to the extent FRA and ODOT deem necessary, in all appropriate areas with respect to the environmental responsibilities that ODOT has assumed. Such training may be provided by either FRA, or another Federal agency or other parties as may be appropriate. ODOT agrees to have all appropriate employees (including consultants hired for the purpose of carrying out the USDOT Secretary's responsibilities) attend such training.
- 12.2 ODOT will continue to implement training necessary to meet its environmental obligations and provide training opportunities to ODOT staff and consultants. ODOT will annually review its training program and update as necessary to reflect the responsibilities assumed under the Program and this MOU.
- 12.3 Within ninety (90) days after the effective date of this MOU, ODOT and FRA, in consultation with other Federal agencies as deemed appropriate, will assess ODOT's need for training and develop a training plan. The training plan will be updated by ODOT and FRA, in consultation with other Federal agencies as appropriate, annually during the term of this MOU. While ODOT and FRA may take other agencies' recommendations into account in determining training needs, ODOT will be solely responsible for the development and implementation of its training program.

PART 13. TERM, TERMINATION AND RENEWAL

13.1 Term

13.1.1 This MOU has a term of five (5) years from the Effective Date.

13.2 Termination by FRA

13.2.1 As provided at 23 U.S.C. 327(i)(2), FRA may terminate ODOT's participation in the Program, in whole or in part, at any time subject to the procedural requirements in 23 U.S.C. 327(i)(2)(B) and subpart 13.2.2 below.

13.2.2 If FRA determines that ODOT is not adequately carrying out the responsibilities assigned to ODOT under this MOU, FRA will provide to ODOT a written notification of its determination and provide ODOT a period of at least 120 calendar days to take such corrective action as the FRA determines is necessary to comply with this MOU, as identified in the FRA's written notification.

13.2.3 If, after notification and the corrective action period provided under this subpart 13.2, ODOT fails to take satisfactory corrective action, as determined by FRA, FRA will provide ODOT with its written determination whether to terminate ODOT's participation in the Project Delivery Program in whole or in part. Any responsibilities terminated by FRA that have been assumed by ODOT through this MOU will transfer back to FRA.

13.2.4 ODOT's failure to adequately carry out the responsibilities assigned to ODOT may include, but is not limited to:

- A. Persistent neglect of, or noncompliance with, any Federal laws, regulations, and policies;
- B. Failure to cooperate with FRA in conducting an audit or any oversight or monitoring activity;
- C. Failure to secure or maintain adequate personnel and financial resources to carry out the responsibilities assumed;
- D. Intentional or substantial noncompliance with this MOU; or
- F. Persistent failure to adequately consult, coordinate, and/or take the concerns of other Federal agencies, as well as SHPOs, into account in carrying out the responsibilities assumed.

13.3 Termination by ODOT

13.3.1 ODOT may terminate its participation in the Program, in whole or in part, at any time by providing to FRA a notice at least 120 calendar days prior to the date that ODOT seeks to terminate its participation in this program, and subject to such terms and conditions as FRA may provide.

13.3.2. The Ohio Legislature and Governor may, at any time, terminate ODOT's authority granted to participate in this Program. In that event, FRA and ODOT shall develop a plan to transition the responsibilities that ODOT has assumed back to FRA so as to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected Federal, State, and local agencies. The plan shall be approved by both FRA and ODOT.

13.3.3. Any such termination of assignment which FRA and ODOT have agreed to under a transition plan shall not be subject to the procedures or limitations provided for in Part 9 of this MOU and shall be

valid as agreed to in the transition plan.

13.4 Effect of Termination of Assignment for Railroad Projects

Consistent with 23 CFR 773.117(d), if ODOT's assumption of FRA's responsibilities for the environmental review of railroad projects is terminated, ODOT's responsibilities assigned under this MOU will automatically terminate.

13.5 Transition Plan

In the event of termination under subparts 13.3, 13.4, or 13.5 of this Part, FRA and ODOT will develop a transition plan consistent with 23 CFR 773.117(c) to transition the responsibilities that ODOT has assumed back to FRA to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected Federal, State, and local agencies.

13.6 Validity of State Actions

Any environmental approvals made by ODOT pursuant to the responsibilities that ODOT has assumed under this MOU will remain valid after termination of ODOT's participation in the Project Delivery Program or withdrawal of assignment by FRA. ODOT will remain solely liable and solely responsible for any decision or approval it makes pursuant to any of the responsibilities it has assumed while participating in the Project Delivery Program.

13.7 Renewal

This MOU is renewable in accordance with 23 U.S.C. 327 and implementing regulations, as in effect at the time of the renewal.

PART 14. AMENDMENTS

14.1 Generally

14.1.1 This MOU may be amended at any time upon mutual agreement by both FRA and ODOT pursuant to 23 CFR 773.113(b).

14.2 Additional Projects, Classes of Projects and Environmental Review Responsibilities

14.2.1 FRA may assign, and ODOT may assume, responsibility for additional projects and additional environmental review responsibilities beyond those identified in Part 3 of this MOU in accordance with 23 CFR 773.113(b).

14.2.2 Should ODOT decide to request this MOU to be amended to add responsibility for additional projects or classes of projects, or additional environmental review responsibilities beyond those identified in Part 3 of this MOU, such request shall be treated as an amendment to ODOT's original application that was submitted to FRA pursuant to 23 U.S.C. 327(b) and 23 C.F.R. part 773. In developing the application supplement, ODOT shall identify the additional projects, classes of projects, and

environmental review responsibilities it wishes to assume and make any appropriate adjustments to the information contained in ODOT's original application, including the verification of personnel and financial resources.

PART 15. AGENCY CONTACTS

15.1 Administrative Contacts

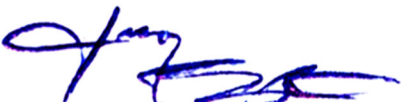
FRA and ODOT have established agency contacts who are responsible for administering the requirements of this MOU for their respective agencies. Unless otherwise provided for, all written notices or other documents required by this MOU should be sent to the agency contact.

For FRA: Supervisory Environmental Protection Specialist, Environmental Policy Division, 1200 New Jersey Avenue, S.E., West Building, Washington, DC 20590

For ODOT: Administrator of ODOT's Office of Environmental Services, Ohio Department of Transportation, 1980 West Broad Street, Mail Stop 4170, Columbus, Ohio 43223

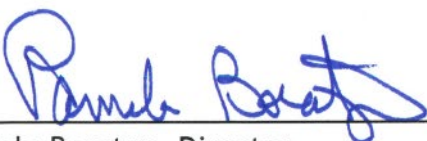
IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed in duplicate as of the date of the last signature written below.

FEDERAL RAILROAD ADMINISTRATION

By:  _____
Amitabha Bose, Administrator
Federal Railroad Administration

Dated: December 3, 2024

STATE OF OHIO

By:  _____
Pamela Boratyn, Director
Ohio Department of Transportation

Dated: 10/24/2024