

**MEMORANDUM OF AGREEMENT (MOA)
BETWEEN THE CHOCTAW NATION OF OKLAHOMA
AND THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE**

**REGARDING THE CHOCTAW NATION COALGATE
INDEPENDENT ELDERLY HOUSING
IN COAL CUNTY, OKLAHOMA**

AMENDMENT 1

The Undersigned mutually consent to amendment of the Memorandum of Agreement (last signed 3-8-18). All other terms and conditions remain the same.

DURATION, AMENDMENT AND TERMINATION

- a. All parties hereby agree to extend the deadline for the report specific in Stipulation IV of the MOA to June 1, 2019.
- b. Any Signatory to this Agreement may request the other Signatories consider amending it, whereupon the parties will consult in accordance with 36 CFR Part 800.6(c)(7) to consider such an amendment.
- c. If any Signatory to this Agreement determines that its terms will not or cannot be carried out, that party will immediately consult with the other parties to attempt to develop an amendment per Stipulation III.b. If within thirty (30) calendar days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may propose that this MOA be terminated per Stipulation IX.
- d. Any Signatory to this agreement may propose at any time that this MOA be terminated. The Signatory proposing to terminate this MOA shall notify the other parties to this MOA, explaining the reasons for termination and affording them at least thirty (30) calendar days to consult and seek alternatives to termination. Should such consultation fail, the Choctaw Nation of Oklahoma or SHPO may terminate this MOA by so notifying all parties.
- e. Should this MOA be terminated, the Choctaw Nation of Oklahoma shall either consult in accordance with 36 CFR Part 800.6 to develop a new MOA, or request the comments of the Council pursuant to 36 CFR800.7(a).

Execution of the Programmatic Agreement by the Choctaw Nation of Oklahoma and the Oklahoma SHPO and implementation of its terms by the Signatories is evidence the Choctaw Nation of Oklahoma has taken into account the effects of the undertaking on historic properties.

SIGNATORIES:

Choctaw Nation of Oklahoma

Chief Gary Batton

Date

SIGNATORIES:

Oklahoma State Historic Preservation Office



Bob Blackburn, State Historic Preservation Officer

Date April 4, 2019

INVITED SIGNATORIES:

Housing Authority of the Choctaw Nation of Oklahoma

_____ Date _____
Bobby Yandell, Executive Director

INVITED SIGNATORIES:

Choctaw Nation of Oklahoma Historic Preservation Department

_____ Date _____
Ian Thompson, Tribal Historic Preservation Officer

INVITED SIGNATORIES:

Oklahoma Archaeological Survey

_____ Date _____
Kary Stackelbeck, State Archaeologist

**MEMORANDUM OF AGREEMENT (MOA)
BETWEEN THE CHOCTAW NATION OF OKLAHOMA
AND THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE**

**REGARDING THE CHOCTAW NATION COALGATE
INDEPENDENT ELDERLY HOUSING
IN COAL COUNTY, OKLAHOMA**

WHEREAS, the Housing Authority of the Choctaw Nation of Oklahoma (HACNO) received an Indian Community Development Block Grant (ICDBG), from the United States Department of Housing and Urban Development (HUD) for the construction of a Choctaw Nation elderly housing development in Coalgate, Coal County, Oklahoma,

WHEREAS, this project, is located at 1307 S. Rangler Blvd, Coalgate, OK 74538, and will contain ten homes, one common house, and all infrastructure; and will occupy 13 acres on non-tribal trust land; and

WHEREAS, the Choctaw Nation of Oklahoma (CNO) has assumed environmental review responsibility as Responsible Entity (RE) in accordance with section 104 (g) of the Housing and Community Development Act of 1974 [42 U.S.C. 5104 (g)] and HUD's Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities [24 CFR Part 58], including agency official responsibility for compliance with Section 106 of the National Historic Preservation Act of 1966 (NHPA) as amended, [54 U.S.C. 306108] and implementing regulations at 36 CFR 800; and

WHEREAS, "HUD Environmental Regulations and Section 106 Agreement Documents," summarizes HUD's role under 24 CFR Part 58 as it pertains to Responsible Entities and consultation under Section 106 of the NHPA and its governing regulations at 36 CFR Part 800. Wherein "HUD may provide technical assistance or otherwise facilitate Section 106 agreements... but HUD is not a signatory to those agreements. The legal responsibility lies with the Responsible Entity" (CNO); and

WHEREAS, in January 2017 HACNO consulted with the State Historic Preservation Office (SHPO) and the Oklahoma Archeological Survey (OAS) regarding construction of the Choctaw Nation elderly housing project and the SHPO and OAS responded with an opinion of no historic properties effected; and

WHEREAS, HACNO consulted with the Choctaw Nation Historic Preservation Department (THPO) on November 11, 2016. The THPO completed a cultural resources survey of the property identifying three archaeological sites (34CO204, 34CO205, and 34CO206). On March 7, 2017, submitted a cultural resources survey report to HACNO that recommended sites 34CO204 and 34CO205 as eligible for inclusion on the National Register of Historic Places (NRHP) and presented a recommended procedure for mitigating the adverse effects to sites 34CO204 and 34CO205; and

WHEREAS, HACNO began construction work during the week of July 17, 2017 (see email from 8/14/2017). On August 8, 2017, the THPO was made aware of the construction work and visited the site. Construction work was halted and the THPO completed a damage assessment of the historic resources (34CO204 and 34CO205) that had been impacted by the construction work; and

WHEREAS, on August 14, 2017, HACNO contacted the SHPO and the OAS regarding the project and the damage assessment report. SHPO recommended that HACNO consult with the Advisory Council on Historic Preservation (ACHP) and HUD, on October 12, 2017, the ACHP responded to HACNOs request for comment wherein the ACHP commented that HACNO was not in violation of Section 110(k) and advised HACNO to continue Section 106 consultation with the SHPO and THPO; and

WHEREAS, in accordance with 36 CFR Part 800.4(c)(1)(2) in response to HACNOs request for continued consultation, in a letter dated October 31, 2017, the SHPO determined that the archaeological sites, 34CO204, 34CO205, and 34CO206 were eligible for the NRHP and per 36 CFR Part 800.5(a)(1) that the construction project had resulted in an adverse effect to the three archaeological sites; and

WHEREAS, on November 5, 2017 during a conference call among HACNO, the THPO, SHPO and OAS, a draft memorandum of agreement outlining mitigation measures of the adverse effect to the three archaeological sites was discussed; and

WHEREAS, for logistical and budgetary reasons, the SHPO and the Oklahoma Archeological Survey (OAS) operate under a cooperative agreement (approved by the NPS) through which OAS formally participates in the Section 106 process. OAS maintains the site files for Oklahoma's archeological resources and provides professional expertise in prehistoric archeology to the SHPO. Therefore, federal agencies (or their designees/authorized representatives) submit their requests for comments on federal undertakings to both the SHPO and the OAS. OAS reviews projects for possible impacts of ground-disturbing activities on prehistoric archeological resources. Both the SHPO and OAS issue letters to the requesting agency and the language of the letters is coordinated to ensure the agency has documentation of its Section 106 consultation with the SHPO. Therefore, the OAS is an invited signatory to this agreement.”

WHEREAS, The CNO gave a presentation about the inadvertent discovery at a community lunch at the Choctaw Nation Coalgate Community Center on August 16, 2017, and the CNO utilized the HUD Tribal Directory Assessment Tool (TDAT); and

WHEREAS, in accordance with 36 CFR Part 800.6(a)(1), HACNO has notified the ACHP of its adverse effect determination and in a letter dated November 9, 2017, the Advisory Council on Historic Preservation chose not to participate in the consultation;

NOW, THEREFORE, CNO, HACNO, the Choctaw Nation of Oklahoma Historic Preservation Department and the Oklahoma SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to mitigate the adverse effect of the project of 34CO204, 34CO205, and 34CO206:

STIPULATIONS

Choctaw Nation of Oklahoma as the Responsible Entity will ensure that the following measures are carried out:

I. SITE PREPARATION

Choctaw Nation of Oklahoma will ensure that the disturbed portions of the tract where 34CO204 and 34CO205, are located will be bladed to below the level of previous disturbance. The portions of the track that have not been previously disturbed which includes 34CO206 will be bladed to six inches below surface.

II. DATA RECOVERY

- A. The Historic Preservation Department will conduct the data recovery and monitor the blading activity and mark any features. Personnel will be directed by an individual who meets or exceeds the Secretary of the Interior's professional qualifications for archaeology.
- B. Identified features will be mapped using a survey grade Global Navigation Satellite System (GNSS) device.
- C. The features smaller than 4 square meters will be bisected and excavated in 10 centimeter (cm) levels. For larger features, no less than a 10% sample will be excavated in 1 x1 meter units. The remainder will be shovel skimmed.
- D. If an intact feature larger than 100 square meters is encountered, the Historic Preservation Department will contact the signatories to this document in order to agree upon a tailored data recovery plan.
- E. Diagnostic artifacts will be piece-plotted. Excavated soil will be screened through 1/4 inch hardware cloth.
- F. All artifacts will be cleaned. Diagnostic artifacts will be photographed. All artifacts will be packaged for curation.

III. CURATION

The recovered artifacts will be curated by the Choctaw Nation Capitol Museum, on the Tushkahoma Capitol Grounds, in Pushmataha County, Oklahoma.

IV. REPORTING

A report will be written summarizing the following:

- 1) past activities at each of the three archaeological sites;
- 2) the excavations conducted as a part of this agreement;
- 3) documentation and analysis of all diagnostic artifacts and tabulation of all artifacts recovered; 4) interpretation of site history and functions; and
- 5) reassessment of original site eligibility.

The report will be completed within six months of completion of the fieldwork. Copies of all reports and documentation will be submitted to the consulting parties, who will have a 30-day period to review and make comments. Upon acceptance, copies of the final version of the report will be distributed to the consulting parties.

V. RESUMPTION OF CONSTRUCTION

After fieldwork is completed, the signatories will hold a telephone conference call, to determine if construction can proceed as planned.

VI. DURATION

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

VII. POST-REVIEW DISCOVERIES

If human remains or potential historic properties are discovered or unanticipated effects on historic properties found Choctaw Nation of Oklahoma and HACNO shall implement the discovery plan included as Appendix A of this MOA.

VIII. MONITORING AND REPORTING

Every six months following the execution of this MOA until it expires or is terminated, HACNO 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 HACNO's efforts to carry out the terms of this MOA.

IX. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, CNO shall consult with such party to resolve the objection. If CNO determines that such objection cannot be resolved, CNO will:

A. Forward all documentation relevant to the dispute, including CNO's proposed resolution, to the ACHP. The ACHP shall provide CNO 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, CNO 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. CNO 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, CNO may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, CNO 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. CNO'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.

VIII. AMENDMENT

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 is signed by all of the signatories. It will then be filed with the ACHP.

IX. 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 CNO 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. CNO shall notify the signatories as to the course of action it will pursue.

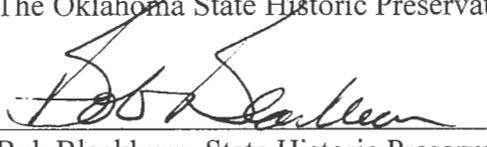
Execution of this MOA by Choctaw Nation of Oklahoma and SHPO , and implementation of its terms evidence that CNO has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

The Choctaw Nation of Oklahoma

_____ Date _____
Chief Gary Batton

The Oklahoma State Historic Preservation Office

 Date March 1, 2018
Bob Blackburn, State Historic Preservation Officer

INVITED SIGNATORIES:

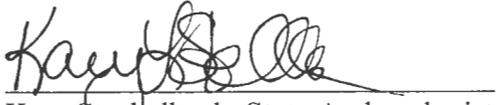
The Housing Authority of the Choctaw Nation of Oklahoma

_____ Date _____
Bobby Yandell, Executive Director

The Choctaw Nation of Oklahoma Historic Preservation Department

_____ Date _____
Ian Thompson, Tribal Historic Preservation Officer

Oklahoma Archaeological Survey

 Date 2/27/2018
Kary Stackelbeck, State Archaeologist

APPENDIX A

INADVERTANT DISCOVERY PROCEDURES

I. BASIC MEASURES

If human remains, funerary objects, and/or materials associated with a burial are observed during construction monitoring all construction activities within 300 feet of the discovery will cease. The Choctaw Nation Historic Preservation Department (CNHPD) will be notified immediately after the find. High visibility fencing will be placed to protect the area. Other protective means may be employed as necessary to protect the area. This could include the placement of protective cover and/or the placement of a person to watch the area.

County law enforcement will be notified within forty-eight hours (per Title 21-1168.4) by HACNO or the CNHPD. It is understood that it is the responsibility of law enforcement to notify the Chief Medical Examiner (ME). If the remains are confirmed to be human, law enforcement in consultation with the ME will determine whether they are of forensic interest or otherwise associated with a crime scene, in which case they would assume responsibility for ensuing treatment measures.

Upon determination that the discovered human remains are not of forensic interest, the HACNO and CNHPD shall evaluate the potential to leave the remains in place and avoid further disturbance to the burial(s) and associated objects. The HACNO shall then notify the State Archeologist (OAS), SHPO, and any other interested Tribes who may assert affiliation with the remains. The evaluation of avoidance shall be included as part of the notification of discovery to the SHPO, OAS, and the Tribes and request for further consultation. If it is not possible to avoid further disturbance to the remains and associated materials, then HACNO shall consult with SHPO, OAS, and Tribes to determine the appropriate treatment measures. Construction would not continue in the area until an appropriate treatment plan is completed.