

**MEMORANDUM OF AGREEMENT
BETWEEN**

**THE U.S. ARMY CORPS OF ENGINEERS,
TULSA DISTRICT**

**AND THE
OKLAHOMA STATE HISTORIC PRESERVATION OFFICE**

**REGARDING
THE CANTON LAKE DAM AND SPILLWAY
IMPROVEMENT PROJECT**

WHEREAS the U.S. Army Corps of Engineers, Tulsa District (hereafter, Corps) proposes to modify the existing spillway at Canton Lake, Blaine County, Oklahoma, and to further modify the dam structure itself to prevent seepage (hereafter, Project); and

WHEREAS the Project is described in the draft Environmental Assessment (EA) entitled "Canton Dam Safety Assurance Evaluation Supplement, Canton Lake, Oklahoma," dated December 2006, produced by the U.S. Army Corps of Engineers, Tulsa District; and

WHEREAS the Corps has established the Undertaking and Area of Potential Effect (APE) as consisting of the Canton Lake dam, a proposed excavated spillway to the immediate southwest of the dam, a minor re-routing of State Highway 58A, and potential borrow areas immediately below the dam; and

WHEREAS the Corps has determined that the Undertaking will have adverse effects, as described in the aforementioned draft Environmental Assessment, on the Canton Lake dam and the Overlook Building which are both eligible for listing on the National Register of Historic Places (NRHP); and

WHEREAS the Corps has consulted with the Oklahoma State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (Council) in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C 470 (NHPA), as amended, and its implementing regulations (36 CFR Part 800.6(b)(1)) to resolve the adverse effects of the Project on historic properties; 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 the SHPO in the Section 106 review process. OAS maintains the inventory of Oklahoma's prehistoric resources and provides professional services to the SHPO in prehistoric archeology. OAS reviews federal undertakings for possible impacts on prehistoric archaeological resources and provides written comments as the SHPO's official representative. OAS has reviewed and provided comments on the undertaking that is the subject of this Memorandum of Agreement (MOA), and OAS has been invited to sign the MOA as a concurring party; and

WHEREAS the Council has decided not to participate in consultation regarding this Project at this time, but may re-enter consultation at any time, particularly functioning to resolve potential disputes between the Corps and SHPO; and

WHEREAS the Corps intends to use the provisions of this Memorandum of Agreement (MOA) to address applicable requirements of Sections 110(b) and 111 of NHPA;

NOW, THEREFORE, the Corps and SHPO agree that upon the Corps' decision to proceed with the Undertaking, the Corps shall ensure that the following stipulations are implemented in order to take into account the effects of the Project on historic properties, and that these stipulations shall govern the Project and all of its parts until this MOA expires or is terminated.

STIPULATIONS

The Corps shall ensure that the following stipulations are implemented:

- (1). **PHOTOGRAPHIC DOCUMENTATION OF CANTON LAKE DAM AND THE OVERLOOK BUILDING.** The Corps shall ensure that both the Canton Lake dam and the Overlook Building, both of which are eligible for the National Register of Historic Places (NRHP), are appropriately documented with photographs. Documentation will consist of a series of black-and-white still photographs, 5 X 7 inch 35mm camera format, with views from a number of different angles. Photographs of the Overlook Building will document each elevation and major design elements. Photographs of the dam will consist both of full-structure views, landscape views (including dam and Overlook Building) and detail views of major structural or design elements. The Corps will conduct technical reviews of photographs prior to release of this documentation to SHPO, to ensure appropriate security considerations are addressed. Photographic documentation will be processed according to modern archival standards and housed in appropriate archival-quality polyethylene sleeves. In addition to 5 X 7 prints, contact sheets and negatives will be produced and housed appropriately. The Corps will ensure that the documentation meets guidelines and

standards outlined in the “Architectural/Historic Resource Survey: A Field Guide” (Oklahoma Historical Society 1992), that the documentation is consistent with the Secretary of the Interior’s Standards and Guidelines for Architectural and Engineering Documentation (HABS/HAER Level II) and that the documentation is delivered to SHPO for curation. The Corps will ensure that this task is completed within two years from the date of execution of this MOA.

- (2). **AS-BUILT CONSTRUCTION DRAWINGS.** The Corps will ensure that a complete set of as-built construction drawings for the Canton Lake dam and the Overlook Building are retained in perpetuity.
- (3). **HISTORIC CONTEXT.** The Corps will ensure that appropriate historic research is conducted in order to document the Canton Lake dam and the associated Overlook Building in accordance with guidelines and procedures outlined in 36 CFR Part 60. Historic research will be compiled into a historic context report, which will investigate historical themes and sub-themes applicable to Canton Lake dam and associated structures, particularly as they relate to the lake’s authorization in the Flood Control Act of 1938, and to subsequent purposes such as those addressed in the Flood Control Act of 1948 and the Water Resources Development Act of 1990 (water supply storage). The dam itself will be addressed as an engineering resource, and the significance of its design and construction will be discussed. The historical importance of Canton Lake will be addressed in terms of flood control, water supply, irrigation, and recreation. Additionally, the historic context will identify and develop engineering and/or architectural themes significant to the construction of Canton Lake and the Overlook Building which contribute to the National Register eligibility of these structures. The Corps will ensure that the historic context meets guidelines and standards outlined in the “Architectural/Historic Resource Survey: A Field Guide” (Oklahoma Historical Society 1992), that the documentation is consistent with the Secretary of the Interior’s Standards and Guidelines for Architectural and Engineering Documentation (HABS/HAER Level II), and that the report is delivered to SHPO for curation. The Corps will provide no fewer than 25 copies of the report to SHPO.
- (4). **DISCOVERIES.** The Corps shall notify the SHPO as soon as practicable if it appears that this undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Corps will stop construction in the vicinity of the discovery and will take all reasonable measures to avoid or minimize harm to the property until the Corps concludes consultation with the SHPO. If the newly discovered property has not previously been included in or been determined eligible for the National Register, the Corps may assume that the property is eligible for purposes of this Agreement. The Corps will consult with the SHPO and any appropriate Indian tribes to develop actions that will take the effects of the undertaking into account. The Corps will notify the SHPO and any consulting Indian tribes of any time constraints, and the Corps, SHPO, and any consulting Indian tribes will mutually agree upon timeframes for the consultation. The Corps will provide the

SHPO and any consulting Indian tribes with written recommendations reflecting the consultation. If the SHPO or any consulting Indian tribe does not object to the Corps' recommendations within the agreed upon timeframe, the Corps will modify the Scope of Work as necessary to implement the actions.

- (5). **CURATION.** The Corps will ensure that all records resulting from historic research and all associated documents including correspondence, background, and associated Project records, are processed according to modern archival standards, duplicated on acid-free paper, and curated at the SHPO. The Corps will ensure that all photographic documentation will be processed according to modern archival standards and appropriately curated at the SHPO. Additionally, the Corps will ensure that all materials and records that may result from data recovery at archaeological sites associated with the Project are curated at an appropriate repository in accordance with 36 CFR Part 79.
- (6). **PUBLIC ACCESS TO RECORDS.** The Corps will ensure that records associated with the Project are made available for public inspection upon request, that potentially interested members of the public are made aware of their availability, and that interested members of the public are invited to provide comments to the Corps.
- (7). **MEETINGS.** At the request of any party to this agreement, the Corps shall ensure that a meeting or meetings are held to facilitate review and comment, to resolve questions, or to resolve adverse comments. Based on this review, the signatories to this agreement shall determine whether this agreement shall continue in force, be amended, or be terminated.
- (8). **DISPUTE RESOLUTION.**
 - (A.) Should the SHPO object to the manner in which the terms of this Agreement are implemented, the Corps will consult further with SHPO to resolve the objection. If the Corps determines that such objection cannot be resolved, Corps will forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation (Council) including Corps' proposed response to the objection. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:
 - (i.) Advise Corps that it concurs in Corps' proposed response, whereupon Corps will respond to the objection accordingly, or
 - (ii.) Provide Corps with recommendations, which Corps will take into account in reaching a final decision regarding the dispute, or
 - (iii.) Notify Corps that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment on the subject in dispute. Any Council comment provided in response to such a request will be taken into account by Corps in accordance with 36 CFR 800.7(c)(4) with reference only to the subject of the dispute, and Corps' responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

(B) Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute, and the responsibility of Corps to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged. The Corps may implement that portion of any Undertaking covered by this Agreement that is subject to dispute under this Stipulation after complying with 36 CFR 800.7(c)(4).

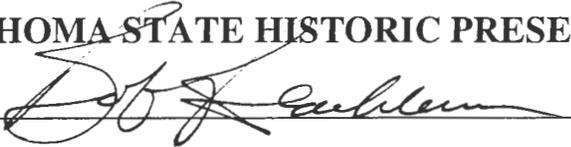
(C) If the Council fails to provide recommendations or to comment within the specified time period, the Corps may implement that portion of the Undertaking subject to dispute under this Stipulation in accordance with the documentation submitted to the Council for review.

(D) At any time during the implementation of the measures stipulated in this Agreement, should an objection to any measure or its manner of implementation be raised by a member of the public, the Corps shall take the objection into account and consult as needed with the objecting party, the SHPO, or the Council to address the objection.

- (9). **DURATION.** This Agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the Corps may consult with the other signatories to reconsider the terms of the Agreement and amend in accordance with the appropriate Stipulation in this Agreement.
- (10). **AMENDMENTS AND NONCOMPLIANCE.** If any signatory to the MOA determines that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to the Agreement pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the final date that a copy is signed by all of the original signatories. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the Agreement in accordance with the appropriate Stipulation in this Agreement.
- (11). **ADDITIONAL SIGNATORIES.** Additional parties may become signatories to this Agreement in the future through an amendment to the Agreement per stipulation 10.
- (12). **ANTI-DEFICIENCY ACT.** It is understood that the implementation of this Agreement is subject to applicable Federal and State anti-deficiency statutes.
- (13). **TERMINATION.** If the MOA is not amended following the consultation set out in the appropriate Stipulation, the Agreement may be terminated by any signatory. Within 30 days following termination, the Corps shall notify the signatories if it will initiate consultation to execute the MOA with the signatories under 36 CFR 800.6(c)(1) or request the comments of the Council under 36 CFR 800.7(a) and proceed accordingly.

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

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE

By:  Date: 3-12-07

Dr. Bob L. Blackburn
Oklahoma State Historic Preservation Officer

U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT

By:  Date: 22 FEB 07

Miroslav P. Kurka
Colonel, U.S. Army
District Engineer

CONCURRING PARTY:

OKLAHOMA ARCHEOLOGICAL SURVEY

By:  Date: April 20, 2007

Dr. Robert L. Brooks
Oklahoma State Archeologist