

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
THE MIAMI TRIBE OF OKLAHOMA,
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA, AND
THE ILLINOIS DEPARTMENT OF TRANSPORTATION
REGARDING
IMPROVEMENTS TO US 34, HENDERSON COUNTY, ILLINOIS**

WHEREAS, the Illinois Department of Transportation (IDOT) plans to improve US 34 in Henderson County, Illinois (Project), IDOT Sequence #238D; 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 470(f), and its implementing regulations, 36 CFR Part 800; and

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

WHEREAS, the FHWA, IDOT, and State Historic Preservation Officer (SHPO) in consultation with the Advisory Council on Historic Preservation (ACHP) executed a Memorandum of Agreement (MOA) on January 6, 2010 stipulating how potential adverse effects to archaeological sites would be treated. The FHWA determined that this previous MOA is no longer valid because a new preferred alternative was selected, thus, requiring additional study and new potential adverse effects; and

WHEREAS, the FHWA and IDOT in consultation with the SHPO have determined that no architectural resources listed or eligible for listing on the National Register of Historic Places (NRHP) will be adversely affected by the Project (Exhibit B); and

WHEREAS, the FHWA and IDOT, in consultation with the SHPO have identified 34 archaeological sites that warrant NRHP consideration and avoidance of adverse effects (Exhibit B); and

WHEREAS, in accordance with 36 CFR Part 800.4(b)(2), the FHWA and IDOT in coordination with the SHPO and Consulting Tribes shall implement a staged approach to the identification and effects assessment of archaeological resources, as IDOT secures access to parcels within the preferred alignment; and

WHEREAS, the FHWA and IDOT invited the following Tribes to enter consultation: Ho-Chunk Nation, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Kickapoo Traditional Tribe of Texas, Kickapoo Tribe of Kansas, Kickapoo of Oklahoma, Miami Tribe of Oklahoma, Osage Nation, Peoria Tribe of Indians in Oklahoma, Citizen Potawatomi Nation, Forest County Potawatomi, Hannahville Indian Community, Kaw Nation, Pokagon Band of Potawatomi

Indians, Prairie Band Potawatomi, Sac and Fox Nation of Missouri, Sac and Fox Nation of Mississippi in Iowa, and Sac and Fox Nation of Oklahoma; and

WHEREAS, the Miami Tribe of Oklahoma, the Peoria Tribe of Indians of Oklahoma, (the Consulting Tribes) accepted the invitation to participate in consultation and to become signatories to this MOA; and

WHEREAS, the FHWA and IDOT notified the ACHP of the preparation of this Memorandum of Agreement (MOA) in an email dated March 27, 2020, and the ACHP declined to participate April 10, 2020; and

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

NOW, THEREFORE, the FHWA, the Miami Tribe of Oklahoma, the Peoria Tribe of Indians of Oklahoma, 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

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

I. ARCHAEOLOGICAL INVESTIGATIONS

- A. Identification and Evaluation of Resources.** Additional archaeological surveys and test excavations will be conducted by IDOT in a staged fashion as access to parcels in the preferred alignment are secured. IDOT will conduct the phased identification and evaluation of historic properties in accordance with 36 CFR 800.4(b)(1) and (c).
- B. Mitigation of Adverse Effects.** For those sites determined eligible for the NRHP, IDOT will attempt to avoid and minimize potential impacts in coordination with the FHWA, SHPO, and Consulting Tribes. When FHWA, SHPO, and Consulting Tribes agree that impacts cannot be avoided, data-recovery excavations will be conducted by IDOT. These investigations will follow the data-recovery plans for prehistoric and historic era habitation sites listed in Exhibit C.
- C. Preservation of mounds within IDOT Right-of-Way (11HE417 and 11HE531).** IDOT shall avoid adverse impacts to and preserve in-place in perpetuity the mound sites within IDOT right-of-way (Sites 11HE417 and 11HE531). IDOT and FHWA will consult with the SHPO and Consulting Tribes to develop a Construction Monitoring and Long-Term Preservation Plan for these sites.

- D. Tribal Construction Monitoring:** IDOT and FHWA will work with Consulting Tribes to develop a Tribal Construction Monitoring Plan (“The Monitoring Plan”). The Monitoring Plan will describe the procedures for Tribal Construction Monitoring during ground-disturbing construction activities in areas with high potential to expose or impact previously unidentified or buried cultural material, and address any reimbursement to Tribes for construction monitoring.
- E. 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 (Attachment 1). 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, IDOT and the FHWA will notify Tribes with an interest in Henderson County within 24 hours and initiate consultation to discuss avoidance, minimization, and mitigation measures.

II. 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. 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.

III. DURATION

This MOA will be null and void 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.

IV. 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. 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's Chief Archaeologist 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 Human Skeletal Remains Protection Act (HSRPA) Coordinator, SHPO and the Tribes within forty-eight (48) hours of the discovery. The IDOT will contact by phone Diane Hunter of the Miami Tribe of Oklahoma and Burgundy Fletcher of the Peoria Tribe of Indians of Oklahoma or designated successors.

(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 the FHWA and IDOT within twenty-four (24) hours of its findings.

(g) IDOT will notify the Tribes within 24 hours of the HSRPA Coordinator's findings.

(g) If it is determined that intact or fragmented human remains are present, IDOT will consult with the HSRPA Coordinator, SHPO, FHWA, the Tribes, and other interested parties regarding additional measures to avoid and protect or mitigate the adverse effect of the Project on any human remains and burial sites. 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, the Tribes, 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) 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, 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, the Tribes, 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, the Tribes, 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, IDOT will consult with the SHPO, the Tribes, and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the National Register, IDOT/FHWA will notify the SHPO, the Tribes,

and other interested parties of those actions for which it proposes to resolve adverse effects. The SHPO, the Tribes, 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, the Tribes, and other interested parties;
- iii. exploration of potential alternatives to avoid the site;
- iv. preparation of a mitigation plan by IDOT in consultation with the Tribes and 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, the Tribes, and other interested parties prior to resuming construction.

V. 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, the FHWA shall consult with the appropriate party to resolve the objection. If the FHWA determines that such objection cannot be resolved, the FHWA will:

- A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide the 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, the 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. The FHWA will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, the FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the 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. The 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.

VI. 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 the signatories is filed with the ACHP.

VII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that signatory 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, the FHWA must request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The FHWA shall notify the signatories as to the course of action it will pursue.

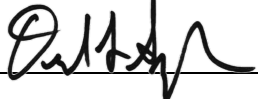
Execution of this MOA by the FHWA, SHPO, the Miami Tribe of Oklahoma, the Peoria Tribe of Indians of Oklahoma, and IDOT, and the implementation of its terms evidence that the FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

[signature pages follow]

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
THE MIAMI TRIBE OF OKLAHOMA,
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA, AND
THE ILLINOIS DEPARTMENT OF TRANSPORTATION
REGARDING
IMPROVEMENTS TO US 34, HENDERSON COUNTY, ILLINOIS**

(Signatory)

FEDERAL HIGHWAY ADMINISTRATION

By:  Date: 8/7/2023

Print Name: David L Snyder

Title: Division Administrator

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
THE MIAMI TRIBE OF OKLAHOMA,
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA, AND
THE ILLINOIS DEPARTMENT OF TRANSPORTATION
REGARDING
IMPROVEMENTS TO US 34, HENDERSON COUNTY, ILLINOIS**

(Signatory)

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: Carey L. Mayer Date: 08/03/2023

Print Name: Carey L. Mayer

Title: Deputy State Historic Preservation Officer

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
THE MIAMI TRIBE OF OKLAHOMA,
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA, AND
THE ILLINOIS DEPARTMENT OF TRANSPORTATION
REGARDING
IMPROVEMENTS TO US 34, HENDERSON COUNTY, ILLINOIS**

INVITED SIGNATORY

MIAMI TRIBE OF OKLAHOMA

By: *Douglas Lankford* Date: 8/23/2023

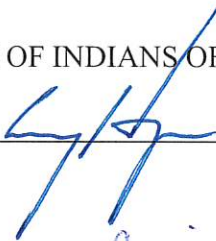
Print Name: Douglas Lankford

Title: Chief

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
THE MIAMI TRIBE OF OKLAHOMA,
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA, AND
THE ILLINOIS DEPARTMENT OF TRANSPORTATION
REGARDING
IMPROVEMENTS TO US 34, HENDERSON COUNTY, ILLINOIS**

INVITED SIGNATORY

PEORIA TRIBE OF INDIANS OF OKLAHOMA

By:  Date: 9/29/23

Print Name: Craig Harper

Title: Chief

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
THE MIAMI TRIBE OF OKLAHOMA,
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA, AND
THE ILLINOIS DEPARTMENT OF TRANSPORTATION
REGARDING
IMPROVEMENTS TO US 34, HENDERSON COUNTY, ILLINOIS**

INVITED SIGNATORY

ILLINOIS DEPARTMENT OF TRANSPORTATION

By: *Pamela C. James* Date: *06/21/23*

Print Name: *Kassil A. Garnett*

Title: *Region 3 Engineer*