

**MEMORANDUM OF AGREEMENT  
AMONG  
THE OKLAHOMA WATER RESOURCES BOARD,  
TAHLEQUAH PUBLIC WORKS AUTHORITY,  
THE CHEROKEE NATION,  
AND THE STATE HISTORIC PRESERVATION OFFICER  
REGARDING RESOLUTION OF ADVERSE EFFECTS TO THE NATIONAL REGISTER OF HISTORIC PLACES  
LISTED ILLINOIS CAMPGROUND (34CK136) RESULTING FROM THE CITY OF TAHLEQUAH  
CLEAN WATER STATE REVOLVING FUND LOAN PROJECT ORF-19-0014-CW,  
CHEROKEE COUNTY, OKLAHOMA**

**WHEREAS**, the Oklahoma Water Resources Board (OWRB) has approved a loan to fund the Tahlequah Wastewater Treatment Plant Improvement Project (the "Undertaking") pursuant to Title 82, Oklahoma Statutes 2011, Section 1085.51 *et seq.*, as amended (the "Act") which established a Clean Water State Revolving Fund Loan Account (the "CWSRF") to enable the State of Oklahoma to match federal funds and implement Title VI of the Federal Water Quality Act of 1987 by providing for a program for financial assistance (commonly known as the "Clean Water SRF Financing Program") to eligible entities for certain authorized purposes;

**WHEREAS**, the OWRB has been delegated the authority to act as the federal lead in the State of Oklahoma for the U.S. Environmental Protection Agency (EPA) for the Section 106 process of the National Historic Preservation Act (NHPA) per the March 1990 Programmatic Agreement (PA) among EPA, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers;

**WHEREAS**, the Undertaking consists, in part, of the construction of a new third flow equalization basin (the "FEB") at the Tahlequah Wastewater Treatment Plant (WWTP) which is located adjacent to the Illinois Campground Site 34CK136 (the "Illinois Campground"). The Tahlequah WWTP was originally constructed in 1971 as a contact stabilization process plant. The WWTP was upgraded in 1990 to an extended activated sludge process in the form of a Sequential Biological Reactor (SBR) which included two FEBs to regulate flow. The City of Tahlequah has experienced a gradual population increase since the last wastewater treatment plant upgrades in the 1990s. The population increase consequently has created more influent flow to the existing plant. Due to this natural increase over time, the existing FEBs do not have enough capacity to accommodate influent flows during wet weather events. This results in the influent not having enough time to be properly treated before it is discharged into the Tahlequah Creek. Additional storage capacity is needed to provide adequate treatment and prevent potential adverse environmental impacts to the local flora and fauna of the area; and

**WHEREAS**, the OWRB in consultation with the State Historic Preservation Officer (SHPO) and the Cherokee Nation (Nation) has determined that the Undertaking will have an adverse effect on the Illinois Campground, which is listed in the National Register of Historic Places, and has consulted with the SHPO pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108). The Illinois Campground is the disbandment site associated with the Cherokee Trail of Tears of 1839 and the site of the Cherokee National Convention that reunified Cherokee Factions into the present day Cherokee Nation; and

**WHEREAS**, the OWRB has consulted with the Nation, for which the Illinois Campground Site 34CK136 has religious and cultural significance and has invited the Nation to sign this Memorandum of Agreement (MOA) as a signatory; and

**WHEREAS**, OWRB has consulted with the Oklahoma Archeological Survey (OAS) regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a invited signatory; and

**WHEREAS**, the Tahlequah Public Works Authority (Authority) as the recipient of the CWSRF Loan has been invited to sign this MOA as a signatory; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), OWRB 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

**WHEREAS**, a Notice of Public Hearing was published on July 11, 2019, in the *Tahlequah Daily Press* and the public hearing was held at 2:00 P.M. on August 15, 2019, at the office of the Tahlequah Public Works Authority, Tahlequah, Oklahoma. The public hearing presented the proposed improvements to the Authority's wastewater treatment facilities, alternatives to the proposed improvements, potential environmental impacts, and the projects associated costs. No adverse comments concerning the proposed project were received from any of the attendees during the public hearing nor were any comments received during the public notice period; and

**NOW, THEREFORE**, the OWRB, the Authority, the SHPO, and the Nation 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**

### **I. MEASURES TO MITIGATE ADVERSE EFFECTS ON HISTORIC PROPERTIES**

The OWRB shall ensure that the following measures are carried out, in order to address the adverse effects to the Illinois Campground.

A. A Visual Barrier Implementation Plan (VBI Plan) shall be developed in consultation with the signatories of the MOA by the Authority and a landscaping company of the Authority's choice. The VBI Plan shall include a description of the visual barrier, final design plans, installation timing, and short - and long-term care and maintenance plan. The visual barrier will consist of river cane, pecan, pin oak, and possibly black walnut trees or other species as requested by the Nation's ethnobotanist.

i. The Authority shall have a complete VBI plan and written approval of the VBI plan from all the signatories no later than six (6) months after the start of the construction of the FEB.

i. The Authority shall provide to OWRB colored hardcopies of the Final VBI Plan Draft for approval and subsequently OWRB shall submit colored hardcopies of the Final VBI Plan Draft via mail to the signatories of the MOA

for review and comment. The signatories shall review and submit comments and/or acceptance of the proposed Final VBI Plan Draft to the OWRB within thirty (30) days of receipt of the document.

- ii. Upon written acceptance of the documentation described in Stipulation I. (A) by all signatories of the MOA, the Authority may proceed with implementing the Visual Barrier Implementation Plan.
- B. The visual barrier shall be constructed along the east bank of the Tahlequah Creek only on the property owned by the Authority between the Illinois Campground and the new FEB within one (1) year after the construction completion of the new FEB or within one (1) year of the signed Final VBI plan approval by all signatories; whichever occurs later.
- C. The Authority shall provide to OWRB an initial colored hard copy photographic documentation of the visual barrier upon completion of the installation then annually until the visual barrier has established survival growth. OWRB shall in turn provide this documentation to the signatories within one (1) week of each submission.
- D. New growth of the river cane requires at least five (5) years of continual care and attention. In the event that the MOA is terminated as a result of a non-survival visual barrier, Signatories agree to discuss additional native vegetation to resolve such failure.

## **II. 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, the OWRB may consult with the signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V listed below.

## **III. MONITORING AND REPORTING**

At ninety (90) calendar days following the execution of this MOA and every subsequent ninety (90) days therein until it expires or is terminated, the Authority shall provide to OWRB a summary report detailing work undertaken pursuant to its terms; OWRB shall, in turn, provide electronic copies to all parties to this MOA within five (5) business days of the receipt of the report from the Authority. Such report shall include any proposed scheduling changes, any problems encountered, and any disputes and objections received in the Authority's efforts to carry out the terms of this MOA. These reports shall be submitted as stated above until the construction completion of the VBI; which at that time, OWRB shall submit only the documentation requested in Stipulation I. (C). Failure to provide such summary report may be considered noncompliance with the terms of this MOA pursuant to Stipulation V listed below.

## **IV. DISPUTE RESOLUTION**

Should any signatory to this MOA object at any time to any actions proposed, the manner in which the terms of the MOA are implemented, or fail to implement the VBI, the OWRB shall consult with

such party to resolve the objection. If OWRB determines, within thirty (30) days, that such objection(s) cannot be resolved, OWRB will:

- A. Forward all documentation relevant to the dispute, including the OWRB's proposed resolution, to the ACHP. The ACHP shall provide OWRB 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, OWRB 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. OWRB 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, OWRB may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, OWRB 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 OWRB's responsibility to carry out all other actions subject to the terms of this MOA that are not subject of the dispute remain unchanged.

## **V. 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.

## **VI. NONCOMPLIANCE**

Failure of the Authority to comply with the requirements of the MOA may result in an "Event of Default" as defined in Article IV of the Loan Agreement, and the OWRB and/or Trustee Bank may take action thereunder as appropriate.

## **VII. TERMINATION**

If any signatory to the MOA determines that its terms will not or cannot be carried out, that party shall immediately, with the other parties, attempt to develop an amendment per Stipulation V, 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, OWRB 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. OWRB shall notify the signatories as to the course of action it will pursue.

**EXECUTION** of this MOA by the parties and implementation of its terms is evidence that the OWRB has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

**SIGNATORIES:**

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Joe Freeman  
Chief, Financial Assistance Division, Oklahoma Water Resources Board

Date

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Mike Doublehead  
General Manager, Tahlequah Public Works Authority

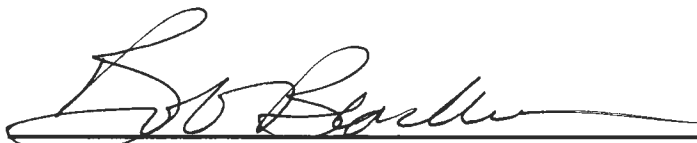
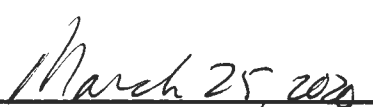
Date

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Chad Harsha  
Secretary of Natural Resources, Cherokee Nation

Date

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Dr. Bob Blackburn  
State Historic Preservation Officer, Oklahoma Historical Society

Date

**INVITED SIGNATORY:**

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Dr. Kary Stackelbeck  
State Archeologist, Oklahoma Archeological Survey

Date