

**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF INDIAN AFFAIRS, SOUTHERN PLAINS REGIONAL OFFICE  
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,  
AND  
KAY COUNTY COMMISSIONERS OF OKLAHOMA  
REGARDING THE PROPOSED REPLACEMENT OF BIRD'S NEST CREEK BRIDGE  
(STRUCTURE 36E0280N3210003),  
KAY COUNTY, OKLAHOMA**

**WHEREAS**, the Bureau of Indian Affairs (BIA), Southern Plains Region, plans to fund through the Tribal Transportation Program the Replacement of Bird's Nest Creek Bridge in Kay County, Oklahoma pursuant to 36 C.F.R. § 800.3(a) of the regulations implementing Section 106 of the National Historic Preservation Act; and

**WHEREAS**, the BIA has determined that the undertaking will have an adverse effect on Bird's Nest Creek Bridge, which is eligible for listing in the National Register of Historic Places, and has consulted with the Oklahoma State Historic Preservation Office (SHPO) pursuant to 36 C.F.R. § 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

**WHEREAS**, the BIA has consulted with the Commissioners of Kay County (The County), who have jurisdiction over Bird's Nest Creek Bridge due to its location on County Road EW28, regarding the effects of the undertaking on historic properties and have invited them to sign this Memorandum of Agreement (MOA) as the "Owner" of the structure; and

**WHEREAS**, the BIA has a fiduciary responsibility to carry out transportation related projects on behalf of the Tonkawa Tribe of Oklahoma and the Wichita and Affiliated Tribes of Oklahoma and has invited the Tribes to sign this MOA as an invited signatory pursuant to 36 C.F.R. § 800.2(c)(2); and

**WHEREAS**, the Tonkawa Tribe of Oklahoma by resolution #T-R-05-11 have stated they would like to use their allocated Tribal Transportation Program funds to remove the Bird's Nest Creek Bridge that has no religious or cultural significance for their tribe and thus have declined to sign this MOA as an invited signatory, but reserve the right to formal consultation for any unforeseen historical or archaeological discoveries; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), the BIA 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 C.F.R. § 800.6(a)(1)(iii); and

**WHEREAS**, the undertaking consists of the removal of Bird's Nest Creek Bridge which is currently non-functional and closed for public use as documented by letter from the Circuit

Engineering District #8 dated November 15, 2012. Bird's Nest Creek Bridge will be moved and erected over a small creek for the Community Farmer's Market located on Highway 77 in Newkirk, Oklahoma, to be used as a bike and pedestrian foot bridge. Kay County has completed an agreement with Cornerstone Mart L.L.C. to accomplish the removal and erection on the new site to prolong the architectural integrity of the existing structure; and

**WHEREAS**, the BIA has defined the undertaking's area of potential effect (APE) as within the existing recorded right-of-way for County Road EW28, 4.8 miles south and 1.8 miles east of the City of Tonkawa, Kay County, Oklahoma, Latitude 36°36'30.4"N and Longitude 097°16'38.98"W and physically described as NW ¼, NE ¼, NW ¼, of Section 35 and the SW ¼, SE ¼, SW ¼ of Section 26 within Township 25 North, Range 1 West, Indian Meridian, Kay County, Oklahoma; and

**NOW, THEREFORE**, the BIA, SHPO and the County 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

Prior to its removal by the County, the BIA shall ensure that the following measures are carried out:

1. Bird's Nest Creek Bridge will be recorded at the equivalent of Level II documentation as specified by the Historic American Engineering Record (HAER). This will include the following:
  - A. Preparation of a brief written technical description of the bridge and historical summary. This report shall conform to the "Oklahoma Historic Property Record Guidelines" in order to establish an archival documentation of the historic property.
  - B. Photographs shall be in compliance with the National Park Service, National Register Photo Policy, current edition.
  - C. Photographic reproduction of selected original construction plans and historic photographs, if they exist.

Reports and 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.

## II. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the BIA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

### **III. POST-REVIEW DISCOVERIES**

If potential historic properties are discovered or unanticipated effects on historic properties found after the execution of this MOA, BIA shall avoid, minimize, or mitigate adverse effects in accordance with 36 C.F.R. § 800.13(b).

### **IV. MONITORING AND REPORTING**

Each 90 day time period following the execution of this MOA until it expires or is terminated, the BIA shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the BIA's efforts to carry out the terms of this MOA.

### **V. 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, the BIA shall consult with such party to resolve the objection. If the BIA determines that such objection cannot be resolved, the BIA will:

A. Forward all documentation relevant to the dispute, including the BIA's proposed resolution, to the ACHP. The ACHP shall provide the BIA 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 BIA 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. The BIA 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, the BIA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BIA 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 BIA'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 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, the BIA must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The BIA shall notify the signatories as to the course of action it will pursue.

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

**SIGNATORIES:**

Bureau of Indian Affairs, Southern Plains Regional Office

*Jim Brun*  
**ACTING** Regional Director

1-22-14  
Date

Oklahoma State Historic Preservation Office

*Bob Blackburn*  
Bob Blackburn  
Oklahoma State Historic Preservation Officer

1-22-14  
Date

Kay County Commissioners

*[Signature]*  
Chairman

1-6-2014  
Date

Member  
*[Signature]*  
Member

Date  
1-6-14  
Date

Attest *Jimmy Reese*  
County Clerk



1-6-14  
Date