MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION
AND THE
ILLINOIS STATE HISTORIC PRESERVATION OFFICER
REGARDING THE REPLACEMENT OF THE DOWNER PLACE BRIDGES OVER THE FOX RIVER
(STRUCTURE NOS 045-6005 & 045-6006)
IN THE CITY OF AURORA,
KANE COUNTY, ILLINOIS

WHEREAS, the Illinois Department of Transportation (IDOT) plans to replace the Downer Place Bridges over the Fox River (Project) in the City of Aurora, Kane County, Illinois; 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 bridge; and

WHEREAS, FHWA has determined that the undertaking may have an adverse effect on the Downer Place Bridges (Structure Numbers 045-6005 & 045-6006), which are contributing structures to the Stolp Island National Register District and has consulted with the Illinois State Historic Preservation Officer (Illinois SHPO) pursuant to 36 C.F.R. Part 800; and

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

WHEREAS, FHWA and IDOT complied with the stipulations contained in the April 2004 Historic Bridge Programmatic Agreement among the FHWA, IDOT and Illinois SHPO; and

NOW, THEREFORE, FHWA, IDOT and the Illinois 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. The City of Aurora will replace the Downer Place Bridges with new structures as developed in the plans prepared by the City, which will be reviewed by the Aurora Preservation Commission and approved by the IDOT and the SHPO. The appearance of the new bridges shall approximate the existing structures.

2. Prior to beginning of construction activities, the City of Aurora, in coordination with IDOT Bureau of Design & Environment, shall submit documentation concerning the Downer Place Bridges to the SHPO to the standards of the Illinois Historic American Engineering Record at Level 3. The IDOT shall coordinate the recordation with the SHPO. The SHPO must accept the documentation in writing prior to the demolition of the existing bridges.

3. The SHPO shall provide the City of Aurora with the list of the names and addresses of the appropriate local and state archives to receive copies of the final documentation reports to be prepared for compliance with stipulation 2. The City of Aurora will ensure copies of the final documentation reports are provided to each local and state archive identified by the SHPO.

4. 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 7 below. FHWA shall notify the signatories as to the course of action it will pursue.

5. 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).

6. 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.

7. 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.

8. 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 7, 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 Illinois 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.

FEDERAL HIGHWAY ADMINISTRATION

By: Michael L. Harris Date: 9/14/09

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Anne E. Haaker Date: 8.21.09

INVITED SIGNATORIES

THE CITY OF AURORA

By: Tom Weisner Date: 7/30/09

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Ramell Lewis Date: 8/17/09