

**MEMORANDUM OF AGREEMENT
AMONG
MUSCOGEE (CREEK) NATION,
BUREAU OF INDIAN AFFAIRS,
OKMULGEE COUNTY,
AND THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
REGARDING
REPLACEMENT OF OLD HWY 75N BRIDGE OVER ADAMS CREEK, OKMULGEE
COUNTY, OKLAHOMA**

WHEREAS, the Bureau of Indian Affairs (BIA), through Tribal Transportation Program (TTP) funds distributed to the Muscogee (Creek) Nation (MCN), plans to replace the existing Old Hwy 75 North Bridge over Adams Creek, south of Beggs, Okmulgee County, Oklahoma, a property determined eligible for listing on the National Register of Historic Places (NRHP), by constructing a new bridge on the existing alignment (the “Project”); and

WHEREAS, the roadway has been identified with the MCN National Tribal Transportation Facility Inventory (NTTFI) as Route 1430, and is located along the south section line in the southwest quarter of Section 4, Township 14 North, Range 12 East (1M) of Okmulgee County, Oklahoma; and

WHEREAS, the BIA plans to fund the Project, through funding provided to the MCN, 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, the BIA has determined that the bridge replacement project will have an adverse effect to the warren with verticals pony through truss bridge over Adams Creek (Structure #56E0900N3910001 [NBI 01211]), a property determined eligible for inclusion in the National Register of Historic Places, and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800; and

WHEREAS, the SHPO and Oklahoma Archeological Survey (OAS) have entered into a cooperative agreement under which the State Archaeologist at the OAS provides special services to the SHPO in the Section 106 review process. OAS maintains the inventory of Oklahoma’s archaeological resources and provides professional services to the SHPO in pre-contact archaeology. The State Archaeologist at the OAS reviews federal undertakings for possible impacts on pre-contact archaeological resources and accordingly, the OAS has been invited to sign this MOA as an Invited Signatory; and

WHEREAS, the BIA has determined that the bridge is owned by Okmulgee County and the County has been included in this MOA as a Signatory; and

WHEREAS, the BIA has consulted with the Alabama Quassarte Tribal Town (AQTT), Kialegee Tribal Town (KTT), Muscogee (Creek) Nation (MCN), Osage Nation, and Thlopthlocco Tribal Town 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

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

WHEREAS, the BIA has determined that as this is a NRHP eligible bridge, The Historic Bridge Foundation and Preservation Oklahoma, Inc. have been invited as Concurring parties; and

NOW, THEREFORE, the BIA, MCN, Okmulgee County, 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

The BIA 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, the MCN, on behalf of the BIA, will record the existing bridge at the equivalent of Level II documentation as specified by the Historic American Engineering Record (HAER). All documentation prepared and gathered by the MCN will be provided to the BIA for record keeping.
 - A. High Quality, 35 mm black and white 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 the BIA and approved by SHPO as meeting 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. The documentation will include photographic reproduction of selected original (as-built) construction plans and historic photographs, if they exist.
 - C. The documentation will include a 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. The BIA, in coordination with MCN, will provide all research documentation, research materials, copies of photographs, and HAER documentation of the bridge to the Oklahoma SHPO within three years of the execution of this MOA.
 - F. The MCN, in coordination with the recipient of the donated bridge if donated, will develop and place an educational board at the original location of the bridge that is visible from the replacement. The Board should include historical information and graphics/photographs and shall be approved by SHPO prior to placement.
- II. **Adoption and Relocation.** In accordance with 23 USC 144(g), the MCN, on behalf of

the BIA, will make the bridge available for donation for a period of 30 days starting within 60 days from the date this MOA is executed. Notice of this availability shall be made in the Tulsa World and The Oklahoman. Should a recipient emerge, the MCN, in coordination with Okmulgee County, will negotiate a Donation Agreement with the recipient. A template of the Donation Agreement is attached as Appendix A. Should no recipient emerge, the bridge will be demolished.

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, the BIA 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, the BIA may consult with signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below. BIA shall notify signatories as to the course of action it will pursue.

IV. Post-Review Discoveries. If potential historic properties are discovered or unanticipated effects on historic properties found, the MCN and the BIA shall follow protocols in accordance with 36 CFR § 800.13. The MCN will notify BIA of the discovery and they will coordinate to determine an appropriate path forward. Work shall be halted on the bridge until approval to continue is provided by the MCN and the BIA.

V. Monitoring and Reporting. Each six months following the execution of this MOA until it expires or is terminated, MCN shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in MCN's efforts to carry out the terms of this MOA.

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, the BIA shall consult with such party to resolve the objection. Objections must be made in writing to the BIA. If the BIA determines that such objection cannot be resolved, the BIA will:

A. Forward all documentation relevant to the dispute, including the BIA's proposed resolution, to the ACHP. The ACHP shall provide the BIA 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, the BIA 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. The BIA will then proceed according to the final decision of the ACHP.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the BIA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BIA 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. The BIA'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 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.

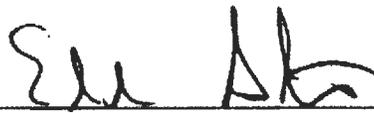
Once the MOA is terminated, and prior to work continuing on the undertaking, the BIA must either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. BIA shall notify the signatories as to the course of action it will pursue.

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

Signatory

MOA for the bridge replacement of Old Highway 75N over Adams Creek in Okmulgee County, Oklahoma (Structure #56E0900N3910001 [NBI 01211]).

Bureau of Indian Affairs

BY:  DATE: 4/12/21
Eddie Streater
Regional Director
Eastern Oklahoma Region

Signatory

**MOA for the bridge replacement of Old Highway 75N over Adams Creek in Okmulgee
County, Oklahoma (Structure #56E0900N3910001 [NBI 01211]).**

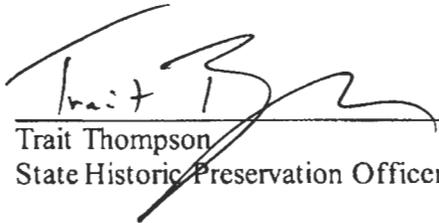
Muscogee (Creek) Nation

BY: _____ DATE: _____
David Hill
Principal Chief

Signatory

**MOA for the bridge replacement of Old Highway 75N over Adams Creek in Okmulgee
County, Oklahoma (Structure #56E0900N3910001 [NBI 01211]).**

Oklahoma State Historic Preservation Office

BY:  _____ DATE: 4/13/21 _____
Trait Thompson
State Historic Preservation Officer

Signatory

MOA for the bridge replacement of Old Highway 75N over Adams Creek in Okmulgee County, Oklahoma (Structure #56E0900N3910001 [NBI 01211]).

Okmulgee County

BY: _____ DATE: _____
Board of County Commissioner, Chairman

BY: _____ DATE: _____
Board of County Commissioner, Member

BY: _____ DATE: _____
Board of County Commissioner, Member

Invited Signatory

**MOA for the bridge replacement of Old Highway 75N over Adams Creek in Okmulgee
County, Oklahoma (Structure #56E0900N3910001 [NBI 01211]).**

Oklahoma Archaeological Survey

BY:  DATE: 5/5/21
Dr. Kary Stackelbeck
State Archaeologist

Concurring Party

**MOA for the bridge replacement of Old Highway 75N over Adams Creek in Okmulgee
County, Oklahoma (Structure #56E0900N3910001 [NBI 01211]).**

Preservation Oklahoma, Inc.

BY: _____ DATE: _____
Chantry Banks
Executive Director

Concurring Party

**MOA for the bridge replacement of Old Highway 75N over Adams Creek in Okmulgee
County, Oklahoma (Structure #56E0900N3910001 [NBI 01211]).**

The Historic Bridge Foundation

BY: _____ DATE: _____
Kitty Henderson
Executive Director

Appendix A:

Donation Agreement Template

**<COUNTY> County Project; <PROJECT NUMBER>, <ODOT JP>
Bridge Replacement on County Road <ROAD NAME/NUMBER> Over <CREEK NAME> Creek,
NRHP Eligible Bridge (NBI <XXXXX>; Structure #<XXXXXXXXXXXXX>) Relocation**

As part of the referenced project, the bridge, which is considered eligible for inclusion in the National Register of Historic Places (Structure # XXXXXXXXXXX) is being donated by <COUNTY> County, Oklahoma (OWNER) to <RECIPIENT> (RECIPIENT), <CITY>, Oklahoma. The project is funded by Federal Highway Administration (FHWA). In accordance with 23 U.S.C. 144(g)(5), Oklahoma Department of Transportation (ODOT) has made the historic bridge available for donation. Upon execution of this Agreement, the bridge will be moved to a <WHERE BRIDGE WILL GO> and will be used at <HOW IT WILL BE USED>. The structure will remain a truss bridge.

The RECIPIENT agrees to the following stipulations:

- A) The RECIPIENT agrees to move the bridge from its current location to its new location at <NEW LOCATION STREET NAME AND CITY>, Oklahoma in such a manner that the historic integrity of the bridge will be maintained.
- B) Once relocated, the RECIPIENT will agree to: 1) maintain the bridge and the features that give it its historic significance (truss elements), 2) maintain the historic integrity of the bridge, and 3) not perform repairs or maintenance inconsistent with the historic design and materials of the bridge. Replacement and maintenance of the deck may be completed as necessary.
- C) The RECIPIENT agrees to assume all legal and financial responsibility for the bridge and will hold <COUNTY> County and <AGENCY> harmless in any liability actions. All such liability will be assumed by the RECIPIENT upon implementing the process of actual physical possession of the bridge for relocation.

In accordance with the attachments included in this Agreement, the RECIPIENT has provided a letter proposal and photographic documentation of the proposed location of the bridge. Upon agreement of the above stipulations, <AGENCY> finds that the proposed relocation provisions do not constitute a 4(f) use of the bridge, because the RECIPIENT will preserve the structure for the foreseeable future.

The undersigned hereby accept the conditions stated above:

OWNER Signature/Title

Date

RECIPIENT Signature/Title

Date

ATTACHMENT I: WORK TO BE PERFORMED BY OWNER

RESPONSIBILITIES OF THE OWNER IN PRESERVING THE BRIDGE

The OWNER will be responsible for the following items of work:

1. Providing owners an estimate of weight for transportable segments.
2. Providing owners with documentation, historical documentation, and any specifications that currently exist.
3. Removing all decking from the bridge and stacking neatly so that decking can be easily loaded by forklift onto owner's trailer.
4. Separating bridge into manageable and transportable segments. Owner will be utilizing a full-size semi-trailer.
5. Loading segments on semi-trailer.
6. Supporting/staging, storing the truss panels in a way that does not cause damage due to overstressing, out of plane bending or rotation, plastic deformation of members, impact, corrosion etc. during demolition, removal, staging and/or temporary storage.
7. Provide the new bridge owners a 30-working day notification for the removal of the bridge from its existing location.
8. Loading the segments on to a truck and trailer provided by the owners. Loading will be completed at a location and time agreed upon by the owners, ODOT, and the contractor at a pre-work meeting.

REIMBURSEMENT OF COSTS - The cost for performing the responsibilities listed above shall be borne entirely by the OWNER, with no reimbursement to be made by the new bridge owners for this work.

ATTACHMENT II: WORK TO BE PERFORMED BY THE RECIPIENT

RESPONSIBILITIES OF THE RECIPIENTS IN PRESERVING THE BRIDGE

The RECIPIENT or the RECIPIENT's contractor will be responsible for the following items of work.

1. Provide a means and method of transport of the segments of the bridge from the existing location to the new location.
2. Coordinate with law enforcement and other entities to arrange for any traffic control or providing escorts.
3. Final installation of completed bridge.
4. Inform ODOT Cultural Resources Program once the bridge has been moved to its new location.
5. Maintain the bridge as described in this agreement.
6. Assume full responsibility for the cost of transferring the trusses and segments.

REIMBURSEMENT OF COSTS - The cost for performing the responsibilities listed above shall be borne entirely by the RECIPIENT, with no reimbursement to be made to the RECIPIENT by the OWNER or ODOT for this work.

ATTACHMENT III: RECIPIENT'S PROPOSAL