PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
FEDERAL AVIATION ADMINISTRATION,
ILLINOIS DEPARTMENT OF TRANSPORTATION,
ST.CLAIR COUNTY,
AND ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
REGARDING
CONSTRUCTION OF THE INTERSTATE 64 AND RIEDER ROAD INTERCHANGE,
ST. CLAIR COUNTY, ILLINOIS

WHEREAS, the Illinois Department of Transportation (IDOT) in coordination with St. Clair plans to construct an interchange at I-64 and Rieder Road in St. Clair County, Illinois (Project), IDOT Sequence #16130; 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 in consultation with the IDOT and Illinois State Historic Preservation Officer (SHPO) have defined the undertaking's area of potential effect (APE) as the area shown in Exhibit A; and

WHEREAS, the proposed interchange is located within the limits of an Environmental Assessment (EA) study area (Exhibit B), encompassing land largely controlled by St. Clair County in coordination with the Federal Aviation Administration (FAA); and

WHEREAS, the IDOT has completed an intensive survey of the EA study area (Exhibit C), excluding those areas not controlled by St. Clair County (Exhibit B) which are privately owned; and

WHEREAS, FAA approval is required for this project to be advanced in order to convert airport property to a surface transportation use because the land was purchased with FAA funds; and

WHEREAS, the FHWA has invited the FAA to be a signatory to this Memorandum of Agreement (MOA); and

WHEREAS, the FAA and FHWA agree that FHWA will serve as the lead Federal Agency for the undertaking; and

WHEREAS, the FHWA in consultation with the SHPO have determined that no standing structures that are eligible for listing on the National Register of Historic Places (NRHP) are within the entire EA study area; and

WHEREAS, the FHWA invited the following Tribes to enter consultation: the Kaw, Miami, Osage, Peoria, and Ponca, and three Tribes (Osage, Peoria, and Miami) expressed an interest in consultation; and

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

WHEREAS, the FHWA has invited the Miami, Peoria, and Osage to be concurring parties to this MOA; and

WHEREAS, the FHWA and IDOT, in consultation with the SHPO, have determined that five archaeological (habitation) sites within that portion of the EA study area controlled by St. Clair are eligible for the NRHP under Criterion D (11S814, 11S825, 11S984, 11S1016, and 11S1098); and

WHEREAS, the FHWA and IDOT, in consultation with the SHPO, have determined that one site, 11S1098 (Site), will be adversely affected by the Project (Exhibit D); and

WHEREAS, St. Clair County shall ensure that the four remaining sites (11S814, 11S825, 11S984, and 11S1016) will be protected from future impacts by placing them in a preservation covenant (Exhibit E), but if future impacts cannot avoided, data-recovery excavations will be conducted by St. Clair County in consultation with the SHPO and IDOT; and

WHEREAS, the Site has no affiliation with historic Indian Tribes and is important for the scientific data it likely contains and 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 August 26, 2013, and in a letter dated September 11, 2013 the ACHP declined to participate in the consultation for the Project; 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, FAA, IDOT, St. Clair County, 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, FAA, IDOT, St. Clair County, and SHPO agree that the following steps will be undertaken for the Project:

I. ARCHAEOLOGICAL SITE IDENTIFICATION & EVALUATION (PHASE I & II)

A. Because the EA study area has been intensively surveyed, except that portion not controlled by St. Clair County, the IDOT and St. Clair County will ensure that this unsurveyed area (see Exhibit B) is surveyed once access to the area is secured by St. Clair County. The Illinois State Archaeological Survey (ISAS) on behalf of the IDOT and in coordination with the SHPO and consulting party Tribes will conduct a Phase I archaeological survey and will conduct Phase II test excavations, if determined necessary by the IDOT in coordination with the SHPO.

II. ARCHAEOLOGICAL SITE MITIGATION (PHASE III)

A. The ISAS in coordination with the IDOT has prepared a data-recovery plan with a research design for the affected Site (see Exhibit C) in consultation with the SHPO that 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.

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.

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 event of an unanticipated discovery of human remains or burials during IDOT construction activities, the IDOT and St. Clair 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 and St. Clair County will ensure that the construction contractor immediately stops work within a three-hundred (300) foot radius from the point of discovery. The IDOT and St. Clair County 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 and St. Clair County will ensure that construction activities have halted within a three-hundred (300) 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), SHPO, consulting party Tribes, 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, consulting party Tribes, 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, consulting party Tribes, 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. The 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, the IDOT and St. Clair County 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 the IDOT and St. Clair County 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, consulting party Tribes, and other interested parties of the discovery.

(b) The 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, consulting party Tribes, and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the National Register, the IDOT/FHWA will notify the SHPO, consulting party Tribes, 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.

VI. 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.

VII. 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.

VIII. 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. 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 the 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: Matt Fuller Date: 12/12/2013

FEDERAL AVIATION ADMINISTRATION

By: _____ Date: 12-10-13

Jim Keefer, Manager CHI-ADO

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: 12·2·13

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Jeffrey L Keim Date: 12/6/13

ST. CLAIR COUNTY

By: _____ Date: 12/10/13