

**MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND
THE INDIANA STATE HISTORIC PRESERVATION OFFICER
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 C.F.R. Part 800
REGARDING THE REPLACEMENT OF BRIDGE NO. 44-73-3332A
IN HENDRICKS TOWNSHIP, SHELBY COUNTY, INDIANA**

WHEREAS the Federal Highway Administration (FHWA) proposes to fund the removal of the existing structure and to place the replacement bridge on the same alignment in Hendricks Township, Shelby County, Indiana; and

WHEREAS the FHWA, in consultation with the Indiana State Historic Preservation Officer (SHPO), has defined this bridge replacement's Area of Potential Effects, as the term defined in 36 C.F.R. Part 800, to be the area that varies from 35 feet to 145 feet from either side of the centerline of SR 44; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has found that Bridge No. 44-73-3332A is within the Area of Potential Effects; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has determined, pursuant to 36 C.F.R. Section 800.4(c), that Bridge No. 44-73-3332A is eligible for inclusion in the National Register of Historic Places; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. Section 800.5(a) that the removal of the existing Bridge No. 44-73-3332A will have an adverse effect on the structure; and

WHEREAS the FHWA has consulted with the Indiana SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations (36 C.F.R. Part 800) to resolve the adverse effect on Bridge No. 44-73-3332A; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has invited the Indiana Department of Transportation (INDOT) to participate in the consultation and to become signatories to this Memorandum of Agreement (MOA);

NOW, THEREFORE, the FHWA and the Indiana SHPO agree that, upon the submission of a copy of this executed MOA, as well as the documentation specified in 36 C.F.R. Sections 800.11(e) and (f) to the Advisory Council on Historic Preservation ("Council" pursuant to 36 C.F.R. Section 800.6(b)(1)(iv)) and upon the FHWA's approval of the removal and replacement of Bridge No. 44-73-3332A, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effect of the removal and replacement of Bridge No. 44-73-3332A on historic properties.

STIPULATIONS

FHWA shall ensure the following stipulations are implemented.

I. MITIGATION STIPULATION OR STIPULATIONS

- A. The INDOT shall construct a new bridge on the same alignment of S.R. 44 as the existing bridge.
- B. The INDOT shall offer the existing steel truss bridge for sale, or be given to an approved entity or person for relocation. Bridge No. 44-73-3332A availability will be posted on the Indiana Department of Transportation's web site for its Historic Bridges Marketing Program for a minimum of five (5) years, from the date of execution of this agreement.
- C. The INDOT shall actively pursue finding a new location for Bridge No. 44-73-3332A by advertising the availability of the historic bridge in 15 newspapers in the surrounding counties. An advertisement in each newspaper shall be advertised at least five (5) times in five years.
- D. The INDOT, FHWA and the Indiana SHPO shall review any proposed offers for the bridge structure. The suitable applicant shall have sufficient funding to encompass the cost of the local funding portion (20 percent match) of the acquisition / maintenance / liability such that no additional costs shall be borne by the INDOT.
- E. If it is decided by the INDOT, FHWA and the Indiana SHPO that the offer and the applicant are suitable and satisfactory to all parties, the transaction of Bridge No. 44-73-3332A will be approved.
- F. Qualified recipient(s) of the spans will be eligible for Federal Transportation Enhancement Funds, which reimburse recipients for 80% of eligible costs related to rehabilitating the structure. Qualified recipients are recognized as any:
 - a. Indiana Public Agency
 - b. Indiana Non-Profit Organization
- G. Recipients of the bridge must agree to the following terms before accepting ownership of the structure:
 - a. Leave the bridge open to the public.
 - b. Maintain the features that give the bridge its historic significance for a period of 25 years.
 - c. Assume future legal and financial responsibility for the bridge.
- H. If no owner is found, prior to removal, the INDOT will arrange to have the existing structure photographed and documented. This will be done in accordance with "Architectural Documentation Standard of Indiana" as adopted by the Indiana State Professional Review Board on Historic Preservation (January 22, 1986).
- I. If no party comes forward to acquire the bridge by the time of the project construction, the INDOT Greenfield District shall store the disassembled Bridge No. 44-73-3332A for at least 10 years to provide the opportunity for a recipient to use the bridge. The bridge members that will have exposed

steel areas, due to the bridge being disassembled, will be painted prior to storage at an INDOT facility.

II. DISPUTE RESOLUTION

Disagreement and misunderstanding about how this MOA is or is not being implemented shall be resolved in the following manner:

- A. If the Indiana SHPO or any invited signatory to this MOA should object in writing to the FHWA regarding any action carried out or proposed with respect to the bridge replacement or implementation of this MOA, then the FHWA shall consult with the objecting party to resolve this objection. If, after such consultation, the FHWA determines that the objection cannot be resolved through consultation, then the FHWA shall forward all documentation relevant to the objection to the Council, including the FHWA's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
 - i. Provide the FHWA with a staff-level recommendation, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - ii. Notify the FHWA that the objection will be referred for formal comment pursuant to 36 C.F.R. Section 800.7(c), and proceed to refer the objection and comment. The FHWA shall take into account the Council's comments in reaching a final decision regarding its response to the objection.
- B. The FHWA shall take into account any Council comment or recommendations provided in accordance with this stipulation with reference only to the subject of the objection. The FHWA's responsibility to carry out all actions under the MOA that are not the subjects of the objection shall remain unchanged.

III. POST REVIEW DISCOVERY

In the event that one or more historic properties other than Bridge No. 44-73-3332A, are discovered or that unanticipated effects on historic properties are found during the implementation of this MOA, the FHWA shall follow the procedure specified in 36 C.F.R. Section 800.13.

IV. AMENDMENT

Any signatory to this MOA may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. Any such amendment shall be governed by 36 C.F.R. Section 800.6(c)(7).

V. TERMINATION

- A. If the terms of this MOA have not been implemented by December 31, 2014, then this MOA shall be considered null and void. In such an event, the FHWA shall so notify the parties to this MOA and, if it chooses to continue with the bridge replacement, then it shall reinitiate review of the bridge replacement in accordance with 36 C.F.R. Sections 800.3 through 800.7.

- B. Any signatory to the MOA may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the bridge replacement.

- C. In the event that the FHWA does not carry out the terms of this MOA, the FHWA shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the bridge replacement.

The execution of this MOA by the FWHA, the Indiana SHPO and the INDOT, the submission of it to the Council with the appropriate documentation specified in 36 C.F.R. Sections 800.11(e) and (f), and the implementation of its terms evidence that the FHWA has afforded the Council an opportunity to comment on the bridge replacement and its effect on historic properties and that the FHWA has taken into account the effects of the bridge replacement on historic properties.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

Signed by: Max Tully
Date: April 27, 2004
Name and Title: Robert F. Tally Jr., P.E., Division Administrator
for

INDIANA STATE HISTORIC PRESERVATION OFFICER

Signed by: Jon C. Smith
Date: 5.7.04
Name and Title: Jon C. Smith, Deputy State Historic Preservation Officer

INDIANA DEPARTMENT OF TRANSPORTATION

Signed by: J. Bryan Nicol
Date: 4/14/04
Name and Title: J. Bryan Nicol, Commissioner