

**FIRST AMENDED
MEMORANDUM OF AGREEMENT (MOA)
PURSUANT TO 36 CFR § 800.6**

AMONG

**THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE INDIANA STATE HISTORIC PRESERVATION OFFICER, AND
THE KENTUCKY STATE HISTORIC PRESERVATION OFFICER**

REGARDING THE

**US421 BRIDGE PROJECT OVER THE OHIO RIVER BETWEEN
MILTON KENTUCKY AND MADISON INDIANA
TRIMBLE COUNTY, KENTUCKY AND JEFFERSON COUNTY, INDIANA**

(Project No. Item-5-135.00)

WHEREAS, the Federal Highway Administration (FHWA), in cooperation with the Indiana Department of Transportation (INDOT) and the Kentucky Transportation Cabinet (KYTC) is proposing to construct the US421 Bridge Project over the Ohio River between Milton, Kentucky and Madison, Indiana; and

WHEREAS, FHWA, INDOT, KYTC, Kentucky and Indiana State Historic Preservation Officers (SHPOs), and the Advisory Council on Historic Preservation (ACHP) executed a Memorandum of Agreement (MOA) for this undertaking on February 17, 2010 and in accordance with Stipulation VII of that MOA, the signatories have agreed to amend the original agreement; and

WHEREAS, the Project Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) provides background information for this Amendment to the MOA dated February 17, 2010; and

WHEREAS, FHWA, KYTC and INDOT are pursuing the construction of a two-lane truss superstructure on the existing piers, which will require only minimal approach improvements all occurring within existing right of way; and

WHEREAS, in accordance with the Original MOA dated February 17, 2010, KYTC and INDOT used INDOT's innovative Design Build Contracting techniques and innovative bidding procedures to minimize the closure of the US421 Bridge and to reduce interruption of its service to the businesses and residents of the historic districts; and

WHEREAS, INDOT, with the concurrence of KYTC and with the approval of FHWA, has awarded the design and construction of the project to Walsh Construction, Inc. who has proposed a closure period of approximately 10 days; and

WHEREAS, this 10 day closure period represents a significant change from the maximum 365 day closure expected in the Original MOA dated February 17, 2010; and

WHEREAS, Stipulation I.C.ii in the Original MOA dated February 17, 2010, to provide a ferry service will be eliminated based upon the innovative design-build strategy which includes a bridge closure of approximately ten calendar days which minimizes the impact to community connectivity; and

WHEREAS, the Project provides for a truss superstructure design having a profile as shown in Attachment A (Example Rendering of the Truss Superstructure) that is similar to the existing US421 Bridge; and

WHEREAS, it is understood that this Amended MOA is based upon a conceptual truss design developed for the EA and the proposed conceptual design-build strategy, which will be refined during the process of developing detailed design; and

WHEREAS, the FHWA, in consultation with the Kentucky and Indiana SHPOs, has delineated an Alternative Specific Area of Potential Effect (APE) as depicted in Attachment B; and

WHEREAS, the FHWA, in consultation with the Kentucky and Indiana SHPOs and the Advisory Council on Historic Preservation (ACHP), has determined that the removal of the existing truss superstructure, which is eligible for the National Register of Historic Places (NRHP), will have an adverse effect on this Historic Property; and

WHEREAS, the FHWA, has determined in consultation with the Kentucky and Indiana SHPOs and the ACHP, that the general disruption of the US421 Bridge construction activities and estimated 10-day bridge closure will have an effect on the communities of Madison and Milton which include the Madison National Historic Landmark District, Madison National Register Historic District, Milton Third Street Historic District and Hunter's Bottom National Register Historic District as described in the project's 800.11e Report and the EA; however the potential for any short-term economic hardship is expected to be offset by overall positive community economic impact and the short-term duration of the closure; and

WHEREAS, Phase I Archaeological Investigations have been completed for the areas within the existing bridge rights-of-way in Indiana and Kentucky. Phase I fieldwork in Kentucky resulted in the identification of one archaeological site, 15Tm112, and Phase II work has been undertaken for this site and consultation is underway between FHWA, KYTC and the Kentucky SHPO; and

WHEREAS, in accordance with the MOA dated February 17, 2010, INDOT offered the existing truss for relocation by posting a notice on INDOT's Bridge Marketing Website and received no inquiries; and

WHEREAS, in accordance with the Original MOA dated February 17, 2010, FHWA, KYTC and INDOT paid for the conservation of the original 35mm nitrate film of the 1929 bridge opening ceremony, owned by Historic Madison Inc., and the creation of a high quality master negative film; and, the master negative was processed by a lab with adequate experience conserving and duplicating nitrate film and the capacity to meet current archival standards for such negatives and duplicates; and, the master negative and one copy have been archived by Historic Madison, Inc; and, twenty-four (24) DVD copies have been made and distributed to Historic Madison, Inc., the State Libraries in Indiana and Kentucky, local public libraries in Madison and Bedford, the IN and KY SHPOs, the City of Madison, City of Milton, Jefferson County Historical Society, Trimble County Historical Society, Indiana Historical Society, Kentucky Historical Society, Indiana State Archives, Kentucky State Archives, Historic Landmarks Foundation of Indiana, the Madison Convention and Visitor's Bureau, KYTC, INDOT, FHWA, Kentucky Transportation Center, the National Park Service, and two copies for the project record; and

WHEREAS, Stipulation I.E.vi in the Original MOA dated February 17, 2010 regarding the amendment of the Madison National Register nomination has been eliminated based on consultation and mutual agreement between INDOT, the Indiana SHPO, the consulting parties, and the signatories to the MOA dated February 17, 2010; and

WHEREAS, Stipulation I.F.v in the Original MOA dated February 17, 2010 regarding the improvements to the former Madison Boat Launch shall be eliminated from the Amended MOA; and, special provisions to provide cross-river transportation for emergency responders during the closure and improvements to the former Madison Boat Launch will be included as a commitment in the Finding of No Significant Impact (FONSI) Reevaluation; and

WHEREAS, Stipulation I.F.vi in the Original MOA dated February 17, 2010 regarding the improvements to the Milton Boat Launch shall be eliminated from the Amended MOA and included as a commitment in the FONSI Reevaluation; and

WHEREAS, terms used in this MOA are defined in accordance with 36 CFR §800.16, unless otherwise indicated; and

WHEREAS, the INDOT and KYTC have participated in consultation and have been invited to be signatories to this Amended MOA; and

WHEREAS, the National Park Service (NPS) has participated in consultation and has declined to be a signatory to this Amended MOA as the National Historic Landmark District has been avoided; and

WHEREAS, the City of Madison has participated in consultation and has been invited to be a signatory to this Amended MOA; and

WHEREAS, the City of Milton has participated in consultation and has been invited to be a signatory to this Amended MOA; and

WHEREAS, the Eastern Band of Cherokee Indians, Cherokee Nation of Oklahoma United Keetoowah Band of Cherokee Indians in Oklahoma, Absentee Shawnee Tribe of Indians of Oklahoma, Eastern Shawnee Tribe of Oklahoma, The Shawnee Tribe, the Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, Delaware Nation, the Chickasaw Nation, the Wyandotte Nation, and the Citizen Potawatomi Nation were invited to participate in the consultation and the United Keetoowah Band of Cherokee Indians in Oklahoma, the Miami Tribe of Oklahoma and the Peoria Tribe of Indians of Oklahoma have participated in the consultation;

WHEREAS, the remaining Consulting Parties are identified in Attachment C; and

WHEREAS, the innovative design-build construction technique proposed for the project has resulted in recommendations to reevaluate the commitments in the Original MOA; and

WHEREAS, this first Amended MOA supersedes the Original MOA dated February 17, 2010 and incorporates the entirety of the agreement among the parties;

NOW, THEREFORE the FHWA, the ACHP, the Indiana SHPO, and the Kentucky SHPO agree that the Project will be implemented in accordance with the following Stipulations in order to take into account and avoid, minimize, and mitigate the effects of the Project on historic properties.

STIPULATIONS

The FHWA will ensure that the following measures are implemented:

I: PROJECT DEVELOPMENT

All measures stipulated within this Amended MOA shall be implemented as part of the Project. The FHWA, KYTC and INDOT agree to program and fund monies necessary for implementation of the measures stipulated within this Amended MOA as a Project cost component.

A. Project Goals – The design goal of the Project is to meet the Project purpose and need while avoiding, minimizing, or mitigating adverse impacts to the environment, including adverse effects to historic properties, to the extent reasonable, feasible, and prudent. Avoidance of adverse effects is the preferred treatment.

B. Public Involvement – The public and the Consulting Parties will be kept advised of the project through the project website and periodic newsletters from KYTC and INDOT. Informational public meetings will be held regarding the bridge closure and other construction activities, as necessary.

C. Economic-based Impacts

- i. INDOT and KYTC shall collectively provide funding up to \$205,000 for a heritage tourism and promotional marketing effort for Madison. This funding shall supplement the planned \$70,000 effort by the Madison Area Convention & Visitors Bureau. This marketing campaign shall be coordinated with the “Branding & Product Development Action Plan” for Madison, Indiana dated May 2009. This marketing campaign shall include a regionally based promotion designed for local businesses to continue attracting customers during and after the bridge closure and construction period, highlighting the innovative construction techniques and shortened bridge closure period. This may also include an Internet Promotional Campaign. Oversight for the tourism and promotional marketing efforts will be provided by a committee that will include representatives from: City of Madison, Madison Area Convention & Visitors Bureau, Madison Main Street Program, Economic Development Partners, Historic Madison, Inc., Madison Area Chamber of Commerce, Jefferson County Board of Tourism, Cornerstone Society, Inc. and City of Milton. The representative from the City of Madison shall chair this committee. This tourism and promotional marketing effort will be implemented through an INDOT Local Public Agency (LPA) agreement with the City of Madison. The funding for this stipulation is presently available to the City of Madison through a local public agency agreement with INDOT.
- ii. INDOT and KYTC shall collectively provide funding up to \$40,000 for tourism and promotional marketing assistance for Milton. This will be implemented through a KYTC Local Public Agency (LPA) agreement with the City of Milton. The funding for this stipulation is presently available to the City of Milton through a local public agency agreement with KYTC.

- iii. The City of Madison will employ a Historic Preservation Officer for the purpose of seeking new opportunities to apply for grants and other assistance for use in improvements for the Madison Historic District and the Madison National Landmark District. The Historic Preservation Officer shall meet the qualifications specified in *The Secretary of the Interior's Historic Preservation Professional Qualification Standards, Federal Register, June 20, 1997*. For a period of two years, INDOT and KYTC shall collectively reimburse the City of Madison for the activities and duties performed by the Historic Preservation Officer that are associated with grants and other assistance for improvements to the Madison Historic District and the Madison National Landmark District. This reimbursement shall not exceed \$40,000 annually, to be shared equally between KYTC and INDOT. This will be implemented through an INDOT Local Public Agency (LPA) agreement with the City of Madison. The funding for this stipulation is presently available to the City of Madison through a local public agency agreement with INDOT.
- iv. For a period of two years, INDOT and KYTC shall collectively reimburse the Madison Main Street Program for the activities and duties performed by the Madison Main Street Program that are associated with grants and other assistance for improvements to assist businesses in lower Madison, the Madison National Landmark District, the Madison Historic District, Hunter's Bottom Historic District and Lower Milton to prepare for and adjust their business practices to best position them for the market disruption caused by the bridge construction and estimated 10-day bridge closure. Business assistance including a business planning seminar, business consultations and retail promotions to maintain market share shall be planned and executed by the Madison Main Street Program. This reimbursement shall not exceed \$40,000 annually. This will be implemented through an INDOT Local Public Agency (LPA) agreement with the City of Madison. The funding for this stipulation is presently available to the City of Madison through a local public agency agreement with INDOT.

D. Impacts on Historic Resources

- i. KYTC and INDOT shall utilize a consultation process parallel to that of Section 106 consultation should any future improvement to enhance mobility and access to the US421 Bridge be advanced, regardless of the funding source. FHWA, in consultation with ACHP, shall approve the consultation process as being parallel to that of Section 106 consultation. The National Park Service, the Indiana SHPO, the Kentucky SHPO, the Advisory Council and the Consulting Parties shall be included in this consultation process by KYTC or INDOT as appropriate.

- ii. KYTC and INDOT shall remove builder plates and other plaques, if in existence, from the existing bridge. These plates shall be offered to the City of Madison or an appropriate non-profit organization for permanent display accessible to the public.
- iii. KYTC and INDOT shall provide the Historic American Engineering Record (HAER) documentation of the US421 Bridge to the National Park Service (NPS) for submittal to the Library of Congress. KYTC and INDOT shall complete documentation of the bridge, including large format photos, measured drawings or full-size Mylar copies of accurate “as-built” plans and a detailed textual history and description of the bridge (Level 1 HAER Documentation if accurate “as built” plans do not exist; Level 2 if accurate “as-built” plans exist). KYTC and INDOT shall utilize a qualified Professional Engineer to verify the accuracy of the “as built” plans prior to acceptance by NPS for submission as part of the HAER documentation. The NPS shall review the work of the HAER documentation submitted by KYTC and INDOT to ensure the work meets the required standard and format. The NPS shall prepare the documentation for submission through the HABS/HAER/HALS Program to the Library of Congress in Washington D.C.
- iv. KYTC shall prepare a study for the possible expansion of the boundaries of the Third Street Historic District to include the other historic structures in the area. If determined appropriate after consultation with the Kentucky SHPO, a nomination to the NRHP shall be prepared by KYTC. This shall be initiated within two years of construction letting on the project.

E. Construction-based Impacts

- i. KYTC and INDOT shall monitor three historic structures for construction vibration damage. This shall include the two adjacent structures in Milton (immediately east of the US421 Bridge at 57 High Street and west of the US421 Bridge at 75 High Street) and one adjacent structure in Madison (902 Fillmore Street). The Contractor will be required to follow each state’s Standard Construction Specifications to avoid impacts and address any issues that may arise. Plans shall include provisions for pre-and post-construction surveys, installation of vibration monitoring devices and visual inspection during construction. As appropriate, KYTC and INDOT will observe the vibration monitors and make the determination as to whether vibration from construction activities could cause vibration damage to the structures. If damage occurs as a result of Project activities, INDOT and KYTC or their contractors shall be responsible for repair of any resulting vibration damage to historic properties. Any repairs shall be

coordinated in advance with the respective SHPO to ensure they are carried out in accordance with the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Secretary's Standards)*. Where access to privately owned property is necessary for monitoring or damage repair, consent shall be obtained prior to entry. If access is denied, a good faith effort shall be made by INDOT and KYTC to identify an alternate historic property nearby for monitoring that is likely to experience similar impacts.

- ii. Construction activities shall occur in accordance with local noise regulations, policies, and guidance to minimize adverse noise effects.
- iii. KYTC and INDOT shall require the contractor to obtain proper permitting to allow oversize or heavy loads, to access the Project site. INDOT's standard specifications state that the contractor must confirm allowable routing with the local government if they are going to use any local roads.
- iv. KYTC and INDOT shall include in the bidding documents requirements that the Contractor utilize a Traffic and Parking Management Plan for maintenance of traffic during construction that is sensitive to the historic districts and makes practical and reasonable efforts to minimize impacts to the historic districts.
- v. Provisions shall be included in the contract documents that limit construction activities and construction noise during special events. KYTC and INDOT, with input from the Cities of Madison and Milton, shall identify the special events for which these provisions will apply.

F. Impacts on Archaeological Resources

- i. FHWA may withhold or limit public disclosure of information about historic properties in accordance with Section 304 of the National Historic Preservation Act and 36 CRF § 800.6(a)(5) and 36 CFR § 800.11 (c).
- ii. Before selecting sites for ancillary activities associated with the Project, FHWA, INDOT and KYTC shall complete the identification and evaluation of archaeological resources for inclusion in the NRHP in accordance with applicable Federal and state standards and guidelines.
- iii. Qualifications, Fieldwork, and Reporting Standards
 - a. FHWA shall ensure that all archaeological work required by this MOA will be carried out by Preservation Professionals meeting, at a minimum, *The Secretary of the Interior's Historic Preservation*

Professional Qualification Standards, Federal Register, June 20, 1997 (hereinafter, Secretary's Standards) and the most current version of the relevant state's standards. The fieldwork and reporting must also meet the Secretary's Standards and the state's guidelines and standards.

- b. Indiana's personnel, fieldwork, and reporting standards can be found at Indiana Code 14-21-1, 312 IAC 21, 312IAC 22 and the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology most current "Guidebook for Indiana Sites and Structures Inventory—Archaeological Sites".
- c. Kentucky's standards are outlined in the KY SHPO's "Specifications for Conducting Fieldwork and Preparing Resource Assessment Reports" (Sanders 2001, updated August 2006).
- iv. FHWA will coordinate with INSHPO and KYSHPO to ensure that Phase I Archaeology Report recommendations are fulfilled. As a result of the design-build proposal to minimize the bridge closure to approximately 10 calendar days instead of the originally anticipated 365-day closure, site 15Tm112 in Milton will be impacted. As a result, Phase II archaeological investigations shall be completed for the areas of the site disturbed by construction activities. KYTC has consulted with the Kentucky SHPO regarding this stipulation. Appropriate findings shall be made by FHWA with recommendations on the site's eligibility and effect determination.
- v. All necessary Phase II Investigations shall be conducted by KYTC and INDOT at archaeological sites that are determined to be potentially eligible for listing in the National Register of Historic Places (NRHP), and which would be affected by the Project. A plan for the Phase II investigations will be submitted to the IN SHPO or KY SHPO, as appropriate, for review and comment prior to fieldwork activities. Testing shall occur prior to the initiation of any ground disturbing activities to determine if the archeological sites are eligible for listing in the NRHP. Reports shall be submitted to FHWA and appropriate SHPO(s) by KYTC and INDOT for review and comment.
- vi. If following consultation with relevant federally recognized Indian Tribes, the appropriate SHPO, and other Parties, FHWA and the SHPO determine that the adverse effect to a site considered eligible for the NRHP cannot be avoided or minimized and FHWA deems Phase III Archaeological Data Recovery appropriate, all necessary Phase III Investigations shall be conducted by KYTC and INDOT. A research design and data recovery plan to mitigate the adverse effects to an archaeological resource shall be developed by KYTC and INDOT. The research design and data recovery

plan shall be submitted to FHWA, KYTC, or INDOT, as appropriate, and the relevant SHPO for review and concurrence. The implementation of the research design and data recovery plan(s) must be completed prior to the initiation of Project construction within segments that could affect that site.

- vii. Native American Consultation (NAC)
 - a. Federally recognized Indian tribes that attach religious or cultural significance to historic properties that may be affected by the Project activities will be afforded opportunities to comment on the results of the Phase II investigation and any recommendations for additional work.
 - b. If sites are tested for the Project and determined by FHWA and SHPOs to be eligible for inclusion in the NRHP, and there are federally recognized Indian tribes which ascribe religious or cultural significance to them, further consultation with those tribes will be undertaken to determine the best way to avoid, minimize, or mitigate impacts to those sites.
 - c. If Phase III data recovery is deemed appropriate for site(s) affected by the Project and any of the participating federally recognized Indian tribes ascribe religious or cultural significance to such site(s), they shall be consulted for input during development of the data recovery scope of work. Should there be conflicting requests among tribes about treatment of sites, FHWA shall take such requests into account and make the final decision after careful consideration of all opinions.

II: UNANTICIPATED DISCOVERIES

- A. Implementation** - If, during the implementation of the Project, a previously unidentified historic property is discovered or a previously identified historic property or archaeological resource is affected in an unanticipated manner, KYTC or INDOT, as appropriate, shall ensure that all work within a minimum of 100 feet around the area of the discovery shall cease until such time as a treatment plan can be developed and implemented as set forth below. The INSHPO or the KYSHPO shall be notified within two (2) business days. Any necessary archaeological investigations will be conducted according to the “Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation” (48 F.R. 44716), and, if applicable, the provisions of IC 14-21-1, 312 IAC 21, 312 IAC 22, the most current “Guidebook for Indiana Historic Sites and Structures — Archaeological Sites”, the most current iteration of the Kentucky SHPO’s

“Specifications for Conducting Fieldwork and Preparing Cultural Resource Assessment Reports,” and applicable Kentucky laws and regulations.

- B. Measures to Avoid Harm** - KYTC or INDOT, as appropriate, shall require the contractor to take all reasonable measures to avoid harm to the previously unidentified property until the FHWA concludes consultation with the appropriate SHPO, ACHP, NPS, federally recognized Indian Tribes and other parties deemed appropriate by FHWA.
- C. Notification** - Upon being notified of the discovery of a previously unidentified property, the FHWA shall contact the appropriate SHPO, federally recognized Indian Tribes and other parties determined to have an interest within two business days and provide written details of the discovery.
- D. On Site Evaluation** - Upon notification of the discovery the INDOT or KYTC shall conduct an on-site evaluation of the discovery to consider eligibility, effects, and possible treatment measures. The FHWA, SHPOs, federally recognized Indian Tribes, and other consulting parties deemed appropriate by FHWA may participate in the on-site evaluation and shall be notified in advance of the location, date and time.
- E. Treatment Plans** - If, based on the on-site evaluation, FHWA determines that a historic property or archaeological resource will be adversely affected, then the consulting parties shall consult to determine an appropriate Treatment Plan(s). The Treatment Plan(s) will be submitted to the consulting parties for review and comment within ten (10) business days of receipt of the proposed plan. FHWA will take comments received into account in developing and implementing the final plan.
- F. Agreement to Proceed** - If FHWA and SHPO(s) agree the site is not eligible for the NRHP, then ground-disturbing work may proceed.
- G. No Agreement to Proceed** - If the consulting parties cannot reach agreement regarding eligibility, effects, or treatment, they may invoke the provisions for dispute resolution at Stipulation IX.
- H. Discovery of Human Remains** - Should human remains be discovered during any stage of this Project, work shall immediately stop in the area and appropriate laws will be followed:
 - i. In Kentucky, the county coroner shall be contacted immediately. If the county coroner determines the remains are of sufficient age

to be considered archaeological in nature, the Office of State Archaeology or the Kentucky Heritage Council must be contacted.

- ii. In Indiana, the County Coroner shall be contacted immediately. The Indiana Department of Natural Resources shall be notified within two (2) business days.
- iii. If the remains are determined to be Native American, FHWA will notify the appropriate federally recognized Indian Tribes.
- iv. Within Indiana, if the remains are determined to be Native American, IDNR will provide notice to the Native American Indian Affairs Commission. Work at the site shall not resume until a plan for the treatment of the human remains is developed and approved in consultation with the Indiana SHPO, INDOT, and any appropriate consulting parties.

III: ADDITIONAL HISTORIC PROPERTIES AND ADDITIONAL ARCHAEOLOGICAL RESOURCES

- A. Construction Activities** - Before the approval of as yet unidentified sites for staging, wetland mitigation, borrow or waste, dredge disposal, or other construction activities associated with the Project, the selected contractor shall determine if additional historic properties or archaeological resources may be affected by the Project. If historic properties or archaeological resources may be affected, the selected contractor shall consult with the FHWA, INDOT, KYTC, SHPOs, federally recognized Indian Tribes, and other parties deemed appropriate by FHWA, in accordance with 36 CFR § 800.3-800.7.
- B. Adverse Effect** - If FHWA determines that there will be any adverse effect to a historic property assessed in accordance with Stipulation III.A, then FHWA shall consult with the INDOT and/or KYTC, the respective SHPO, federally recognized Indian Tribes, and other parties deemed appropriate by FHWA to seek ways to avoid, minimize or mitigate the adverse effects.
- C. Mitigation** - If the parties can agree on measures to mitigate the adverse effect, FHWA will ensure that those measures are implemented. If the parties cannot agree, the dispute will be resolved in accordance with Stipulation IX.

IV: PERFORMANCE STANDARDS

- A. Professional Qualifications** – The FHWA shall ensure that all cultural resources work undertaken pursuant to this MOA shall be carried out by or under the direct supervision of individuals that meet the *Secretary of the*

Interior's Professional Qualification Standards Federal Register, June 20, 1997.

- B. Standards and Guidelines** – The FHWA shall also ensure that all historic preservation resource work carried out pursuant to this MOA shall be guided by the most recent version of the following standards and guidelines, as applicable:
- i. The Secretary of Interior: “Standards and Guidelines for Archaeology and Historic Preservation, as amended.”
 - ii. Advisory Council on Historic Preservation: “Treatment of Archaeological Properties: A Handbook.”
 - iii. Indiana Guidelines: Most current “Guidebook for Indiana Historic Sites and Structures—Archaeological Sites.”
 - iv. Indiana State Codes: IC 14-21-1 and 312 IAC 21; 312 IAC 22
 - v. Kentucky State Historic Preservation Office most recent version of Guidelines: “Specifications for Conducting Fieldwork and Preparing Cultural Resource Assessment Reports”.

V: PROGRESS REPORTS

- A. Timing** - Progress reports detailing implementation of the measures stipulated within this MOA and providing advanced notice of milestones, such as scheduled letting dates and initiation of construction activities, shall be submitted by the Milton Madison Management Team to the signatory parties, every six (6) months, until all phases of the Project are complete.
- B. First Progress Report** - The first progress report shall be distributed six (6) months following execution of this MOA.
- C. Content** - The progress report shall identify the status of activities for each stipulation outlined in this MOA and of associated documents and products, such as treatment plans, late discoveries, and acquisition and preservation of historic properties.

VI: PROJECT MODIFICATION

If the Project is significantly modified, such that additional adverse effects to historic properties or archaeological resources not previously considered may result, then FHWA will consult with the signatories to determine if the MOA

should be amended. If the signatories agree that the MOA should be amended, they will consult in accordance with Stipulation VII to amend the MOA.

VII: AMENDMENT

- A. Request to Amend** - Any signatory to this MOA may request that it be amended, whereupon the signatories of this MOA shall consult to consider such an amendment.
- B. Development of Amendments** - Any resulting amendments shall be developed and executed among the signatories in the same manner as the original MOA. Amendments shall be reviewed and any comments returned as soon as possible, no longer than 7 calendar days of written notice unless a shorter time frame is agreed to by the signatories. The signatories may provide email or facsimile approval of an amendment to the MOA.
- C. Effective Date of Amendments** - Any amendment to this agreement will go into effect only upon written agreement of all signatories.

VIII: FAILURE TO COMPLY/TERMINATION

If any signatory determines that the terms of this MOA cannot be or are not being carried out, then the signatories shall consult to seek amendment of the MOA. If the MOA is not amended, any signatory may terminate it by providing thirty (30) calendar days written notice to the other parties. FHWA shall then either execute a new agreement with the signatories pursuant to 36 CFR § 800.6(c)(1) or request and respond to the comments of the Council under 36 CFR § 800.7.

IX: DISPUTE RESOLUTION

- A. Objection by Signatory** - Should any signatory party object in writing within thirty (30) days of the receipt of any plans or implementation of any actions proposed pursuant to this MOA, FHWA shall consult with the objecting party and the appropriate SHPO to try to resolve the objection. If the FHWA and the SHPO determine that the objection cannot be resolved, FHWA shall forward all documentation relevant to the objection to the ACHP. Within fifteen (15) days after receipt of all pertinent documentation, the ACHP shall either:
 - i. Provide the FHWA with a recommendation, which the FHWA shall take into account in reaching a final decision regarding the dispute; or

- ii. Notify the FHWA that it shall comment pursuant to 36 CFR § 800.7(c) and proceed to comment within the following 30 days.

B. Recommendations provided by ACHP - Any recommendations provided by the ACHP in response to a request made pursuant to Stipulation IX.A.i shall be taken into account by FHWA with reference only to the subject of the dispute.

C. ACHP Comments - Any comment provided by the ACHP in response to a request made pursuant to Stipulation IX.A.ii shall be taken into account and responded to by the FHWA in accordance with 36 CFR § 800.7(c)(4) with reference only to the subject of the dispute.

D. Responsibilities of FHWA - FHWA's responsibility to carry out all actions under this MOA that are not subject to the dispute shall remain unchanged.

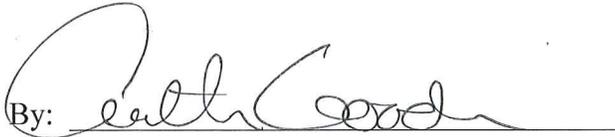
X: DURATION

This MOA shall remain in effect for six years following its execution. If the Project has not been completed and the terms of the MOA implemented within this time, the signatories shall consult to reconsider the terms of the MOA and determine whether extension, amendment, or termination is in order.

EXECUTION and implementation of this amended MOA is evidence that FHWA has taken into account the effects of the Project on historic properties and has afforded the ACHP an opportunity to comment on those effects. This amended MOA encompasses the entire agreement among the parties and replaces any agreements previously negotiated regarding this undertaking.

SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

By:  Date: 12/20/10

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 12/23/10

INDIANA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 12-21-10

KENTUCKY STATE HISTORIC PRESERVATION OFFICER

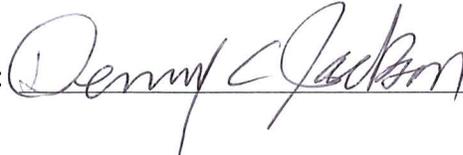
By:  FOR MARK DENNEN Date: 12-20-10

INVITED SIGNATORIES:

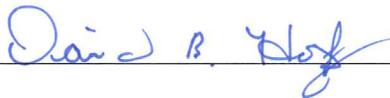
CITY OF MADISON INDIANA

By:  _____ Date: 12/20/10

CITY OF MILTON KENTUCKY

By:  _____ Date: 12/20/10

INDIANA DEPARTMENT OF TRANSPORTATION

By:  _____ Date: 21 Dec 2010

KENTUCKY TRANSPORTATION CABINET

By:  _____ Date: 12/20/10

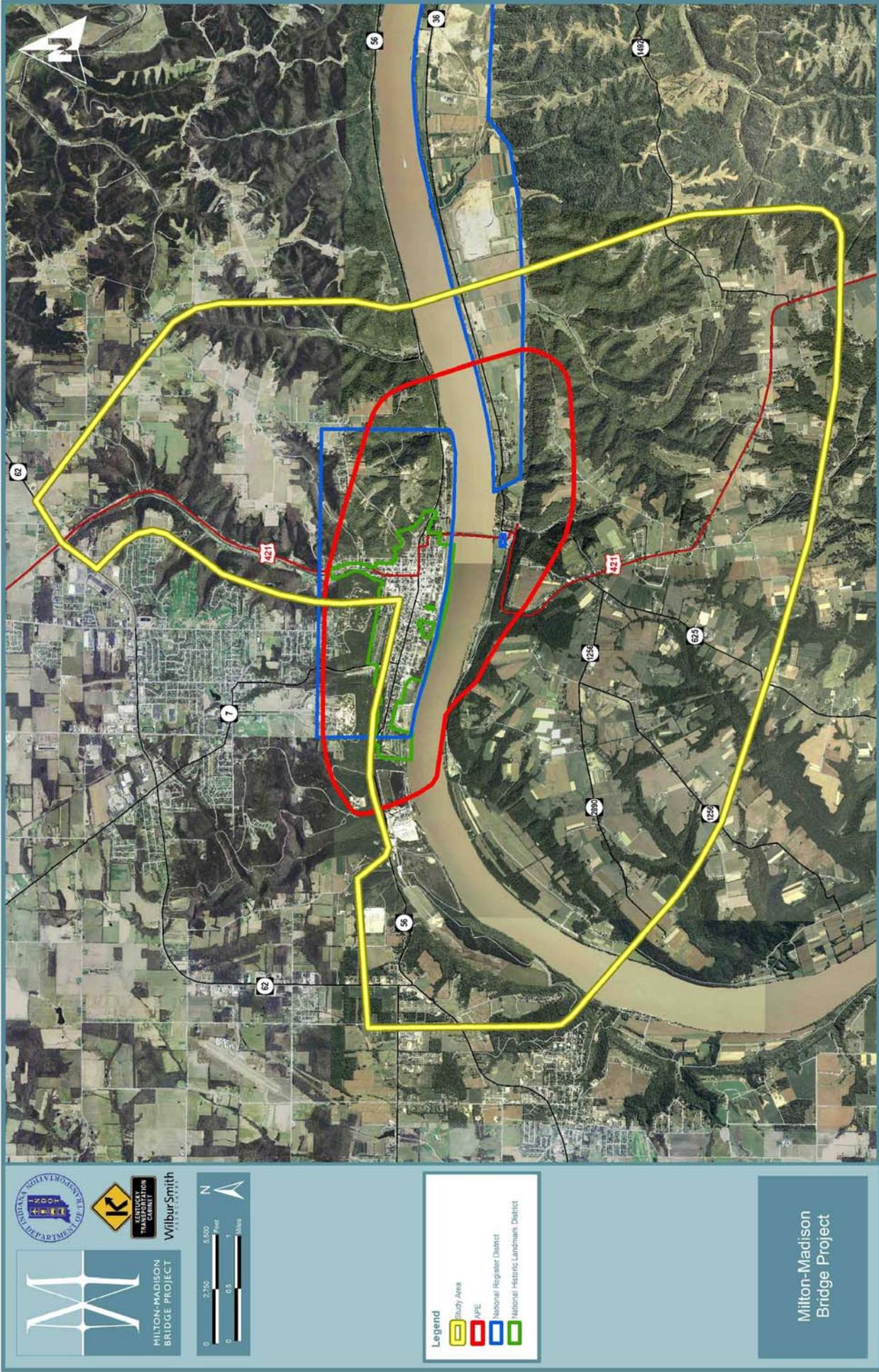
Approved as to form and legality.

By:  _____ Date: 12/20/10

Attachment A

Renderings of the Replacement Truss Superstructure





Attachment B – Area of Potential Effect

Attachment C

Section 106 Consulting Parties

Nathan Adams, Area Resident
Bob Canida, Area Resident
Joe Carr, Jefferson County Historical Society
Patrick Cunningham, Area Resident
Michele Curran, National Park Service
Mark Dennen, Kentucky Heritage Council (KY SHPO)
Steve Eaglin, Area Resident
Camille Fife, Area Resident
George Freeman, Area Resident
John Froman, Peoria Indian Tribe of Oklahoma
James Glass and staff, Indiana Department of Natural Resources, Division of Historic
Preservation and Archaeology (IN SHPO)
Rhonda Deeg, Madison Main Street Program replacing Nancy Gruner
Tony Hertz, Madison Historic District Board of Review
Virginia Jorgensen, Cornerstone Society Inc
Tracey Keller, Area Resident
Wayne Kyle, Area Resident
Lisa LaRue-Stopp, United Keetoowah Band of Cherokee Indians
Carol Legard, Advisory Council on Historic Preservation
Link Ludington, Area Resident
Elizabeth Merritt, National Trust for Historic Preservation
Karen Nickless, National Trust for Historic Preservation
Genell Scheurell, National Trust for Historic Preservation
Greg Sekula, Historic Landmarks Foundation of Indiana
John Staicer, Historic Madison Foundation
Joshua Sutterfield, Miami Tribe of Oklahoma
Steven and Elizabeth Thomas, Area Residents
Jan Vetrhus, Madison Bicentennial Committee
Judith Wolf, Area Resident
Vickie Young, Area Resident