

## **MEMORANDUM OF AGREEMENT**

### **AMONG**

**THE U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT,  
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,  
THE CADDO NATION OF OKLAHOMA, AND  
THE WICHITA AND AFFILIATED TRIBES OF OKLAHOMA**

**REGARDING COMPLIANCE WITH SECTION 106 OF THE  
NATIONAL HISTORIC PRESERVATION ACT OF 1966 (AS AMENDED)  
FOR THE  
SPIRO MOUNDS STREAM EROSION PROJECT,  
LeFLORE COUNTY, OKLAHOMA**

WHEREAS, the U.S. Army Corps of Engineers, Tulsa District (Tulsa District) owns the Spiro Mounds Archaeological Site (Spiro), which is located on the Arkansas River in LeFlore County, southeastern Oklahoma; and

WHEREAS, Spiro is one of the most significant archaeological sites in the United States and was listed on the National Register of Historic Places in 1969. Spiro was occupied perhaps as early as AD 800 and most heavily occupied between AD 1200-1450, during which over a dozen earthen mounds were built. Although the investigation of those mounds at the site in the 1930s brought the site to international attention and archaeological investigations in 1979-82 uncovered structures on top of low earthen rises that archaeologists call house mounds, little is known about the number, size, or nature of typical dwellings at Spiro other than some poorly documented houses uncovered during the 1930s; and

WHEREAS, Spiro is considered a sacred site and/or a site of high significance to the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes of Oklahoma; and

WHEREAS, between October 2011 and June 2012, personnel from the Oklahoma Archeological Survey (OAS), the Department of Anthropology at the University of Oklahoma, and the Arkansas Archeological Survey conducted a near-surface geophysical investigation of Spiro with permission from the Tulsa District, Caddo Nation of Oklahoma, and Wichita and Affiliated Tribes of Oklahoma; and

WHEREAS, this investigation revealed over 60 evenly-spaced anomalies that are consistent in size and shape with prehistoric houses. At least four of these probable houses have been cut in half by a creek, which was rerouted into its present course by a landowner, most likely in the 1940s; and

WHEREAS, the integrity of these probable houses, which are likely important contributing elements to the significance of the Spiro site, is being lost to erosion of the creek banks during high-flow events; and

WHEREAS, Tulsa District has determined through consultation with the Oklahoma State Historic Preservation Office (SHPO), the Caddo Nation of Oklahoma, the Wichita and Affiliated Tribes of Oklahoma in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 (NHPA), as amended, and its implementing regulations (36 CFR Part 800) that the erosion from the creek represents an adverse effect to these potentially significant features and the Spiro site; and

WHEREAS, the consulting parties have agreed to resolve these adverse effects through salvage excavation of the features being impacted by the creek; and

WHEREAS, it is understood that the ultimate destruction of these features through excavation will not only remove any concerns about the future loss of the information they contain, it may also reveal much significant information about prehistoric residential life at Spiro and allow for better management of the site. These benefits gained will offset the loss of these features; and

WHEREAS, Tulsa District and SHPO agree that it is advisable to accomplish resolution of these adverse affects and compliance with Section 106 through the development and execution of this Memorandum of Agreement (MOA) in accordance with 36 CFR 800.6; and

WHEREAS, the ACHP has decided not to participate in consultation regarding this Project at this time, but may re-enter consultation at any time, particularly functioning to resolve potential disputes between Tulsa District , SHPO, and/or other Signatories to this MOA; and

WHEREAS, the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes of Oklahoma have been invited to sign this MOA; and

NOW, THEREFORE, the Tulsa District, SHPO, Caddo Nation of Oklahoma, and the Wichita and Affiliated Tribes of Oklahoma agree that the Tulsa District shall ensure that the following stipulations are implemented in order to resolve adverse effects of the creek erosion and that these stipulations shall govern the Project and all of its parts until this MOA expires or is terminated.

### **STIPULATIONS**

Tulsa District shall ensure that the following measures will be carried out. All work conducted under this MOA will be performed in a manner consistent with the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716-44740; September 23, 1983), as amended, or the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 CFR 68), as appropriate.

## **I. EXCAVATION OF IMPACTED FEATURES**

The Tulsa District shall ensure that the salvage excavation of the impacted features is undertaken by qualified personnel. Excavation methods will generally follow those outlined in the attached proposal (see Attachment) 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.

All signatories will be informed of the schedule for field work at the site as soon as possible once it has been developed. Should changes to previously determined work schedules be necessary due to weather or other impediments, signatories will be informed as soon as possible.

Excavations will be undertaken in a manner which reduces the potential for increased erosion of the stream bank. The Tulsa District will investigate appropriate methods of erosion protection for the stream bank to help manage erosion of the site into the future. Investigations should focus on using natural materials to protect the bank to minimize visual and mechanical impacts to the site.

## **II. TREATMENT OF HUMAN REMAINS**

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. The Tulsa District shall develop a treatment plan (e.g., NAGPRA Plan of Action) for inadvertently discovered human remains in consultation with the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes of Oklahoma

## **III. 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 are ultimately accessioned into the Sam Noble Oklahoma Museum of Natural History in Norman and curated to 36 CFR Part 79 standards. NAGPRA items will be handled in accordance with the treatment plan developed under Stipulation II of this document.

B. REPORTS. The Tulsa District shall ensure that a final technical report describing the completed work in a format following accepted professional standards is produced and shall provide copies of this report to the signatories. 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) and in accordance with the Plan of Action developed under Stipulation II of this document.

#### **IV. TECHNICAL REPRESENTATIVES OF THE SIGNATORIES.**

Each signatory shall designate a project contact and notify the other signatories of the person's name and full contact information. Notification shall be by letter or email. Each signatory shall notify the other signatories as soon as possible in the event there is a change in the designated project contact.

#### **V. EXECUTION AND APPLICABILITY OF THIS AGREEMENT.**

This Agreement will go into effect when signed by Tulsa District and SHPO, and when an executed version is received by the Advisory Council on Historic Preservation (ACHP).

#### **VI. PROFESSIONAL QUALIFICATIONS.**

All investigations specified in this MOA shall be carried out by principal investigators meeting the pertinent professional qualifications of the Secretary of the Interior's (SOI) *Professional Qualification Standards* (36 CFR Part 61) in a discipline appropriate for the task and the nature of the historic properties.

#### **VII. 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 objector is encouraged to consult the other signatories in resolving the objection. If that objector determines that such objection cannot be resolved, Tulsa District shall perform the following tasks.

A. CONSULT ACHP. Forward all documentation relevant to the dispute, including proposed resolution, to the ACHP. The ACHP shall provide the agency 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 agency shall prepare a written response that takes into account advice or comments regarding the dispute from the ACHP and signatories and provide them with a copy of this written response. The agency will then proceed according to its final decision.

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

#### **VIII. ANTI-DEFICIENCY ACT.**

It is understood that the implementation of this Agreement is subject to Federal and State anti-deficiency statutes.

## **IX. DURATION, AMENDMENT, WITHDRAWAL, AND TERMINATION.**

A. DURATION. Unless terminated or amended as outlined below, this MOA shall remain in effect for a period of 5 years from the date that the MOA goes into effect and may be extended for a second, five-year term with the written concurrence of all of the signatories. During the time in which this is in effect, relevant portions of this MOA will be superseded, if appropriate, by future revisions to 36 CFR Part 800 or other federal historic preservation law or regulation.

B. AMENDMENT. If any signatory to the MOA determines that the Agreement cannot be fulfilled or that modification of the Agreement is warranted, that signatory shall consult with the other signatories to seek amendment of the Agreement. The Agreement may be amended after consultation among the signatories and all parties agree in writing with such amendment.

C. WITHDRAWAL. Any signatory may withdraw their involvement in this Agreement by providing 30 days written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent withdrawal. Withdrawal of Tulsa District or SHPO will invalidate the MOA.

D. TERMINATION. This Agreement will be fully terminated if any of the signatories provides notice of termination and after 30 days or more of unsuccessful consultations to amend the Agreement. This Agreement may also be terminated by the implementation of a subsequent MOA per 36 CFR Part 800 that explicitly supersedes this Agreement.

## **XI. COMPLIANCE WITH 36 CFR PART 800.**

Execution of this MOA and implementation of its terms is evidence that U.S. Army Corps of Engineers, Tulsa District has taken into account the effects of the agency's undertakings on historic properties and has afforded the ACHP an opportunity to comment.

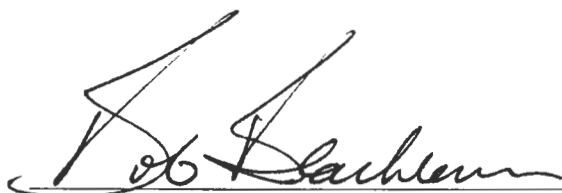
## SIGNATORIES



COL Richard A. Pratt  
Commander  
U.S. Army Corps of Engineers, Tulsa District

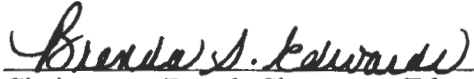
23 Sep 13

Date

  
Dr. Bob Blackburn  
Oklahoma State Historic Preservation Officer


9.9.03  
Date

## INVITED SIGNATORIES

A handwritten signature in cursive script, reading "Brenda S. Edwards", is written over a horizontal line.

Chairperson Brenda Shemayne Edwards  
Caddo Nation of Oklahoma



  
\_\_\_\_\_  
President Terri Parton  
Wichita and Affiliated Tribes of Oklahoma

09/10/2013  
Date