

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE, AND
OKLAHOMA DEPARTMENT OF TRANSPORTATION,
REGARDING ADVERSE EFFECT TO
COUNTY ROAD 74 BRIDGE OVER POTEAU RIVER**

WHEREAS, LeFlore County plans to address functional and structural deficiencies in the County Road 74 over Poteau River Parker thru truss bridge (Bridge Location No. 40E1296N4707000, NBI No. 01170, and local County Bridge No. 2) in LeFlore County by eliminating its structurally deficient status, Oklahoma, a property determined eligible for inclusion on the National Register of Historic Places (NRHP); and

WHEREAS, LeFlore County plans to replace the existing bridge by removing the existing historic structure and replacing it with a slab on girder bridge with two 12-foot driving lanes, 10-foot-wide paved outside shoulder, and four-foot inside shoulder; and

WHEREAS, LeFlore County has selected Alternative 5 as described in Guy Engineering's report entitled *Design Support Report for Programmatic Section 4(f) Alternatives Analysis County Road 74 - Bridge Over Poteau River (January 2022)*; and

WHEREAS, the project is being let for construction through Oklahoma Department of Transportation (ODOT) contracting process; and

WHEREAS, the Federal Highway Administration (FHWA) plans to fund the Federal-Aid Project STP-240C(112)CI, State Job J/P 32899(04), thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. § 470 et seq.), and its implementing regulations, 36 CFR Part 800; and

WHEREAS, FHWA and ODOT, in consultation with SHPO, have concluded that Alternative 5 will have an adverse effect to the historic bridge by constructing a new bridge on a new alignment and removing the historic bridge; and

WHEREAS, in accordance with 36 CFR § 800.3(f), ODOT and FHWA, in consultation with the Oklahoma SHPO, identified LeFlore County, the Historic Bridge Foundation, the Oklahoma Historic Bridge and Highway Group, LeFlore County Historical Museum, Nathan Holth of Historic Bridges.org, and Preservation Oklahoma, as consulting parties and have invited them to sign this Memorandum of Agreement (MOA) as a concurring party; and

WHEREAS, FHWA has consulted with the Caddo Nation, Choctaw Nation, Osage Nation, and Wichita and Affiliated Tribes in accordance with 36 CFR § 800.2(c)(2), and determined that no properties of traditional religious cultural significance will be affected by the undertaking, and has invited them to sign this MOA as a concurring party; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iv) as a signatory to this MOA; and

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

STIPULATIONS

FHWA will ensure that the following measures are carried out. Measures will be met within the timeframes presented for each stipulation.

- I. **Documentation.** Prior to the construction of the new bridge, ODOT will record the existing bridge at the equivalent of Level II documentation as specified by the Historic American Engineering Record (HAER).
 - A. High Quality, 35 mm color photographs of the bridge documenting its present appearance and major structural or decorative details, together with all negatives on archival gold CD as digital TIFF files that meet or exceed the minimum requirement for pixel depth. Photographs are to be submitted by ODOT and approved by SHPO to meet the conditions outlined above before any work takes place that will affect the property. The photographs will be a minimum 4" x 6" and no larger than 8" x 10", and will be clearly labeled with the following information:
 - a. Name of property;
 - b. Location (county, city, state, and street address);
 - c. Name of photographer;
 - d. Date of photograph;
 - e. Location of photographic negative;
 - f. Indication of direction camera is pointing; and
 - g. Number of photograph in series.
 - B. Photographic reproduction of selected original (as-built) construction plans and historic photographs, if they exist.
 - C. Preparation of a brief written technical description of the bridge and historical summary.
 - D. All documentation will be edited, catalogued and packaged in a manner acceptable to the Oklahoma SHPO. The Oklahoma SHPO will be the repository for the documentation.
 - E. Within three years of the execution of this MOA, ODOT will provide all research documentation, research materials, copies of photographs, and HAER documentation of the bridge to the Oklahoma SHPO.
- II. **Duration.** This MOA will be null and void if its stipulations are not carried out within ten (10) years from the date of its execution. At such time, and prior to work continuing on the undertaking, FHWA shall either (a) execute a MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below. FHWA shall notify the signatories as to the course of action it will pursue.

- III. **Post-Review Discoveries.** If potential historic properties are discovered or unanticipated effects on historic properties found, FHWA shall follow ODOT Spec 107.09, Protection of Archeological and Unmarked Human Burial Sites.
- IV. **Human Remains.** Treatment and disposition of any human remains that may be discovered will be managed in a manner consistent with the Advisory Council on Historic Preservation's Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funeral Objects; and the Burial Desecration Law-Oklahoma Statute Chapter 47 (Section 1168.0-1168.6), and the Native American Graves Protection and Repatriation Act (NAGPRA) as appropriate. Any human remains, burial sites, or funerary objects, sacred objects, or items of cultural patrimony that are discovered will at all times be treated with dignity and respect.
- V. **Dispute Resolution.** Should any signatory 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:
- A. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. The ACHP 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 ACHP, signatories and concurring parties, 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 and concurring parties 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.
- 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 of 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 party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) 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 § 800.6, or (b) 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 FHWA 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.

Signatory

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

FEDERAL HIGHWAY ADMINISTRATION

BY: **KAREN D**
ORTON
Digitally signed by KAREN
D ORTON
Date: 2024.08.22 16:05:33
-05'00'


DATE: 8/22/2024

Karen Orton
Realty Officer/Environmental Program Manager – Oklahoma Division

Signatory

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE

BY:  _____ DATE: 8/12/2024
Lynda Ozan
Deputy Oklahoma State Historic Preservation Officer

Invited Signatory

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**


OKLAHOMA DEPARTMENT OF TRANSPORTATION

BY:  _____ DATE: 8/1/2024
Joe Brutsché
Environmental Programs Division Manager

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

LEFLORE COUNTY BOARD OF COMMISSIONERS

BY:  DATE: August 12, 2024
~~Lance Smith~~ Josh Blaylock
Commissioner
LeFlore County, District #2

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

HISTORIC BRIDGES FOUNDATION

BY: _____ DATE: _____

Kitty Henderson
Executive Director

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

OKLAHOMA BRIDGE AND HIGHWAY GROUP

BY: _____ DATE: _____
Weslee Kinsler
Administrator

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

LEFLORE COUNTY HISTORICAL SOCIETY MUSEUM

BY: _____ DATE: _____
Randy Bridgman
President

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

HISTORICBRIDGES.ORG

BY: _____ DATE: _____
Nathan Holth

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

Preservation Oklahoma

BY: _____ DATE: _____
Heather Sumner
Executive Director

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

Caddo Nation

BY: _____ DATE: _____

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

Choctaw Nation

BY: _____ DATE: _____

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

Osage Nation

BY: _____ DATE: _____

Concurring Party

**MOA for STP-240C(112)CI; Job/Piece 32899(04) County Road 74 over Poteau River in
LeFlore County**

Wichita and Affiliated Tribes

BY: _____ DATE: _____