

**MEMORANDUM OF AGREEMENT (MOA)
AMONG
FEDERAL HIGHWAY ADMINISTRATION,
OKLAHOMA DEPARTMENT OF TRANSPORTATION,
THE OKLAHOMA ARCHAEOLOGICAL SURVEY (OAS),
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE (SHPO),
AND MR. DAN HILL
REGARDING
REPLACEMENT OF SH-101 BRIDGE OVER POLECAT CREEK**

WHEREAS, the Oklahoma Department of Transportation (ODOT) plans to replace the existing bridge carrying SH-101 over Polecat Creek, Sequoyah County, Oklahoma by constructing a new bridge on existing alignment; and

WHEREAS, the Federal Highway Administration (FHWA) plans to fund the Project, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. § 300101 et seq.), and its implementing regulations, 36 CFR Part 800; and

WHEREAS, a newly-identified portion of the prehistoric Fears archaeological site (34SQ76), which is listed on the National Register of Historic Places (NRHP #88001235), is within the Area of Potential Effects; and

WHEREAS, during the archaeological survey it was determined that the boundaries 34SQ76 extended well-beyond the reported boundaries from the National Register nomination, and yielded Late Archaic period and Village farming/Mississippian (Harlan Phase) period cultural materials relating to prehistoric occupations and that the site may yield datable archeological features that are preserved; and

WHEREAS, ODOT will require approximately 1.25 acres of temporary right-of-way from within the boundaries of 34SQ76 in order to construct the project; and

WHEREAS, FHWA has determined that Federal-Aid Project SSP-299I(123)EC, State Job J/P 27981(04) will have an adverse effect to 34SQ76, and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) and the State Archeologist pursuant to 36 CFR Part 800; and

WHEREAS, the Oklahoma SHPO and the Oklahoma Archaeological Survey (OAS) have entered into a cooperative agreement under which OAS provides special services to SHPO in the Section 106 review process under which OAS maintains the inventory of Oklahoma's prehistoric resources and provides professional services to SHPO in prehistoric archeology, OAS reviews federal undertakings for possible impacts on prehistoric archeological resources, and provides written

comments, which are coordinated with SHPO's written comments, directly to federal agencies and their designees; and

WHEREAS, the FHWA has consulted with the Caddo Nation, Cherokee Nation, Osage Nation, United Keetoowah Band of Cherokee, and Wichita and Affiliated Tribes in accordance with 36 CFR 800.2(c)(2), and invited their participation in the drafting and execution of this MOA as consulting parties; and

WHEREAS; the Osage Nation has declined to participate in the drafting and execution of this MOA; and

WHEREAS, in accordance with 36 CFR 800.3(f) ODOT and FHWA identified the landowner, Mr. Daniel Hill as a consulting party and has invited Mr. Hill to sign this MOA as an invited signatory party; and

WHEREAS, in accordance with 36 CFR Part 800.6(a)(1), the 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; and

NOW, THEREFORE, FHWA, ODOT, the Oklahoma Archaeological Survey, 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. **Mitigation.**

A. Prior to the letting of construction of the project, the following mitigation measures will be implemented.

i. *Geophysical Survey.* The portion of 34SQ76 to be impacted (roughly 8 acres) will be subject geophysical survey to identify areas within that exhibit signatures consistent with archaeological features. The geophysical studies will be conducted by a professional with demonstrated experience in producing quality documentation and reporting for similar archaeological resources. Means and methods for the ensuing excavations and data recovery will be informed by the professional recommendations of the geophysical technician and may include multiple methods. The study will culminate in a professional report that will illustrate anomalies that may be consistent with archaeological features.

ii. *Data Recovery Plan.* ODOT will incorporate the information from the geophysical survey and Phase I efforts into a research design for data recovery efforts within the project footprint (data recovery plan). The data recovery plan will describe the scientific excavation of archaeological materials within the APE including the method of excavation of archaeological features, collection of samples for further study, and the analysis of archaeological materials. The Data Recovery Plan will be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the Secretary of the Interior's Standards and Guidelines for Archaeological and Historic Preservations, and the Advisory Council on Historic Preservation's Treatment of Archaeological Properties: A Handbook. The data recovery plan and geophysical studies report will be submitted to the signatories of this MOA for 30-day review and comment, at which time ODOT will incorporate comments and recommendations and initiate data recovery efforts.

B. *Data recovery efforts.* Upon review and signatory approval of the data recovery plan, and acquisition of temporary right-of-way, ODOT will initiate data recovery efforts within the project footprint that will be disturbed by the undertaking.

C. *Reporting.* Upon completion of the archeological data recovery efforts, the results of investigations shall be incorporated into a report of findings.

- i. *Letter Report of Findings and Commencement of Construction.* Within 30 days of completion of data recovery efforts, ODOT will produce, or cause to produce, a letter report of preliminary findings. The Letter Report will be provided to signatories of the MOA for review and comment. Signatories will have 15 days to provide comment to the Letter Report. Should Signatories have no comment to the Letter Report, construction will be allowed to commence.
 - ii. *Draft Formal Report.* A draft report of findings suitable for signatory review will be completed within 24 months of the completion of fieldwork. The report shall be consistent with professional archeological research reports and will be consistent with that outlined in the data recovery plan.
 - 1. Signatories will review the Draft Report and provide written comments to ODOT on the draft report within 30 days of receipt.
 - 2. ODOT will incorporate the comments into a Final Report for submittal to signatories and concurring parties.
 - iii. *Final Report.* ODOT will produce 30 hard copies of a final report. ODOT will distribute the report to signatories and concurring parties.
 - 1. A digital copy (pdf) form of the full report shall be produced. ODOT will also prepare a redacted pdf version of the report, suitable for public viewing, and will post that report on ODOT Cultural Resources Program website.
- D. *Curation.* All artifacts will be curated in accordance with 36 CFR Part 79 and in accordance with agreements between ODOT and OAS. All documentation and cultural materials will be edited, catalogued and packaged in a manner acceptable for submittal to a federally recognized curation facility. The federally recognized curation facility will be the repository for the cultural material. ODOT will coordinate the accession of materials with the Sam Noble Museum, or other federally recognized repository.
- E. *Submittal of final reports.* ODOT will provide all research documentation, research materials, and copies of reports to all signatories and concurring parties within five years of the execution of this MOA.
- F. Upon completion of the data recovery effort, if all signatories and concurring parties can agree that sufficient data has been collected, ODOT will ensure the development of a “for public document” effort (i.e. blogspot, booklet, video, presentation, etc.) that will be printed or hosted on ODOT Cultural Resources Program website. The specific content and platform will be determined in

consultation with signatories and concurring parties.

II. **National Register Documentation.**

- A. Upon completion of Stipulation I, ODOT will prepare or cause to prepare an updated National Register nomination for the Fears archaeological site (34SQ76) that incorporates new information that has been gleaned through more recent investigations of the site, including [but not limited to] the expanded boundaries that extend outside the APE for the current undertaking. The document will be submitted to the State Archaeologist for a 30-day review. The document will conform with the National Park Service standards and be subject to review by Oklahoma SHPO.

- III. **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 VII below. FHWA shall notify the signatories as to the course of action it will pursue.

- IV. **Post-Review Discoveries.** If potential historic properties unrelated to 34SQ76 are discovered or unanticipated effects on historic properties found, FHWA shall follow ODOT Spec 107.09, Protection of Archeological and Unmarked Human Burial Sites.

- V. **Human Remains.** Treatment and disposition of any human remains that may be discovered will be managed in a manner consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601; 25 U.S. Code 3001 et seq.), 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). 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. Specific processes for treatment of human remains will be outlined in the data recovery plan.

- VI. **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.

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 per Stipulation VII, 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 SSP-299I(123)EC; State Job 29781(04) SH-101 over Polecat Creek in Sequoyah
County, Oklahoma**

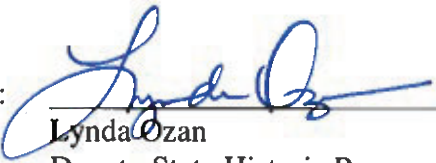
Federal Highway Administration

BY: KAREN D ORTON Digitally signed by KAREN D
ORTON
Date: 2021.05.13 09:00:47 -05'00' DATE: _____
Karen Orton
Realty Officer/Environmental Program Manager
FHWA Oklahoma Division

Signatory

**MOA for SSP-299I(123)EC; State Job 29781(04) SH-101 over Polecat Creek in Sequoyah
County, Oklahoma**

Oklahoma State Historic Preservation Office

BY:  DATE: 4/22/21
Lynda Ozan
Deputy State Historic Preservation Officer

Invited Signatory

**MOA for SSP-299I(123)EC; State Job 29781(04) SH-101 over Polecat Creek in Sequoyah
County, Oklahoma**

Oklahoma Department of Transportation

BY: *Sivanuja S Sundaram* DATE: 04/23/2021
Siv Sundaram
Environmental Programs Division Engineer

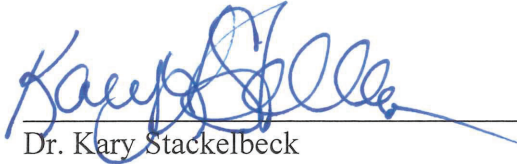
BY: *Chris Wallace* DATE: 04/23/2021
Chris Wallace
District I Engineer

Invited Signatory

**MOA for SSP-299I(123)EC; State Job 29781(04) SH-101 over Polecat Creek in Sequoyah
County, Oklahoma**

Oklahoma Archeological Survey

BY:



Dr. Kary Stackelbeck
State Archaeologist of Oklahoma

DATE:

4/22/21

Invited Signatory

MOA for SSP-299I(123)EC; State Job 29781(04) SH-101 over Polecat Creek in Sequoyah
County, Oklahoma

Landowner

BY: 

Mr. Daniel Hill

DATE: 04/13/2021

I support as written


Concurring Party

**MOA for SSP-299I(123)EC; State Job 29781(04) SH-101 over Polecat Creek in Sequoyah
County, Oklahoma**

Caddo Nation

BY: _____ DATE:

Concurring Party

**MOA for SSP-299I(123)EC; State Job 29781(04) SH-101 over Polecat Creek in Sequoyah
County, Oklahoma**

Cherokee Nation

BY: *Elizabeth Yonkers KSLP* DATE: 05.10.2021

Concurring Party

**MOA for SSP-299I(123)EC; State Job 29781(04) SH-101 over Polecat Creek in Sequoyah
County, Oklahoma**

United Keetoowah Band of Cherokee

BY: _____ DATE:

Concurring Party

**MOA for SSP-299I(123)EC; State Job 29781(04) SH-101 over Polecat Creek in Sequoyah
County, Oklahoma**

Wichita and Affiliated Tribes

BY: _____ DATE: