

**MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE OKLAHOMA DEPARTMENT OF TRANSPORTATION, AND
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
REGARDING THE HOBART DOWNTOWN STREETSCAPE TRANSPORTATION
ALTERNATIVES PROGRAM PROJECT, HOBART, KIOWA COUNTY, OKLAHOMA**

WHEREAS, the Oklahoma Department of Transportation (ODOT) has made improvements to the Hobart Streetscape for five blocks along both sides of Main St. from Iris St. to 5th St. and for one block along the west side only of Main St. from 5th St. to 6th St., Hobart, Kiowa County, Oklahoma; and

WHEREAS, the project included sidewalk reconstruction Americans with Disabilities Act (ADA) ramps within the Hobart Historic District, a property listed on the National Register of Historic Places (NRHP), and three properties individually listed on the NRHP: Kiowa County Courthouse, the Hobart City Hall and Hobart Public Library; and

WHEREAS, the Federal Highway Administration (FHWA) funded Federal-Aid Project STP-138E(170)EH, State Job Piece 26891(04), 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, this undertaking is defined as a Transportation Enhancement (TE) project authorized under the U.S. DOT's Federal-aid surface transportation programs, and authorized through the Transportation Equity Act for the 21st Century (TEA-21); and

WHEREAS, ODOT, on behalf of FHWA, consulted with the State Historic Preservation Office (SHPO) on January 27, 2010 and provided a copy of the cultural resources report with environmental study footprint and determination of *no adverse effect* to historic properties; and

WHEREAS, SHPO concurred with ODOT and FHWA on February 23, 2010 with the condition that ODOT provide complete project plans and specifications that are consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings to SHPO prior to bid solicitation for construction or any construction work; and

WHEREAS, the final plans, which were produced by R.L Shears Company, P.C. on December 3, 2010, were not provided to SHPO for review and comment; and

WHEREAS, due to funding constraints, only a portion of the project was actually constructed, including only sidewalk reconstruction along only the west side of Main Street between 4th Street and 5th Street with bump outs at each corner of the intersections of 4th Street and at 5th Street.

WHEREAS, on behalf of FHWA, in April 2010 ODOT completed a Categorical Exclusion (CE) document under the National Environmental Policy Act (NEPA) containing all environmental documentation and project plans, and is available to the public upon request from ODOT; and

WHEREAS, the project has been constructed since the December 3, 2010 final plans; and

WHEREAS, ODOT and FHWA have agreed that the undertaking has had an adverse effect on the historic properties listed on the NRHP, and have consulted with the Oklahoma State Historic Preservation Officer (SHPO), pursuant to 36 CFR 800, and the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, ODOT, FHWA, and SHPO have agreed that the adverse effect is in relation to ODOT's failure to meet the condition requested by SHPO in the February 23, 2010 correspondence regarding submittal of final plans to SHPO for review and comment; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), 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 pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, FHWA, ODOT, 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

FHWA shall ensure that the following measures are carried out. Measures will be met within the timeframes presented for each stipulation.

- I. MITIGATION.** ODOT recognizes the uniqueness of Transportation Enhancement (now referred to as Transportation Alternatives Program (TAP) projects) projects, in that they routinely seek to provide small towns and communities with transportation improvements in sidewalks, lighting, traffic calming, and general pedestrian safety improvements. ODOT shall establish a project development process for such undertakings in a manner that will facilitate SHPO involvement and provide opportunities to comment on the undertaking in a timely manner. ODOT's typical project development project for all federal undertakings is to initiate the National Environmental Policy Act (NEPA) environmental studies upon request from a particular field division or central office division after a project has been programmed. At the time of these requests, plans have not typically been developed. As such, the results of all environmental studies are used to inform the transportation decision. The process for TAP projects is different in nature due to the fact that federal funding approval is typically based on an application process that may include preliminary plans to support the application.

 - A. Within six months of the effective date of this MOA, ODOT, on behalf of FHWA, shall develop a Draft Programmatic Agreement (PA) for SHPO, FHWA, and ACHP review that will address this particular type or project.
 - B. SHPO and ACHP shall provide comments to the Draft PA to ODOT and FHWA
 - C. ODOT and FHWA will review comments, schedule any necessary meetings to discuss comments and, upon agreement with all parties, will execute a Final PA to formalize the review process for streetscape projects in town settings that may be funded through TAP or other similar federal-aid funding process.
- II. DOCUMENTATION.** ODOT Cultural Resources staff will document the Hobart Historic District in its current setting. Documentation will include the preparation of an updated Historic Preservation Resource Identification (HPRI) form and associated photographs of the Hobart Historic District in its current setting.
- III. DURATION.** This MOA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, FHWA and ODOT may consult with other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below
- IV. POST-REVIEW DISCOVERIES.** If properties are discovered that may be historically significant or unanticipated effects on historic properties found, the FHWA shall follow ODOT Spec 107.09, Protection of Archaeological and Unmarked Human Burial Sites, which stipulates that all work near the area of the find shall be ceased and the area protected until ODOT and other parties, as appropriate are notified.
- V. DISPUTE RESOLUTION.** Should any signatory party to this MOA object at any time to the 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 provides 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.

VI. AMENDMENTS. This MOA may be amended when such amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all the signatories is filed with the ACHP.

VII. 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 VI, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

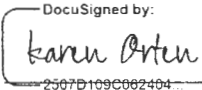
Once the MOA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it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

Execution of this MOA by the FHWA, ODOT, 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 Federal-Aid Project STP-138E(170)EH, State Job Piece 26891(04)
Hobart Downtown Streetscape

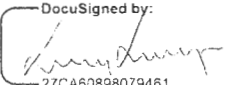
Federal Highway Administration

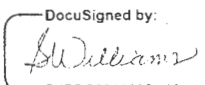
BY:  DATE: 4/27/2020
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Karen Orton
Environmental Program Manager
Oklahoma Division

Signatory

**MOA for Federal-Aid Project STP-138E(170)EH, State Job Piece 26891(04)
Hobart Downtown Streetscape**

Oklahoma Department of Transportation

BY:  DocuSigned by:
27CA60898079461 DATE: 4/23/2020
Siv Sundaram
Environmental Programs Division Engineer

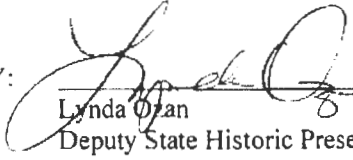
BY:  DocuSigned by:
D4B8C024382D449 DATE: 4/22/2020
Shelly Williams
Local Government Division Engineer

Signatory

**MOA for Federal-Aid Project STP-138E(170)EH, State Job Piece 26891(04)
Hobart Downtown Streetscape**

Oklahoma State Historic Preservation Office

BY:


Lynda Ozan
Deputy State Historic Preservation Officer

DATE:

4/23/2020