

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION,
OKLAHOMA DEPARTMENT OF TRANSPORTATION, AND
OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
REGARDING
THE REPLACEMENT OF SH-11 BRIDGE OVER HOMINY CREEK**

WHEREAS, the Oklahoma Department of Transportation (ODOT) plans to replace the existing bridge carrying SH-11 over Hominy Creek in Tulsa County, Oklahoma, a property eligible for inclusion on the National Register of Historic Places (NRHP), by constructing a new bridge on the existing alignment; and

WHEREAS, the Federal Highway Administration (FHWA) plans to fund the Project, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. 300101 et seq.), and its implementing regulations, 36 CFR Part 800; and

WHEREAS, FHWA has determined that the Federal-Aid Project STP-172C(365)SS, State Job J/P 24365(04) will have an adverse effect to the existing K-thru truss over Hominy Creek (ODOT Structure 7236 0743X; NBI 09535), a property eligible for listing on the National Register of Historic Places, and has consulted with the Oklahoma State Historic Preservation Officer (SHPO), pursuant to 36 CFR Part 800; and

WHEREAS, in accordance with 36 CFR § 800.3(f), ODOT and FHWA identified Preservation Oklahoma and Oklahoma Historic Bridge and Highway Group as a consulting party; and

WHEREAS, FHWA has consulted with the Alabama-Quassarte Tribal Town, Cherokee Nation, Muscogee (Creek) Nation, Kialegee Tribal Town, Osage Nation, Thlopthlocco Tribal Town, United Keetoowah Band of Cherokees and the Wichita and Affiliated Tribes, in accordance with 36 CFR § 800.2(c)(2), and determined that no properties of traditional religious cultural significance will be affected by the undertaking; and

WHEREAS, in accordance with 23 USC § 144(n) ODOT prepared a press release on January 17, 2014 informing the public that the subject bridge was available for donation, and one adoption proposal was received from a private business, 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, Oklahoma Department of Transportation, 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.

STIPULATIONS

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

- I. **Documentation.** The subject bridge was determined eligible for listing on the NRHP in 2007. Prior to the construction of the new bridge, ODOT 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, 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. 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.

Photographs are to be submitted by ODOT and approved by SHPO as meeting the conditions outlined above before any work takes place that will affect the property.
 - B. Photographic reproduction of selected original (as-built) construction plans and historic photographs, if they exist.
 - C. 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. Within three years of the execution of this MOA, ODOT will provide all research documentation, research materials, copies of photographs, and HAER documentation of the bridge to the Oklahoma SHPO.
- II. **Adoption and Relocation.** In accordance with 23 USC 144(n)(4), ODOT will donate the historic bridge to a private citizen. The Historic Bridge will be moved to a private business in Skiatook roughly 2.5 miles north of its current location and will be

placed over a slough on said property northeast of 136th Street and SH-11 intersection, within 200 feet of SH-11. The Historic Bridge will be visible to the public, will be preserved, and will be subject to occasional private vehicular use. The specifications of the donation are outlined in Appendix A.

- III. **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.
- IV. **Post-Review Discoveries.** If potential historic properties are discovered or unanticipated effects on historic properties found, FHWA shall follow ODOT Specification 107.09, Protection of Archeological and Unmarked Human Burial Sites.
- V. **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.
- VI. **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.

VII. **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 VI, 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 Job/Piece 24365(04) SH-11 over Hominy Creek in Tulsa County, Oklahoma
(Structure 7236 0743X; NBI 09535)**

FEDERAL HIGHWAY ADMINISTRATION

BY:  DATE: 3/24/2015
John Hartley
Environmental Program Manager
Oklahoma Division

Signatory

**MOA Job/Piece 24365(04) SH-11 over Hominy Creek in Tulsa County, Oklahoma
(Structure 7236 0743X; NBI 09535)**

OKLAHOMA DEPARTMENT OF TRANSPORTATION

BY:  _____ DATE: 3/26/2015 _____
Dawn Sullivan, P.E.
Environmental Programs Division Engineer

Signatory

**MOA Job/Piece 24365(04) SH-11 over Hominy Creek in Tulsa County, Oklahoma
(Structure 7236 0743X; NBI 09535)**

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER

BY:

DATE:

3-26-15

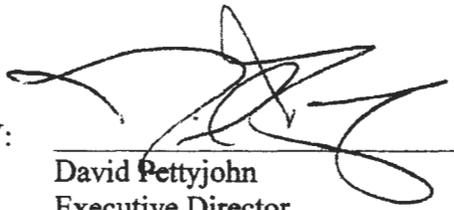
Melvena Heisch
Deputy State Historic Preservation Officer

Concurring Party

**MOA Job/Piece 24365(04) SH-11 over Hominy Creek in Tulsa County, Oklahoma
(Structure 7236 0743X; NBI 09535)**

Preservation Oklahoma

BY:


David Pettyjohn
Executive Director

DATE:

03/26/15

Concurring Party

**MOA Job/Piece 24365(04) SH-11 over Hominy Creek in Tulsa County, Oklahoma
(Structure 7236 0743X; NBI 09535)**

Oklahoma Historic Bridge and Highway Group

BY: Wes Kinsler DATE: 3-27-2015
Wes Kinsler
Administrator

APPENDIX A

Historic Bridge Relocation Agreement Job/Piece 24365(04) SH-11 over Hominy Creek in Tulsa County, Oklahoma (Structure 7236 0743X; NBI 09535)

WHEREAS, ODOT owns an Historic Bridge on a public highway located at State Highway 11 and Hominy Creek, roughly 1.25 miles north of Sperry, Tulsa County; and,

WHEREAS, ODOT intends to replace the existing Historic Bridge with a new structure on existing alignment; and

WHEREAS, the date for letting the highway bridge replacement project to contract construction is tentatively scheduled for September 2017; and

WHEREAS, the existing bridge being replaced has been determined eligible for listing on the National Register of Historic Places on November 21, 2007; and

WHEREAS, Title 23 United States Code Section 144(n) established the Historic Bridge Program to provide for the rehabilitation, reuse, and preservation of historic bridges; and

WHEREAS, the Historic Bridge Program provides that any State which proposes to demolish a historic bridge for a replacement project shall make the bridge available for donation to recipients which may be public or private entities; and

WHEREAS, it is mutually agreeable between ODOT and Recipient for ownership of the main truss span of the Historic Bridge to be assumed by the Recipient for preservation in accordance with the Historic Bridge Program; and

WHEREAS, the Recipient submitted a proposal to ODOT evidencing its desire to acquire and preserve the Historic Bridge under the provisions of the Historic Bridge Program; and

WHEREAS, the Recipient's proposal is acceptable to ODOT and is included as Attachment I, which is attached to and made a part of this agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties to be by them respectively kept and performed as set forth, it is agreed as follows:

AGREEMENT

Article 1. Assignment of Ownership of the Historic Bridge

A. Ownership of the truss elements of the Historic Bridge is relinquished by ODOT and assumed by the Recipient when the work performed by ODOT as outlined in Attachment B is completed and the bridge is in the care, custody, and control of the Recipient.

- B. Ownership by the Recipient includes full and immediate responsibility for all future legal and financial matters relating to the Historic Bridge, including compliance with applicable federal, state, and local government laws, rules, and regulations.

Article 2. Adaptive Use of the Historic Bridge

- A. The Historic Bridge shall not be used on a public road as a vehicular traffic facility.
- B. The Recipient shall preserve and maintain the Historic Bridge and the features that give it its historical significance, adhering to the provisions of the U.S. Secretary of Interior's Standards for Rehabilitation (36 CFR 67.7) incorporated by reference and made a part of this agreement as though fully set forth within it.
- C. The Recipient shall provide for all necessary real property and utility adjustments needed for performance of the work on sites not owned or to be acquired by ODOT.
- E. After completion of the modification, restoration, or preservation work on the Historic Bridge as described by the Recipient and contained in the approved proposal (Attachment A), ODOT will visit the site solely for the purpose of confirming that the work has been accomplished.

Article 3. Scope of Work and Funding

- A. The work to be performed by ODOT is described in Attachment II. The work to be performed by the Recipient is described in Attachment III. Attachments II and III are attached to and made part of this agreement.
- B. The recipient shall receive no funding or financial assistance from ODOT for the removal and transport of the Historic Bridge.

Article 4. Indemnification

- A. The Recipient shall indemnify and hold harmless ODOT and its officers and employees from all damages, claims, and liabilities, including those arising from injury to or death of persons or loss of or damage to property, arising out of, incident to, or in any manner connected with the relocation, maintenance, or operation of the Historic Bridge, which indemnification shall extend to and include any and all court costs, attorney's fees, and expenses related to or connected with any claims or suits for damages and shall, if requested in writing by ODOT to do so, assist with or relieve ODOT from defending any suit brought against it.

Article 5. Termination

- A. This agreement may be terminated by any of the following conditions:
 1. By mutual agreement and consent of all parties or by any party, upon thirty (30) days written notice to the other parties.
 2. By the ODOT Cultural Resources Specialist giving written notice to the Recipient as a consequence of Recipient's failure to satisfactorily perform the responsibilities and obligations set forth in this agreement. Reasonable allowance will be made for circumstances beyond the control of the Recipient, as determined by ODOT. The Recipient will be afforded thirty (30) days to remedy the breach as outlined by ODOT.
 3. By ODOT if the project is cancelled.
- B. Where termination is required due to failure of the Recipient to perform its agreed to responsibilities and obligations, ODOT may move the Historic Bridge to a temporary site or take other action without further consultation with the Recipient. Subject to consultation

with the SHPO and/or other parties, such actions may include demolition.

- C. Termination of this agreement shall extinguish all duties, obligations, and liabilities of ODOT under this agreement. Additionally, the Recipient shall not perform any actions to take over or remove the Historic Bridge from the existing location.

Article 6. Disputes

Should disputes arise as to the parties' obligations or responsibilities established in this agreement, FHWA shall be engaged as an arbitrator.

Article 7. Amendments

Any changes in the character, responsibilities, or obligations established in this agreement shall be enacted by written amendment executed by both parties to this agreement.

Article 8. Legal Construction

In case one or more provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision and this shall be construed as if such invalid, illegal, or unenforceable provision had never been contained within it.

Article 9. Sole Agreement

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the subject matter of this agreement.

Article 10. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by ODOT and the Recipient in duplicate.

THE RECIPIENT

Slot Underwood
Signature

SLOT UNDERWOOD
Typed or Printed Name

Title

2/17/15
Date

THE STATE OF OKLAHOMA

Randle White
Randle White, P.E.
Division 8 Engineer
Oklahoma Department of Transportation

02/24/15
Date