

Memorandum of Agreement
Henry Street Bridge
Marion County, IN
LRL-2021-560-sjk

**MEMORANDUM OF AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT,
THE INDIANA STATE HISTORIC PRESERVATION OFFICER, AND
THE CITY OF INDIANAPOLIS DEPARTMENT OF PUBLIC WORKS**

**REGARDING
PROPOSED BRIDGE OVER THE WHITE RIVER FROM HENRY STREET
TO SOUTH WHITE RIVER PARKWAY WEST DRIVE,
MARION COUNTY, INDIANA
LRL-2021-560-sjk**

WHEREAS, the City of Indianapolis Department of Public Works (Applicant), Marion County, Indiana has submitted a Department of the Army (DA) Section 404 of the Clean Water Act (CWA) permit application to the U.S. Army Corps of Engineers, Regulatory Division (Corps) for impacts to jurisdictional waters of the US (Undertaking) associated with the proposed construction of a bridge over the White River along Henry Street, beginning at Kentucky Avenue and extending west across the White River and terminating at South White River Parkway West Drive; and

WHEREAS, construction of the new crossing would require a DA Permit for impacts to jurisdictional waters of the US (LRL-2021-560-sjk) and the Corps has defined the Undertaking's Permit Area pursuant to 33 CFR Part 325 Appendix C as the impacts to jurisdictional waters, the eastern and western approaches to the bridge, work in the uplands directly associated with construction and protection of the proposed bridge (e.g. cofferdam and placement of rip rap) and any associated access, staging, and borrow areas; and

WHEREAS, the Corps has coordinated the cultural resources review pursuant to Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended (54 USC 300101 et seq.: Historic Preservation; formerly 16 U.S.C. 470f); and

WHEREAS, One National Register of Historic Places (NRHP)-listed property the Indianapolis Parks and Boulevard System (IPBS) Historic District, and one NRHP-eligible property, the Diamond Chain Complex (DCC) have been identified within the Corps' review area; and

WHEREAS, the undertaking would result in direct and indirect impacts to the IPBS and DCC ; and

WHEREAS, the Corps has consulted with the Indiana Division of Historic Preservation and Archaeology/State Historic Preservation Office (SHPO) and the Applicant pursuant to 36 C.F.R. Part 800, regulations implementing the NHPA; and

WHEREAS, in accordance with 36 C.F.R. §800.5(d)(2) and 33 C.F.R. §325, Appendix C(7)(d), and the Interim Guidance issued by the Corps on 25 April 2005, the Corps has determined that the proposed undertaking would have an Adverse Effect on the IPBS and the DCC, and the SHPO has concurred with the Adverse Effect finding; and

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WHEREAS, the Corps invited the following federally recognized Native American Tribes (Tribes) to consult on the proposed undertaking: Miami Tribe, Eastern Shawnee, Shawnee, Absentee Shawnee, Delaware Tribe, Delaware Nation, Wyandotte Nation, Pokagon Band of Potawatomi, Forest County Potawatomi, Hannahville Indian Community, Gun Lake Tribe Potawatomi, Nottawaseppi Huron Band of Potawatomi, the Prairie Band of Potawatomi; and

WHEREAS, the Forest County Potawatomi accepted the invitation to consult; and

WHEREAS, the Applicant has participated in the development of this Memorandum of Agreement (MOA) and been invited to sign the MOA;

WHEREAS, Indiana Landmarks, Kroger Gardis and Regas, LLP, the City of Indianapolis Parks Department, the Forest County Potawatomi have participated in the development of the MOA and have been invited to concur in the MOA; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its Adverse Effect determination, provided the specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii);

NOW, THEREFORE, the Corps and the SHPO agree that the project will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties, and further agree that these stipulations will govern the undertaking and all of its parts.

Stipulations

The Corps will ensure that the following stipulations are implemented.

I. INDIANAPOLIS PARKS AND BOULEVARD SYSTEM

A. Indianapolis Parks and Boulevard System (IPBS) Enhancements

1. Within 90 days of execution of the MOA, the applicant will conduct a review of the IPBS and identify potential locations and types of natural enhancements to the IPBS within Center Township, Marion County. Natural enhancements may include tree plantings, plantings of native species of grasses and flowers, removal of invasive species, stream and/or wetland enhancements, riparian corridor enhancements, and pollinator gardens:
 - a. The Applicant will prepare a summary of their IPBS review describing areas and types of natural enhancements they have identified and their preferred enhancement alternative within Center Township and submit it to the Corps and the SHPO for review within 120 days of execution of the MOA. The Corps will distribute the summary to the consulting parties.
 - b. The Corps, SHPO, and consulting parties will have 30 calendar days to review the summary and provide comments to the Corps. The Corps will compile the comments and provide them to the Applicant, SHPO, and other consulting parties.
 - c. Within 30 days of receipt of comments, the Corps will schedule a meeting with the Applicant, SHPO and consulting parties to discuss the natural enhancement

proposals and to approve the final alternative.

2. The Applicant will implement the approved natural enhancement alternative within 60 days of the completion of construction activities, following Corps, SHPO, and consulting party approval. All natural enhancements will be completed within 36 months of execution of the MOA:
 - a. The Applicant will provide the Corps with project updates twice per year. Updates will be submitted to the Corps on June 1 and December 1 of each calendar year until such time as all stipulations of this agreement have been implemented and accepted as final by the Corps, SHPO, and consulting parties.
 - b. Within twelve (12) months of the implementation of the natural enhancements project the Applicant will submit a final summary to the Corps detailing the natural enhancements to the IPBS. The Corps will distribute the summary to the SHPO and consulting parties.
3. The Applicant will be responsible for long-term care and maintenance of the natural enhancements.

II. DIAMOND CHAIN COMPLEX

- A. The Applicant will contract with a consultant that meets the *Secretary of the Interior's Professional Qualification Standards* to document the Diamond Chain Complex in accordance with the Indiana Division of Historic Preservation & Archaeology Minimum Architectural Documentation Standards to include:
 1. Digital photo documentation of the exterior architectural and structural elements, surrounding environmental settings, and any other significant character-defining details. Digital, color photographs in .TIF format, a photo log that corresponds to the photographs, a photo key, and an overview thumbnail sheet of the photographs will be provided on CD, flash drive, or any other previously approved storage device or transfer method.
 2. If available, a copy of the original construction plans for the complex will be included.
 3. Drafts of the completed documentation will be submitted by the Applicant to the Corps for review. The Corps will distribute the documentation to the SHPO and consulting parties for review and approval. The Corps, SHPO, and consulting parties will provide comments within 30 calendar days of receipt.
 - a. Upon notification by the Corps of acceptance of the documentation, the Applicant will provide a copy to the SHPO for upload to the State Historic Architectural and Archaeological Research Database and transferal to the Indiana State Archives.

III. ARCHAEOLOGICAL MONITORING

- A. The Applicant will contract with a SOI-qualified archaeological consultant to monitor all ground disturbing activities within the Corps' Permit Area on the eastern bank of the White River;
1. If evidence of archaeological sites, such as prehistoric or historic artifacts and/or features is identified during ground disturbing activities, work within 100 feet of the find will stop until the archaeological consultant can assess the site and consult with the Corps and the SHPO regarding the potential NRHP-eligibility of the site;
 2. If the SHPO and Corps concur that an identified archaeological site does not meet the criteria for inclusion in the NRHP, then the Applicant may resume work in the Permit Area;
 3. If the SHPO and Corps concur that an identified archaeological site requires additional work, then the Corps will notify the consulting parties and interested Native American Tribes and work with them to develop an appropriate treatment plan;
 4. Within 30 days of completion of ground-disturbing activities in the Permit Area, the archaeological consultant will provide the Corps and SHPO with a Management Summary (MS) detailing the results of the monitoring. The Corps and SHPO will provide comments within 30 days of receipt of the MS.
 5. If archaeological sites are identified, the archaeological consultant will, within six (6) months of completion of ground-disturbing activities, provide the Corps with a draft report detailing the investigations. The report will comply with the SOI "Standards and Guidelines and Historic Preservation," and the most current SHPO guidelines.

B. INADVERTENT DISCOVERY OF HUMAN REMAINS

1. If human remains are discovered during the course of ground-disturbing activities within the Corps' Permit Area, the Applicant will immediately stop work within 100 feet of the find and notify the Marion County Coroner and the Corps. The Corps will notify the SHPO. If the remains are determined to be Native American, the Corps will consult with Native American Tribes with an interest in the area regarding the disposition of the remains. Remains determined to be of a criminal nature or non-Native American will be treated in accordance with all applicable State and local laws.

IV. POST REVIEW DISCOVERY

A. If, during the implementation of the undertaking a previously unidentified cultural resource is encountered, the applicant will ensure that the construction contractor stops work within 100 feet of the newly identified cultural resource and immediately notify the Corps.

B. Upon notification of a previously unknown resource, the Corps will notify the SHPO and consult with the SHPO and the Applicant to evaluate the newly identified resource and/or develop an appropriate treatment plan, as necessary, pursuant to 36 C.F.R. Part 800, and the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* and in accordance with Indiana State regulations IC 14-21-1, the Guidebook for Indiana Historic Sites and Structures Inventory—Archaeological sites, 312 IAC 21, and 312 IAC 22.

V. DISPUTE RESOLUTION

A. Should any signatory, invited signatory, or concurring party object at any time in writing to the Corps regarding any action carried out or proposed with respect to the Undertaking or to the manner in which the terms of this MOA are implemented, the Corps will consult with such party to resolve the objection. The Corps will also notify the other signatories to this MOA of such objection and provide them the opportunity to participate in any consultations to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will:

1. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP will provide the Corps 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, the Corps will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps will 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 ACHP with a copy of such written response.

The Corps will then proceed with its final decision.

B. The Corps' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

VI. TERMINATION

A. If the Corps determines that the terms of this agreement cannot be implemented as stipulated or a signatory determines that the agreement is not being properly implemented, such party may propose to the other signatories to the agreement that it be terminated in accordance with 36 C.F.R. § 800.6 (c)(1) and (8).

B. The party proposing to terminate this agreement will so notify all parties to this agreement, including the concurring parties, explaining the reasons for termination and affording the parties at least thirty (30) days to consult and seek alternatives to termination. The parties will then consult.

C. If, after the expiration of thirty (30) days an agreement to avoid termination cannot be reached, the Corps or other signatory (including invited signatories who sign) may terminate this agreement by notifying all parties in writing.

D. Should this agreement be terminated, the Corps will either:

1. Consult with all parties in accordance with 36 C.F.R. § 800.6 to develop a new MOA:
or
2. Request the comments of the ACHP pursuant to 36 C.F.R. § 800.7.

VII. AMENDMENTS

A. Any signatory (including invited signatories) to this agreement may propose to the Corps that the agreement be amended, whereupon the Corps will consult with the other parties to this agreement to consider such an amendment. The execution of any such agreement will be governed by 36 C.F.R. § 800.6(c)(1). The signatures of all of the signatories will be required for any amendment to take effect.

VIII. DURATION

A. If the DA Permit is not issued, this MOA will be considered null and void. If the terms of this MOA have not been implemented within 48 months of the date the DA Permit was issued, the Corps, prior to the expiration of the 48-month term, may consult with the SHPO, Invited Signatory, and concurring parties to reconsider the terms of the MOA, including the time limit, and amend it in accordance with Stipulation VI above.

B. This MOA will be effective upon signature of all Signatories and filing with ACHP and will remain in effect until the earliest of the following occurs: the 48-month implementation period has expired, or the MOA is amended or terminated and replaced.

C. Execution of this MOA and implementation of its terms will evidence that the Corps has afforded the ACHP an opportunity to comment on the proposed Undertaking and its effects on historic properties, and that the Corps has taken into account the effects of the Undertaking on historic properties.

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SIGNATORIES:

U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT



Eric Reusch
Chief, Regulatory Division

10/6/2022

Date

SIGNATORY:

INDIANA DIVISION OF HISTORIC PRESERVATION AND ARCHAEOLOGY/SHPO



Beth McCord
Deputy State Historic Preservation Officer

11/02/2022

Date

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INVITED SIGNATORY:

Indianapolis Department of Public Works:

Ericka Miller, PE, Deputy Director - Engineering

Name and Title (Printed)

10/11/2022

Date



Signature


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CONCURRING PARTY:

Indiana Landmarks Central Regional Office:

Marsh Davis, President/CEO
Name and Title (Printed)

10-11-2022
Date


Signature

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CONCURRING PARTY

Indianapolis Parks Department:

Name and Title (Printed)

Date

Signature

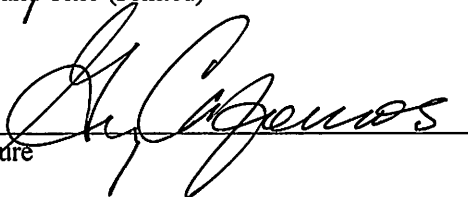
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CONCURRING PARTY

Kroger Gardis and Regas, LLP:

Greg Cafouras, Partner
Name and Title (Printed)

10/19/22
Date


Signature

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CONCURRING PARTY

Forest County Potawatomi:

Name and Title (Printed)

Date

Signature