

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION,
OKLAHOMA DEPARTMENT OF TRANSPORTATION,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE, AND
THE OKLAHOMA ARCHEOLOGICAL SURVEY
REGARDING
REPLACEMENT OF SH-56 BRIDGE OVER JUMPER CREEK**

WHEREAS, the Oklahoma Department of Transportation (ODOT) plans to replace the existing bridge carrying SH-56 over Jumper Creek, Seminole County, Oklahoma by constructing a new bridge on a new alignment; 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, 54 U.S.C. § 300101 et seq.), and its implementing regulations, 36 CFR Part 800; and

WHEREAS, archeological site 34SM87 was subjected to archeological testing, and subsequent reporting, to determine whether intact prehistoric cultural deposits were preserved, and during the testing it was determined that the site yielded Late Archaic period cultural material relating to prehistoric occupations in what is now Seminole County, Oklahoma approximately 3000 years ago, and that the site yielded datable prehistoric archeological features that are preserved; and

WHEREAS, the Oklahoma State Historic Preservation Office (SHPO) and the Oklahoma Archeological Survey (OAS) have entered into a cooperative agreement under which OAS provides special services to SHPO in the Section 106 review process under which: a) OAS maintains the inventory of Oklahoma's prehistoric resources and provides professional services to SHPO in prehistoric archeology, b) OAS reviews federal undertakings for possible impacts on prehistoric archeological resources, and c) provides written comments, which are coordinated with SHPO's written comments, directly to federal agencies and their designees; and

WHEREAS, FHWA has determined that Federal-Aid Project STP-267C(045)SS, State Job J/P 28911(04) will have an adverse effect to the archaeological site 34SM87, a property determined eligible for inclusion in the National Register of Historic Places, and has consulted with the SHPO and OAS pursuant to 36 CFR Part 800; and

WHEREAS, the FHWA has consulted with the Kialegee Tribal Town, Thlopthlocco Tribal Town, Osage Nation, Seminole Nation, and Wichita and Affiliated Tribes in accordance with 36 CFR 800.2(c)(2), and determined that no other properties of traditional religious or cultural significance will be affected by the undertaking; and

WHEREAS, in accordance with 36 CFR 800.3(f) ODOT and FHWA identified the Wichita and Affiliated Tribes as a consulting party and invited them to sign this MOA as a concurring party; 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 not to participate in the consultation; and

NOW, THEREFORE, FHWA, ODOT, the Oklahoma SHPO, and OAS 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.

I. Mitigation.

- A. Prior to the initiation of construction, the portion of 34SM87 falling within the Area of Potential Effect (APE) will be subject geophysical testing to identify additional areas within the APE that exhibit magnetic signatures consistent with archeological features. That effort will be summarized in a report of investigations that will be used in concurrence with the Site Testing Report to guide data recovery efforts.
- B. Upon review of the geophysical testing report, ODOT will incorporate the information from the two site testing efforts into a data recovery plan with a research design for the affected site. The data recovery plan will be prepared in consultation with the OAS, SHPO, and will be provided to the Wichita and Affiliated Tribes for a 30-day review. The Plan will be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the Secretary of the Interior's Standards and Guidelines for Archaeological and Historic Preservations, and the Advisory Council on Historic Preservation's Treatment of Archaeological Properties: A Handbook.
- C. Upon review of the data recovery plan and research design, and acquisition of right-of-way, ODOT will initiate data recovery efforts. Data recovery efforts will be specifically outlined in the recovery plan and research design, and will focus on locations determined to have intact archeological features.
 - i. Discovery of Human Remains. Any human remains discovered during any phase of this work will be handled in accordance with all applicable State and Federal laws and regulations and in accordance with specific agreements with signatories and concurring parties to this Agreement.

II. Documentation.

- A. Upon completion of the archeological data recovery efforts, the results of investigations shall be incorporated into a report of findings. The report shall be consistent with professional archeologic research reports and will be consistent with that outlined in the data recovery plan.
 - i. A draft report of findings suitable for signatory and concurring party review will be completed within 24 months of the completion of fieldwork.
 - ii. A total of 40 copies of a final report will be produced. ODOT will distribute the report to signatories and concurring parties, as well as other repositories.

iii. A single digital copy (pdf) form of the report shall be produced.

- B. Upon completion of Stipulation II(A), the data recovery and reporting effort, ODOT will prepare or cause to prepare a research article, suitable for publication in a local or regional research bulletin or journal. The article will be based on the findings from the data recovery will be produced for the benefit of the public.
- C. All documentation and cultural materials will be edited, catalogued and packaged in a manner acceptable for submittal to a federally recognized curation facility. The federally recognized curation facility will be the repository for the cultural material.
- D. ODOT will provide all research documentation, research materials, and copies of reports to the Oklahoma SHPO and the OAS within three years of the execution of this MOA.

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, 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 VII below. FHWA shall notify the signatories as to the course of action it will pursue.

IV. Post-Review Discoveries. If potential historic properties unrelated to 34SM87 are discovered or unanticipated effects on historic properties found, FHWA shall follow ODOT Spec 107.09, Protection of Archeological 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 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 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.

VI. 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.

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 parties 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.

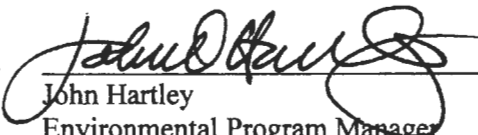
Once the MOA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it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

Execution of this MOA by 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 STP-267C(045)SS; State Job 28911(04) SH-56 over Jumper Creek in Seminole
County, Oklahoma**

Federal Highway Administration

BY:  DATE: 7/7/2015
John Hartley
Environmental Program Manager
Oklahoma Division

Signatory

**MOA for STP-267C(045)SS; State Job 28911(04) SH-56 over Jumper Creek in Seminole
County, Oklahoma**

Oklahoma Department of Transportation

BY:



DATE:

8/03/2015

Dawn Sullivan

Environmental Programs Division Engineer

Signatory

**MOA for STP-267C(045)SS State Job 28911(04) SH-56 over Jumper Creek in Seminole
County, Oklahoma**

Oklahoma State Historic Preservation Office

BY: _____ DATE: 7-7-15

Melvena Heisch

Deputy State Historic Preservation Officer

Signatory

**MOA for STP-267C(045)SS; State Job 28911(04) SH-56 over Jumper Creek in Seminole
County, Oklahoma**

Oklahoma Archeological Survey

BY:

A handwritten signature in black ink, appearing to read 'Robert Brooks', written over a horizontal line.

DATE: 7/2/15

Robert Brooks

Oklahoma Archeological Survey, State Archaeologist

Concurring Party

**MOA for STP-267C(045)SS; State Job 28911(04) SH-56 over Jumper Creek in Seminole
County, Oklahoma**

Wichita and Affiliated Tribes

BY:

A handwritten signature in dark ink, appearing to read "Terri Parton", written over a horizontal line.

Terri Parton
President

DATE: 07/10/2015