

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
ILLINOIS DEPARTMENT OF TRANSPORTATION,
AND
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
REGARDING
THE REALIGNMENT OF IL 104 (FAP 745) IN MEREDOSIA IN CONJUNCTION
WITH THE REPLACEMENT OF THE IL 104 BRIDGE OVER THE ILLINOIS RIVER,
MORGAN COUNTY, ILLINOIS**

WHEREAS, the Illinois Department of Transportation (IDOT) plans to replace the IL 104 (FAP 745) Bridge over the Illinois River and realign IL 104 in Meredosia, Morgan County, Illinois (Project), IDOT Sequence #14216; and

WHEREAS, the Federal Highway Administration (FHWA) may fund the Project thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470f, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, the IL 104 Bridge (Structure #069-0016) has been determined eligible for the National Register of Historic Places (NRHP), and the FHWA and IDOT mitigated the adverse effect to the Bridge by completing Historic American Engineering Record documentation prior to its removal pursuant to a Memorandum of Agreement (MOA) ratified March, 21, 2011; and

WHEREAS, the Project may impact archaeological resources within the town of Meredosia, but archaeological investigations in the proposed realignment of IL 104 in Meredosia were not possible until the IDOT began acquiring affected parcels; and

WHEREAS, the IDOT has begun acquiring affected parcels and test excavations have been completed by Illinois State Archaeological Survey (ISAS) personnel for the IDOT, and ISAS personnel have discovered buried remnants of a prehistoric (Middle Woodland period) habitation site 11MG491 with intact features and fragmentary human remains; and

WHEREAS, the archaeological features have yielded new and important information about the prehistory of the region, and therefore site 11MG491 (Site) has been determined eligible for the NRHP under Criterion D (see Exhibit A), and

WHEREAS, the realignment of IL 104 in Meredosia will adversely impact the Site within the Project's area of potential effect (APE) defined by the FHWA as the limits of proposed realignment of IL 104 (as shown in Exhibit B); and

WHEREAS, the FHWA invited the IDOT to participate in consultation and to become a signatory to this MOA; and

WHEREAS, the Site has no affiliation with any specific historic Indian Tribes, it is important for the scientific data it contains, and it does not require preservation in place; and

WHEREAS, the FHWA invited the following Tribes to enter consultation: the Kickapoo, Miami, Peoria, and Potawatomi, and the Peoria Tribe of Indians in Oklahoma and the Pokagon Band of Potawatomi Indians have expressed an interest in consultation and have been invited to be a concurring party to this MOA; and

WHEREAS, in accordance with 36 CFR Part 800, the FHWA acknowledges and accepts the advice and conditions outlined in the Council's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites," published in the Federal Register on June 17, 1999; and

WHEREAS, the FHWA notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect in a letter dated July 28, 2014, and the FHWA received no response from the ACHP; and

WHEREAS, execution and implementation of this MOA evidences that the FHWA has satisfied its Section 106 responsibilities for the Project; and

NOW, THEREFORE, the FHWA, IDOT, and SHPO agree that the Project shall be implemented in accordance with the following stipulations to ensure that potential effects on historic properties are taken into account.

STIPULATIONS

The FHWA, IDOT, and SHPO agree that the following steps will be undertaken for the Project:

I. ARCHAEOLOGICAL MITIGATION

- A.** To mitigate the adverse effect, the IDOT will ensure that data-recovery excavations are completed by ISAS personnel in accordance with the attached data-recovery plan (see Exhibit C), which is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the Secretary of the Interior's Standards and Guidelines for Archaeological and Historic Preservation, and the Advisory Council on Historic Preservation's Treatment of Archaeological Properties: A Handbook. The IDOT will ensure that no construction activities will be undertaken in the vicinity of the Site prior to the conclusion of data-recovery excavations.
- B.** Human remains are likely to be found during the investigations covered by this MOA. Fragmentary remains were discovered during test excavations, and the provisions of the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170) and its rules (the Act), were followed. No

excavation of human remains will be performed except under the direction of a Certified Skeletal Analyst (17 IAC 4170.300(f)). Disposition of the remains and associated artifacts will be accomplished as determined under the Act. Following the provisions of the Memorandum of Understanding for Tribal Consultation for the Illinois Federal Transportation Program, ratified August 31, 2011, Tribes with an interest in Morgan County were notified of the discoveries July 3, 2014.

II. PROFESSIONAL STANDARDS

For the purpose of implementing this MOA, the IDOT shall continue to employ departmental staff with qualifications that meet the requirements of 36 CFR Part 61, Appendix A. At a minimum, the professional staff required to carry out the terms of this MOA shall consist of one permanent, full time, archaeologist. In the event of a prolonged absence of the IDOT archaeologist, IDOT will, in consultation with the FHWA and SHPO, appoint an archaeologist that meets the requirements of 36 CFR Part 61, Appendix A.

III. DURATION

This MOA will be null and void if its stipulations are not carried out within ten years from the date of its execution. In such an event, the FHWA shall so notify the parties to this MOA and, if it chooses to continue with the Project, then it shall reinstate review of the Project in accordance with 36 CFR Part 800.

IV. POST REVIEW DISCOVERIES

A. *Procedures for an Unanticipated Discovery of Human Remains and Burials:* In the case of an unanticipated discovery of human remains or burials on state land during IDOT construction activities, the IDOT will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act) and follow these procedures:

(a) Upon encountering human remains or an unmarked human burial during ground disturbing construction activities, the IDOT will ensure that the construction contractor immediately stops work within a one-hundred-fifty (150) foot radius from the point of discovery. The IDOT will ensure that the construction contractor implements interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

(b) Immediately following receipt of such notification, the IDOT will ensure that construction activities have halted within a one-hundred-fifty (150) foot radius from the point of discovery and assume responsibility for

implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.

(c) The IDOT will determine if the skeletal remains are human, the degree to which they were disturbed, and, if possible, assess their potential age and cultural affiliation without any further disturbance.

(d) The IDOT will notify the county coroner, Illinois Historic Preservation Agency (IHPA) and SHPO, and other interested parties within forty-eight (48) hours of the discovery.

(e) Within seventy-two (72) hours after notification the county coroner will determine jurisdiction. If the remains are older than 100 years, the county coroner will notify the IHPA and SHPO.

(f) The IHPA is responsible for notifying FHWA, IDOT, and other interested parties within twenty-four (24) hours of its findings.

(g) If it is determined that intact or fragmented human remains are present the IDOT will consult with the IHPA, SHPO, FHWA, and other interested parties regarding additional measures to avoid and protect or mitigate the adverse effect of the Project on the human remains and burial site. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. if the remains are determined to be Native American, consultation with appropriate Tribes will be required;
- iii. visits to the site by the SHPO and other interested parties;
- iv. exploration of potential alternatives to avoid the human remains or burial;
- v. for Native American remains, implementation of a mitigation plan by the IDOT in consultation with appropriate Tribes, including procedures for disinterment and re-interment;
- vi. implementation of the mitigation plan; and
- vii. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

B. *Procedures for an Unanticipated Discovery of Historic Properties:* In the event of an unanticipated discovery of historic properties during IDOT construction activities on state land, IDOT will follow these procedures:

(a) The construction contractor must immediately stop all construction activity within a three-hundred (300) foot radius of

the discovery, notify IDOT of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the IDOT shall:

- i. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
- ii. clearly mark the area of the discovery;
- iii. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
- iv. notify the FHWA, the SHPO, and other interested parties of the discovery.

(b) IDOT/FHWA will have seven (7) business days following notification to determine the National Register eligibility of the discovery after considering the filed comments of the SHPO and other interested parties. IDOT/FHWA may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR§ 800.13(c)

(c) If the find is determined to be potentially significant the IDOT will consult with the SHPO and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the National Register, IDOT/FHWA will notify the SHPO and other interested parties, of those actions for which it proposes to resolve adverse effects. The SHPO and other interested parties will have seven (7) business days to provide their views on the proposed actions to resolve adverse effects. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. visits to the site by the SHPO and other interested parties;
- iii. exploration of potential alternatives to avoid the site;
- iv. preparation of a mitigation plan by the IDOT in consultation with other interested parties for approval by the SHPO;
- v. implementation of a mitigation plan; and
- vi. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

(d) If the find is determined to be either isolated or completely disturbed by construction activities, the IDOT will consult with the SHPO and other interested parties prior to resuming construction.

(e) Dispute Resolution: The FHWA will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding determination of effects.

V. DISPUTE RESOLUTION

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

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

VI. 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 ACHP.

VII. TERMINATION

If any 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. If within thirty 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, the FHWA must request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The FHWA shall notify the signatories as to the course of action it will pursue.

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

FEDERAL HIGHWAY ADMINISTRATION

By: Janis P. Pitand Date: 8-19-2014

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Anne E. Adams Date: 8.18.14


INVITED SIGNATORY

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Reggie Z. Smith Date: 8-13-14

CONCURRING PARTIES

PEORIA TRIBE OF INDIANS OF OKLAHOMA

By:  Date: 8/27/14