

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION,
OKLAHOMA DEPARTMENT OF TRANSPORTATION,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL PARK SERVICE
REGARDING
PROPOSED REPLACEMENT OF SH-33 VIADUCT OVER
COTTONWOOD CREEK**

WHEREAS, the Oklahoma Department of Transportation (ODOT) plans to replace the existing double-deck viaduct carrying SH-33 (Noble Avenue) over Cottonwood Creek in Guthrie, Logan County, Oklahoma, a property determined eligible for listing on the National Register of Historic Places (NRHP), by constructing a new four-lane bridge on a slight offset alignment to the south; and

WHEREAS, the proposed widening of the bridge itself is driven solely by local factors related to its current design, placement with respect to adjacent intersections, and local events in the area of the bridge that cause traffic to back up on the bridge, resulting in a safety concern due to its very poor condition and poor sight distances, and that the proposed four-lane bridge is not being constructed to facilitate any potential future widening of SH-33 through the NRHP-listed Guthrie Historic District; and

WHEREAS, in order to construct the new bridge on the selected alignment, 11 buildings that contribute to the NRHP-listed Guthrie Historic District must be removed; 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), 16 U.S.C. § 470f, and its implementing regulations, 36 CFR 800; and

WHEREAS, FHWA has determined that Federal-Aid Project STPY-155E(819)EC, State Job J/P 21860(04) will have an adverse effect to the existing double-deck viaduct over Cottonwood Creek (Structure 4206 1442X [NBI 05047]), a property determined eligible for inclusion in the National Register of Historic Places, the NRHP-listed Guthrie Historic District, and that the undertaking may have the potential to adversely affect the Guthrie National Historic Landmark (NHL), and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800; and

WHEREAS, in accordance with 36 CFR 800.3(f) ODOT and FHWA, in consultation with the Oklahoma SHPO, identified Preservation Oklahoma, the Logan County Historical Society, and the City of Guthrie as consulting parties. ODOT and FHWA met with these parties and the Oklahoma SHPO to discuss the undertaking and ask for comments on March 23, 2012; June 20, 2012; and March 27, 2013; and

WHEREAS, under 36 CFR 800.10 Special Requirements for Protecting National Historic Landmarks and Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking; and

WHEREAS, under 36 CFR 800.10 (c); The agency official is required to notify the Secretary of the Interior (delegated to the National Park Service Regional Directors) of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect; and

WHEREAS, FHWA consulted with the National Park Service (NPS) Intermountain Regional Office on May 2, 2013 and invited the NPS to be consulting party in the Section 106 consultation; and

WHEREAS, the FHWA has consulted with the NPS regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as an invited signatory; and

WHEREAS, the FHWA has consulted with the City of Guthrie regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a signatory party; and

WHEREAS, the FHWA has consulted with the Logan County Historical Society, and Preservation Oklahoma, regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a concurring party; and

WHEREAS, the FHWA has consulted with the Cheyenne and Arapaho Tribes, Iowa Tribe of Oklahoma, Osage Nation, United Keetoowah Band of Cherokees, 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

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 to participate in the consultation pursuant to 36 CFR Part 800.6(a)(1)(iii) as a signatory to this MOA; and

NOW, THEREFORE, FHWA, Oklahoma Department of Transportation, the Oklahoma SHPO, the ACHP, and the NPS 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. Prior to the construction of the new bridge, ODOT will record the existing bridge to meet the Historic American Engineering Record (HAER) standards to provide imagery, plans, and historical context to illustrate the national historical significance of the bridge. ODOT shall consult with the NPS Intermountain Regional Office for determining the appropriate level of documentation. Once the NPS Intermountain Regional Office has set the level of documentation and approved the final HAER documentation, the NPS will transmit the documentation to the Library of Congress, HABS/HAER/HALS Collection. ODOT shall submit a copy of the final materials to the Oklahoma SHPO. The HAER documentation will be completed and submitted within three years of execution of this MOA.
 - ✓ a. Prior to beginning any work on the bridge, archival, large-format photographs will be taken and a short history of the bridge written in accordance with the appropriate level of documentation set by the NPS Intermountain Regional Office. ODOT will work with the NPS to complete the documentation to meet HAER standards.
 - ✓ b. ODOT will make a reasonable attempt to seek out individuals in the Guthrie vicinity who may have worked on construction of the Cottonwood Creek Viaduct and who may be able to provide additional perspectives regarding the historic context of the bridge.
- II. Prior to the construction of the new bridge, the existing 11 buildings that will be affected by the undertaking will be recorded and documented. Documentation will be completed and submitted to the SHPO within two years of execution of this MOA. This documentation will include the following:
 - ✓ a. High Quality, 35 mm black and white photographs, of the buildings, documenting their appearance and current setting, together with all negatives or archival gold CD containing digital TIFF files that meet or exceed the minimum requirement for pixel depth. Photographs are to be submitted and approved by SHPO as meeting the conditions outlined above before any work takes place that will affect the property.
 - ✓ b. 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:
 - i. Name of property;
 - ii. Location (county, city, state, and street address);
 - iii. Name of photographer;
 - iv. Date of photograph;
 - v. Location of photographic negative;
 - vi. Indication of direction camera is pointing;
 - vii. Number of photograph in series.
 - ✓ c. Preparation of a brief written technical description of the buildings 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

- III. ODOT will complete a review of the Guthrie Historic District NRHP nomination form and prepare an aerial photograph or map of the contributing properties in the district that are still extant. ODOT will produce a Geographic Information System (GIS) data file that would provide geospatial information of the Guthrie NRHP District. The mapping will be completed within two years of execution of this MOA.
 - a. This data file will be provided to the SHPO and the City of Guthrie for their use. ODOT will also retain the GIS data in its offices. The GIS data will include the boundaries of the existing historic districts (the NRHP and NHL) and the ability to select a parcel, determine the historic designation, and view an image of buildings on the parcel.
- IV. Within three years of the execution of this MOA, ODOT will provide all research documentation, research materials, copies of photographs, HAER documentation of the bridge, and documentation of the buildings, and maps produced to the City of Guthrie and the Logan County Historical Society for use in the research library or other repository.
- V. ODOT will install an interpretive kiosk or panel adjacent to the new bridge presenting the history of the former double-deck viaduct. ODOT will consult with the Oklahoma SHPO and the City of Guthrie regarding the location of the kiosk or panel and the content of the information presented on the interpretive kiosk or panel. This kiosk or panel will be completed and put into place prior to the opening of the new bridge to traffic.
- VI. ODOT will implement design considerations to minimize effects of the new bridge within the NRHP and the adjacent NHL District. These design elements will be developed in coordination with SHPO, NPS, and other local consulting parties to ensure reasonable compatibility with the surrounding historic district. The existing SH-33 bridge is not part of the period of significance of the Guthrie NRHP or NHL District. However, new construction features will consider the surrounding district setting, feeling and association. ODOT and FHWA shall consult with the City of Guthrie, the Oklahoma SHPO, and the National Park Service in the development of the bridge design.
 - a. ODOT will review and consider design elements in the configuration of the new bridge, and approaches will include measures to minimize direct and indirect impacts to the surrounding NRHP and nearby NHL historic districts. ODOT will consider appropriate landscape screening along the approach wall at 2nd Street and SH-33 to soften the view from the northern boundary of the Guthrie NHL District at 2nd Street and Cleveland Avenue.
 - b. ODOT shall provide copies of plans, drawings, or other documentation regarding design elements that are proposed for the new bridge. Signatories will review these materials and provide comment within 30 days of receipt of such materials.
 - c. ODOT shall not advertise this project for construction bids until all agreed-upon design and construction measures to minimize impacts to the surrounding NRHP and NHL districts are incorporated into the final Plans,

Specifications, and Estimates (PS&E) package.

- VII. Duration. This MOA will be null and void if its stipulations are not carried out within five (5) 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 11 below. FHWA shall notify the signatories as to the course of action it will pursue.
- VIII. 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.
- IX. Monitoring and Reporting. Each year following the execution of this MOA until it expires or is terminated, ODOT shall provide all signatories to this MOA a summary report detailing work carried out pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in FHWA's efforts to carry out the terms of this MOA.
- X. 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, 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 the 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.
- XI. 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.
- XII. 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 VIII, 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.

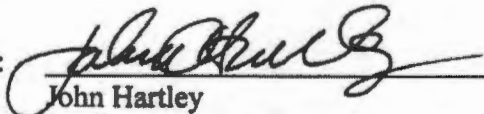
Execution of this MOA by the FHWA and SHPO and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment

Signatory

**MOA for STPY-155E(819)EC; State Job 21860(04) SH-33 (Noble Avenue) over
Cottonwood Creek in Logan County, Oklahoma (Structure 4206 1442X [NBI 05047])**

Federal Highway Administration

BY:



John Hartley
Environmental Program Manager
Oklahoma Division

DATE:

Dec 16, 2013

Signatory

**MOA for STPY-155E(819)EC; State Job 21860(04) SH-33 (Noble Avenue) over
Cottonwood Creek in Logan County, Oklahoma (Structure 4206 1442X [NBI 05047])**

Oklahoma Department of Transportation

BY:



DATE:

12/13/2013

Dawn Sullivan

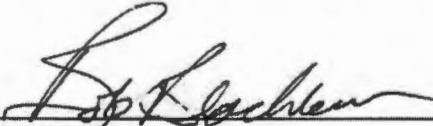
Environmental Programs Division Engineer

Signatory

**MOA for STPY-155E(819)EC; State Job 21860(04) SH-33 (Noble Avenue) over
Cottonwood Creek in Logan County, Oklahoma (Structure 4206 1442X [NBI 05047])**

Oklahoma State Historic Preservation Office

BY:



Bob Blackburn

State Historic Preservation Officer

DATE:

12/16/13

Signatory

**MOA for STPY-155E(819)EC; State Job 21860(04) SH-33 (Noble Avenue) over
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City of Guthrie

BY: S. Breland DATE: 12-12-13
Sereniah Breland
Guthrie City Manager

Signatory

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Advisory Council on Historic Preservation

BY: John M. Fowler DATE: 12/23/0
~~Reid Nelson~~ John M. Fowler
~~Director~~ Executive Director

Invited Signatory

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National Park Service

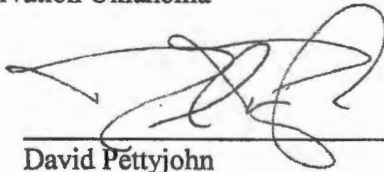
BY:  DATE: 11/20/2013
Christine Whitacre
Program Manager, Heritage Partnerships Program
Intermountain Region

Concurring Party

**MOA for STPY-155E(819)EC; State Job 21860(04) SH-33 (Noble Avenue) over
Cottonwood Creek in Logan County, Oklahoma (Structure 4206 1442X [NBI 05047])**

Preservation Oklahoma

BY:



David Pettyjohn
Executive Director

DATE:

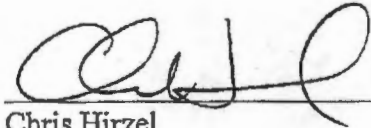
11/25/13

Concurring Party

**MOA for STPY-155E(819)EC; State Job 21860(04) SH-33 (Noble Avenue) over
Cottonwood Creek in Logan County, Oklahoma (Structure 4206 1442X [NBI 05047])**

Logan County Historical Society

BY:



Chris Hirzel
President

DATE:

Nov. 19 2013