

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE, AND
OKLAHOMA DEPARTMENT OF TRANSPORTATION,
REGARDING ADVERSE EFFECT TO
STATE HIGHWAY 66 BRIDGE OVER BIRD CREEK**

WHEREAS, the Federal Highway Administration (FHWA), the Oklahoma State Historic Preservation Office (SHPO), the Oklahoma Department of Transportation (ODOT), the City of Catoosa, and the Advisory Council on Historic Preservation (ACHP) entered into a Memorandum of Agreement (MOA) on March 21, 2011 to mitigate adverse effects to the State Highway (SH) 66 bridge over Bird Creek; and

WHEREAS, the subject bridge (NBI 05048), which was constructed in 1936 and replaced in 2012 was eligible for listing on the National Register of Historic Places (NRHP); and

WHEREAS, the Federal Highway Administration (FHWA) funded the Federal-Aid Project BRFY-166C(130); State Job 20899(04), thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. § 470 et seq.), and its implementing regulations, 36 CFR Part 800; and

WHEREAS, Stipulation 1 of the original MOA (HAER Document) was completed in 2013, and that document is posted on ODOT's website (<http://www.odotculturalresources.info/historic-american-engineering-records.html>); and

WHEREAS, Stipulation 3 of the original MOA has been partially completed in that a Draft Interagency Agreement was submitted to SHPO within 18 months of the execution of the original MOA; and

WHEREAS, the MOA was amended on January 21, 2021 to remove Stipulation 3(C): *Upon development of a draft interagency agreement, the Department, the Oklahoma SHPO, and FHWA shall consult to produce and execute a final interagency agreement at the earliest possible time.*

WHEREAS, Stipulation 4 of the original MOA has been partially completed in that thru-truss spans have been transferred to the City of Catoosa and placed in Rogers Point Park; and

WHEREAS, Stipulation 5 of the original MOA is a recurring commitment in that it stipulates transparency in the maintenance of the 1956 bridge; and

WHEREAS, in accordance with Stipulation 5(A) of the original MOA, ODOT has submitted inspection reports to consulting parties via email in September 5, 2019; and

WHEREAS, in accordance with Stipulation 5(B) of the original MOA, ODOT has consulted with SHPO and consulting parties on the maintenance of the 1956 bridge under JPs 20926(04) and 20926(05), which are federal undertakings; and

WHEREAS, pursuant to Stipulation 5(C), no additional federal undertakings have occurred on the 1956 bridge, however all bridge inspection reports and a history of maintenance activities on the 1956 bridge are posted on the ODOT Cultural Resources Program website (<http://www.odotculturalresources.info/bird-creek-bridge.html>)

WHEREAS, the original MOA expired on March 21, 2021, prior to the completion of Stipulation 2: *Documentary History of the 1936 and 1956 Sister Bridges*, and Stipulation 4(B): *Installation of an interpretive kiosk or panel adjacent to relocated trusses within Rogers Point Park*; and

WHEREAS, the City of Catoosa occupies and maintains Rogers Point Park through a lease with the United States Army Corps of Engineers (USACE), and the city is responsible for submitting individual real estate approval requests to the USACE; and

WHEREAS, the Signatories fully intend to complete and implement Stipulations 2, 4(B), and 5(A) and 5(C) of the original MOA, which are listed as Stipulations I(A), II(A), and III of this MOA; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FHWA 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 CFR § 800.6(a)(1)(iv) as a signatory to this MOA; and

NOW, THEREFORE, FHWA, ODOT, and the 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.

STIPULATIONS

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

- I. **Documentation.** ODOT will produce a video documentary of the history of the 1936 and 1956 "Sister Bridges". The documentary will be placed on ODOT's Cultural Resources Program website within 18 months of the execution of this MOA.
 - A. ODOT has completed the video but is seeking additional historic imagery of the 1936 bridge or its predecessor, originally located roughly 800 feet northwest of the 1936 bridge.
- II. **Public Interpretation.** ODOT will implement the following interpretation measures to engage and educate the public on the history of Route 66 and the Bird Creek Sister Bridges.
 - A. ODOT will construct an interpretive kiosk adjacent to two relocated K-trusses from the 1936 bridge. ODOT will create an interpretive panel presenting the history of twin bridges. The two K-trusses from the 1936 bridge have already been installed in Rogers Point Park as part of the 1936 bridge replacement. The content of the display panel has been coordinated with SHPO and consulting parties.
 - i. Upon execution of this MOA, ODOT will submit the construction plans for the kiosk to Signatories for a 30-day review and comment.
 1. ODOT will incorporate comments from Signatories and produce a final design, which will be constructed as part of the kiosk.
 2. ODOT will integrate SHPO comments and produce a Final scope of work. The scope of work will be acceptable to SHPO and ODOT.
- III. **Maintenance of the 1956 SH-66 eastbound bridge (Structure #6602 0368 EX).** ODOT will implement the following measures to continue to provide information on maintenance activities of the subject bridge.
 - A. Routine inspections. ODOT will continue bridge inspections every two years, or as needed, and will provide those inspection reports on its dedicated website (<http://www.odotculturalresources.info/bird-creek-bridge.html>)
 - B. ODOT will continue to implement feasible and reasonable repairs as necessary to maintain structural integrity and load carrying capacity of the bridge until it is no longer feasible and prudent.
 - i. ODOT and FHWA shall consult with Oklahoma SHPO and consulting parties for those repair and maintenance projects that are defined as federal undertakings, in accordance with 36 CFR 800.16(y).

- IV. **Duration.** This MOA will be null and void if its stipulations are not carried out within ten (10) years from the date of its execution. At such time, and prior to work continuing on the undertaking, FHWA 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, FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below. FHWA shall notify the signatories as to the course of action it will pursue.
- V. **Post-Review Discoveries.** If potential historic properties are discovered or unanticipated effects on historic properties found, FHWA shall follow ODOT Spec 107.09, Protection of Archeological and Unmarked Human Burial Sites.
- VI. **Human Remains.** Treatment and disposition of any human remains that may be discovered will be managed in a manner consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601; 25 U.S. Code 3001 et seq.), the Advisory Council on Historic Preservation's Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funeral Objects; and the Burial Desecration Law-Oklahoma Statute Chapter 47 (Section 1168.0-1168.6). Any human remains, burial sites, or funerary objects, sacred objects, or items of cultural patrimony that are discovered will at all times be treated with dignity and respect. Specific processes for treatment of human remains will be outlined in the data recovery plan.
- VII. **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, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:
- A. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA 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, FHWA 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. FHWA 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, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA 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. FHWA'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. **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.

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 VII, 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, FHWA 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. FHWA shall notify the signatories as to the course of action it will pursue.

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

Signatory

MOA for BRFY-166C(130); Job/Piece 20899(04) SH-66 over Bird Creek in Rogers County

FEDERAL HIGHWAY ADMINISTRATION

BY: _____ DATE: 10/7/2021 _____

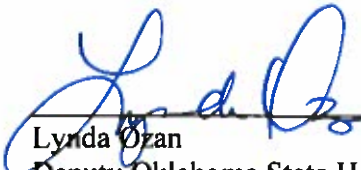
Karen Orton

Realty Officer/Environmental Program Manager – Oklahoma Division

Signatory

MOA for BRFY-166C(130); Job/Piece 20899(04) SH-66 over Bird Creek in Rogers County

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE

BY:  DATE: 9/14/2021
Lynda Oran
Deputy Oklahoma State Historic Preservation Officer

Invited Signatory

MOA for BRFY-166C(130); Job/Piece 20899(04) SH-66 over Bird Creek in Rogers County

OKLAHOMA DEPARTMENT OF TRANSPORTATION



BY:  DATE: 9/16/2021
Joe Brutsché
Environmental Programs Division Manager

BY:  DATE: 09/29/2021
Randle White
District 8 Engineer

Invited Signatory

MOA for BRFY-166C(130); Job/Piece 20899(04) SH-66 over Bird Creek in Rogers County

CITY OF CATOOSA

BY:  DATE: 
John Blish
City Manager