

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION,
OKLAHOMA DEPARTMENT OF TRANSPORTATION, AND
OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
REGARDING
THE REPLACEMENT OF SH-10 BRIDGE OVER THE SPRING RIVER**

WHEREAS, the Oklahoma Department of Transportation (ODOT) plans to replace the existing bridge carrying SH-10 over the Spring River in Ottawa 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 SSP-158C(116)SS, State Job J/P 24272(04) and 24278(04) will have an adverse effect to the existing six-span Warren with verticals deck truss over the Spring River (ODOT Structure 5824 0831X; NBI 12853), 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 as a consulting party; and

WHEREAS, FHWA has consulted with the Cherokee Nation, Eastern Shawnee Tribe, Miami Nation, Modoc Tribe of Oklahoma, Osage Nation, Ottawa Tribe, Peoria Tribe of Indians of Oklahoma, Quapaw Tribe of Oklahoma, Seneca-Cayuga Tribe of Oklahoma, Shawnee Tribe, United Keetoowah Band of Cherokee in Oklahoma, and Wyandotte Nation, 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 U.S.C. § 144(n) ODOT prepared a press release on January 17, 2014 informing the public that the subject bridge was available for donation, and no recipients have emerged; 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. **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.

- III. **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.
- 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, 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.
- 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, 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 24272(04) SH-10 over Spring River in Ottawa County, Oklahoma
(Structure 5824 0831X; NBI 12853)**

FEDERAL HIGHWAY ADMINISTRATION

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

Signatory

**MOA Job/Piece 24272(04) SH-10 over Spring River in Ottawa County, Oklahoma
(Structure 5824 0831X; NBI 12853)**

OKLAHOMA DEPARTMENT OF TRANSPORTATION

BY:



DATE:

2/25/2015

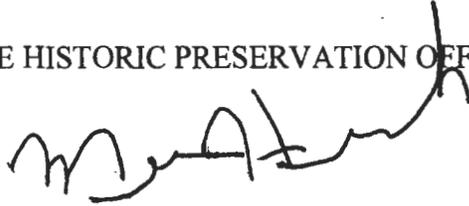
Dawn Sullivan

Environmental Programs Division Engineer

Signatory

**MOA Job/Piece 24272(04) SH-10 over Spring River in Ottawa County, Oklahoma
(Structure 5824 0831X; NBI 12853)**

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER



BY:

Melvena Heisch
Deputy State Historic Preservation Officer

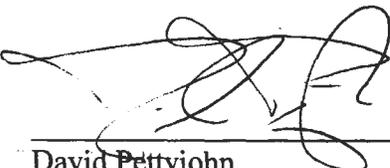
DATE:

2-9-15

Concurring Party

**MOA Job/Piece 24272(04) SH-10 over Spring River in Ottawa County, Oklahoma
(Structure 5824 0831X; NBI 12853)**

Preservation Oklahoma

BY:  _____ DATE: 01/09/15 _____
David Pettyjohn
Executive Director

Concurring Party

**MOA Job/Piece 24272(04) SH-10 over Spring River in Ottawa County, Oklahoma
(Structure 5824 0831X; NBI 12853)**

Oklahoma Historic Bridge and Highway Group

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