

**MEMORANDUM OF AGREEMENT
AMONG
UNITED STATES ARMY CORPS OF ENGINEERS,
CRAIG COUNTY,
AND THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
REGARDING
REPLACEMENT OF BRIDGE AND APPROACHES ON COUNTY ROAD
EW-266 OVER LITTLE CABIN CREEK**

WHEREAS, the Craig County Commissioner, plans to replace the existing bridge carrying County Road EW-266 over Little Cabin Creek, east of Vinita, Craig County, Oklahoma, by constructing a new bridge on existing alignment for State Job J/P 28528(04) (SWT-2018-275); and

WHEREAS, the Project requires compliance with Section 404 of the Clean Water Act, specifically the 2017 Nationwide Permit (NWP) 14 and the NWP General Conditions 20 and 32 for pre-construction notification, for which the Craig County Commissioner has submitted a Department of the Army Permit Application to the U.S. Army Corps of Engineers (USACE) Tulsa District for review (SWT-2018-275); and

WHEREAS, the USACE review and verification of NWP 14 for a project that may affect a Historic Property makes the project an undertaking subject to compliance with Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. § 300101 et seq), using the USACE current procedures for addressing the requirements of Section 106 and its implementing regulations (36 CFR Part 800) in 33 CFR Part 325 Appendix C, as well as USACE Interim Section 106 Guidance Memos of 2005 and 2007; and

WHEREAS, USACE has consulted with the Cherokee Nation of Oklahoma, and the Delaware Tribe of Oklahoma, both requesting to be included as concurring parties, no response was received from the Osage Nation, the Shawnee Tribe of Oklahoma, the United Keetoowah Band of Cherokee Indians, or the Wichita and Affiliated Tribes.

WHEREAS, USACE has consulted with the Oklahoma State Historic Preservation Officer (SHPO) and has determined that the Project will have an adverse effect to the camelback pony truss bridge over Little Cabin Creek (NBI: 00355; Structure# 18E0266N4430001), a historic property determined eligible for inclusion in the National Register of Historic Places; and

WHEREAS, in accordance with 33 CFR Part 325(7)(d) Appendix C, the USACE 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; and

NOW, THEREFORE, USACE, Craig County Commissioner, and the Oklahoma SHPO, 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.

USACE, CRAIG COUNTY, SHPO MOA
EW-266 Bridge SWT-2018-275

STIPULATIONS

USACE will ensure that the following measures are carried out. Measures will be met within the timeframes presented for each stipulation.

I. **Documentation.** Prior to the construction of the new bridge and removal of the existing bridge, Craig County will record the existing bridge at the equivalent of Level II documentation as specified by the Historic American Engineering Record (HAER).

A. High Quality, 35 mm black and white photographs or digital photographs, of the bridge documenting its present appearance and major structural or decorative details, together with all negatives on archival gold CD as digital TIFF files that meet or exceed the minimum requirement for pixel depth. Photographs are to be submitted by Craig County and approved by SHPO as meeting the conditions outlined above before any work takes place that will affect the property. The photographs will be a minimum 4" x 6" and no larger than 8" x 10", and will be clearly labeled with the following information:

- a. Name of property;
- b. Location (county, city, state, and street address);
- c. Name of photographer;
- d. Date of photograph
- e. Location of photographic negative;
- f. Indication of direction camera is pointing; and
- g. Number of photograph in series

B. The document will include photographic reproduction of selected original (as-built) construction plans and historic photographs, if they exist.

C. The document will include a preparation of a brief written technical description of the bridge and historical summary.

D. All documentation will be edited, catalogued and packaged in a manner acceptable to the Oklahoma SHPO. The Oklahoma SHPO will be the repository for the documentation.

E. Craig County will provide all research documentation, research materials, copies of photographs, and HAER documentation of the bridge to the Oklahoma SHPO and the USACE within three years of the execution of this MOA.

II. **Duration.** This MOA will be null and void if its stipulations are not carried out before March of 2022. At such time, and prior to work continuing on the undertaking, USACE shall either (a) execute a 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. Prior to such time, USACE may consult with signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below. USACE shall notify signatories as to the course of action it will pursue.

III. Post-Review Discoveries. If potential historic properties are discovered or unanticipated effects on historic properties found, Craig County shall comply with 33 CFR Part 325 (11) Appendix C. Consultation will be completed in accordance with USACE current procedures for addressing the requirements of Section 106 and 36 CFR § 800.13.

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

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

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. 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 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.

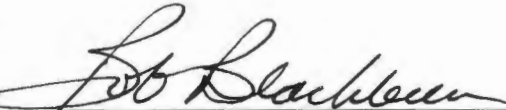
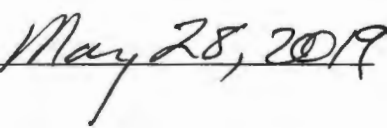
Once the MOA is terminated, and prior to work continuing on the undertaking, USACE shall execute the requirements set forth in 33 CFR Part 325(9)(a).

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

Signatory

**MOA for SWT-2018-275; State Job 28528(04) Bridge and approaches on County Road
EW-266 over Little Cabin Creek, Craig County, Oklahoma (NBI: 00355; Structure#
18E0266N4430001)**

Oklahoma State Historic Preservation Office

BY:  DATE: 
Dr. Bob Blackburn*
State Historic Preservation Officer

* By signing this MOA, the OK/SHPO is agreeing to the documentation process regarding Little Cabin Creek Bridge (NBI: 00355; Structure# 18E0266N4430001,) Craig County, Oklahoma. The OK/SHPO is not agreeing that Appendix C is an alternative to 54 U.S.C. § 306108 (Section 106).