MEMORANDUM OF AGREEMENT

AMONG THE U.S. ARMY CORPS OF ENGINEERS,
OHIO STATE HISTORIC PRESERVATION OFFICE,
CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY
CANALWAY PARTNERS

AND THE

ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING THE CLEVELAND-CUYAHOGA COUNTY
PORT AUTHORITY APPLICATION FOR PERMIT TO
CONDUCT MAINTENANCE DREDGING

WHEREAS the U.S. Army Corps of Engineers ("USACE") is
considering issuing a permit (under the authority of Section 10 of the
Rivers and Harbors Act of 1899) to the Cleveland-Cuyahoga County
Port Authority (the "Port Authority") for maintenance dredging in
Cleveland Harbor, Lake Erie at the Cleveland Bulk Terminal, located
at 5400 Whiskey Island, in the City of Cleveland, Cuyahoga County,
Ohio 44102 (the "Undertaking" or "Project"), described as the
proposed action in the Public Notices published by the USACE on
March 3, 2006, and April 11, 2017; and

WHEREAS the USACE has determined the Undertaking's Area of
Potential Effects (APE), as defined at 36 CFR 800.16(d) and the permit
area under 33 CFR 325 Appendix C, to be the area encompassed by the
expansion plan for the Cleveland Bulk Terminal, a property that was
listed on the National Register of Historic Places (NRHP #95000492)
as the Pennsylvania Railway Ore Dock ("PROD"), as shown on Sheet
2 of 4 in the March 2, 2006 Public Notice, and any locations determined
to be subject to direct or indirect effects from the relocation and public
display of the Huletts, as set forth in the Stipulations; and

WHEREAS the USACE has determined that the past removal of
historically contributing resources (including four (4) Hulett ore
loaders, four (4) shunt railroad engines, and five (5) buildings) from the PROD, as described in the Ohio Historic Inventory, as part of the overall expansion of the Cleveland Bulk Terminal which includes and requires the proposed dredging activity, constitutes an adverse effect under 36 CFR 800.5; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), USACE has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and ACHP has chosen to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii); and

WHEREAS the USACE has consulted with Ohio State Historic Preservation Office (SHPO), the Cleveland-Cuyahoga County Port Authority (Port Authority), Logistec Corp., National Trust for Historic Preservation, Committee to Save Cleveland’s Huletts, Cleveland Landmarks Commission, Cleveland Restoration Society, Canalway Partners (former Ohio Canal Corridor), Mr. Marty Gelfand, Councilman Matt Zone (Ward 15), and the ACHP (collectively, “Consulting Parties”), in accordance with Section 106 of the National Historic Preservation Act, 54 U.S.C. Sec. 306108 (NHPA), and its implementing regulations (36 CFR Part 800.6(b)(2)) to resolve the adverse effects of the Project on historic properties; and

WHEREAS pursuant to 36 CFR 800.6(c)(2) the USACE has invited the Port Authority (Applicant) and Canalway Partners to sign this Memorandum of Agreement (MOA) as invited signatories; and

WHEREAS the Port Authority prepared historic documentation for portions of the Pennsylvania Railway Ore Dock that were completed in December 1999 in cooperation with local review procedures which occurred under the jurisdiction of the Cleveland Landmarks Commission; and

WHEREAS local preservation advocates and partners conducted substantial fundraising efforts that supported the relocation and preservation of major portions of the Huletts within property controlled by the Port Authority, and
WHEREAS the USACE has notified the ACHP that the USACE finds that, based on the actions of the applicant, the Port Authority, Section 110(k) of the NHPA (54 U.S.C. Sec. 306113) is applicable, but that circumstances may justify granting a permit after execution of this MOA which sets forth the steps to resolve the adverse effects to historic properties; and

NOW, THEREFORE, the USACE, the SHPO, Canalway, Port Authority and the ACHP agree that upon the USACE's permit decision for the dredging associated with expansion of Cleveland Bulk Terminal, the USACE, shall ensure that the following stipulations are implemented in order to take into account the effects of the Undertaking on historic properties, and that these stipulations shall govern the Project and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The USACE shall ensure that the following measures are carried out:

I. CONTEXT; HULETTS HISTORIC REVIEW

A. The Port Authority will prepare a proposal that provides for the creation of a single document (hereinafter, the “Pennsylvania Railway Ore Dock and Huletts Historical Review” or “HHR”) that combines previously published scholarly work relevant to the PROD and Huletts’ history into a single resource. Relevant original resources that are already held within other repositories may be included by reference. New photographs or drawings may be proposed if existing resources do not adequately provide sufficient information to clearly convey the physical characteristics of the Huletts. The HRR shall not exceed the cost of $15,000. The HRR will also include the following:

1. New narrative content will be included in order to provide a context for the document’s organization and content. This narrative shall also include a description of the historic relationship and importance of the Huletts to the Cleveland waterfront area.
2. The narrative shall provide a summary of previous efforts undertaken on this Project by the Port Authority and local and state preservation advocates, the current and proposed dispensation of PROD elements to museums and a public display on the lakefront location, and the current status and location of disassembled elements that were part of the listed historic property.

B. Within 6 months of execution of this MOA, the Port Authority will submit the proposal to the SHPO for review and approval before the Port Authority’s consultant proceeds with the new document.

C. Within 12 months of the execution of this MOA, the Port Authority will submit a draft version of the HHR to the SHPO and other consulting parties (who express an interest in this mitigation product for review and comment). After responding to such comments and any reasonable requests for revision, the Port Authority shall submit the revised draft of the HHR to SHPO and the USACE for final review and approval within 18 months of the execution of this MOA.

D. The final HHR and any available referenced source documents will be posted in readable PDF or similar format at a website hosted by the Port Authority for the duration of the MOA. An additional archival-quality copy of the final document shall also be provided to City of Cleveland Landmarks Commission. The Port Authority shall also offer digital copies of the final document to other consulting parties and will provide them with consent to host the document at other websites for non-commercial use with attribution to the source.

E. The Port Authority shall submit three archival copies of the final documentation package – two bound copies and a third unbound copy containing any new photographic negatives – to the State Library of Ohio at the following address:

Ms. Kristin Krumsee
Government Information Services
The State Library of Ohio
December 2017

274 E. First Avenue
Columbus, OH 43201

The phrase “Submitted to the Ohio State Historic Preservation Office” must appear on the title page of the documentation package to allow library staff to identify SHPO as the agency from which the document originated and process it for entry into the collections.

The State Library will catalog the documentation package on the Online Computer Library Center (OCLC) system. This will make the documentation package available to anyone using WorldCat, FirstSearch, or the State Library’s catalog. The copy of the documentation package containing the photographic negatives will be placed in the State Library’s rare book room. Of the two bound copies, one may be circulated through OhioLink or according to the State Library’s policy while the other will be non-circulating.

II. WORKING GROUP PURPOSE & TEMPORARY STORAGE OF HULETTS & HULETT ARTIFACTS

A. A Working Group shall be created to support future planning consideration for a Public Display to be created using any portion of the remaining Huletts or Hulett Artifacts as its basis. The Working Group shall cooperatively work to develop a plan that identifies a preferred location(s) for a Public Display that can be implemented within three years of the execution of this MOA.

1. The primary purpose of the Working Group is to consider any feasible alternatives for a Public Display that would result in the relocation of Huletts or Hulett artifacts to a new location from their current location at the Cleveland Bulk Terminal. If it is determined at any point during that three year time period that the Working Group cannot successfully complete that task, as described in this MOA, the Working Group Leader must notify USACE that it will be necessary for them to implement the process of providing Contingency Mitigation described in Stipulation V.
2. The Public Display plan will propose a location(s) and outline an integrated and appropriate interpretive storyline that features the historic role of the Huletts. The plan will include an accurate budget defining costs and a fundraising strategy to maximize success in constructing the Public Display at the preferred location(s).

3. The Working Group members shall be responsible for determining the budget and potential funding needs of the Public Display and seeking the commitment of sufficient funding to support it. Potential funding may include, but is not limited to, the funds committed by the Port Authority towards the costs of relocation of the Huletts as provided herein, as well as grants or donations of services and funds from other sources.

B. Subject to the terms of this MOA, the Port Authority agrees to allow the two (2) Huletts Ore Unloaders and three (3) remaining rail road Shunt Engines to remain stored on its property at Cleveland Bulk Terminal for a period of no more than three years from the execution of this MOA.

1. Should an approved Public Display Plan move into implementation during that three year period, the Port Authority agrees to identify and contract with a reputable contractor to relocate those portions of the Huletts required for the Public Display Plan and transport them to the Public Display site (the “Relocation Contract”).

2. The Relocation Contract shall not exceed a cost to the Port Authority of $500,000. The safe and lawful transportation of the Huletts and/or their components may require additional disassembly that should be taken into account by the Working Group.

3. In the event that the Port Authority determines it is necessary or advisable to relocate the Huletts during the three year time period referenced above from their current location on the Cleveland Bulk Terminal to another location, the Port Authority may relocate the Huletts at the Port Authority’s sole
cost and expense to another location on the Cleveland Bulk Terminal pending relocation to the Public Display site.

4. In the event that the Relocation Contract is less than $500,000 the Port Authority shall allocate the remaining funds to implementation of the Public Display Plan.

5. In the event that the Port Authority proposes to fulfill a portion of the Relocation Contract cost by using the scrap value of the portions of the Huletts and engines unused in Public Display, the Port Authority may proceed with scrapping of the unused portions of the Huletts when a public display location and plan has been approved by the Working Group and when the Port Authority has been authorized to do so by the USACE.

III. ESTABLISHING THE WORKING GROUP

A. The Working Group members shall be comprised of designated representatives of the Signatories to this MOA and any additional Consulting Parties electing to participate pursuant to III.B.1 below. The Working Group shall make decisions based on a simple majority vote of its members.

B. The Working Group shall be led by a single member designated by Canalway Partners as their representative (the "Working Group Leader"). The Working Group Leader will provide contact information and a draft schedule of activities to all Consulting Parties within 30 days of the execution of this MOA.

1. All Consulting Parties may designate a representative to participate in the Working Group. Those Consulting Parties who wish to participate in the Working Group should provide written notice to the leader of the Working Group regarding their decision to participate within 60 days of the execution of this MOA. Designees representing each organization or agency may be changed at any time by a written request made to the Working Group Leader.
2. Representatives from other local organizations or agencies can be added to the Working Group at the discretion of the Working Group Leader, should their participation be determined as likely to facilitate the group’s activities. Any member of the Working Group may request that the Working Group Leader consider participation of representatives from additional organizations or agencies on the basis of their ability to advance the goals stated in this MOA.

3. The Working Group may elect at any time to vote regarding a maximum allowed number of members, in the interest of efficiency in meeting their goals. The members may also elect to establish an organizational plan that allows the Working Group to focus on effectively managing its operations and the fulfillment of its goals, as defined in this MOA.

4. Should Canalway Partners determine that they wish to withdraw from participation in the Working Group, USACE and SHPO agree that their representatives shall temporarily act as Co-Leaders for the Group in fulfillment of the Group’s remaining duties under this MOA. Canalway Partners shall provide the basis for such a decision to all Signatories. This information may be used by USACE to determine, in consultation with Signatories, whether the Working Group should continue their activities, or whether to proceed with Contingency Mitigation as described in Stipulation V.

C. Temporary Relocation - Once impaneled, the Working Group will vote on the inclusion of pursuing the “Temporary Relocation” of the Huletts as an interim step of securing and moving the Huletts to a site outside of the Cleveland Bulk Terminal.

IV. PLANNING FOR THE PUBLIC DISPLAY

A. The primary goal of the Working Group is to evaluate all options (concepts) for the relocation of Hulet or Hulet artifacts within an interpretive setting that highlights the historic contribution of these unique machines. The Working Group is tasked with selecting only
those options for a preferred Public Display Plan that may practically be implemented within 3 (three) years of the execution of this MOA.

B. The Working Group will include for evaluation any concept that:

1. Is introduced with a minimum of two (2) members from the Working Group. Sponsors will provide needed information to properly evaluate each proposed concept’s realistic chance to be implemented.

2. Has evidence of site landowner’s willingness to host the Public Display – through letter of intent.

3. Provides for public viewing of the preferred location(s), with preference given to waterfront sites.

C. The evaluation process will work in a manner that begins with a wide range of options proposed by at least two (2) members of the Working Group. Through careful evaluation, the Working Group will focus their efforts towards more detailed planning in support of a single concept that can be implemented at a preferred location(s) and otherwise meets the intent of this MOA.

D. The Working Group shall ensure that the chosen Public Display site for the Huletts and shunt engines are appropriate to the character of the Huletts so that they are visually and otherwise compatible with the surroundings of the new site. It is the goal of this consultation that the installation of the Public Display will not adversely affect any additional historic property.

1. The Working Group will complete, at its sole expense, any studies or surveys necessary to take into account effects to historic properties that are in the Area of Potential Effects for the Public Display site. The Working Group shall consult with USACE and SHPO to determine the level of consultation that will be necessary in order to consider potential effects on historic properties related to the Public Display.
2. If other historic properties may be adversely effected by the installation of the Public Display, USACE and the Working Group shall seek the input of SHPO regarding data recovery or other appropriate mitigation, along with any consulting parties with a demonstrated interest in that consultation.

E. After the evaluation process has been completed and within one year of its first meeting, the Working Group is required to choose a Preferred Concept that is proposed for more detailed planning efforts by the members. The Working Group leader will notify USACE, SHPO and ACHP when a Preferred Concept has been identified.

1. Any Preferred Concept that is proposed for more detailed planning by the Working Group must be found to be financially and logistically feasible. Such a determination will be made through an assessment of the Preferred Concept’s viability that is confirmed by a majority vote of Working Group members.

2. USACE, SHPO and ACHP must confirm that the Preferred Concept proposal meets the intent of this MOA before the Working Group shall proceed with additional planning and implementation of the Preferred Concept. Additional comments offered by USACE, SHPO and ACHP shall be considered by the Working Group as they continue development and implementation plans for the Preferred Concept and location(s) for the Public Display.

F. If a viable Preferred Concept is identified under this stipulation, the Working Group shall continue to plan for the implementation of the Public Display plan. The Working Group will provide the Port Authority, USACE, SHPO and ACHP with a schedule of tasks associated with the detailed development and implementation of the Public Display plan within 2 (two) years of the execution of this MOA.

1. The Working Group shall provide timely updates to the Port Authority, USACE, SHPO and ACHP regarding its activities
and a time frame for the Relocation Contract to be executed by the Port Authority.

2. If there are unanticipated factors that delay the timely implementation of a Public Display plan that has been approved in accordance with this MOA, the Port Authority may be asked by the Working Group (at the discretion of USACE) to allow a minor time extension, not to exceed 60 days, for the relocation of the stored Huletts.

G. If the Working Group does not succeed in finding a suitable location for Public Display Site within three (3) years of execution of this MOA or fails to secure the approvals or funding necessary to carry out its Preferred Concept, then the Port Authority shall proceed in accordance with Stipulation V of this MOA.

V. CONTINGENCY MITIGATION

A. In the event that no Public Display can be accomplished as described by Stipulations II – IV within three years of execution of this MOA (or by such time extension approved by the USACE and the Port Authority) then the Port Authority shall be permitted to dispose of the Huletts in any manner it determines, including by selling the Huletts for the scrap value of metal.

B. The Port Authority agrees that in lieu of the $500,000 in funding that was committed in support of the Relocation Contract described in Stipulation II.B, the allocation of equivalent mitigation funds shall be made as follows.

1. The mitigation funds provided will be utilized to reimburse the Canalway Partners for its initial contribution to support the salvaging of one Hulett (first $250,000). These funds will be used to fulfill objectives of Canalway Partners that are related to improved access and interpretation of sites within Cuyahoga County related to the Ohio and Erie Canal National Heritage Area.
2. The remaining mitigation funds (second $250,000) will be paid to the State Historic Preservation Office of The Ohio History Connection and administered by SHPO for the benefit of historic preservation initiatives in Cleveland, Ohio that are jointly identified as priorities by SHPO and the Cleveland Landmarks Commission. Any initiatives proposed for funding shall be selected based on the goals laid out within *Finding Ground, A Historic Preservation Plan for Ohioans 2016-2020*, with a preference for projects related to the city’s industrial heritage.

**VI. PROFESSIONAL QUALIFICATIONS**

All physical dismantling, moving, reassembly, and interpretation of the Huletts carried out pursuant to this MOA shall be conducted under the supervision of a person or persons meeting at a minimum the Secretary of the Interior's Personnel Qualifications, found at 36 CFR 61.2(d) and in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (NPS 1983:44738-9).

**VII. EFFECTIVE DATE AND DURATION**

This MOA shall become effective on the date the Permit is validated by the USACE (the “Effective Date”) and will be null and void if its terms are not carried out within five (5) years from the date of its execution. At such time, and prior to work continuing on the Undertaking, the USACE shall either (a) execute a MOA pursuant to 36 CFR 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. Prior to such time, the USACE may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation XII below. The USACE shall notify the signatories as to the course of action it will provide.

**VIII. POST-REVIEW DISCOVERIES**

In the event of discovery of archeological artifacts, the Working Group Leader shall immediately stop work in the area of discovery and notify
the USACE. If previously unidentified archaeological or historic properties or unanticipated effects are discovered after completion of Section 106 review, work in the direct vicinity of the findings will stop immediately until the proper course of action can be coordinated with the SHPO. No further construction in the area of discovery will proceed until the requirements of 36 CFR Section 800.13 have been satisfied, including consultation with federally recognized Native American tribes that may attach traditional cultural and religious significance to the discovered property. USACE will consult with the SHPO and Native American tribes, as appropriate, to record, document, and evaluate NRHP eligibility of the property and the project’s effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property. If neither the SHPO nor a federally recognized Native American tribe files a timely objection to USACE’s plan for addressing the discovery, USACE may carry out the requirements of 36 CFR Section 800.13 and the ACHP need not be notified.

IX. HUMAN REMAINS

Historic and Prehistoric human remains are subject to protection under Ohio Revised Code Sections 2909.5 and 2927.11. As such, if previously unidentified human remains are discovered during construction, work within a 50 foot buffer of the findings will stop immediately and will not resume until the proper course of action can be coordinated with the SHPO and consulting parties, as appropriate. The remains will be covered and/or protected in place in such a way as to minimize further exposure of, or damage to, the remains as soon as possible. The Working Group Leader will immediately notify local law enforcement and/or the County Coroner and consult with the USACE and the SHPO within one (1) business day regarding the discovery. If the remains are found to be Native American, a treatment plan will be developed by the Working Group and SHPO in consultation with USACE and appropriate federally recognized Native American tribes. USACE and the Working Group will ensure that any treatment and reburial plan is fully implemented. If the remains are not Native American, the appropriate local authority will be consulted to determine final disposition of the remains. Avoidance and preservation in place is the preferred option for treating human remains. A timeline
for resumption of construction activities at the identification location shall be determined through consultation within five (5) business days.

**X. MONITORING AND REPORTING**

A. Each year following the execution of this MOA or until Stipulations I – V are complete or the MOA is terminated, the Working Group shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the USACE’s efforts to carry out the terms of this MOA.

B. Monitoring and reporting requirements shall not exceed five years from the date of MOA execution unless specifically extended by amendment under Stipulation XII, below.

**XI. DISPUTE RESOLUTION**

Should any party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the USACE shall consult with the objecting party(ies) to resolve the objection. If the USACE determines, within 30 days, that such objection(s) cannot be resolved, the USACE will:

A. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise the USACE on the resolution of the objection within 30 days. Any timely comment provided by the ACHP, and all timely comments from the parties to the MOA, will be taken into account by the USACE in reaching a final decision regarding the dispute.

B. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the USACE may render a decision regarding the dispute. In reaching its decision, the USACE will take into account all timely comments regarding the dispute from the parties to the MOA.
C. The USACE’ responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged. The USACE will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The USACE’ decision will be final.

XII. AMENDMENTS

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

XIII. TERMINATION

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

Once the MOA is terminated, and prior to continuing on the Undertaking, the USACE must either (a) execute an MOA pursuant to 36 CFR 800.6, or (b) request, take into account and respond to comments of the ACHP under 36 CFR 800.7. Within 30 days following termination, the USACE shall notify the signatories as to the course of action it will pursue.

EXECUTION of this MOA by the USACE, SHPO, Port Authority, Canalway and ACHP, the submission of documentation and filing of this MOA with the ACHP pursuant to 36 CFR Section 800.6(b)(1)(iv) prior to the USACE’s approval of this Undertaking, and implementation of its terms evidence that the USACE has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.
SIGNATORIES

U.S. ARMY CORPS OF ENGINEERS

Diane C. Kozlowski, Chief, Regulatory Branch
Date: 1/6/2017

STATE HISTORIC PRESERVATION OFFICER

Lox A. Logan, Jr. President and CEO of The Ohio History Connection
Date: __________

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Name and Title: ________________________________
Date: __________

INVITED SIGNATORIES

CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY

The Cleveland-Cuyahoga County Port Authority agrees to participate in and implement this MOA. By participating in this MOA the Cleveland-Cuyahoga County Port Authority does not waive any rights it may have (including rights to any administrative appeals) or concede any legal conclusions or factual findings or determinations as set forth in this MOA.

Name and Title: ________________________________
Date: __________
December 2017

CANALWAY PARTNERS

Name and Title: ____________________________
Date: ______________

CONCURRING PARTIES

*The refusal of any party to concur in the Memorandum of Agreement does not invalidate the Memorandum of Agreement (36 CFR 800.6 (c)(3)).*

Cleveland Landmarks Commission
Name and Title: ____________________________
Date: ______________

Cleveland Restoration Society
Name and
Title: ____________________________ Date: ______________

Committee to Save Cleveland’s Huletts
Name and
Title: ____________________________ Date: ______________

National Trust for Historic Preservation
Name and
Title: ____________________________ Date: ______________

Councilman Matt Zone (Ward 15)
Name and
Title: ____________________________ Date: ______________