

**MEMORANDUM OF UNDERSTANDING
AMONG**

**THE FEDERAL HIGHWAY ADMINISTRATION,
ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
ILLINOIS DEPARTMENT OF TRANSPORTATION,**

and

FEDERALLY RECOGNIZED TRIBES INTERESTED IN ILLINOIS LANDS

**REGARDING TRIBAL CONSULTATION REQUIREMENTS
FOR THE ILLINOIS FEDERAL TRANSPORTATION PROGRAM**

PREFACE

This document is the result of discussions among the Federal Highway Administration (FHWA), the Illinois Department of Transportation (IDOT), the Advisory Council on Historic Preservation (ACHP), the Illinois State Historic Preservation Officer (Illinois SHPO), and the Tribes who have expressed an interest in Illinois lands. This document is intended to define consultation, for compliance with the National Historic Preservation Act (NHPA) (16 U.S.C. § 470 et seq.), among the FHWA, IDOT and the Tribes interested in Illinois lands. As required under the terms of the NHPA and resulting regulations (36 CFR 800), consultation has revealed that many Tribes have aboriginal ties to what is now the State of Illinois. Those Tribes have expressed concern, and requested to be consulted on future transportation projects in Illinois.

The FHWA and IDOT understand that the Tribes have concerns regarding cultural resources, protection of burials, preservation of Traditional Cultural Properties (TCPs), continuing destruction of places and items of cultural value, and the effects of this destruction on their cultural identity today. Cultural resources are revered by the Tribes and are a connection to their past and important to their cultural identity, sense of self and future well-being. Cultural resources are tied to people's ancestors, some are related to important religious activities, and many have ongoing spiritual connections. The FHWA and IDOT recognize the importance of these remnants from the past to aboriginal people living today.

Modern development, including transportation construction, has the potential to destroy valuable cultural resources and adversely impact others. This agreement is intended to ensure all parties understand which cultural resources are important to the Tribes and work together to protect and preserve them. The FHWA and IDOT are committed to providing a transportation system that will benefit all people of Illinois. The FHWA and IDOT are committed to learning Tribal perspectives about cultural resources important to the Tribes. The Tribes are committed to understanding transportation issues and the perspectives of the FHWA and IDOT. Jointly we are committed to establishing a relationship of mutual trust and respect.

The FHWA and IDOT recognize that transportation projects have the potential to adversely affect cultural resources: burials, sacred sites, archaeological sites, traditional natural resources, and traditional landscapes of value to the Tribes. The FHWA and IDOT do not wish further destruction of these culturally valued places, and recognize the inherent rights of Tribes to preserve those places that they value.

It is the intention of the FHWA and IDOT to work with the Tribes to find appropriate ways to avoid effect to important cultural resources. The FHWA and IDOT pledge to always look for ways to avoid effect to these resources as the first option. When avoidance of effect is impossible or impractical, given other concerns of equal importance, the FHWA and IDOT will work with the Tribes for appropriate and respectful resolution of any unavoidable effects.

The IDOT will follow the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001) when there is a discovery of human remains or burials on Federal lands. In the event of an inadvertent discovery of human remains or burials on non-Federal lands during transportation construction activities, IDOT will comply with the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440) (see III.C.3.)

WHEREAS, all signatory Tribes identified in Appendix A with the area in which they have expressed an interest are federally recognized sovereign Indian Nations with their own Tribal laws, with established government-to-government relationships with the United States and an interest in specific areas of Illinois, as shown in Appendix A: “COUNTY LISTING OF THE TRIBES’ ANCESTRAL HOMELANDS AND TERRITORY IN THE STATE OF ILLINOIS”, and have been consulted and agree to be signatories to this document; and

WHEREAS, the Illinois SHPO has been consulted and agrees to be a signatory to this document; and

WHEREAS, the FHWA and IDOT wish to affirm the government-to-government relationship with the Tribes for consultation and cooperation regarding Federal Acts and Orders including, but not limited to, Section 106 of the NHPA; the National Environmental Policy Act, 42 U.S.C. §§ 4321, 4331, 4332, the Archaeological Resource Protection Act, 16 U.S.C. § 470aa et seq. Presidential Executive Order 13007 (Indian Sacred Sites), Presidential Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001) and the American Indian Religious Freedom Act, 42 U.S.C. § 1996; and

WHEREAS, the FHWA is the Federal agency with statutory responsibilities for administering the Federal-aid highway program under Title 23 U.S.C. 101 et seq, and IDOT is the applicant for Federal funds for highway construction projects in Illinois. The FHWA agrees to coordinate under a government-to-government relationship with federally recognized Tribal government officials or appointees with regard to Federal responsibilities under Section 106 of the NHPA through the terms of this Memorandum of Understanding (MOU). The IDOT will consult with representatives designated by the Tribal governments to manage or advise on matters pertaining to cultural resources; and

WHEREAS, the FHWA has determined that its undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places

(NRHP), that may be of interest to the Tribes, and through this agreement will consult with the Tribes pursuant to Section 106 of the NHPA (16 U.S.C. 470f); and

WHEREAS, the FHWA and IDOT are committed to the design and construction of a transportation system that: 1) safely moves people and goods; 2) avoids, minimizes and mitigates adverse effects on cultural resources; 3) recognizes that consideration of Tribal interest in preservation of significant cultural resources is important to Tribal well-being, growth and prosperity; and 4) responds to the needs of Illinois communities and the Tribes; and

WHEREAS, the IDOT will 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 MOU shall consist of one permanent, full time archaeologist; and

WHEREAS, the IDOT may contract archaeological field work to other qualified personnel provided they are managed by IDOT. At this time the Illinois State Archaeological Survey (ISAS) , through an intergovernmental agreement with the University of Illinois, performs all field work and develops technical reports to implement IDOT's cultural resources program; and

WHEREAS, the FHWA, IDOT, and the signatory Tribes aspire to engage in meaningful, long-term planning for the appropriate consideration of cultural resources important to the Tribes, and to include the following:

- develop a comprehensive and efficient Tribal consultation process for all Section 106 undertakings,
- streamline the process and procedural requirements,
- recognize that Tribes share the responsibility to engage in effective consultation,
- develop a consultation process based upon education and understanding,
- involve the Tribes' cultural experts to a greater extent and at an earlier point than before the implementation of this MOU,
- devote a percentage of time and energy to identify relevant transportation problems threatening cultural resources important to the Tribes,
- any additional goals identified through consultation;

BE IT RESOLVED, the FHWA, IDOT and the Tribes hereby agree that the implementation of Tribal consultation on highway projects shall be administered in accordance with the following stipulations in order to satisfy FHWA tribal consultation responsibilities under the NHPA.

STIPULATIONS

I. GENERAL

A. This MOU sets forth the process by which FHWA will meet its responsibilities with regard to consultation with the Tribes under Section 106 of the NHPA for highway projects within the State of Illinois of the Federal Aid Highway Program. This MOU establishes a protocol for consultation with the Tribes on individual highway projects.

B. Nothing in this MOU shall be interpreted to alter the requirements of the NHPA or its implementing regulations. In the event any portion of this MOU is deemed contradictory to law or regulation, only that contradictory portion becomes void. The sole contradictory issue does not negate the entire agreement. The parties should consult to resolve that contradictory issue with the intent to reform that portion to make it compliant with the applicable law or regulation, and the remaining portions of the MOU remain in full force and effect.

C. No portion of this MOU shall be interpreted to limit the rights, duties, or responsibilities as may be implemented under Federal statutes, regulations, policies, Executive Memoranda or Executive Orders, and related documents.

D. Consultation should begin early in the planning process and continue throughout a Section 106 undertaking. A letter or email of notification, in and of itself, from FHWA/IDOT to the Tribe is not considered consultation. Consultation is a mutual, meaningful dialogue between FHWA, IDOT, the Illinois SHPO, and the Tribe regarding historic properties that may be affected by an undertaking. Consultations may include face-to-face meetings, as well as communications by mail, electronic mail, facsimile, and telephone. Times and places of meetings, as well as agendas of meetings, will be developed with mutual acceptance. If there are historic properties that are of religious and cultural significance to the Tribe, then consultation may be extended to include future management, protection, and preservation of these properties.

E. The FHWA and IDOT shall consult each Tribe on a government-to-government basis in recognition of its sovereign status early in the planning process, and throughout Section 106 review, regarding any activity or undertaking that might affect historic or cultural properties. The FHWA will monitor and supervise any such consultations, and will be available for direct communication from any party. The FHWA will be a signatory on all project specific, or other formal Section 106 agreement documents.

F. The FHWA and IDOT shall ensure that the Tribe is consulted throughout a specific undertaking and that the Tribe is afforded, in accordance with applicable Federal, State, and local authorities and highway safety measures, the opportunity to conduct religious/traditional ceremonies within right-of-way owned by IDOT, with regard to a specific location or with regard to American Indian human remains and funerary objects as well as any other cultural items from sacred or religious contexts.

G. The FHWA and IDOT recognize that facilitating effective tribal consultation may require providing travel support for tribal officials. Future formal agreements may specify how this support may occur.

H. The FHWA and IDOT shall ensure that consultation with other consulting parties, including local governments, shall not include the dissemination, beyond those who have an official need to know, of confidential information except as mandated by Federal or State laws. Confidential information is defined as information that might risk harm to

1. TCPs,
2. archaeological sites that may contain burials or human remains and/or associated cultural items,

3. significant archaeological habitation sites in accordance with Section 304 of the NHPA and other applicable authorities,

I. As TCPs, burial sites, and/or associated cultural items are non-renewable resources, FHWA and IDOT shall make a reasonable and good faith effort to inform the public and private landowners regarding stewardship, site protection and preservation which may include but not be limited to tax incentives or related benefits, lectures, exhibits, site-specific consultation, brochures, and videos.

J. An interested Tribe may request to enter the process at any time. The interested Tribes will be contacted if human remains or burials are found during archaeological investigations conducted within IDOT rights-of-way and the human remains are determined to be associated with Tribes. If individual or scattered fragments of bone or teeth are found, further field investigations will be done to determine if they are isolated or part of additional human remains or burials.

II. NOTIFICATION FOR CONSULTATION PROCEDURES

A. *Points of Contact:* The FHWA, IDOT, Illinois SHPO, and the Tribes, shall each designate a primary and secondary contact. The primary contact for the Tribes is the contact to whom all initial and formal correspondence goes, including the Illinois Proposed Highway Improvement Program (HIP) listing (see Stipulations II.C and III.A.) and electronic web-based Project Notification System (PNS) notifications (see Stipulation III.B.). If the individual designated as the primary point of contact is not available, communications should be directed to the secondary contact. The primary and secondary contacts within each Tribe are responsible for involving the appropriate Tribal individuals as they deem appropriate. Each party of this MOU shall provide the other parties with the phone numbers, email addresses, and mailing addresses for the primary and secondary contacts (see Appendix B “POINT OF CONTACT LIST”). Each party shall notify the other parties in writing (hardcopy or email) when either point of contact changes. Such changes shall not require the amendment of this agreement.

B. *Tribal Areas of Concern:* The Tribes have provided, or will provide, FHWA/IDOT with a map and listing of all Illinois counties that exist within their ancestral homeland and territory, in which they have an interest (see Appendix A). At the Tribes’ discretion, a Tribe or Tribe(s) may also be identified to review projects in other areas of Illinois. The FHWA/IDOT will maintain this list and will update as necessary when additional Tribal interests are made known.

C. *Illinois Program Documents:* The current Illinois Proposed HIP, which is a multi-year list of all proposed transportation projects with scopes and locations, is maintained on the IDOT website. The IDOT will email Tribal contacts the website address when these documents are updated on an annual basis, with an offer to send hard copies upon request. This information will give the Tribes the opportunity to review and comment on *all* projects in their counties of interest in advance of project development. (see Section III, Consultation Procedures)

D. *Delegation of Certain Responsibilities to IDOT:* The IDOT will send the Illinois Proposed HIP and the initial electronic PNS notification to Tribes for the applicable projects (see Stipulation II. F.), soliciting the Tribes’ input early in the project’s development, and providing them project information as necessary or requested. The IDOT may also carry out consultation

activities in accordance with Stipulation I.D., but FHWA will be involved in or monitor all such consultations, and will at all times be available for direct communication with any party. The FHWA will be a signatory on all project specific or other formal agreement documents.

E. Projects Exempt from Initial PNS Notification: Projects listed in Appendix C “PROJECTS EXEMPT FROM INITIAL NOTIFICATION”, provided they are not part of a larger undertaking, are by their nature and definition either: 1) types of projects that have no potential to affect historic properties, or 2) types that have no or limited potential to result in any effects to historic properties of concern to the Tribes. These projects are exempt from PNS notification. Exemption of projects from PNS *notification* does not exempt those projects from Tribal *consultation* opportunities. Upon agreement from FHWA, IDOT, Illinois SHPO, and all signatory Tribes, Appendix C may be modified without amendment to this MOU.

No Federal-aid projects are exempt from being listed in the Illinois Proposed HIP. Therefore, Tribes will see a listing of *all* Federal-aid projects in their counties of interest (see III.A).

F. Transportation Projects to be Considered for PNS Notification to Tribes: The IDOT will use the PNS to notify Tribes and the Illinois SHPO about minor projects (typically Categorical Exclusion (CE) classes of action under the National Environmental Policy Act (NEPA)) with potential to affect historic properties that may be of interest to the Tribes. The FHWA will normally notify by email Tribes and the Illinois SHPO directly about major projects (typically Environmental Assessment (EA) and Environmental Impact Statement (EIS) projects under NEPA) with the potential to affect historic properties that may be of interest to the Tribes. PNS notifications include:

1. Any minor IDOT project that is considered to be a Federal undertaking that is subject to Section 106 as described in 36 CFR Part 800.3(a) and Part 800.16(y). The IDOT will consult with the Tribes who claim association with that project’s county (see Appendix A). However, those projects that impact previously disturbed or surveyed ground are exempt from initial notification (see Appendix C).
2. Information about minor projects at the initiation of the archaeological resources survey for all projects that fall under Stipulation F.1 that are not EA or EIS projects. At a minimum this information will include a project description, location maps, and the location of known burial sites in the immediate area.
3. The FHWA/IDOT will consult with the Tribes regarding any properties in which the Tribes have an expressed interest as a result of their review of all project documentation provided by IDOT.

III. CONSULTATION PROCEDURES

A. Illinois Program Documents: The current Illinois Proposed HIP, which is a multi-year list of all proposed transportation projects with scopes and locations, is maintained on the IDOT website. The IDOT will email Tribal contacts the website address when these documents are updated on an annual basis, with an offer to send hard copies upon request. This information will give the Tribes the opportunity to review and comment on projects in advance of project development.

If a Tribe expresses interest in any project(s) listed, they may request that detailed project information be sent to them via the PNS, and the procedures under Stipulation III. B. will be followed.

B. Project Notification System (PNS): In addition to the regular notification of all projects in the Illinois Proposed HIP, IDOT will notify the Tribal designated contacts (Appendix B) and the Illinois SHPO through the PNS by email when a proposed minor project has been requested for archaeological survey. These are projects that IDOT has determined may have potential to affect historic properties, in consultation with the interested Tribes. This notification will be done for projects identified in Stipulation II.F, *Transportation Projects to be Considered for PNS Notification to Tribes*.

For projects sent through the PNS, the Tribes, FHWA, the Illinois SHPO, and IDOT, mutually agree on the following consultation procedures for identifying and evaluating the effects of projects on cultural resources. These procedures shall comply with all applicable Federal, and State laws, statutes, and regulations.

1. The IDOT will use Appendix A, to identify and provide the interested Tribes with early notification through the PNS that a project is under study within a county of their area of concern. The PNS notification will provide a project description along with a 7.5 minute quadrangle map showing the proposed project location. The Tribe will notify IDOT in the PNS if there is a TCP within the project area, or if they have an interest in the undertaking. If IDOT does not receive a response from the Tribes within 45 days, they may assume the Tribes have no interest in the undertaking. The IDOT may proceed with archaeological investigations as soon as the notification is sent to the Tribes.
2. Tribes that responded within the 45-day period with an interest will be considered a consulting party for the project. The IDOT will notify FHWA of the Tribe's interest, who will, if appropriate, contact the Tribe. The interested Tribe may request additional project information, which IDOT will provide. The means of consultation will be negotiated on a project case-by-case basis as appropriate for the Tribe's interest and request.
3. If there is any disagreement among the agencies and the Tribes regarding eligibility of a TCP, all parties will have further discussions to attempt to reach agreement and will follow eligibility guidelines in National Park Service Bulletin 38. If Tribes disagree on preferred treatment of a TCP, the Tribes will negotiate among themselves and present one recommendation for IDOT/FHWA on which to base their actions.
4. The IDOT, in consultation with the Illinois SHPO and interested Tribes, shall conduct appropriate archaeological investigations and prepare the reports, which will be posted on the IDOT/ISAS PNS and a notification sent to the consulting party Tribes and the Illinois SHPO. Reports may also be sent by hardcopy to consulting party Tribes that have demonstrated technical difficulties accessing the reports via PNS.
5. Upon completion, IDOT will send the archaeological survey report to the Illinois SHPO via PNS for a 30-day review period, and also to consulting party Tribes via PNS for a 30-

day comment period that runs concurrent with the Illinois SHPO's 30-day review period. Any response received from consulting party Tribes during this period will be provided to the SHPO for consideration in the identification of historic properties. If IDOT does not receive a response within the 30-day period from a consulting party Tribe, IDOT may assume the Tribe has no comment regarding the outcome of the archaeological investigation and will request concurrence from the Illinois SHPO.

6. Based on the initial field surveys for those properties which FHWA, IDOT, and Illinois SHPO, in consultation with Tribes, agree are not eligible for inclusion in the NRHP, no further archaeological investigations will be required in those areas. The IDOT will send the eligibility determination documentation to the consulting party Tribes via PNS.
7. For those properties identified as eligible for the NRHP, consultation will continue with the Illinois SHPO and consulting party Tribes. If adverse impacts cannot be avoided, then IDOT, FHWA, the Tribes, and Illinois SHPO will consult to develop a Memorandum of Agreement.

C. *Unanticipated Discoveries During Construction:*

1. *Objectives:* The following procedures will be used in the event that previously unreported and unanticipated historic properties or human remains are found during IDOT construction activities. The procedures differ depending on whether unanticipated cultural materials (see Section C.2.) or human remains (see Section C.3.) are encountered. The plan is intended to ensure that the project is in compliance with all applicable Federal and State laws and regulations, including Section 106 of the NHPA of 1966 (36 CFR 800), the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420), the Illinois Archaeological and Paleontological Resources Protection Act (20 ILCS 3435), and the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440).
2. *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 150 foot radius of the discovery, notify IDOT of the discovery, and implement interim measures to protect the discovery from looting and vandalism. Within 48 hours of receipt of this notification of the discovery, 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 Illinois SHPO, and the Tribes who have identified the location as within their ancestral homelands, of the discovery.

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

(c) If the find is determined to be potentially significant, IDOT will consult with the Illinois SHPO, the Tribes, and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the NRHP, IDOT/FHWA will notify the Illinois SHPO, interested Tribes, and other consulting parties, of those actions for which it proposes to resolve adverse effects. Interested Tribes and other consulting parties will have seven business days to provide their views on the proposed actions. The IDOT/FHWA will ensure that the recommendations of interested Tribes and other consulting parties are taken into account prior to granting approval of the measures that will be implemented to resolve adverse effects. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. visits to the site by the Illinois SHPO, the Tribes, and other interested parties;
- iii. exploration of potential alternatives to avoid the site;
- iv. preparation of a mitigation plan by IDOT in consultation with the Tribes for approval by the Illinois 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, IDOT will consult with the Illinois SHPO, the Tribes, 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.

3. *Procedures for an Unanticipated Discovery of Human Remains and Burials:* In the case of an unanticipated discovery of human remains or burials on Federal land, IDOT will follow the procedures outlined by the Native American Graves Protection and Repatriation Act, as amended (43 CFR 10, Subpart B), and pursuant to the Archaeological Resources Protection Act of 1979 (43 CFR 7). In the event of an unanticipated discovery of human remains or burials on non-Federal lands during IDOT construction activities, the IDOT will comply with the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440) as administered by the Illinois Historic Preservation Agency (IHPA) and will follow these procedures:

(a) Upon encountering human remains or an unmarked human burial during ground disturbing construction activities, IDOT will ensure that the construction contractor immediately stops work within a 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) The IDOT will notify the County Coroner, IHPA, the Tribes, and other interested parties within 48 hours of the discovery. The IDOT/FHWA will contact by phone the point of contact for each interested Tribe of the discovery.

(c) Within 72 hours after notification the County Coroner will determine jurisdiction. If the remains are older than 100 years, the County Coroner will transfer jurisdiction to IHPA.

(d) In coordination with IHPA, 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.

(e) The IDOT/FHWA is responsible for notifying the Tribes within 24 hours of IHPA's findings.

(f) If it is determined by IHPA that intact or fragmented human remains are present and they are Native American, IDOT will consult with the IHPA, Illinois SHPO, FHWA, the 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 the Tribes will be required;
- iii. visits to the site by the Illinois SHPO, the Tribes, and other interested parties; exploration of potential alternatives to avoid the human remains or burial;
- iv. for Native American remains, implementation of a mitigation plan by IDOT in consultation with IHPA and the Tribes, including procedures for disinterment and re-interment;
- v. implementation of the mitigation plan; and
- vi. IHPA and FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

IV. OTHER POINTS OF MUTUAL AGREEMENT

A. Execution and Implementation: This agreement is effective as of the date of the last signature among FHWA, IDOT, and at least one Tribe with an interest in Illinois lands. Other Tribes may become signatory to this agreement after that date, without the need to amend this MOU. The successful implementation of this process shall constitute meaningful consultation between FHWA and the Signatory Tribes to fulfill tribal consultation requirements of Section 106 of the NHPA.

B. *Annual Report*: The IDOT will submit a report to FHWA, Illinois SHPO, and Tribes identifying projects processed under this MOU. The report should include a description of actions taken to comply with this agreement. Discussion needs to take place between the Tribes, Illinois SHPO, IDOT, and FHWA regarding effectiveness of the MOU and any changes. If necessary, the contact list in Appendix B will be updated annually when the report is submitted.

C. *Confidentiality*: The FHWA and IDOT acknowledge the need for confidentiality of certain Tribal spiritual and cultural information that may be provided by the Tribes during the course of consultations, and other aspects of Tribal consultation conducted on cultural resource issues. Information identified as sensitive by consulted Tribal members, and requested to remain confidential, will remain confidential to the extent permitted by State and Federal law [Section 304 of NHPA].

D. *Dispute Resolution*: Should any signatory object at a later date to the implementation of this agreement in whole or in part, the objecting party will consult with all signatories to resolve the objection. If all signatories are unable to satisfactorily resolve the issue, and the issue involves resolution of the Adverse Effect of an IDOT project on a site eligible for inclusion on the NRHP, the administrative process defined in 36 CFR Part 800.6 will be followed.

E. *Failure to Comply/Termination*: If any signatory determines that the terms of this MOU cannot be or are not being carried out, then the signatories shall consult regarding the reasons, and will seek amendment to the MOU, if appropriate. If the MOU is not amended, any signatory may terminate their participation in the MOU by providing 30 calendar days written notice to the other parties. In the event of termination by a Tribe, the FHWA and IDOT shall comply with 36 CFR 800 and continue with individual Tribal consultation with that Tribe. As long as the FHWA, IDOT, Illinois SHPO, and at least one Tribe continues to participate, the MOU will remain in effect, but the Tribes who have terminated their participation will no longer be held to the terms of this agreement.

F. *Amendment*: Any signatory to this MOU may request that it be amended, whereupon all signatories shall consult to consider such an amendment. Any resulting amendments shall be developed and executed among the signatories in the same manner as the original MOU. Any amendment to this agreement will go into effect only upon written agreement of all signatories.

G. *Evaluation of MOU Implementation*: At least once a year, the signatories will discuss issues defined in this MOU. Once every two years, to the extent feasible, FHWA will host a meeting and will reimburse travel/per diem expenses for one representative from each signatory Tribe to attend the meeting. The purpose of the meetings is to continue effective working relationships and evaluate the implementation of this agreement.

H. *Participation in Similar Activities*: This MOU in no way restricts the FHWA, IDOT, or the signatory Tribes from participating in similar activities with other public or private agencies, organizations, and individuals.

I. *Commencement/Termination Date*: This MOU is executed as of the date of last signature between FHWA, IDOT, Illinois SHPO, the ACHP, and at least one Tribe affiliated with land within the State of Illinois. Other Tribes may become signatory to this agreement after that date. This MOU is effective through December 31, 2030, at which time it will expire unless

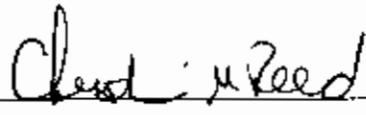
specifically extended by signatory resolution. One year prior to expiration, the signatories will discuss whether this agreement should be renewed, modified, or allowed to expire.

SIGNATORIES

By: 

Date: 8/31/2011

Norman R. Stoner, P.E.,
Division Administrator
Federal Highway Administration

By: 

Date: 8/31/11

Christine M. Reed,
Director of Highways
Chief Engineer
Illinois Department of Transportation

CONCURRING PARTIES

By: 

Date: 8/31/11

Anne E. Haaker,
Deputy State Historic Preservation Officer
Illinois Historic Preservation Agency