

**MEMORANDUM OF AGREEMENT
AMONG THE U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT,
THE NATIONAL PARK SERVICE,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
THE OKLAHOMA ARCHEOLOGICAL SURVEY, AND
THE WICHITA AND AFFILIATED TRIBES OF OKLAHOMA
REGARDING THE PROPOSED ARCHAEOLOGICAL TESTING
AT THE DEER CREEK SITE (34KA3)**

WHEREAS, the U.S. Army Corps of Engineers (USACE), Tulsa District plans to carry out archaeological testing at the Deer Creek Site (34KA3) (undertaking) pursuant to the agency's responsibilities to manage and preserve the site under the National Historic Preservation Act of 1966 (as amended) (54 U.S.C. § 300101 et seq); and

WHEREAS, the undertaking will be carried out under an existing USACE Challenge Partnership Agreement among the Tulsa District, the Oklahoma Archeological Survey (OAS), the Wichita and Affiliated Tribes of Oklahoma, Oklahoma State University (OSU), and the Oklahoma Anthropological Society (OASociety). The goal of the Challenge Partnership Project at the Deer Creek Site (Project) is to undertake work to determine the current state of preservation and context for the cultural features and deposits at the Deer Creek site as it has not been re-assessed in some 40 years; and

WHEREAS, Deer Creek is one of the most significant archaeological sites in Oklahoma and was listed on the National Register of Historic Places and designated as a National Historic Landmark in 1966. The Deer Creek site is a fortified village site believed to have been occupied by the Wichita Tribe during the first half of the 18th century. It has also been called Ferdinandina or Ferdinandino and is closely associated with the French exploration of the southern and central Plains. It is one of only three such (known) sites in the Southern Plains; and

WHEREAS, the Tulsa District has defined the undertaking's area of potential effects (APE) as those areas which will be subject to archaeological excavation as described in the attached Research Design; and

WHEREAS, the Tulsa District has determined that the undertaking will have an adverse effect on the Deer Creek Site, which is listed in the National Register of Historic Places, and has consulted with the Oklahoma State Historic Preservation Office (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) to determine that this Memorandum of Agreement (MOA) is necessary to document how the Tulsa District will address the adverse effects; and

WHEREAS, the Tulsa District, in accordance with 36 CFR § 800.10(c), has notified the Secretary of the Interior of the consultation involving the Deer Creek Site and has invited the Secretary to participate in the consultation and development of the MOA because of the adverse effect of the project. The National Park Service, National Historic Landmarks Program (NPS) accepted the invitation to participate and will be a signatory to the MOA as the Federal Agency with oversight responsibilities for National Historic Landmarks; and

WHEREAS, the SHPO and 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 prehistoric resources and provides professional services to the SHPO in prehistoric archeology. The State Archaeologist at the OAS reviews federal undertakings for possible impacts on prehistoric archaeological resources and provides written comments as the SHPO's official representative. Accordingly, the OAS has been invited to sign this MOA; and

WHEREAS, the Tulsa District has consulted with the Wichita and Affiliated Tribes of Oklahoma for whom the Deer Creek Site has religious and cultural significance and has invited them to sign this MOA; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the Tulsa District 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)(iii); and

NOW, THEREFORE, the Tulsa District and the 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

Tulsa District shall ensure that the following measures are carried out:

I. EXCAVATIONS:

- a. The Tulsa District shall ensure that the archaeological excavation of the targeted features and areas of the Deer Creek site is undertaken by professional archaeologists meeting Secretary of Interior Professional Qualification Standards (36 CFR 61) and their adequately supervised field crew. Excavation methods will follow those outlined in the attached Research Design and will be approved by all signatories prior to commencement of work. Any changes to the outlined methods, such as those made based on field conditions or upon discovery of new information, will be made in consultation with all signatories.
- b. The Tulsa District will inform all signatories of the schedule for field work at the site once it has been developed and at least two weeks before work begins. Should changes to previously determined work schedules be necessary due to weather or other impediments, the Tulsa District will inform signatories within 48 hours of the change and before work begins. If the specific situation does not allow for the advance notification of a schedule change, the Tulsa District will notify all signatories of the change as soon as possible.
- c. It is unlikely for burials to be located in the area of excavation. However, the Tulsa District shall comply with the Native American Graves Protection and Repatriation Act (NAGPRA) and its associated regulation, 43 CFR Part 10 should any human remains or funerary objects be inadvertently discovered.

II. CURATION AND DISPOSITION OF RECOVERED MATERIALS, RECORDS, AND REPORTS:

- a. **CURATION.** Tulsa District shall ensure that all archaeological materials and records that result from identification, evaluation, and treatment efforts conducted under this MOA will be transferred to Tulsa District's current repository, the Sam Noble Oklahoma Museum of Natural History in Norman, and curated to 36 CFR Part 79 standards. NAGPRA items, if any, will be handled in accordance with a treatment plan developed in accordance with NAGPRA regulations.
- b. **REPORTS.**
 - i. The Tulsa District shall ensure that a summary report of the Project, the fieldwork, and the findings is produced by the OAS and other Project partners by August 15, 2016 to assist in providing a condensed reporting of the results of the Challenge Partnership Project for Tulsa District reporting to USACE Headquarters. This summary report will be a preliminary document for the Tulsa District that Tulsa District will provide to all signatories.
 - ii. The Tulsa District shall ensure that a final technical report describing the completed work is produced by the OAS and other Project partners within 9 months of completion of the fieldwork.
 1. Report shall meet accepted professional standards, including the Secretary of the Interior's Standards and the guidance found in the Oklahoma Historical Society State Historic Preservation Office Fact Sheet #16:
<http://www.okhistory.org/shpo/factsheets/fs16archreports.pdf>
 2. Final report shall include a site management plan that:
 - a. proposes measures to address immediate and long-term needs to reduce or minimize potential adverse effects to the site; and
 - b. recommends "best practices" for preserving the site into the future.
 3. The Tulsa District shall provide copies of this report to the signatories for an initial 60 day review and comment period. Should signatory review result in comments and recommendations for changes, appropriate edits will be made within 60 days and the final draft will be provided by the Tulsa District to the signatories for final review. If after 30 days no additional comments are received, the Tulsa District will assume acceptance and finalize the report.
 4. The signatories shall withhold from the public all information that may be of a confidential or sensitive nature pursuant to 36 CFR 800.11(c).

III. TECHNICAL REPRESENTATIVES OF THE SIGNATORIES: Each signatory shall designate a project contact and notify the Tulsa District of the person's name and full contact information within one week of execution of this MOA. Notification shall be by letter or email. The Tulsa District will distribute the contact information to all signatories within 48 hours of receipt. Each signatory shall promptly notify the Tulsa District in the event there is a change in the designated project contact. The Tulsa District will provide all signatories with this information change within 48 hours of receiving notification.

IV. DURATION: This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the Tulsa District may consult with the other

signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

- V. MONITORING AND REPORTING:** Each year following the execution of this MOA until it expires or is terminated, the Tulsa District 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 the Tulsa District's efforts to carry out the terms of this MOA.
- VI. DISPUTE RESOLUTION:** Should any signatory or concurring 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 Tulsa District shall consult with such party to resolve the objection. If the Tulsa District determines that such objection cannot be resolved, the Tulsa District will:
- a. Forward all documentation relevant to the dispute, including the Tulsa District's proposed resolution, to the ACHP. The ACHP shall provide the Tulsa District 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 Tulsa District 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 Tulsa District 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, the Tulsa District may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Tulsa District 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 Tulsa District'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 signatories 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, the Tulsa District 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. The Tulsa District shall notify the signatories as to the course of action it will pursue.

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

SIGNATORY PAGE

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REGARDING THE PROPOSED ARCHAEOLOGICAL TESTING
AT THE DEER CREEK SITE (34KA3)

U.S. Army Corps of Engineers, Tulsa District



Richard A. Pratt
Colonel, U.S. Army
District Commander

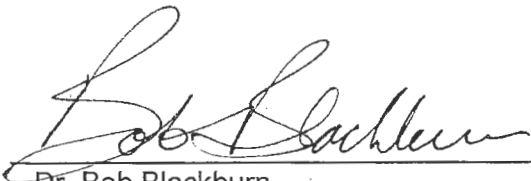
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Oklahoma State Historic Preservation Officer



Dr. Bob Blackburn
State Historic Preservation Officer

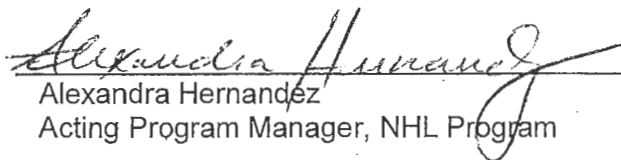
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National Park Service

 Date 5/17/16
Alexandra Hernandez
Acting Program Manager, NHL Program

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Wichita and Affiliated Tribes of Oklahoma



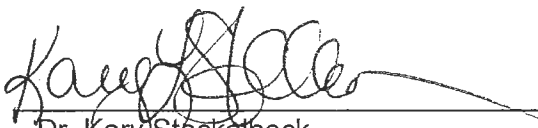
Ms. Terri Parton
President

Date 05/26/2016

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Oklahoma Archeological Survey

 Date 5/13/2016
Dr. Kary Stackelbeck
State Archaeologist