

APPENDIX D

**DRAFT PROGRAMMATIC AGREEMENT
FOR ARCHAEOLOGICAL RESOURCES**

**PROGRAMMATIC AGREEMENT AMONG FEDERAL HIGHWAY ADMINISTRATION; WEST VIRGINIA STATE
HISTORIC PRESERVATION OFFICER; WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF
HIGHWAYS AND ADVISORY COUNCIL ON HISTORIC PRESERVATION, IF NECESSARY, FOR
ARCHAEOLOGICAL INVESTIGATION ASSOCIATED WITH CONSTRUCTION OF A NEW BRIDGE OVER THE
OHIO RIVER BETWEEN BROOKE COUNTY, WEST VIRGINIA AND JEFFERSON COUNTY, OHIO**

STIPULATIONS

1. ARCHAEOLOGICAL RESOURCES

- A. The Federal Highway Administration (FHWA) will ensure all cultural resource investigations carried out pursuant to this agreement will be by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739; repeated in 36 CFR 61, Appendix A).
- B. FHWA will ensure that all final archaeological reports resulting from actions pursuant to this agreement will be provided to the West Virginia State Historic Preservation Officer (WVSHPO) for review and comment. Completed reports include the Phase IA Archaeological Survey dated October 2009 and the Phase IA Survey Addendum dated May 2011. Anticipated reports include Phase IB Archaeological Survey and whatever additional surveys and reports are warranted. The reports will meet professional standards set forth by the Department of the Interior's *Format Standards for Final Reports of Data Recovery Programs* (42 FR 5377-79) and conform to WVSHPO's "Guidelines for Phase I, II, and III Archaeological Investigations and Technical Reports" dated December 2001, as amended (WVSHPO's Guidelines). With WVSHPO consent, management summaries may be used for consultation prior to completion of final reports.
- C. The FHWA will ensure that an archaeological identification survey of the area of potential effects [defined in 36 CFR 800.16(d)] of the Preferred Alternative of the Undertaking is conducted in a manner consistent with the Secretary of the Interior's *Standards and Guidelines for Identification* (48 FR 44720-23) and the WVSHPO's Guidelines. Prior technical consultation with WVSHPO concerning the Undertaking will be used as a guide in conducting field investigations and subsequent site analysis. In addition, the WVSHPO will review the Scope of Work of the archaeological investigations. A report of the survey will be forwarded to the WVSHPO for review and comment. The site identification report will contain locational information, descriptions of fieldwork, methods employed, results of fieldwork, pertinent maps, photographs, completed West Virginia Archaeological Site Forms, and recommendations and scope(s) of work to evaluate site significance, if necessary.
- D. The FHWA will evaluate properties identified through the archaeological survey for eligibility for nomination to NRHP in accordance with 36 CFR 800.4(c).
 - If FHWA and the WVSHPO agree that a property is not eligible for the NRHP, then no further cultural resource investigation of that property will be conducted.
 - FHWA will assess the effect of the Undertaking on each eligible site in accordance with 36 CFR 800.5.
 - If evaluation identifies an archaeological resource eligible for inclusion in the NRHP for its association with important events, persons, or other qualities, and it will be adversely effected by the Undertaking, the FHWA shall comply with 36 CFR 800.6.
 - If FHWA and the WVSHPO agree that there will be an adverse effect on resources that are only eligible for the information they contain and do not warrant

preservation in place, the FHWA will ensure that they are treated in accordance with Stipulation 1E.

- E. If it is determined by FHWA and the WVSHPO that avoidance of an eligible archaeological site is impracticable and preservation in place is not warranted, the FHWA will develop and implement a data recovery plan in consultation with the WVSHPO. The plan will be consistent with the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37) and WVSHPO's Guidelines.
- F. FHWA will ensure that any human remains encountered during the archaeological investigations are brought to the immediate attention of the WVSHPO and the County Sheriff, in accordance with West Virginia Code § 29-1-8a(d). No activities that might damage the remains will be conducted until FHWA has consulted with WVSHPO, Federally recognized Indian Tribes, and other interested parties.
- G. FHWA will ensure all records and materials resulting from the archaeological investigations will be curated in accordance with 36 CFR 79 and West Virginia Division of Culture and History's *Guidelines for Submitting a Collection to the Archaeological Collections Facility of West Virginia* (Archeological Collections Facility 2002).
- H. FHWA will ensure that research results from data recovery at eligible archaeological sites will be disseminated to the public.
- I. In the event of unanticipated discoveries during construction, all activities will be suspended in the area of the discovery. FHWA will contact the WVSHPO within two working days of the discovery. FHWA and the WVSHPO will agree upon appropriate treatment of the discovery prior to resumption of construction activities in the area of the discovery.

2. ADMINISTRATIVE CONDITIONS

- A. While not required as part of this agreement, it is anticipated that the FHWA will administer its cultural resources obligations in this agreement through the West Virginia Department of Transportation, Division of Highways.
- B. No construction activity will occur within the limits of an eligible historic property until all inventory, documentation, or data recovery has been completed and a report or management summary has been reviewed by the WVSHPO.
- C. The WVSHPO may monitor activities carried out pursuant to this agreement, and the Advisory Council on Historic Preservation (ACHP) will review such activities if so requested. The FHWA will cooperate with the ACHP and the WVSHPO in carrying out monitoring and review responsibilities.
- D. Any signatory to the agreement may request that it be amended, whereupon the parties will consult to consider such amendment.
- E. In the event the FHWA does not carry out the terms of this agreement, the FHWA will comply with 36 CFR 800.3-800.7 with regard to the Undertaking covered by this agreement.
- F. Any signatory to this agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendment or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR 800 with regard to the individual Undertaking covered by this agreement.

3. DISPUTE RESOLUTION AND AGREEMENT EXPIRATION

- A. This agreement shall expire if its terms are not carried out within 10 years from the date of its execution, unless the Signatories agree in writing to an extension.
- B. Should a signatory object to any actions proposed pursuant to this agreement, the FHWA will consult with the Signatories within fifteen (15) days to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA will request the comments of the ACHP pursuant to 36 CFR 800.7. Any ACHP comment provided in response to such a request will be taken into account by the FHWA with reference only to the subject of the dispute. The FHWA responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

Execution of this agreement, its submission to the ACHP, and implementation of its terms evidence that the FHWA has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that the FHWA has taken into account the effects of the Undertaking on historic properties.

SIGNATORIES:

Federal Highway Administration

Date

West Virginia State Historic Preservation Officer

Date

Advisory Council on Historic Preservation, if it chooses to participate

Date

INVITED SIGNATORY

West Virginia Department of Transportation, Division of Highways

Date

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