

**MEMORANDUM OF AGREEMENT  
AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION  
THE MISSOURI STATE HISTORIC PRESERVATION OFFICER  
AND  
JACKSON COUNTY, MISSOURI  
FOR THE MITIGATION OF ADVERSE EFFECTS**

**TO HISTORIC PROPERTY:** Rock Island and Pacific Railroad Corridor (Corridor) in Jackson County, MO

**UNDERTAKING:** Phased Construction of the Rock Island Trail, a 16.5 mile, 10 foot wide bicycle and pedestrian Shared Use Path on and adjacent to the centerline of the historic Rock Island and Pacific Railroad in Jackson County, Missouri. *Missouri Department of Transportation Job Number J\_STP 3301(525)* (Attachment A).

**STATE:** Missouri

**AGENCY:** Federal Highway Administration

**WHEREAS,** the Federal Highway Administration (FHWA) Missouri Division is the federal agency responsible for ensuring the undertaking complies with Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) codified in its implementing regulations 36 CFR Part 800, *Protection of Historic Properties*; and

**WHEREAS,** the Missouri Department of Transportation (MoDOT) administers Federal-aid projects throughout Missouri; the MoDOT's Historic Preservation (HP) staff has assisted the consulting parties in the drafting of this agreement document and will aid in the execution of it; and

**WHEREAS,** the duties of the Missouri State Historic Preservation Officer (SHPO) pursuant to Section 106 of the NHPA (54 USC 306108) and 36 CFR Part 800 include responsibilities to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

**WHEREAS,** Jackson County plans to construct a 16.5 mile, 10 foot wide, bicycle and pedestrian shared use path in Jackson County, Missouri, using funding from the Surface Transportation Program and Transportation Alternatives Program funded by the FHWA pursuant to the Infrastructure Investment and Jobs Act (IIJA) (commonly called the Bipartisan Infrastructure Legislation) (BIL) (PL 117-58); and

**WHEREAS,** This project was planned to be constructed in phases, with the first two phases being completed under Federal Projects STP-3453(401) and STP-3453(402), and a new phase being proposed under Federal Project STP-3301(525); and

**FILED**

MAY 17 2023

MARY JO SPINO  
COUNTY CLERK

FHWA

Missouri, Jackson County

Rock Island Rail Corridor & Rock Island Shared Use Path, MoDOT Job No. STP 3301 (525)

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**WHEREAS**, A prior Memorandum of Agreement (MOA) was executed by the Parties of this agreement related to Federal Projects STP-3453(401) and STP-3453(402) on August 22, 2017, in which it was determined that these projects had an adverse effect on the historical railroad property. Stipulations and all related mitigation requirements included in the prior MOA were fulfilled as confirmed by SHPO Staff on March 9<sup>th</sup> 2022; and

**WHEREAS**, The prior MOA included incorrect information regarding the length of the project, the parties attempted to correct this with an amendment in order to demonstrate that the previous agreement accounted for development of the trail along the railroad corridor within the current project area, however the prior MOA expired before execution of the amendment; and

**WHEREAS**, the MoDOT, acting on behalf of the FHWA, has determined that the undertaking's area of potential effects (APE), as defined at 36 CFR Part 800.16(d), has been identified as the project footprint, including existing right of way (ROW) and new ROW, including permanent and temporary easements, for the consideration of direct effects due to construction-related and ground disturbing activities. The APE for the history/architecture built environment resources is the corridor boundary, and includes the rail line and associated structures (mainly culverts) as well as resources identified within the linear resource of the rail such as tracks, ties, etc, between railroad mileposts 272-270.6. (see Attachment B). For the consideration of direct effects due to auditory, vibration, visual or atmospheric effects caused by the project an offset has been applied around new ROW and extends 50 feet beyond these areas. The APE is further described and mapped in Attachment B to this MOA; and

**WHEREAS**, the FHWA has determined that the Rock Island and Pacific Railroad Corridor is eligible for listing in the National Register of Historic Places (National Register) under Criterion C for significance in engineering and has consulted with the SHPO pursuant to 36 CFR Part 800, *Protection of Historic Properties*, regulations implementing Section 106 of the NHPA (54 U.S.C. § 306108) (see Attachment C), as amended; and

**WHEREAS**, the FHWA has determined that the proposed improvements to the Rock Island and Pacific Railroad Corridor under the current project number will result in no additional adverse effects, beyond those accounted for by the previous MOA, and will have no adverse effects upon the historic culverts eligible for inclusion in the National Register and has consulted with the SHPO pursuant to 36 CFR Part 800; and

**WHEREAS**, Jackson County, Missouri has been invited to participate in the preparation of and be invited signatories to this MOA; and

**WHEREAS**, the FHWA recognizes that the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Kaw Indian Nation of Oklahoma, Miami Tribe of Oklahoma, Osage Nation, Ponca Tribe of Nebraska, Ponca Tribe of Oklahoma, Sac and Fox Tribe of the Missouri in Kansas and Nebraska, Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Oklahoma, Wyandotte Nation, have an interest in the undertaking area, and has consulted with them on a government-to-government basis in June and July of 2020; and,

**WHEREAS**, The Osage Nation requested to review the Cultural Resources Survey, and the Miami Tribe of Oklahoma requested to consult and be made aware of any findings; and

**WHEREAS**, Missouri Rock Island Trail, Inc., Railway & Locomotive Historical Society, Inc., Katy Railroad Historical Society, Rock Island Technical Society, National Railway Historical Society, National Railway Historical Society - Missouri Chapter, Historic Kansas City, Kansas City Archeological Society, Raytown Historical Society & Museum, Historical Society of Lee's Summit & Museum, Jackson County Historical Society, Missouri Preservation Missouri Archaeological Society, National Trust for Historic Preservation, Historic Bridge Foundation, City of Kansas City Landmarks Commission, City of Kansas City Historic Preservation Commission, City of Lee's Summit, City of Raytown, Missouri Department of Conservation, Missouri State Parks KCATA have been notified of undertaking and have been invited to participate in consultation during July and August of 2017; and

**WHEREAS**, the City of Raytown, Lee's Summit Historical Preservation Commission, Kansas City Landmarks Commission, Kansas City Archeological Society, and the KCATA elected to consult on the project, but had no specific comments; and

**WHEREAS**, public involvement for this undertaking has been handled in accordance with the MoDOT *Engineering Policy Guide*, Chapter 129: Public Involvement; and

**WHEREAS**, public meetings were held on March 6<sup>th</sup>, 8<sup>th</sup>, and 15<sup>th</sup> of 2017 and May 2<sup>nd</sup> and 4<sup>th</sup> of 2017 and information about the undertaking, historic properties and the undertaking effects on historic properties was made available to the public; and

**WHEREAS**, No comments were received from the public about historic properties, project effects on historic properties, or proposed mitigation measures; and

**WHEREAS**, to the best of the FHWA's knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001), are expected to be encountered; and

**NOW, THEREFORE**, the FHWA and the SHPO agree that the undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### STIPULATIONS

##### **1. TREATMENT OF HUMAN REMAINS**

- A. The FHWA recognizes that any human remains (other than from a crime scene or covered under Missouri's Cemeteries Law, §§ 214. RSMo) that may be discovered during project activities and are located on non-federal land are subject to the

immediate jurisdiction of the SHPO, albeit FHWA's delegate is responsible to have a professional archeologist analyze the remains and advise SHPO of the physical location and cultural and biological characteristics, and if SHPO determines, as per the consultation conducted under Section 106, excavation is warranted such remains will be handled pursuant to the Missouri Unmarked Human Burial Sites Act, §§ 194.400 – 194.410, RSMo. All discoveries of human remains shall be treated as sensitive information and shall not be made available to the public.

**B. If human remains are encountered during construction:**

- 1) The contractor shall immediately stop all work within a 50-foot radius of the remains and shall not resume without specific authorization from either the SHPO or the local law enforcement officer, whichever party has jurisdiction over and responsibility for such remains.
- 2) The contractor shall notify the MoDOT Construction Inspector and/or Resident Engineer who will contact the MoDOT HP section within 24 hours of the discovery.
- 3) MoDOT HP staff will immediately notify the local law enforcement (to ensure that it is not a crime scene) and the SHPO as per RSMo 194 or to notify SHPO what has occurred and that it is covered by Missouri's Cemeteries Law, §§ 214. RSMo.
- 4) MoDOT HP staff will notify FHWA that human remains have been encountered within 24 hours of being notified of the find.
- 5) If, within 24 hours, the contractor is unable to contact appropriate MoDOT staff, the contractor shall initiate the involvement by local law enforcement and the SHPO. A description of the contractor's actions will be promptly made to MoDOT.
- 6) FHWA will notify any Tribe that might attach cultural affiliation to the identified remains as soon as possible after their identification.
- 7) FHWA shall take into account Tribal recommendations regarding treatment of the remains and proposed actions, and then direct MoDOT HP to carry-out the appropriate actions in consultation with the SHPO.
- 8) MoDOT shall monitor the handling of any such human remains and associated funerary objects, sacred objects or objects of cultural patrimony in accordance with the Missouri Unmarked Human Burial Sites Act, §§ 194.400 – 194.410, RSMo.

**2. POST-REVIEW DISCOVERIES**

**A. If cultural resources are encountered during construction:**

- 1) The contractor shall immediately stop all work within a 50-foot buffer around the limits of the resource and shall not resume without specific authorization from a MoDOT Historic Preservation Specialist.
- 2) The contractor shall notify the MoDOT Resident Engineer or Construction Inspector, who shall contact the MoDOT HP within 24 hours of the discovery.

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- 3) MoDOT HP shall contact FHWA and SHPO within 48 hours of learning of the discovery and provide an evaluation of the resource and reasonable efforts to assess whether avoidance is possible.
  - 4) FHWA shall make an eligibility and effects determination based upon the preliminary evaluation and consult with MoDOT and SHPO to minimize or mitigate any adverse effect.
  - 5) FHWA will notify the Council and any Tribes that might attach religious and/or cultural significance to the property within 48 hours of this determination.
  - 6) FHWA shall take into account Council and Tribal recommendations regarding the eligibility of the property and proposed actions, and direct MoDOT to carry out the appropriate actions.
  - 7) MoDOT will provide FHWA and SHPO with a report of the actions when they are completed.
  - 8) FHWA shall provide this report to the Council and the Tribes.
  - 9) MoDOT, in coordination with FHWA, will make this report available to the public and other consulting parties, if it is not limited by the requirements for confidentiality, as identified in Stipulation 3. Confidentiality.
- B. If the discovery is not limited by the confidentiality requirements of Section 304 of the NHPA and Stipulation 3 of this MOA, the public shall be notified of the late discovery, in the following manner:
- 1) Information on the discovery shall be posted to the MoDOT website associated with the project, if one exists. This information will include the nature of the discovery, how it is being treated, and the evaluation of it. The website will include information on how to contact the project manager or the MoDOT HP Section with comments or concerns about the discovery.
  - 2) MoDOT will issue a press release about the discovery. The press release will include the nature of the discovery, how it is being treated and the evaluation. The press release will include a way for the public to contact the project manager or the MoDOT HP Section, if they have comments or concerns about the discovery.

### 3. CONFIDENTIALITY

The signatories acknowledge that information about historic properties may be subject to the provisions of Section 304 of the NHPA or would be otherwise exempt from disclosure pursuant to Freedom of Information regulations (5 USC 552 and Section 610.021.14 RSMo). Section 304 allows the applicable Lead Federal Agency to withhold from disclosure to the public, information about the location, character or ownership of a historic property if the applicable Lead Federal Agency determines that disclosure may: 1) cause a significant invasion of privacy, and 2) risk harm to the historic property. All actions stipulated in this MOA, where necessary, will be consistent with the requirements of Section 304 of the NHPA.

### 4. DURATION

This agreement shall commence upon having been signed by the FHWA, SHPO and Jackson County And shall expire five (5) years from the date of its execution by the last of the signatories, unless otherwise terminated or amended pursuant to Stipulations 7 or 8.

**5. MONITORING AND REPORTING**

Within one year after carrying out the terms of the MOA, the MoDOT, acting on behalf of FHWA, shall provide to all signatories a written report regarding the actions taken to fulfill the terms of the agreement, and shall file a copy with the Council per 36 CFR Part 800.6(b)(iv).

**6. DISPUTE RESOLUTION**

- A. Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:
- 1) Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the Council. The Council shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
  - 2) If the Council does not provide its advice regarding the dispute within the thirty (30) day period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the Council with a copy of such written response.
  - 3) FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
- B. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the

action subject to dispute hereunder to proceed in accordance with the terms of that decision.

**7. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Council.

**8. TERMINATION**

If any signatory to this MOA determines its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation 7 above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR Part 800.6 or (b) request, take into account, and respond to the comment of the Council under 36 Part CFR 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

**9. EXECUTION**

Execution of this MOA by the FHWA, the SHPO and the Jackson County and the implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment. A copy of the executed PA shall be provided by FHWA to the Council for their records.

The parties agree a person may execute this document by electronic symbol or process attached to or logically associated with the document, with an intent to sign the document and by method that must include a feature to verify the identity of the signer and the authenticity of the document, commonly referred to as verified electronic signature.

This document may be signed in two or more counterparts, each of which shall be deemed an original for all purposes, and all of which when taken together shall be considered one and the same agreement.


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FHWA  
Missouri, Jackson County  
Rock Island Rail Corridor & Rock Island Shared Use Path, MoDOT Job No. STP 3301 (525)

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Signed:

FEDERAL HIGHWAY ADMINISTRATION:

By:  Date: 5-16-23

Title: Environmental Protection Specialist

THE MISSOURI STATE HISTORIC PRESERVATION OFFICER:

By:  Date: 04/26/23

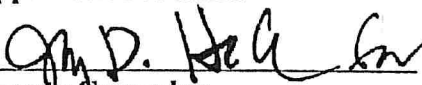
Title: Deputy Director, Division of State Parks, Deputy State Historic Preservation Officer

JACKSON COUNTY, MISSOURI:

By:  Date: 4/27/2023

Title: County Executive

Approved as to form:

  
County Counselor

Attest:

  
Clerk of the County Legislature