

MEMORANDUM OF AGREEMENT

AMONG

BUREAU OF INDIAN AFFAIRS, EASTERN OKLAHOMA REGION;

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE;

AND

OKLAHOMA ARCHEOLOGICAL SURVEY;

REGARDING

SPAVINAW CREEK BRIDGE PROJECT, (G08904-0789(1)G,S,B)

DELAWARE COUNTY, OKLAHOMA

WHEREAS, the Bureau of Indian Affairs (BIA) proposes to fund, assist, plan, construct, approve, permit, and otherwise facilitate, wholly or in part, a replacement bridge over Spavinaw Creek for Bridge No. 65, Structure No. 21N4510E0500001, located on County Road D0469 (Route 1), Delaware County, Oklahoma; and,

WHEREAS, the BIA may fund, plan, implement, approve, or otherwise facilitate, wholly or in part, construction of a new bridge 300 feet downstream of the existing bridge and realign County Road D0469 approaches to the new bridge, all of which collectively and/or individually may be undertakings subject to review under Section 106 of the National Historic Preservation Act, as amended (16 US C. 470t), and shall be known as "undertakings" or "activities" for the purposes of this Agreement; and,

WHEREAS, the BIA, in consultation with the Oklahoma State Historic Preservation Office (SHPO), agree that archeological sites 34DL300 and 34DL301 are eligible for the National Register of Historic Places (National Register); and,

WHEREAS, the BIA has determined that Bridge No. 65, Structure No. 21N4510E0500001, located on County Road D0469 (Route 1), Delaware County, Oklahoma, does not meet National Highway Transportation standards, and the undertakings may have an adverse effect on sites 34DL300 and 34DL301, and has consulted with the Advisory Council on Historic Preservation (ACHP), the Oklahoma Archeological Survey (OAS) and the SHPO to develop and implement this agreement (Agreement) in accordance with 36 CFR 800.6(b)(1) for compliance with Section 106 of the National Historic Preservation Act, as amended (16 USC. 470f), with the goal of mitigating adverse effects to sites 34DL300 and 34DL301; and,

WHEREAS, the ACHP has decided not to participate in consultation regarding this undertaking at this time, but may re-enter consultation at any time, particularly functioning to resolve potential disputes between the BIA and the SHPO or the Tribes; and,

WHEREAS, the BIA has reviewed alternative locations for the replacement bridge and determined an alternate location is not feasible; and,

WHEREAS, the BIA has reviewed the requirements for preserving sites 34DL300 and 34DL301

by burial in place and determined the soil conditions and bridge design are not compatible with this preservation technique; and,

WHEREAS, the OAS is a party and signatory to this Agreement because, pursuant to a cooperative agreement with the SHPO, it maintains site files for archaeological sites located within the state of Oklahoma and provides professional expertise in prehistoric (pre-contact) archaeology, such as opinions on National Register eligibility, effect determinations, and recommendations for mitigation of adverse effects to prehistoric archaeological sites; accordingly, the BIA shall notify the SHPO and OAS simultaneously of requests for comments and other communications pursuant to this Agreement; and,

NOW, THEREFORE, the BIA, the SHPO, the OAS, and the ACHP agree that the undertakings shall be implemented in accordance with the following stipulations in order for the BIA to mitigate the effects of the undertakings on historic properties:

## STIPULATIONS

The agency shall ensure that the following measures are carried out:

- I 34DL300
  - A Place five – 1x2 meter excavation units within the construction corridor across northeast edge of the site.
  - B Place two – 1x2 meter excavation units within the portion of the construction corridor that lies east of the present road.
  - C Strip the plow-zone off the entire construction corridor that crosses site 34DL300 to identify possible subsurface features that are not located in the excavation units.
  - D Implement data recovery in accordance with measures specified in III-A below.
- II 34DL301
  - A Place eighteen – 1x2 meter excavation units in the area of major impact due to bridge construction.
  - B Place two – 1x2 meter excavation in the construction corridor south of the bridge.
  - C Strip the plow-zone off bridge and road construction corridor that crosses site 34DL301 to identify possible features that were not located in the excavation units.
  - D Implement data recovery in accordance with measures specified in III-A below.
- III Measures common to both sites
  - A Specialized analyses if features are located:
    - 1 Radio-carbon dates of charcoal samples, if dateable material exists within a feature. Ten total radio-carbon dates, five on each site, if supported by recoverable material.
    - 2 Flotation of soils in features or middens.
    - 3 Floral analysis of seeds and other floral materials recovered.
    - 4 Faunal analysis of bones and other faunal material recovered.
  - B Frequent monitoring during archeological field excavation by the Bureau of

Indian Affairs, Eastern Oklahoma Region, Regional Archeologist to insure the test units are placed where needed. If redundant information is being recovered the number of test units may be decreased following consultation and concurrence with the SHPO and the OAS.

- C Schedule one field site visit for representatives of the SHPO and the OAS.
- D Secure an agreement from the landowners relinquishing ownership of the artifacts for curative purposes.
- E Monitor the bridge piling area during construction to identify any possible deep buried features or cultural zones. Monitoring may be accomplished by a contract or BIA archeologist.
- F Curate artifacts and excavation records at Institute of the Great Plains, a facility meeting Department of the Interior standards for curation.
- G Print 100 copies of final report for distribution to scientific community requesting copies.

#### IV Discovery of Human Remains

- A Human remains discovered during any phase of this work shall be handled in accordance with all state and Federal laws and the Advisory Council Guidelines on the *Treatment of Human Remains and Grave Goods*.
  - 1 All work at the location of the remains shall immediately halt.
  - 2 The remains will be carefully covered to protect the remains.
  - 3 The Eastern Oklahoma Regional Archeologist will be immediately contacted.
  - 4 The Eastern Oklahoma Regional Archeologist will, no later than the following day, contact the Caddo Nation of Oklahoma, the Cherokee Nation and the United Keetoowah Band of Cherokee Indians to inform each of the discovery and initiate consultation for disposition of the human remains.

#### V Dispute Resolution

Should any signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the objector is encouraged to consult the other signatories in resolving the objection. If that objector determines that such objection cannot be resolved, the Agency shall:

- A Forward all documentation relevant to the dispute, including proposed resolution, to the ACHP. The ACHP shall provide the agency with its advise on the resolution of the objection within (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the agency shall prepare a written response that takes into account advice or comments regarding the dispute from the ACHP, signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.

#### VI Anti-deficiency Act

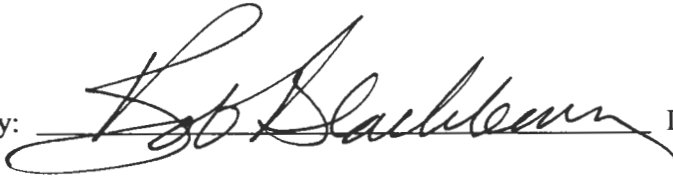
It is understood that the implementation of the Agreement is subject to applicable Federal and State anti-deficiency statutes.

## VII Amendment, Withdrawal and termination

- A Amendment. If any signatory to the Agreement determines that the Agreement cannot be fulfilled or that modification of the Agreement is warranted, that signatory shall consult with the other signatories to seek amendment of the Agreement. The Agreement may be amended after consultation among the signatories and all signatories agree in writing with such amendment..
- B Withdrawal. Any signatory may withdraw its involvement in this Agreement by providing 30 days written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that will prevent withdrawal. Should any signatory withdraw its involvement in this Agreement, the Agreement shall remain in effect for the other remaining signatories, provided the SHPO, the OAS and the Agency remain as signatories.
- C Termination. This agreement will be fully terminated if any signatory provides notice of termination and after 90 days or more of unsuccessful consultation to amend the Agreement.

Signatory Pages (1 of 5)

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER

By:  Date: June 17, 2008

Print/Type Name: Bob L. Blackburn, Ph.d.

Print/Type Title: State Historic Preservation Officer

Signatory Pages (2 of 5)

OKLAHOMA ARCHAEOLOGICAL SURVEY

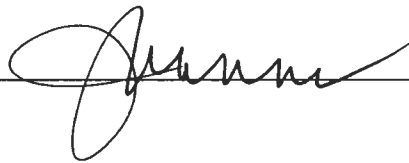
By:  Date: June 12, 2008

Print/Type Name: Robert L. Brooks

Print/Type Title: State Archaeologist

Signatory Pages (3 of 5)

BUREAU OF INDIAN AFFAIRS, EASTERN OKLAHOMA REGION

By:  \_\_\_\_\_ Date: 11.19.08

Print/Type Name: Jeanette Hanna

Print/Type Title: Regional Director

Signatory Pages (4 of 5)

DELAWARE COUNTY COMMISSIONER, DISTRICT 3

By: Dave Kendrick Date: 5-27-08

Print/Type Name: DAVE KENDRICK.


Print/Type Title: DELAWARE Co. Comm Dist #3





Signatory Pages (5 of 5)

UNITED KEETOOWAH BAND

By:  Date: 5/30/08

Print/Type Name: George Wickliffe

Print/Type Title: Chief