

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE MISSOURI STATE HISTORIC PRESERVATION OFFICE
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICE
THE ILLINOIS DEPARTMENT OF TRANSPORTATION
AND THE
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
FOR THE MITIGATION OF ADVERSE EFFECTS**

TO HISTORIC PROPERTY: Chester Bridge (L0135) on MO 51/IL 150 over Mississippi River in Perry County, Missouri and Randolph County, Illinois and the Horse Island Chute Bridge (L1004) on MO 51 over Horse Island Chute in Perry County, Missouri

UNDERTAKING: Replacement of the Chester Bridge (L0135) and the Horse Island Chute Bridge (L1004) on Route 51, MoDOT Job Number J9P3239, Illinois Sequence Number 20783A

STATE: Missouri and Illinois

AGENCY: Federal Highway Administration

WHEREAS, the Federal Highway Administration (FHWA) Missouri Division is the federal agency responsible for ensuring the undertaking complies with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) codified in its implementing regulations 36 CFR Part 800, *Protection of Historic Properties*; and

WHEREAS, the duties of the State Historic Preservation Office (SHPO) under Section 106 of the NHPA and 36 CFR Part 800 include responsibilities to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

WHEREAS, the Missouri SHPO (MoSHPO) has assumed responsibility as the lead SHPO for the project, and responsibility for resources in Missouri and the Chester Bridge and the Illinois Historic Preservation Office (IISHPO) has responsibility for participating in Section 106 decision-making for resources in Illinois; and

WHEREAS, the Illinois State Historic Preservation Office currently resides within the Illinois Department of Historic Resources (IDNR), and the Director of IDNR is the duly designated Illinois State Historic Preservation Officer; and

WHEREAS, the Missouri Department of Transportation (MoDOT) and the Illinois Department of Transportation (IDOT) plan to replace the Chester Bridge (L0135) in Randolph County, Illinois and Perry County, Missouri, and the Horse Island Chute Bridge (L1004) in Perry County, Missouri, using funding from the FHWA pursuant to the Fixing America's Surface Transportation (FAST) Act (PL 114-94); and

WHEREAS, the MoDOT, acting on behalf of the FHWA, has determined that the project's area of potential effects (APE), as defined at 36 CFR 15 800.16(d), for the undertaking has been defined as the footprint of the project, including new right of way, including permanent and temporary easements for the archaeological resources. For architectural and bridge resources the APE has been defined as the new right of way and permanent easements, demolition easements

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and a buffer of one hundred (100) feet for the consideration of direct and indirect effects, as described in the attached Information to Accompany; and

WHEREAS, the FHWA has determined that the Chester Bridge (L0135) (criteria A and C), Horse Island Chute Bridge (L1004) (criterion A), and archaeological sites 11R931-11R934 (criterion D) are eligible for listing on the National Register of Historic Places (National Register) and has consulted with the MoSHPO and/or the IISHPO pursuant to 36 CFR Part 800; and

WHEREAS, the FHWA has determined that the proposed improvements to MO51/IL150 will have an adverse effect upon the Chester Bridge (L0135) and the Horse Island Chute Bridge (L1004), properties eligible for inclusion on the National Register (see attached Information to Accompany); and has consulted with the MoSHPO and IISHPO pursuant to 36 CFR Part 800, *Protection of Historic Properties*, regulations implementing Section 106 of the NHPA (54 U.S.C. § 306108), as amended; and

WHEREAS, the FHWA has determined that the proposed improvements to IL150 will have no adverse effect on 11R931-11R934 and has consulted with the IISHPO pursuant to 36 CFR Part 800; and

WHEREAS, the FHWA has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination April 15, 2019 and the Council has chosen not to participate in this Memorandum of Agreement (MOA) April 25, 2019; and

WHEREAS, the Missouri Highways and Transportation Commission (MHTC), acting by and through the MODOT, has been invited to participate in the preparation of and be a signatory to this MOA; and

WHEREAS, the FHWA recognizes that the Absentee-Shawnee Tribe of Indians of Oklahoma, the Cherokee Nation, the Delaware Nation, the Delaware Tribe of Indians, the Eastern Shawnee Tribe of Oklahoma, the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, the Kaw Nation, the Miami Tribe of Oklahoma, the Osage Nation, the Peoria Tribe of Indians of Oklahoma, the Ponca Tribe of Nebraska, the Ponca Tribe of Oklahoma, the Quapaw Tribe of Oklahoma, the Shawnee Tribe, and the United Keetoowah Band of Cherokee Indians in Oklahoma have an interest in the project area, and has consulted with them on a government-to-government basis (notified them of the project and invited them to participate in consultation on July 26, 2017); and,

WHEREAS, the Cherokee Nation, the Delaware Nation, and the Ponca Tribe of Nebraska indicated they would consult in the Section 106 process; and

WHEREAS, the Absentee-Shawnee Tribe of Indians of Oklahoma, the Miami Tribe and the Shawnee Tribe indicated that they have no issues or objections at this time; and

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WHEREAS, the Osage Nation indicated that they would like to see the archaeological survey when complete and would comment at that time; and

WHEREAS, the Quapaw Nation asked to be copied on all correspondence with the SHPO; and

WHEREAS, the City of Chester, Illinois, Perry County, Missouri, the Perry County Historical Society, the Randolph County Historical Society, Landmarks Illinois, historicbridges.org, the Historic Bridge Foundation, the Society for Commercial Archeology, James Baughn and Brenda Owen were notified of project and have been invited to participate in consultation (September 6, 2017); and

WHEREAS, the Historic Bridge Foundation, historicbridges.org, the Society for Commercial Archeology and Brenda Owen accepted the invitation to consult under Section 106; and

WHEREAS, the MoDOT has made the Chester Bridge (L0135) available for reuse by another party for a period of 481 days, in accordance with the Missouri *Bridge Marketing Plan*, and no suitable proposal has been received for the reuse of the Bridge; and

WHEREAS, MoDOT, the MoSHPO and FHWA agreed that the Horse Island Chute Bridge (L1004) was not a good candidate for preservation in place or relocation, and the bridge was exempted from marketing, in accordance with the Missouri *Bridge Marketing Plan*; and

WHEREAS, public involvement for this project has been handled in accordance with the MoDOT *Engineering Policy Guide*, Chapter 129: Public Involvement; and

WHEREAS, public meetings were held on August 24, 2017, and March 13, 2018, and information about the project, historic properties and the project effects on historic properties was made available to the public; and

WHEREAS, during the August 24, 2017, public meeting comments were received expressing support for keeping the historic Chester Bridge in place; and

WHEREAS, to the best of the FHWA's knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered; and

NOW, THEREFORE, the FHWA and the MoSHPO and the ILSHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

FHWA, with the assistance of MoDOT and IDOT, shall ensure that the following measures are carried out:

1. **MITIGATION MEASURES**

A. The MHTC, acting by and through MoDOT, shall develop archival documentation to the following specifications for the Chester Bridge. Work shall be done by MoDOT staff or by consultants who meet the Secretary of the Interior's Professional Qualification Standards for History or Architectural History (36 CFR Part 61):

- 1) Prepare historical documentation to Level I standards of the *Levels of Bridge Documentation (State Level) For Section 106 Mitigation of Adverse Effect* (Bridge Documentation Standards).
- 2) Prior to the project letting, take archival photographs of the bridge.
 - a) Take archival photographs, consistent with the National Register standards, with sufficient coverage to provide overall views of the bridge and significant details of the bridge.
 - b) Prior to the project letting, consult with the MoSHPO regarding the adequacy of coverage for the bridge and the selection of images.
 - c) Print photographs in size required by the Bridge Documentation Standards and label photographs in a manner consistent with National Register standards.
 - d) Provide original photographs and digital images (in .tiff and color .jpeg formats) on archival discs to the MoSHPO and IISHPO; MoDOT and IDOT will maintain original photographs and digital images.
- 3) Original construction plans shall be provided as part of the documentation in paper and digital format (.pdf), if available.
- 4) A report, consisting of the historical documentation, plates of the archival photographs, and the construction plans shall be provided to the MoSHPO, the IISHPO, the Chester Public Library and to the Perry County Historical Society in paper and digital (.pdf) formats. The report will be made available on MoDOT's web-site.

B. The MHTC, acting by and through MoDOT, shall develop archival documentation to the following specifications for the Horse Island Chute Bridge (L1004). Work shall be done by MoDOT staff or by consultants who meet the Secretary of the Interior's Professional Qualification Standards for History or Architectural History (36 CFR Part 61):

- 1) Prepare historical documentation to Level II standards of the Bridge Documentation Standards.
- 2) Prior to the project letting, take archival photographs will be taken of the bridge.
 - a) Take archival photographs, consistent with the National Register standards, with sufficient coverage to provide overall views of the bridge and significant details of the bridge.
 - b) Prior to the project letting, consult with the MoSHPO regarding the adequacy of coverage for the bridge and the selection of images.

- c) Print photographs in size required by the Bridge Documentation Standards and label photographs in a manner consistent with National Register standards.
 - d) Provide original photographs and digital images on archival discs to the MoSHPO; MoDOT will maintain original photographs and digital images.
- 3) Original construction plans shall be provided as part of the documentation in paper and digital format (.pdf), if available.
 - 4) A report, consisting of the historical documentation, plates of the archival photographs, and the construction plans shall be provided to the MoSHPO, the IISHPO, the Chester Public Library and to the Perry County Historical Society in paper and digital (.pdf) formats. The report will be made available on MoDOT's web-site.
 - 5) The historical information for the Horse Island Chute Bridge may be included in the documentation of the Chester Bridge, so long as it is complete.
- C. MoDOT will develop a web-page for the Chester and Horse Island Chute Bridges, providing information on the history and significance of the bridge (Chester Bridge web-site). Information included on the web-site will include contextual information developed during the preparation of the historical documentation (per Stipulations 1.A.1 and 1.B.1), and historic and contemporary photographs. It could also include historic videos of the bridge (if any are located and can be digitized) and clips of oral interviews (if available). The web-site will be developed in with input from MoDOT staff or by consultants who meet the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61).
- 1) Consulting parties shall be given the opportunity to comment on the web-site before it goes public. For purposes of review, consulting parties will be provided a link to the web-site beta version.
 - 2) Consulting parties will have 30 days to review the beta version of the web-site and provide comments.
 - 3) Consultation to address substantive comments, and to resolve any conflict, shall occur prior to the web-site appearing to the public. This consultation may be conducted by in-person meeting, conference call or e-mails, as needed to resolve any conflicts.
- D. MoDOT will provide drone footage of the Chester and Horse Island Chute Bridges. Raw drone footage will be provided on DVD to the various repositories named in Stipulation 1.A.4.
- E. MoDOT will develop two short videos about the Chester and Horse Island Chute Bridges: one focused on general facts about the bridges and one focused on the engineering of the bridges. Neither video will exceed five (5) minutes in length. The video may incorporate drone video footage of the bridges, historic photographs and historical facts about the bridges.
- 1) Consulting parties will be given the opportunity to comment on the video before it is finalized. Videos will be distributed to consulting parties by ftp site for review. If they cannot access the ftp site, a disc with the video will be mailed.
 - 2) Consulting parties will have 30 days to review the videos and provide comments.

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- 3) Consultation to address substantive comments, and to resolve any conflicts, shall occur prior to the final editing of the video. Consultation may be conducted by in-person meeting, conference call or e-mail, as needed to resolve any conflicts.
- 4) MoDOT will make the videos available for use at the Chester Welcome Center and to area schools. In addition, the video will be linked to the MoDOT Chester Bridge web-site.
- 5) MoDOT will provide the videos on DVD to the various repositories named in Stipulation 1.A.4.

F. ILLINOIS ARCHAEOLOGY

- 1) Every effort shall be made during design to ensure that right of way limits do not extend beyond the right of way limits identified in the Environmental Assessment prepared for the project.
- 2) If the project footprint changes in ways that could affect the archaeological sites identified in Illinois, FHWA, IDOT and the IISHPO shall consult about project effects to historic sites 11R931-11R934.
- 3) FHWA will submit, when complete, the report of data recovery excavations at site 11R932 to the IISHPO for review and comment.

2. **DURATION**

This agreement shall commence upon having been signed by the FHWA, MHTC, the MoSHPO and the IISHPO and shall be null and void if its terms are not carried out within five (5) years from the date of its execution, unless the FHWA, the MoSHPO and the IISHPO agree in writing to an extension for carrying out its terms.

3. **POST-REVIEW DISCOVERIES**

A. MISSOURI PROCEDURES

If cultural resources are encountered during construction:

- 1) The contractor shall immediately stop all work within a 50-foot buffer around the limits of the resource, and shall not resume without specific authorization from a MoDOT Historic Preservation (HP) Specialist.
- 2) The contractor shall notify the MoDOT Resident Engineer or Construction Inspector, who shall contact the MoDOT HP within 24 hours of the discovery.
- 3) MoDOT HP shall contact FHWA and SHPO within 48 hours of learning of the discovery to report the discovery after a preliminary evaluation of the resource and reasonable efforts to see if it can be avoided.
- 4) If it is determined that it is a historic property that will be adversely affected by the undertaking, MoDOT HP will immediately notify FHWA and SHPO of the finding and provide recommendations to minimize or mitigate the adverse effect.
- 5) FHWA will notify the Council and any tribes that might attach religious and/or cultural significance to the property within 48 hours of this determination.
- 6) FHWA shall take into account Council and Tribal recommendations regarding the eligibility of the property and proposed actions, and direct MoDOT to carry out the appropriate actions.

- 7) MoDOT will provide FHWA and SHPO with a report of the actions when they are completed.
- 8) FHWA shall provide this report to the Council and the Tribes.

B. ILLINOIS PROCEDURES

In the event previously unrecorded resources are discovered during construction or previously identified historic properties are affected in an unanticipated manner, the contractor shall adhere to the following procedures, in accordance with 36 CFR 800.13:

- 1) The contractor shall stop all work within a 50-foot buffer around the limits of the resource.
- 2) The contractor shall notify the FHWA of the discovery.
- 3) If the unrecorded properties are discovered in Illinois, the following actions shall be undertaken:
 - a) The contractor shall notify the IDOT Resident Engineer or Construction Inspector, who shall contact the IDOT Cultural Resources Unit (IDOT CR).
 - b) IDOT CR shall preliminarily evaluate the resource. If it determines that the resource is historic, it shall suggest reasonable efforts to avoid the resource.
 - c) IDOT CR shall submit to FHWA and IISHPO information on the resource, the preliminary evaluation, and the possible avoidance measures.
 - d) If IISHPO concurs that it is a historic property and that it will be adversely affected by the undertaking, it will notify IDOT CR and FHWA of the finding and provide recommendations to minimize or mitigate the adverse effect.
- 4) Within 48 hours of having been notified of the IISHPO's concurrence, FHWA will notify the Council and any tribes that have an interest in the area and collect their recommendations.
- 5) FHWA shall take into account Council and Tribal recommendations regarding the eligibility of the property and proposed actions, and direct IDOT to carry out the appropriate actions.
- 6) IDOT will provide FHWA and IISHPO with a report of the actions when they are completed.

C. HUMAN REMAINS--MISSOURI

- 1) The FHWA recognizes that SHPO assumes responsibility for any human remains and associated funerary objects, sacred objects, or other objects of cultural patrimony (other than from a crime scene or covered under Missouri's Cemeteries Law, §§ 214. RSMo) that may be discovered or are excavated and are located on state land, and are to be handled pursuant to the Missouri Unmarked Human Burial Sites Act, §§ 194.400 – 194.410, RSMo, and pursuant to any provisions of the Native American Graves Protection and Repatriation Act applicable to such remains and artifacts found on non-federal lands.
- 2) If human remains are encountered during construction:
 - a) The contractor shall immediately stop all work within a 50-foot radius of the remains, and shall not resume without specific authorization from either the

MoSHPO or the local law enforcement officer, whichever party has jurisdiction over and responsibility for such remains.

- b) The Contractor shall notify the MoDOT Construction Inspector and/or Resident Engineer who will contact the MoDOT HP section within 24 hours of the discovery.
- c) MoDOT HP staff will immediately notify the local law enforcement (to ensure that it is not a crime scene) and the MoSHPO as per RSMo 194 or to notify SHPO what has occurred and that it is covered by Missouri's Cemeteries Law, §§ 214. RSMo.
- d) MoDOT HP staff will notify FHWA that human remains have been encountered within 24 hours of being notified of the find.
- e) If, within 24 hours, the Contractor is unable to contact appropriate MoDOT staff, the Contractor shall initiate the involvement by local law enforcement and the MoSHPO. A description of the Contractor's actions will be promptly made to MoDOT.
- f) FHWA will notify any Indian tribe that might attach cultural affiliation to the identified remains as soon as possible after their identification.
- g) FHWA shall take into account Tribal recommendations regarding treatment of the remains and proposed actions, and then direct MoDOT HP to carry-out the appropriate actions in consultation with the MoSHPO.
- h) MoDOT, subject to FHWA oversight, shall monitor the handling of any such human remains and associated funerary objects, sacred objects or objects of cultural patrimony on non-federal land to assure itself that these are handled, excavated, or processed in accordance with the Missouri Unmarked Human Burial Sites Act, §§ 194.400 – 194.410, RSMo and pursuant to any provisions of the Native American Graves Protection and Repatriation Act applicable to such remain and artifacts found on non-federal lands.

D. HUMAN REMAINS—ILLINOIS

If human remains and/or associated funerary objects and burial artifacts (Remains) are encountered during construction or during archaeological data recovery, the following actions must occur:

- 1) Contractor shall stop all work within a 50-foot radius of the remains and notify FHWA, IDOT, and the County Coroner or Medical Examiner.
- 2) FHWA shall notify any Native American tribes that have an interest in the project area that might associate cultural affiliation to the Remains as soon as possible after their identification.
- 3) IDOT shall notify the IISHPO.
- 4) FHWA shall take into account Tribal recommendations regarding treatment of the remains and proposed actions, and then direct IDOT to carry out the appropriate actions in consultation with the IISHPO.
- 5) If the Remains do not constitute a crime scene, as determined by the Coroner, and it is not feasible to preserve in place, they shall be removed and analyzed under the supervision of a skeletal analyst certified under Section 4170.300(f) in Rules

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for the Protection, Treatment and Inventory of Unmarked Human Burial Sites and Unregistered Graves (17 IAC 4170; the Rules). Subsequent reporting shall meet requirements described in Section 4170.340 of the Rules.

4. **MONITORING AND REPORTING**

Within one year after carrying out the terms of the MOA, MoDOT, acting on behalf of the FHWA shall provide to all signatories a written report regarding the actions taken to fulfill the terms of the agreement.

5. **DISPUTE RESOLUTION**

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

- A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution to the Council. The Council shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council or signatories, and provide them with a copy of this written response. FHWA will then proceed with its final decision.
- B. If the Council does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA and provide them and the Council with a copy of the written response.
- C. FHWA's responsibilities to carry out all other actions subject to the terms of the MOA that are not the subject of the dispute remain unchanged.

6. **AMENDMENTS**

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

7. **TERMINATION**

If any signatory to this MOA determines its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation 6 above. If within thirty (30) days 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 work continuing on the undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR 800.6 or (b) request, take into

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account, and respond to the comment of the Council under 36 CFR 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

8. Five (5) copies of this signed MOA will be provided, one to each signatory. FHWA will transmit an electronic copy to the Council for inclusion in their files.

Execution of this MOA by the FHWA, the MoSHPO, IISHPO, IDOT and the MHTC and the implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

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STATE: Missouri and Illinois

AGENCY: Federal Highway Administration

Signed:

FEDERAL HIGHWAY ADMINISTRATION:

By:  Date: 12-17-19

Title: Program Development Team Leader

FHWA

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STATE: Missouri and Illinois

AGENCY: Federal Highway Administration

ILLINOIS STATE HISTORIC PRESERVATION OFFICER:

By: *Colleen Callahan* Date: 11-1-19

Title: *Director*

APPROVED FOR EXECUTION
Date: 10/29/2019
Legal Counsel: *[Signature]*

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STATE: Missouri and Illinois

AGENCY: Federal Highway Administration

THE MISSOURI STATE HISTORIC PRESERVATION OFFICE:

By: _____



Date: _____

10/18/19

Title: _____

Deputy SHPO

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STATE: Missouri and Illinois

AGENCY: Federal Highway Administration

THE ILLINOIS DEPARTMENT OF TRANSPORTATION:

By: Keith Roberts Date: 10/15/19

Title: Acting Region Fire Engineer

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STATE: Missouri and Illinois

AGENCY: Federal Highway Administration

THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION:

By: Brenda Morris Date: 10/17/2019

Title: Chief Financial Officer

Attest: [Signature]
Commission Secretary

Approved as to form: [Signature]
Commission Counsel

