

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
ILLINOIS DEPARTMENT OF TRANSPORTATION,
AND
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
REGARDING
RECONSTRUCTION OF I-57/I-74 INTERCHANGE
CHAMPAIGN, CHAMPAIGN COUNTY, ILLINOIS**

WHEREAS, the Illinois Department of Transportation (IDOT) plans to reconstruct the interchange of I-57 and I-74 in Champaign, Champaign County, Illinois (Project), IDOT Sequence #17502, 17502A, 17502B; 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 FHWA has defined the undertaking's area of potential effect (APE) as the proposed project area (as shown in Exhibit A); and

WHEREAS, the FHWA in consultation with the Illinois State Historic Preservation Officer (SHPO) has determined that no standing structures that are eligible for listing on the National Register of Historic Places will be adversely effected by the Project (Exhibit B); and

WHEREAS, the FHWA invited the following Tribes to enter consultation: the Kickapoo, Miami, and Peoria, and no Tribe expressed an interest in consultation; and

WHEREAS, the FHWA has invited the IDOT to participate in consultation and to become a signatory to this Memorandum of Agreement (MOA); and

WHEREAS, the FHWA and IDOT, in consultation with the SHPO, have identified an ancient American Indian habitation area (Site) that has the potential to yield important information about the prehistory of region (11CH608), thus, making the Site eligible for the National Register of Historic Places (NRHP) under Criterion D, and the Site may be adversely effected by the Project; and

WHEREAS, the Site has no affiliation with historic Indian Tribes and is important for the scientific data it likely contains; therefore, it does not require preservation in place; 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 preparation of this MOA in a letter dated April 8, 2014 and the ACHP has declined to participate in consultation; 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 TESTING (PHASE II)

- A. When the IDOT has secured access to the Site (11CH608), the Illinois State Archaeological Survey (ISAS) on behalf of the IDOT will conduct test excavations within the project limits to identify and evaluate archaeological resources. The IDOT will seek SHPO concurrence in determining the NRHP eligibility of the archaeological resources.
- B. If the resources are determined eligible for the NRHP, and adverse impacts by the Project cannot be avoided, the IDOT, in coordination with the SHPO, will ensure that data-recovery excavations (mitigation) are completed.

II. ARCHAEOLOGICAL MITIGATION (PHASE III)

- A. To mitigate the adverse effect, the IDOT will ensure that data-recovery excavations are completed by the ISAS in accordance with the attached data-recovery plan (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 not expected to be found during the investigations covered by this MOA. However, if encountered, required notifications of the discovery will be made to the county coroner and the SHPO, then after authorization under Illinois Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170) and its rules (the Act), the remains along with

any associated artifacts will be removed following procedures for recording and reporting established under the Act. 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.

III. 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.

IV. 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 reinitiate review of the Project in accordance with 36 CFR Part 800.

V. 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, 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, 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.

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: Max Tuth Date: July 3, 2014

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Anne Haas Date: July 3, 2014

INVITED SIGNATORY

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Kensil A. Garnett Date: 6-25-14
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