DRAFT
PROGRAMMATIC AGREEMENT
BETWEEN
WRIGHT-PATTERSON AIR FORCE BASE AND
THE OHIO STATE HISTORIC PRESERVATION OFFICER,
REGARDING DEMOLITIONS FOR PHYSICAL PLANT REDUCTION AT
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

WHEREAS, the United States Air Force (Air Force), Wright-Patterson Air Force Base, Ohio (Wright-Patterson AFB), is proposing to demolish multiple facilities in Area A and Area B of the base, as part of an Air Force (AF) initiative to reduce the amount of the physical plant that it spends money on by 20% by the year 2020; and

WHEREAS, Wright-Patterson AFB has determined that implementation of the initiative to reduce the base physical plant through demolition of multiple facilities over a period of years (Undertaking) will affect properties included in, eligible or potentially eligible for the National Register of Historic Places (NRHP), and has informed the Advisory Council on Historic Preservation (ACHP), and consulted with the Ohio State Historic Preservation Office, hereinafter (SHPO), in accordance with (IAW) Title 36 Code of Federal Regulations (CFR) Part 800, regulations implementing section 106 of the National Historic Preservation Act (NHPA), as amended (Title 16 United States Codes [U.S.C.] Part 470f) (5 August 2004), to take the effects of the undertaking on historic properties into account and to afford the Council a reasonable opportunity to comment on the undertaking and its effects on historic properties; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(l), WPAFB has notified the ACHP of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(l)(iii); and

WHEREAS, WPAFB sought comment from the public regarding the proposed demolitions and the effects of the undertaking on historic properties; and

WHEREAS, the Wright-Patterson AFB has created a list of facilities identified as potential candidates for demolition between FY 2014 and 2020 as part of this undertaking (Appendix A, Table of Proposed Demolitions); and

WHEREAS, the Air Force and SHPO agree that Appendix A contains facilities that are both eligible and not eligible for listing on the NRHP; and

WHEREAS, WPAFB and SHPO agree that, due to the ever-changing fiscal climate and unpredictability of future facility space requirements through 2020, that the list of buildings in Appendix A will change throughout the life of this PA; and
WHEREAS, the Air Force and SHPO have agreed, pursuant to 36 CFR 800.14(b), that Air Force compliance with section 106 for the undertaking will be evidenced by execution and implementation of this Programmatic Agreement (PA); and

NOW, THEREFORE, the Air Force and SHPO agree that the undertaking shall be implemented IAW the following stipulations in order to take into account the effects of the undertaking on historic properties, and that these stipulations shall govern the undertaking until this PA expires or is terminated.

STIPULATIONS

To the extent of its legal authority, and in coordination with the SHPO, Wright-Patterson AFB shall ensure that the following stipulations are carried out:

1. MITIGATION DETERMINATION FOR ADVERSE EFFECTS
   1.1 Each FY that this PA is in effect and demolition is proposed, negotiations will be entered into for identification of appropriate mitigation to address the effects of proposed demolitions for the FY.
   1.2 The extent of the adverse effects for the fiscal year will be assessed by the CRM and submitted to SHPO as part of the process delineated in Stipulation 3.

2. MITIGATION ITEMS
   2.1 Mitigation agreed to as a result of negotiations in Stipulation 1 will be outlined in a separate letter to be forwarded to SHPO for concurrence. This letter and SHPO concurrence response will be bound into this PA as an appendix as part of the annual report in Stipulation 5.

3. PROCESS
   The CRM will follow the following procedures when addressing proposed demolition of any facility or structure on Wright-Patterson AFB.
   3.1 Any undertaking for demolition of structures not considered a part of this PA and will follow the standard section 106 consultation defined in 36 CFR 800.6.
   3.2 Any undertaking for demolition of a facility or structure that is included in Appendix A will follow the process of this PA.
   3.3 Policy: It is the policy of Wright-Patterson AFB to: Identify, inventory and protect all cultural resources under its control, and to preserve the military heritage of Wright-Patterson AFB by adaptively re-using historic buildings in a manner that respects the historic integrity, captures the latent asset value of historic properties, contributes to the stated mission of the Wright-Patterson AFB
and ensures the long-term preservation of its historic resources. Wright-Patterson AFB will seek creative ways to improve the resource efficiency of historic buildings in order to meet the USAF Policy on Sustainability. Wright-Patterson AFB will maintain mission readiness while protecting its heritage by incorporating cultural resources planning into installation planning at the earliest possible opportunity and will consult in good faith with internal and external stakeholders including federal, state, and local government agencies, the State Historic Preservation Office, Tribal Historic Preservation Officers, professional and advocacy organizations, and the general public.

3.4. Identification of Historic Properties

3.4.1. For all demolition projects under this PA, the Cultural Resource Manager (CRM) shall establish an Area of Potential Effects (APE), plan to identify historic properties, and evaluate all properties for eligibility for the NR located within the APE in accordance with the process described in 36 CFR Section 800.4. The CRM will document all eligibility findings for properties within the APE in an individual project file.

3.4.1a. The CRM will consider past surveys of the area, including the National Register of Historic Places, the Ohio Historic Inventory, the Ohio Archaeological Inventory, local survey information, and any available historic background information that pertains to the project area.

3.4.1b. Where existing information regarding the presence or absence of historic properties within an APE is absent or inadequate, the CRM may also determine that in order to meet this stipulation, it is necessary to conduct a historic resource survey for a specific project area, either by a consultant or the CRM. Survey work will be conducted in accordance with the Secretary of the Interior’s Archeological and Historic Preservation: Standards and Guidelines (1983), SHPO guidelines and previous studies. All survey reports will be submitted to the SHPO for review and acceptance.

3.5. The CRM will consolidate all proposed demolitions of facilities listed in Appendix A for a given fiscal year under a single undertaking for that year. This documentation will include both eligible and non-eligible properties. Documentation will include existing and new inventory evaluations as required, and this documentation will be submitted to SHPO for comment at the earliest possible time for the coming FY.

3.5.1. If the APE for the undertaking is found to contain property eligible for the NR the CRM will put together a standard Section 106 submittal, including an assessment of the extent of adverse effects, with a finding of adverse effect for review and comment by the SHPO.
3.5.1a. If the CRM finds no eligible properties are proposed for demolition and finds that no adverse effects from the proposed demolition are anticipated, then the CRM will document this and submit the documentation to SHPO for comment. SHPO will have 30 days to respond and if SHPO concurs then the demolition may proceed.

3.5.1b. SHPO will have 30 days to respond with concurrence to an adverse effect determination and provide comments on the extent of effects.

3.5.2. Upon receipt of concurrence from SHPO of an adverse effect and its extent, the CRM will initiate negotiation with SHPO for appropriate mitigation to address the effects.

3.5.3. Once negotiations between Wright-Patterson AFB and SHPO reach a conclusion with agreement on mitigation, the CRM will delineate the mitigation items in a separate letter to SHPO. SHPO has 30 days to respond with a letter of concurrence with the listed mitigation items.

3.5.4. Once Wright-Patterson AFB is in receipt of the concurrence letter the undertaking may proceed, and the undertaking submittal and mitigation letters will be bound to this agreement as an appendix as part of the annual report in Stipulation 5.

3.6. Should SHPO at any point disagree with the extent of adverse effect or proposed mitigation, and Wright-Patterson AFB and SHPO cannot come to agreement on the extent of effects or proposed mitigation, then the matter will be to the attention of the ACHP in accordance with Stipulation 8 Dispute Resolution.

3.7. All mitigation items thus agreed upon and bound into this agreement as an appendix shall be binding and only limited by Stipulation 7 Fiscal Requirements and Sources.

4. DISCOVERIES AND EMERGENCIES

4.1. Wright-Patterson AFB will manage its response to discoveries, unanticipated effects, and emergencies where feasible to avoid or minimize harm to historic properties and IAW ICRMP sections D.2, E.6, and E.7.

4.2. If, in the process of reviewing any discovery, unanticipated effect or emergency, the CRM identifies the potential for an adverse effect to historic properties, the CRM will notify the SHPO by telephone or e-mail to consult and resolve the adverse effect. When appropriate, additional parties will be notified and consulted. The consultation process shall not exceed 10 working days. The CRM will provide SHPO and other involved parties with written recommendations reflecting the outcome of the consultation. If the parties do not object to the Wright-Patterson AFB recommendations within 10 working
days of receipt, Wright-Patterson AFB will modify the scope of work as necessary to implement the recommendations.

4.3. **Discoveries.** Should any historic properties or archaeological material be discovered during implementation of an action under this PA, the contractor shall stop work in the immediate area of discovery and immediately contact the CRM. The CRM, will consult with the SHPO to develop an appropriate treatment of the material and location. Work in the area of the discovery shall not resume until appropriate treatment for the affected historic properties has been implemented by the contractor. Discovery of human remains shall be treated in a manner that fully complies with the Native American Graves Protection and Repatriation Act (NAGPRA) procedures as spelled out in 43 CFR Part 10.

4.4. **Emergencies.** In the event that the Wright-Patterson AFB Installation Commander proposes an Emergency Action as an essential and immediate response to a disaster or emergency declared by the President of the United States, by the Governor of the State of Ohio, or by the installation commander, the CRM shall notify the SHPO within seven days of its intent to take emergency action. Emergency actions are assumed to occur within 30 days of a declaration of an emergency. In the event of an emergency that requires immediate action which does not permit advance notification, the CRM shall notify the SHPO of the action’s effects on historic properties. Immediate search, rescue, and salvage are exempt from requesting SHPO comment; however the CRM shall notify the SHPO of the necessity of any immediate emergency operation and its effect on historic properties.

4.4.1. Wright-Patterson AFB may take actions that affect historic properties without consultation to protect life, safety, and prevent further damage to property, consistent with 36 CFR 800.12. Emergency response work shall be undertaken in a manner to avoid or minimize effects on historic properties to the extent possible.

4.4.2. As early as possible, given the nature of the emergency, Wright-Patterson AFB will provide telephonic or e-mail notification of the emergency to the SHPO. Notification will include the steps being taken to address the emergency, the affected property and its historic significance, and a description of the emergency work (within appropriate security protocols) and potential effects of that work on the discovered property.

4.4.3. Within 30 calendar days following this notification, Wright-Patterson AFB will provide the SHPO and other parties, as appropriate, a written report documenting the actions taken to minimize effects, the present condition of the historic property, and the planned treatment of the property. The SHPO and other parties will have 30 calendar days to provide comments on the report and planned treatment. This action will also be included in the annual report IAW the ICRMP and Stipulation 5 of this PA.
5. ANNUAL REPORT/MONITORING

5.1. Wright-Patterson AFB will submit an annual report to the SHPO, for review and comment, by 1 December of the calendar following the federal fiscal year covered in the annual report, summarizing the activities carried out under the terms of this PA, for all actions that pertain to historic properties (i.e. undertakings that affect eligible properties), for the preceding calendar year, and proposed projects for the coming year.

5.2. The SHPO will provide written comments to the Wright-Patterson AFB CRM within 45 days of receipt of the annual report. Failure of SHPO to comment within this timeframe shall signify no objection to the Annual Report.

5.3. Wright-Patterson AFB will consider any timely comments received, and within 45 days following such receipt, will provide the commenting and all other reviewing parties with its response to the comments. Disputes that may arise hereunder shall be addressed pursuant to the Stipulation for Dispute Resolution of this PA.

6. ROLES OF SIGNATORIES TO THIS PA

6.1. Authority to Implement this PA.

6.1.1. The Wright-Patterson AFB Installation Commander has designated a CRM with the authority to implement this PA on the Commander's behalf and to conduct any coordination and consultation with the SHPO and Council, concurring parties, American Indian tribes, and other concerned agencies, organizations, and persons that may be required by this PA.

6.2. Confidentiality

The parties to this PA recognize that the ICRMP contains information about sensitive cultural resources and that the release of information to the general public may endanger those resources. Therefore, the parties agree to withhold such information as necessary to protect the resources as authorized by 16 U.S.C. 470w-3. Information on sensitive cultural resources that is released to other individuals or organizations with a need to know shall contain a warning against further redistribution or publication.

7. FISCAL REQUIREMENTS AND SOURCES

7.1. The stipulations of this PA are subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. 1341. If compliance with the Anti-Deficiency Act alters or impairs Wright-Patterson AFB's ability to implement the stipulations of this PA, Wright-Patterson AFB will consult in accordance with the dispute resolution, amendment, or termination stipulations as specified in stipulations VIII and IX.
7.2. Consistent with the Anti-Deficiency Act, any requirement for the payment or obligation of funds by USAF in connection with this PA shall be subject to the availability of appropriated funds, and nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, and nothing in this document is intended to bind the Air Force to commit, obligate, appropriate or spend funds in violation of the Anti-Deficiency Act and other applicable laws respecting federal funding. Air Force compliance with this PA is strictly subject to budget limitations and availability of funds. However, Wright-Patterson AFB agrees to aggressively seek sufficient funding through established procedures to fulfill its obligations under this PA.

8. DISPUTE RESOLUTION

Should the SHPO object within thirty (30) days to any action implementing this agreement, Wright-Patterson AFB will consult with the SHPO to resolve the objection. If Wright-Patterson AFB determines that the disagreement cannot be resolved, Wright-Patterson AFB will request the ACHP to join the consultation in accordance with 36 CFR Section 800.6(b)(1)(v). If the ACHP objects within thirty (30) days to any action implementing this agreement, Wright-Patterson AFB will consult with the ACHP to resolve the objection. If agreement cannot be reached with ACHP participation, the procedures set forth in 36 CFR Section 800.7 will be used to terminate consultation and document the Air Force's decision. The Air Force will take any ACHP comment into account when making a final decision with respect to the subject of the dispute. The responsibilities of Wright-Patterson AFB and the Developer to carry out all actions under this agreement that are not the subject of the dispute will remain unchanged.

9. EFFECTIVE DATE, DURATION, AMENDMENT, ANNUAL REVIEW, AND TERMINATION

9.1. This PA shall become effective upon execution by all parties.

9.2. The PA shall be in effect through 31 December 2020 following the execution by all signatory parties. Not later than 6 months prior to the termination date of this PA, Wright-Patterson AFB shall initiate consultation the signatory parties to determine if this PA should be allowed to terminate automatically or whether it should be extended for an additional term, with or without amendments, as the signatory parties may determine. Unless the signatory parties unanimously agree through such consultation on an alternative to automatic termination of this PA, this PA shall automatically terminate IAW the timetable stipulated herein and have no further force or effect.

9.3. Any signatory may at any time propose amendment of this PA, whereupon all signatories shall consult to consider such amendment pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). This PA may be amended only upon written concurrence of all signatory parties.
9.4. If any party determines that it cannot carry out the terms of this PA, that party may request an amendment to this PA. Should the parties to this PA not agree on an amendment, this PA shall remain unchanged.

9.5. Any signatory to this agreement may revoke it upon written notification to the other parties by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, Wright-Patterson AFB will comply with 36 CFR Sections 800.3 through 800.6 with regard to individual aspects of the undertaking covered by this agreement.

9.6. Wright-Patterson AFB shall in writing notify all other signatories if the administration of all or part of the Wright-Patterson AFB installation is disposed of by the United States. In the event of such disposal, this PA shall terminate and have no other force or effect.

10. DEFINITIONS

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

14. GENERAL PROVISIONS

14.1. Entirety of Agreement. This PA, consisting of seventeen (17) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

14.2. Prior Approval. This PA shall not be binding upon any party unless this PA has been reduced to writing before performance begins as described under the terms of this PA, and unless the PA is approved as to form by the Attorney General or his representative.

14.3. Severability. Should any portion of this PA be judicially determined to be illegal or unenforceable, the remainder of the PA shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
Execution of this PA and implementation of its terms evidences that Wright-Patterson AFB has afforded the ACHP an opportunity to comment on the undertaking and its effects on Historic Properties, and that Wright-Patterson AFB has taken into account the effects of the undertaking on historic properties. Execution of this PA and implementation of its terms also evidence that Wright-Patterson AFB has fulfilled its responsibilities under Section 106 of the NHPA and applicable implementing regulations for all aspects of the undertaking.

SIGNATORY PARTIES:

UNITED STATES AIR FORCE

By: _________________________   Date: __________________

Current Commander
Colonel, USAF
Commander
Wright-Patterson AFB

OHIO HISTORIC PRESERVATION OFFICE

By: _________________________   Date: __________________

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _________________________   Date: __________________

John M. Fowler, Executive Director
Advisory Council on Historic Preservation