

**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. Section 800.6(b)(iv)
REGARDING THE REPLACEMENT OF LAKE COUNTY BRIDGE NO. 2
IN LAKE, NEWTON AND JASPER COUNTIES, INDIANA**

WHEREAS the Federal Highway Administration ("FHWA") proposes to provide funding to the Lake County Commissioners for the replacement of Lake County Bridge No. 2 carrying Clay Street (Range Line Road) over the Kankakee River in Lake, Newton and Jasper Counties, Indiana; and

WHEREAS the FHWA, in consultation with the Indiana State Historic Preservation Officer ("SHPO"), has defined the area of potential effects for the replacement of Lake County Bridge No. 2, as the term defined in 36 C.F.R. Section 800.16(d), to be the area within a ¼ mile radius centered around Lake County Bridge No. 2; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has found that Lake County Bridge No. 2 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 Lake County Bridge No. 2 is eligible for inclusion in the National Register of Historic Places;

WHEREAS the FHWA, in consultation with the Indiana SHPO, has determined pursuant to 36 C.F.R. Section 800.5(a) that the replacement of Lake County Bridge No. 2 will have an adverse effect on Lake County Bridge No. 2; 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. Section 800) to resolve the adverse effect on Lake County Bridge No. 2; and

WHEREAS the public was given an opportunity to comment on the undertaking's adverse effect in a notice published on October 2, 2009 in the Post Tribune and the Northwest Indiana Times; and

WHEREAS the FHWA has notified the Advisory Council on Historic Preservation of the adverse effect and invited the Council's participation in the project, pursuant to 36 CFR Section 800.6(a)(1), in a letter dated December 22, 2009; and

WHEREAS the Advisory Council on Historic Preservation declined to participate in consultation in a letter dated December 30, 2009; and

WHEREAS the FHWA, in consultation with the Indiana SHPO, has invited the Lake County Board of Commissioners, the Kankakee County Board and the Indiana Department of Transportation (INDOT) to participate in the consultation and to become a signatory/signatories to this memorandum of agreement; 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) concerning the scope of work as presented in the materials and plans dated September 25, 2009, and agreed to proceed with the project as proposed; and

NOW, THEREFORE, the FHWA and the Indiana SHPO agree that, upon the submission of a copy of this executed memorandum of agreement, as well as the documentation specified in 36 C.F.R. Section 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 replacement of Lake County Bridge No. 2, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effect of the replacement of Lake County Bridge No. 2 on historic properties.

Stipulations

- I. Mitigation for the replacement of Lake County Bridge No. 2 will consist of the following measures.
 - A. The Kankakee Valley Historical Society (KVHS), which is an Indiana 501(C)(3) non-profit organization has offered to take ownership of Lake County Bridge No. 2. However, due to monetary considerations the KVHS has indicated that they will not be prepared to take ownership of the bridge for a number of years. Therefore, the Lake County Board of Commissioners will store Lake County Bridge No. 2 in a secure location for a minimum of 15 years, measured from the date the bridge is dismantled. This should allow the KVHS an opportunity to prepare for acquisition of the bridge.
 - B. If Bridge No. 2 is to be dismantled, then the Lake County Board of Commissioners or the KVHS or any other, qualified recipient that is acquiring the bridge shall have the bridge's component match-marked and mapped to facilitate its later reassembly.
 - C. The recipient(s) of the bridge may work through a Local Public Agency (LPA) to secure Transportation Enhancement Funds for the rehabilitation of the relocated structure. If awarded, the recipient(s) of the bridge will enter into a third party agreement with the LPA to transfer funds.
 - D. If another public agency or non-profit organization approaches the Lake County Commissioners and offers to take the bridge the KVHS will be given the first right of refusal.
 - E. If the County, INDOT, FHWA and SHPO agree that the offer and the applicant is suitable and satisfactory to all parties, the transfer of Lake County Bridge No. 2 may proceed.
 - F. The KVHS or other qualified recipient(s) of the structure must agree to the following terms before accepting ownership of the structure:
 - i. Accept all ownership rights and responsibilities connected now or in the future with the bridge.
 - ii. Leave the bridge open to the public.
 - iii. Maintain the features that give the structure its historic significance for a minimum period of twenty-five (25) years from the date from which the recipient(s) takes title of the bridge.
 - iv. Assume future legal and financial responsibility for the bridge.
 - v. Indemnify and hold harmless any and all entities to include but not limited to the County of Lake, the Board of Commissioners of the County of Lake, the Lake County Highway Department, it's elected officials, it's appointed officials, it's employees, and or its agents for any and all expenses or charges to include attorney fees which these entities or person might have to pay by virtue of the successful owners actions, non-actions, or performance.
 - G. The KVHS or any other qualified recipient shall be required to perform archaeological investigations, as needed, for the proposed relocation site for Bridge No. 2, in consultation with the Indiana SHPO. The KVHS or any other qualified recipient shall be permitted to change the relocation site in order to avoid an archaeological site.
 - H. The KVHS or any other qualified recipient shall submit detailed rehabilitation and reassembly plans for Bridge No. 2 to the Indiana SHPO, INDOT Cultural Resources

Section and the Historic Landmarks Foundation of Indiana, Inc. for a 30-day review and comment period before beginning rehabilitation and reassembly.

- I. As part of the mitigation for the replacement of Bridge No. 2, the Lake County Board of Commissioners and the Kankakee County Board will rehabilitate Lake County Bridge No. 36, which is considered to be eligible for inclusion in the National Register of Historic Places. If possible, the rehabilitation will adhere to the applicable rehabilitation standards and guidelines of the "Secretary of the Interior's Standards for the Treatment of Historic Properties." The Lake County Board of Commissioners shall submit detailed rehabilitation plans for Bridge No. 36 to the Kankakee County Board for a 30-day review and comment period. At the conclusion of this comment period the Lake County Board and the Kankakee County Board shall submit the detailed rehabilitation plans to the Indiana SHPO, INDOT Cultural Resources Section and the Historic Landmarks Foundation of Indiana, Inc. for a 30-day review and comment period before beginning rehabilitation. If Bridge No. 36 cannot be rehabilitated in accordance with the applicable rehabilitation standards and guidelines, then the rehabilitation of the bridge will be considered to have an "adverse effect," and the rehabilitation project shall be reviewed in accordance with 36 C.F.R. Part 800, which may require the development and execution of a project-specific memorandum of agreement (MOA).

II. OBJECTION RESOLUTION PROVISION

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

- A. If the Indiana SHPO or any invited signatory to this memorandum of agreement should object in writing to the FHWA regarding any action carried out or proposed with respect to the replacement of Lake County Bridge No. 2 or implementation of this memorandum of agreement, 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. If comments or recommendations from the Council are provided in accordance with this stipulation, then 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 memorandum of agreement 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 Lake County Bridge No. 2 are discovered or that unanticipated effects on historic properties are found during the implementation of this memorandum of agreement, the FHWA shall follow the procedure specified in 36 C.F.R. Section 800.13, as well as and IC 14-21-1-27 and IC 14-21-1-29, by stopping work in the immediate area and informing the Indiana SHPO and the INDOT Cultural Resources Section of such unanticipated discoveries or effects within two (2) business days.

Any necessary archaeological investigations will be conducted according to the provisions of IC 14-21-1 and 312 IAC 21, and the most current *Guidebook for Indiana Historic Sites and Structures Inventory – Archaeological Sites*.

IV. AMENDMENT

Any signatory to this memorandum of agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment. 36 C.F.R. 800.6(c)(7) shall govern the execution of any such amendment.

V. TERMINATION

- a. If the replacement of Bridge No. 2 has not commenced within five years of the signing of this memorandum of agreement, or if the rehabilitation of Bridge No. 36 pursuant to Stipulation I.I. has not commenced within five years of the opening to traffic of the bridge that replaces Bridge No. 2, then this memorandum of agreement shall be considered null and void. In such an event, the FHWA shall so notify the parties to this memorandum of agreement and, if it chooses to continue with the replacement of Lake County Bridge No. 2, then it shall resume consultation with the other consulting parties on developing a new memorandum of agreement or request the comments of the Council, pursuant to 36 CFR Part 800.
- b. Any signatory to the memorandum of agreement 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 replacement of Lake County Bridge No. 2.
- c. In the event that the FHWA does not carry out the terms of this memorandum of agreement, the FHWA shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the replacement of Lake County Bridge No. 2.

The execution of this memorandum of agreement by the FWHA, INDOT, Lake County Board of Commissioners, Kankakee County Board, and Indiana SHPO, the submission of it to the Council with the appropriate documentation specified in 36 C.F.R. Section 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 replacement of Lake County Bridge No. 2 and its effect on historic properties and that the FHWA has taken into account the effects of the replacement of Lake County Bridge No. 2 on historic properties.

SIGNATORIES (required):

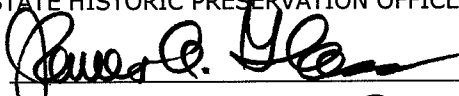
FEDERAL HIGHWAY ADMINISTRATION

Signed by: Joyce E. Newland Date: February 16, 2010
Name and Title: Planning & Environmental Specialist

(Typed or printed)

SIGNATORIES (required):

INDIANA STATE HISTORIC PRESERVATION OFFICER

Signed by:  Date: 1/15/2010

Name and Title: James A. Glass
Deputy SHPO

(Typed or printed)

INVITED SIGNATORIES

INDIANA DEPARTMENT OF TRANSPORTATION

Signed by: James Poturalski Date: 1/15/10

Name and Title: James Poturalski
Deputy Commissioner,
(Typed or printed) Highway Management

INVITED SIGNATORIES

LAKE COUNTY BOARD OF COMMISSIONERS

Signed by: *Roosevelt Allen* Date: 01-20-10

Name and Title: Roosevelt Allen, Jr. District 1

(Typed or printed)

Signed by: *Gerry J. Scheub* Date: 01-20-10

Name and Title: Gerry J. Scheub, District 2

(Typed or printed)

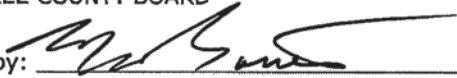
Signed by: *Frances DuPey* Date: 01-20-10

Name and Title: Frances DuPey, District 3

(Typed or printed)

INVITED SIGNATORIES

KANKAKEE COUNTY BOARD

Signed by:  Date: 2/9/2010

Name and Title: Michael Bossert
(Typed or printed) Chairman, Kankakee County Board