

**MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION
AND THE
ILLINOIS STATE HISTORIC PRESERVATION OFFICER
REGARDING THE REPLACEMENT OF
THE 5TH STREET (FAU 8427) CULVERT OVER TOWN BRANCH CREEK
(STRUCTURE NO. 026-6008)
IN THE CITY OF VANDALIA, FAYETTE COUNTY, ILLINOIS**

WHEREAS, the Illinois Department of Transportation (IDOT) and City of Vandalia plan to replace the 5th Street Culvert over Town Branch Creek (Project) in the City of Vandalia, Fayette County, Illinois (Sequence #17439); and

WHEREAS, the Federal Highway Administration (FHWA) plans to 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 FHWA has defined the undertaking's area of potential effect (APE) as the footprint of the existing structure; and

WHEREAS, FHWA has determined that the undertaking will have an adverse effect on the 5th Street Culvert over Town Branch Creek (Structure Number 026-6008), which is eligible for listing on the National Register of Historic Places, and has consulted with the Illinois State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800; and

WHEREAS, FHWA has invited the IDOT and City of Vandalia to participate in consultation and to become signatories to this memorandum of agreement; and

WHEREAS, the public was given an opportunity to comment on the undertaking's adverse effect in a notice published on August 30, 2013 in the *Belleville News-Democrat* and on September 5, 2013 in the *Vandalia Leader-Union*; and

WHEREAS, pursuant to 23 USC 144(o)(4), there were no responsible parties who expressed an interest in taking ownership of the bridge to maintain and preserve the bridge in perpetuity; and

WHEREAS, the FHWA has notified the Advisory Council on Historic Preservation of the adverse effect, pursuant to 36 CFR Section 800.6(a)(1), in a letter dated July 3, 2014; and

WHEREAS, the Advisory Council on Historic Preservation declined to enter into consultation in a letter dated July 14, 2014; and

WHEREAS, the FHWA has invited consultation of the following Tribes, and no responses were received: Kickapoo, Miami, and Peoria; and

NOW, THEREFORE, FHWA, IDOT, City of Vandalia, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on historic properties.

STIPULATIONS

FHWA, in coordination with the IDOT, shall ensure that the following measures are carried out:

1. Prior to beginning of construction activities, the IDOT shall submit documentation concerning the 5th Street Culvert over Town Branch Creek to the SHPO to the standards of the Illinois Historic American Engineering Record (HAER) at Level 3. The IDOT shall coordinate the recordation with the SHPO. IDOT must receive concurrence from the SHPO that the documentation is acceptable prior to IDOT demolishing the existing structure.

2. DURATION

This MOA will be null and void if its stipulations are not carried out within ten (10) years from the date of its execution. At such time, and prior to work continuing on the undertaking, FHWA shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation 6 below. FHWA shall notify the signatories as to the course of action it will pursue.

4. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, FHWA shall make reasonable efforts to avoid, minimize, or mitigate adverse effects to such properties and follow the requirements of 36 CFR Section 800.13(b).

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 this MOA are implemented, 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 ACHP. The ACHP 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 ACHP and signatories and provide them with a copy of this written response. FHWA will then proceed according to its final decision.

B. If the ACHP 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 ACHP with a copy of such written response.

C. 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.

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 ACHP.

7. 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 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 account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

EXECUTION of this MOA by the FHWA and SHPO 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.

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(STRUCTURE NO. 026-6008)
IN THE CITY OF VANDALIA, FAYETTE COUNTY, ILLINOIS**

Signatory:

FEDERAL HIGHWAY ADMINISTRATION

By: Janis P. Pilaud Date: 11-26-14

Printed Name: Janis P. Pilaud

Signatures follow on separate pages

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Signatory:

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Anne E. Haaker Date: 11/25/14

Printed Name: Anne E. Haaker, DSHPO

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Invited Signatory:

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Ray Orskell Date: 10-29-14

Printed Name: Ray L Orskell

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Invited Signatory:

CITY OF VANDALIA

By:  Date: 11-12-14

Printed Name: Ricky J. Gottman