

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
THE MIAMI TRIBE OF OKLAHOMA,
THE OSAGE NATION,
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA,
THE POTAWATOMI FOREST COUNTY COMMUNITY, AND
THE ILLINOIS DEPARTMENT OF TRANSPORTATION
REGARDING
REPLACEMENT OF THE BRIDGE THAT CARRIES US 67 OVER THE ILLINOIS
RIVER AT BEARDSTOWN,
CASS AND SCHUYLER COUNTIES, ILLINOIS**

WHEREAS, the Illinois Department of Transportation (IDOT) plans to replace the bridge that carries US 67 over the Illinois River at Beardstown (009-0001) in Cass and Schuyler Counties, Illinois (IDOT Sequence #24, SHPO Log #018072619) (Project); and

WHEREAS, the Federal Highway Administration (FHWA) may fund the Project thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470f, and its implementing regulations, 36 CFR Part 800; and

WHEREAS, the FHWA has defined the undertaking's area of potential effects (APE) as the as the corridor shown in Exhibit A; and

WHEREAS, this Project is one section of a larger planned undertaking to improvement US 67, from Jacksonville to Macomb, to be completed in eight (8) sections; and

WHEREAS, Section 106 compliance was concluded in accordance with a Memorandum of Agreement entered into by the FHWA, IDOT, and State Historic Preservation Officer (SHPO) on January 6, 2010; and

WHEREAS, due to the passage of time after the execution of the January 6, 2010 Memorandum of Agreement, the FHWA and IDOT, in consultation with the SHPO, have determined that the Beardstown Bridge (009-0001) is eligible for the National Register of Historic Places (NRHP), and its replacement will cause adverse effects to this historic property (Exhibit B); and

WHEREAS, this Memorandum of Agreement (MOA) addresses the adverse effects to the Beardstown Bridge (009-0001) and related improvements; and

WHEREAS, the remaining sections of the US 67 improvements are currently unfunded for construction and FHWA will update the identification and assessment of effects steps of the Section 106 process prior to authorizing final design, right-of-way, or construction activities on those Sections; and

WHEREAS, in accordance with the Memorandum of Understanding regarding Tribal Consultation Requirements for the Illinois Federal Transportation Program, effective September 19, 2011, FHWA invited the following Tribes to enter consultation June 25, 2019: Ho-Chunk Nation, Kickapoo Traditional Tribe of Texas, Kickapoo Tribe of Kansas, Kickapoo of Oklahoma, Miami Tribe of Oklahoma, Osage Nation, Peoria Tribe of Indians of Oklahoma, Potawatomi Citizen Nation, Potawatomi Forest County Community, Potawatomi Hannahville Indian Community, Potawatomi Pokagon Band, Potawatomi Prairie Band, Sac & Fox Tribe of the Mississippi in Iowa, Sac & Fox Nation of Missouri, and Sac & Fox of Oklahoma; and

WHEREAS, four Tribes expressed interest in the Project and are considered Consulting Tribes: Miami Tribe of Oklahoma, Osage Nation, Peoria Tribe of Indians of Oklahoma, and Potawatomi Forest County Community; and

WHEREAS, FHWA has invited the Miami Tribe of Oklahoma, the Osage Nation, the Peoria Tribe of Indians of Oklahoma, the Potawatomi Forest County Community, and IDOT to become invited signatories to this MOA; and

WHEREAS, the FHWA and IDOT provided the public opportunities to comment on the Project and to become consulting parties. No comments were received, and no requests were received to be consulting parties. Public engagement efforts included: (1) public meetings held in 2007, 2008, 2009, 2011, and 2016, and (2) in 2019 letters were sent to seven parties: Landmarks Illinois, Historic Bridge Foundation, Beardstown Main Street, Old Lincoln Courtroom and Museum Commission, Cass County Historical and Genealogical Society, Schuyler County Architecture Foundation, and Schuyler County Historical Jail Museum & Genealogical Society; and

WHEREAS, pursuant to 23 USC 144(g), the Beardstown Bridge was offered for donation in notices published on 09/17/2020 and 11/05/2020 in the Cass-County Star Gazette and the Breeze Courier, with no responses received; and

WHEREAS, the IDOT, on behalf of FHWA, in accordance with 36 CFR § 800.6(a)(1), notified the Advisory Council on Historic Preservation (ACHP) of the preparation of this MOA in an email dated February 8, 2021, and the ACHP has chosen not to participate in a letter dated February 24, 2021 pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, execution and implementation of this MOA evidences that FHWA has satisfied its Section 106 responsibilities for the Project; and

NOW, THEREFORE, FHWA, IDOT, and SHPO agree that the Project shall be implemented in accordance with the following stipulations to ensure that potential effects on historic properties are taken into account.

STIPULATIONS

FHWA, IDOT, and SHPO agree that the following steps will be undertaken for the Project:

I. ARCHAEOLOGICAL RESOURCE INVESTIGATIONS

- A. **Identification and Evaluation of Resources.** Additional archaeological surveys and test excavations will be conducted by IDOT in a staged fashion when access to sites and previously unexamined high-priority parcels is secured. In coordination with the SHPO and Consulting Tribes, IDOT and FHWA will make a good-faith effort to identify archaeological resources and to evaluate their NRHP eligibility.
- B. **Mitigation of Adverse Effects.** For those sites determined eligible for the NRHP, IDOT and FHWA in coordination with the SHPO and Consulting Tribes will attempt to avoid and minimize potential impacts. When impacts cannot be avoided, data-recovery excavations will be conducted by IDOT. These investigations will follow the generalized data-recovery plans for prehistoric and historic era habitation sites contained in Exhibit C.
- C. **Human Remains.** If human remains are discovered during the investigations covered by this MOA, the provisions of the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170) and its rules (the Act), will be followed. No excavation of human remains will be performed except under the direction of a Certified Skeletal Analyst (17 IAC 4170.300(f)). Disposition of the remains and associated artifacts will be accomplished as determined under the Act. If the remains are determined to be Native American, the provisions of the Memorandum of Understanding regarding Tribal Consultation Requirements for the Illinois Federal Transportation Program, effective September 19, 2011, will be followed, and Tribes with an interest in Cass and Schuyler will be notified.

II. ARCHITECTURAL AND HISTORICAL RESOURCE INVESTIGATIONS

- A. **Beardstown Bridge Mitigation.** In consultation with the SHPO and FHWA, IDOT shall (1) complete Historic Illinois Engineering Record (HIER) Level III recordation of the bridge, and (2) develop an interpretative video of the bridge.
 - 1. Prior to beginning of construction activities, the IDOT shall complete HIER level III recordation of the existing Bridge. The IDOT will submit the draft HIER (95%) to the SHPO, and the IDOT must receive written concurrence from the SHPO that the draft HIER documentation is acceptable prior to the IDOT initiating demolition of the Bridge. The IDOT will ensure the final HIER (100%) documentation is submitted to the SHPO for review and approval.

2. The IDOT shall develop a video that highlights linkages between the development of industry and transportation in Beardstown, focusing on the role that Illinois River bridges played in this process. The video will be provided in a format easily accessible to the public and historic bridge enthusiasts. The IDOT shall submit to the SHPO for review the draft video within six (6) months of the removal of the Beardstown Bridge. The IDOT will ensure the final video is submitted to the SHPO for approval and is then provided to consulting parties and other interested groups.

III. PROFESSIONAL STANDARDS

For the purpose of implementing this MOA, the IDOT shall continue to employ departmental staff with qualifications that meet the requirements of 36 CFR Part 61, Appendix A. The IDOT shall ensure that the professional staff responsible for the implementation of the mitigation measures meet the requirements of 36 CFR Part 61, Appendix A.

IV. DURATION

This MOA will expire if its stipulations are not carried out within five (5) years from the date of its execution. In such an event, the FHWA shall so notify the parties to this MOA and, if it chooses to continue with the Project, then it shall reinstate review of the Project in accordance with 36 CFR Part 800.

V. POST REVIEW DISCOVERIES

- A. **Procedures for an Unanticipated Discovery of Human Remains and Burials.** In the case of an unanticipated discovery of human remains or burials on Federal land, IDOT will follow the procedures outlined by the Native American Graves Protection and Repatriation Act, as amended (43 CFR 10, Subpart B), and pursuant to the Archaeological Resources Protection Act of 1979 (43 CFR 7). In the event of an unanticipated discovery of human remains or burials on non-Federal lands during IDOT construction activities, IDOT will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act (HSRPA)) and follow these procedures:

- (a) Upon encountering human remains or an unmarked human burial during ground disturbing construction activities, IDOT will ensure that the construction contractor immediately stops work within a one hundred fifty (150) foot radius from the point of discovery. The IDOT will ensure that the construction contractor implements interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

(b) Immediately following receipt of such notification from the contractor, the IDOT will ensure that construction activities have halted within a one hundred fifty (150) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.

(c) IDOT will determine if the skeletal remains are human, the degree to which they were disturbed, and, if possible, assess their potential age and cultural affiliation without any further disturbance.

(d) IDOT will notify the county coroner, the HSRPA Coordinator, and SHPO within forty-eight (48) hours of the discovery.

(e) Within seventy-two (72) hours after notification, the county coroner will determine jurisdiction. If the remains are older than one hundred (100) years, the county coroner will notify the HSRPA Coordinator.

(f) The HSRPA Coordinator is responsible for notifying FHWA and IDOT within twenty-four (24) hours of its findings.

(g) If it is determined that intact or fragmented human remains are present IDOT will consult with the HSRPA Coordinator, SHPO, FHWA, and other interested parties regarding additional measures to avoid and protect or mitigate the adverse effect of the Project on the human remains and burial site. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. if the remains are determined to be Native American, consultation with appropriate Tribes will be required;
- iii. visits to the site by the HSRPA Coordinator, SHPO, and other interested parties;
- iv. exploration of potential alternatives to avoid the human remains or burial;
- v. for Native American remains, implementation of a mitigation plan by IDOT in consultation with appropriate Tribes, including procedures for disinterment and re-interment;
- vi. implementation of the mitigation plan; and
- vii. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

B. Procedures for an Unanticipated Discovery of Historic Properties. In the event of an unanticipated discovery of historic properties during IDOT construction activities, IDOT will follow these procedures:

(a) The IDOT shall ensure that the construction contractor immediately stops all construction activity within a one hundred fifty (150) foot radius of the discovery, notifies IDOT of the discovery and implements interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the IDOT shall:

- i. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
- ii. clearly mark the area of the discovery;
- iii. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
- iv. notify the FHWA, the SHPO, and other interested parties of the discovery.

(b) IDOT/FHWA will have seven (7) business days following notification to determine the National Register eligibility of the discovery after considering the filed comments of the SHPO and other interested parties. IDOT/FHWA may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR§ 800.13(c)

(c) If the find is determined to be potentially significant the IDOT will consult with the SHPO and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the National Register, IDOT/FHWA will notify the SHPO and other interested parties of those actions for which it proposes to resolve adverse effects. The SHPO and other interested parties will have seven (7) business days to provide their views on the proposed actions to resolve adverse effects. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. visits to the site by the SHPO and other interested parties;
- iii. exploration of potential alternatives to avoid the site;
- iv. preparation of a mitigation plan by IDOT in consultation with other interested parties for approval by the SHPO;
- v. implementation of a mitigation plan; and
- vi. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

(d) If the find is determined to be either isolated or completely disturbed by construction activities, the IDOT will consult with the SHPO and other interested parties prior to resuming construction.

(e) Dispute Resolution: The FHWA will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding determination of effects.

VI. DISPUTE RESOLUTION

Should any signatory 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:

- A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objections within thirty 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 ACHP and signatories and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time 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 to the MOA and provide them and the ACHP with a copy of such written response.
- C. 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.

VII. 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 ACHP.

VIII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment. If within thirty 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 request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the FHWA, IDOT, and SHPO and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

(Signature Pages Follow)

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REGARDING
REPLACEMENT OF THE BRIDGE THAT CARRIES US 67 OVER THE ILLINOIS
RIVER AT BEARDSTOWN,
CASS AND SCHUYLER COUNTIES, ILLINOIS**

Signatory

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: 12/14/2021

Print Name: Heidi Thomas, P. E.

Title: Transportation Engineer

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Signatory

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Carey L. Mayer Date: 11/22/2021

Print Name: Carey L. Mayer, AIA

**Title: Deputy State Historic Preservation Officer
Illinois Department of Natural Resources**

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Invited Signatory

MIAMI TRIBE OF OKLAHOMA

By: _____ Date: _____

Print Name: _____ Title: _____

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OSAGE NATION

By: _____ Date: _____

Print Name: _____ Title: _____

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PEORIA TRIBE OF INDIANS OF OKLAHOMA

By: _____ Date: _____

Print Name: _____ Title: _____

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POTAWATOMI FOREST COUNTY COMMUNITY


By: _____ Date: _____

Print Name: _____ Title: _____

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Invited Signatory

ILLINOIS DEPARTMENT OF TRANSPORTATION

By:  Date: 12/01/2021

Print Name: Jeffrey P. Myers Title: Region 4 Engineer