

MEMORANDUM OF AGREEMENT

WHEREAS, the Federal Highway Administration (FHWA) has determined that the construction of State Highway 77T, providing access to the proposed University of Oklahoma Employment Center in Norman, Oklahoma, will have an effect upon the former Norman Naval Air Station (NNAS), a World War II-era property eligible for inclusion in the National Register of Historic Places (NRHP), and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Places (Council) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the Oklahoma Department of Transportation (ODOT), the Oklahoma State Archaeologist, and the Federal Aviation Administration (FAA) participated in the consultation and have concurred with this Memorandum Agreement;

WHEREAS, the definitions given in Appendix I are applicable throughout this Memorandum of Agreement;

NOW, THEREFORE, the FHWA, the Oklahoma SHPO, and the Council 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

The Federal Highway Administration will ensure that the following measures are carried out:

- (1) Construction of State Highway 77T will proceed as planned following execution of this MOA and completion of the Section 4(f) evaluation by the Oklahoma Department of Transportation (ODOT). During construction of the highway, ODOT will take particular care to avoid affecting any historic or archaeological remains associated with the Norman Naval Air Station (NNAS). All earth-disturbance activities within the former NNAS property will be confined to the roadway right-of-way, and areas to be avoided for equipment staging or other construction-related activities will be flagged and noted on the construction plans. ODOT shall make suitable arrangements for archaeological monitoring in consultation with the SHPO prior to construction. If a previously undiscovered archaeological property is encountered during construction, all work that might adversely impact the property will cease until FHWA can evaluate and, if necessary, mitigate impacts to the new discovery.

Evaluation and mitigation will be carried out in consultation with the SHPO as expeditiously as possible. The Council will be notified if eligible resources are discovered. Any properties which will be recovered as mitigation will be curated in an accredited museum or other repository approved by the SHPO.

- (2) The University of Oklahoma will undertake a complete historic survey of the former Norman Naval Air Station to identify and assess the integrity and condition of all individual resources that contribute to the site's status as a National Register Historic District. This survey must be performed in consultation with, and accepted by, the Oklahoma SHPO prior to any development or sale of lots within the proposed Employment Center served by State Highway 77T, either by the University or its agents and tenants.
- (3) The University of Oklahoma will take the following steps to mitigate potential impacts to historic resources associated with the Norman Naval Air Station within the future Employment Center served by State Highway 77T. These mitigation measures must be in place and approved by SHPO prior to any development or sale of lots within the Employment Center, either by the University, its agents, or tenants.:
 - a. The University will establish a protective easement surrounding "Mt. Williams" and associated target handling features identified as Feature 7 in the attached cultural resources report (Attachment A). No development, other than for the purpose of maintaining, restoring, or interpreting the historic features will be allowed within this easement. Any proposed maintenance, restoration, or interpretation of the feature must be approved in advance by the SHPO. The area of this easement is illustrated in Attachment B.
 - b. All other known historic features within the Employment Center and described in Attachment A will be subjected to photodocumentation and recordation equivalent to the requirements of the HABS/HAER "Short Form". Once this documentation is completed and accepted by the Oklahoma SHPO, lots containing these features may be developed as the University sees fit.

Should any party to this agreement object to any plans provided for review, specifications provided, or actions proposed pursuant to this agreement, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall request the further

comments of the Council pursuant to 36 CFR 800.6(b). Any Council comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR 800.6(c)(2) with reference only to the subject of the dispute; the FHWA's responsibility to carry out all action under this agreement that are not the subjects of the dispute will remain unchanged.

Any party to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.6(c)(5) to consider such amendment.

Execution of this Memorandum of Agreement and implementation of its terms evidence that FHWA has afforded the Council an opportunity to comment on the construction of State Highway 77T in the University of Oklahoma's proposed Employment Center and its effects on historic properties, and that FHWA has taken into account the effects of the undertaking on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: Robert W. Bush Date: 11/10/93

FEDERAL HIGHWAY ADMINISTRATION

BY: Mike Henon Date: 9/17/93

UNIVERSITY OF OKLAHOMA

BY: Jerry B Farley Date: 9-30-93

STATE HISTORIC PRESERVATION OFFICER

BY: Blake Wade Date: 9-21-93

CONCUR :

OKLAHOMA DEPARTMENT OF TRANSPORTATION

By: Ben C Taylor Date: 10/19/93

FEDERAL AVIATION ADMINISTRATION

By: James A. Spriggs Date: 10/06/93

OKLAHOMA STATE ARCHAEOLOGIST

By: Walt L. Burts Date: 9/21/93

Reviewed and Approved as to Form
and Legality

By: Ben C. Taylor Date: 10/24/93
Ben C.

APPENDIX I
DEFINITIONS

Employment Center

A tract of land owned by the University of Oklahoma, measuring approximately 1/4 mile by 2 miles in area, proposed for development as a business and research park. It occupies approximately the western 1/3 of the former Norman Naval Air Station (now known as the University Research Park). A cultural resources survey for State Highway 77T identified eight abandoned features associated with the former naval base within the Employment Center, the most significant of which is Feature 7, locally known as "Mt. Williams". With the exception of a few modern features such as oil/gas wells, the property is largely undeveloped. Attachment C is a map that shows the Employment Center in relationship to Naval Air Station.

"Mt. Williams" (Site 34CL179, Feature 7)

This is a local landmark associated with the Norman Naval Air Station (NNAS) consisting primarily of a large earthen mound measuring approximately 350x175 feet at the base and 75 feet tall. It served as a target range for small arms and machine gun practice and includes a number of associated target handling features including a concrete trench along the south side, a bunker for the protection of target range crews, and the remains of machinery used to raise and lower targets. The mound gets its popular name from Lt. Cmdr. James W. Williams, USNR, the first commanding officer of the NNAS. It is one of eight features associated with the NNAS recorded in the University of Oklahoma's Employment Center, and the only one that appears to warrant in situ preservation.

Norman Naval Air Station (NNAS)

The NNAS was a major U.S. Navy flight and ground training facility during the Second World War. The airfield itself was established prior to the War by the University of Oklahoma as Max Westheimer Field. In 1942 the U.S. Navy obtained the 260-acre flying field on a 99-year lease and purchased large tracts of surrounding countryside to support the much larger military facility. In its final form the NNAS covered an area of approximately 1650 acres. In 1945, it comprised 91 individual buildings, approximately 25 of which are still extant, either as standing structures or foundations. After the war, the entire base was transferred to the University of Oklahoma for use as an

airfield and research/business park. Portions of the base have been intensively developed, while others are relatively unchanged. The facility is currently referred to as "University Research Park". The Smithsonian trinomial 34CL179 has been assigned to the NNAS by the Oklahoma State Archaeologist

State Highway 77T

A proposed four-lane roadway that will follow a "serpentine" N-S route through the Employment Center, to be constructed by the Oklahoma Department of Transportation with Federal-Aid and Local funds. The purpose of the highway is to facilitate development of the Employment Center. It is an integral part of the planned development. A January, 1993, cultural resources survey for this facility and the surrounding Employment Center identified eight features associated with the NNAS in the Employment Center. None are within, or immediately adjacent to, the proposed highway alignment.

University Research Park

A property containing approximately 1700 acres including three distinct areas: Swearingen Research Park; Max Westheimer Airpark; and the Employment Center. The University Research Park is largely coterminous with the former Norman Naval Air Station (NNAS). The Swearingen Research Park contains the majority of the remaining standing structures of the NNAS. The Max Westheimer Airpark has been extensively altered from its World War II configuration and retains relatively few NNAS features. The Employment Center contains a number of outlying ruins and other features associated with the NNAS.

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 26th day of October, 2004 between UNIVERSITY NORTH PARK, L.L.C., an Oklahoma limited liability company ("UNP"), THE OKLAHOMA DEPARTMENT OF TRANSPORTATION ("ODOT") and the OKLAHOMA HISTORICAL SOCIETY ("OHS") with respect to the following facts:

(a) UNP is the owner of certain real property situated in the City of Norman, Cleveland County, Oklahoma, which was formerly a part of the United States Naval Air Station ("North Base") and which is more particularly described on Exhibit A attached hereto and made a part hereof ("University North Park").

(b) UNP acquired University North Park from the University of Oklahoma (the "University") on September 15, 2003.

(c) Pursuant to an Assignment and Assumption of Contracts dated September 15, 2003, UNP assumed the obligations of the University under that certain Memorandum of Agreement dated August 28, 2003 between the University and ODOT (the "2003 MOA"). The 2003 MOA was entered into following consultation with the State Historic Preservation Officer ("SHPO"), concerning the World War II era firing range earthen structure associated with North Base and known as "Mount Williams". Mount Williams is located on a portion of University North Park.

(d) The 2003 MOA provides various options for the construction of access roads, critical to the development of University North Park, and the preservation of Mount Williams. The options include an alternative to relocate a portion of Mount Williams in the implementation of access roads and the development of University North Park.

(e) Engineering studies performed for UNP have determined that the options included in the 2003 MOA do not satisfy the objectives of providing the necessary access to the

University North Park property, preserving Mount Williams in place and providing a proper tribute to the World War II veterans who served at the North Base. Thus, UNP has determined there are no feasible and prudent alternatives to the removal of Mount Williams.

(f) UNP, ODOT and OHS have reached a mutually acceptable agreement that will supercede and replace the 2003 MOA in its entirety.

NOW THEREFORE, in consideration of the terms, covenants, conditions and agreements contained herein, the parties hereto agree to the following:

1. Removal Plan. The parties agree that UNP may cause Mount Williams to be removed at the sole cost and expense of UNP. UNP will provide written notice to the ODOT Cultural Resource Coordinator ("ODOT Coordinator") not less than thirty (30) days prior to the anticipated commencement of the removal of Mount Williams. Prior to any earthwork or other demolition activity in the area of Mount Williams, the ODOT Coordinator will be provided a minimum of thirty (30) days to complete detailed photographic and field documentation of the mound and all associated trenches, equipment, and bunkers. Any historical items which are believed appropriate by the ODOT Coordinator for eventual preservation as part of the OHS Mount Williams exhibit described in Section (2)(b)(i) of this Agreement shall be marked for removal from the site. If necessary, physical removal of historical items from the site to the Oklahoma History Center in Oklahoma City ("History Center") shall be accomplished by a contractor engaged directly by UNP or a contractor engaged by a developer designated by UNP (the "Removal Contractor") under the direct supervision of the ODOT Coordinator or his designated field representative. In the event unusual conditions prohibit completion of this work within 30 days, any extension shall be accomplished on a mutually agreeable schedule between ODOT and UNP. The ODOT Coordinator or archaeologists under his overall supervision will be allowed on site at any point during the removal process to identify, document and safeguard any

significant historic artifacts and features the removal activities may unexpectedly yield. If such finds are unearthed, earthmoving activities in the find sites will be suspended as directed by the ODOT Coordinator, and ample time will be provided for the archaeologists to remove and prepare the find for transferal to the History Center. If requested by ODOT, the Removal Contractor will assist in this work. Costs for any use of the Removal Contractor personnel or equipment to excavate or remove historical artifacts from the site will be borne by UNP. Any hard expenses incurred by ODOT in the field documentation and conservation activities will be reimbursed by OHS out of the funds transferred by UNP to OHS pursuant to Section (2)(b) of this Agreement. The History Center shall be the final curatorial repository for all field notes, photographs, reports, and artifacts obtained by the investigations.

2. Mitigation of Removal Impact. The following requirements shall be satisfied in order to alleviate and mitigate the impact of removal of Mount Williams:

(a) UNP will issue a public announcement not less than thirty (30) days prior to commencing the removal expressing appreciation of prior efforts of the University, ODOT, and OHS to preserve Mount Williams, providing an explanation of the necessity for its removal, describing the efforts which will be taken by UNP, ODOT and OHS, as partners, to mitigate the impact of removal, and describing future plans for University North Park.

(b) UNP will cause the sum of One Hundred Thousand Dollars (\$100,000) to be transferred to OHS in support of plans for a permanent exhibit at the History Center to document and memorialize Mount Williams, the North Base and the World War II veterans who served at the North Base. Such plans will include:

(i) the establishment of an appropriate permanent exhibit at the History Center and educational programs that will be offered to students and visitors, and

- (ii) a simple historical marker to memorialize Mount Williams to be placed in the vicinity of its current location after development plans are finalized and traffic flow is established.

The transfer of funds to OHS shall occur prior to commencement of removal of Mount Williams, but in no event later than December 31, 2005.

(c) In consideration of UNP's support, OHS agrees to participate in preparing the public announcement regarding the removal and mitigation of Mount Williams, and agrees to designate Bob L. Blackburn, Executive Director of the OHS and SHPO, as spokesman in support of the memorial exhibit at the History Center and historical marker at the Mount Williams site. In addition, UNP and the University of Oklahoma Foundation, Inc. will be recognized as supporters of the memorial exhibit at the History Center and a sixty (60) second film of the history of the University of Oklahoma Foundation, Inc. will be accessible to visitors to the History Center. Such film history (and any future modification thereof) shall be approved in advance by UNP.

(d) ODOT agrees to make the ODOT Coordinator, (currently John Hartley), available as a special consultant to OHS to document current conditions of the mound, monitor the excavation process, report the findings, and provide insight regarding design of the exhibit to depict the history of Mount Williams and North Base, and in the development of the text of the historical marker and permanent exhibit.

3. Applicability to Subsequent Actions. The parties understand that this Agreement relates only to measures dealing with Mount Williams. ODOT makes no commitment to support, fund, or in any way assist with roads to be constructed to or within University North Park. Nothing contained herein shall imply that ODOT has made any commitments to support, fund, or help implement any of the roadways to be constructed in University North Park, nor has

ODOT approved any proposal to provide additional access to UNP from Interstate Highway 35 or any other Federal or State Highway.

4. Compliance with Laws. UNP agrees that it shall comply with all federal, state, and local laws, ordinances, or regulations applicable to the removal and disposal of the material from and associated with the Mount Williams site. UNP further agrees that it shall, prior to beginning the removal of Mount Williams, obtain all necessary authorizations and permits for the removal and disposal of the material from and associated with the Mount Williams site.

5. Removal Indemnity. UNP agrees to save, defend, and hold harmless ODOT and/or OHS from any claim, cause of action, or liability of any nature, directly or indirectly, arising as a result of the removal and disposal of material from and associated with the Mount Williams site.

6. Remedies. In the event of a default hereunder, the parties hereto shall be entitled to exercise all remedies available at law or in equity.

7. Entire Agreement. This Agreement supercedes the 2003 MOA in its entirety and contains the entire agreement and understanding between the parties hereto with regard to the subject matter hereof. All prior negotiations, understandings, terms or conditions are merged into this Agreement. No changes, modifications or amendments to this Agreement shall be effective unless signed by the parties hereto.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and/or assigns of the parties hereto.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma.

10. Attorney Fees. In the event of any dispute under this Agreement, each party shall bear its own costs and attorney fees.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

UNIVERSITY NORTH PARK, L.L.C.

By: H.E. Rainbolt

Name: H.E. Rainbolt

Title: Manager

Date: 10/26/04

OKLAHOMA DEPARTMENT OF TRANSPORTATION

By: Gary M. Ridgely

Name: GARY M. RIDGELY

Title: DIRECTOR

Date: 10-19-04

United General Council

OKLAHOMA HISTORICAL SOCIETY

By: Bob Blackburn

Name: Bob Blackburn

Title: Director

Date: 10-22-04

EXHIBIT A

LEGAL DESCRIPTION – UNIVERSITY NORTH PARK

A tract of land lying in the West Half of Section 13, the East Half of Section 14, the East Half of Section 23, and the West Half of Section 24, all in Township 9 North, Range 3 West of the Indian Meridian, Cleveland County, Oklahoma, and being more particularly described as follows:

COMMENCING at the Northwest corner of said Section 13, said point also being the Northeast corner of said Section 14;

THENCE South $00^{\circ}16'07''$ East, along the common line between said Sections 13 and 14, a distance of 85.00 feet to a point on the southerly right-of-way line of Tecumseh Road as established by that certain HIGHWAY EASEMENT recorded in Book 2475, Page 439, said point also being the POINT OF BEGINNING of the herein described parcel;

THENCE easterly along said right-of-way the following four (4) courses:

1. South $89^{\circ}49'14''$ East a distance of 33.00 feet;
2. North $44^{\circ}57'58''$ East a distance of 35.22 feet;
3. South $89^{\circ}49'14''$ East a distance of 189.54 feet;
4. South $83^{\circ}18'03''$ East a distance of 58.87 feet;

THENCE South $09^{\circ}09'51''$ East a distance of 99.71 feet;

THENCE South $00^{\circ}38'00''$ East a distance of 7763.68 feet to a point on the north line of the Southwest Quarter of Section 24, Township 9 North, Range 3 West of the Indian Meridian;

THENCE South $89^{\circ}53'39''$ West a distance of 355.58 feet to the northeast corner of the Southeast Quarter of Section 23, Township 9 North, Range 3 West of the Indian Meridian, Cleveland County, Oklahoma;

THENCE South $00^{\circ}35'48''$ East, along the East line of said Southeast Quarter, a distance of 555.00 feet;

THENCE South $35^{\circ}55'40''$ West a distance of 2440.50 feet;

THENCE South $44^{\circ}27'30''$ West a distance of 100.65 feet to a point on the northerly right-of-way line of Robinson Street as established by that certain GRANT OF EASEMENT recorded in Book 2756, Page 244;

THENCE westerly and northwesterly with the northerly right-of-way line for Robinson Street and the entrance/exit ramp for Interstate Highway 35 (I-35) as established by those certain documents entitled GRANT OF EASEMENT recorded in Book 2756, Page 244, HIGHWAY

EASEMENT recorded in Book 1899, Page 141, and PUBLIC HIGHWAY DEDICATION DEED recorded in Book 243, Page 110, the following seven (7) courses:

1. North 85°39'45" West a distance of 25.84 feet;
2. South 89°24'39" West a distance of 159.87 feet;
3. North 04°17'48" West a distance of 62.23 feet to point on a non-tangent curve;
4. Northwesterly on a curve to the left having a radius of 205.00 feet (said curve subtended by a chord which bears North 43°31'58" West a chord distance of 280.53 feet) an arc distance of 308.95 feet;
5. North 86°42'26" West a distance of 296.38 feet;
6. North 88°25'36" West a distance of 111.36 feet to a point on a non-tangent curve;
7. Northerly on a curve to the right having a radius of 335.00 feet (said curve subtended by a chord which bears North 46°08'59" West a chord distance of 287.36 feet) an arc distance of 296.99 feet to a point on the easterly right-of-way line for Interstate Highway 35 (I-35) as established by that certain PUBLIC HIGHWAY DEDICATION DEED recorded in Book 243, Page 110;

THENCE North 00°21'28" West, along said easterly right-of-way line as established by said PUBLIC HIGHWAY DEDICATION DEED and the DEDICATION DEED PUBLIC HIGHWAY recorded in Book 242, Page 188, a distance of 8696.40 feet;

THENCE North 89°16'02" East, along the southerly line of the premises described in that certain Cleveland County District Court Case, Case No. CJ-99-1510 BH, recorded in Book RB 3111, Page 680, and said line extended, a distance of 1262.33 feet to the southeast corner of said premises, said point being 1319.56 feet south of the north line of said Northeast Quarter;

THENCE North 00°06'18" West, along the easterly line of said premises, a distance of 8.20 feet to a point, said point being 1311.36 feet south of the north line of said Northeast Quarter;

THENCE North 89°15'36" East a distance of 1240.60 feet to a point on the common section line to said Sections 13 and 14;

THENCE North 00°16'07" West, along said common section line, a distance of 1226.50 feet to the POINT OF BEGINNING.