

**MEMORANDUM OF AGREEMENT
BETWEEN
THE NATIONAL PARK SERVICE AND
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE PROPOSED GEOPHYSICAL SURVEY AND TARGETED ARCHEOLOGICAL TESTING AT
FORT GIBSON'S (34MS94) LAUNDRESS QUARTERS**

WHEREAS, the Oklahoma Archeological Survey (OAS) plans to carry out geophysical and targeted archeological survey at Fort Gibson's Laundress Quarters using federal funds provided, in part, by a contract with the National Park Service (NPS) through the Heritage Partnerships Program (HPP) with the support of the landowner, Oklahoma Historical Society (OHS); and

WHEREAS, the OAS in consultation with the NPS, SHPO, the Cherokee Nation, and the Osage Nation has completed a Scope of Work, which describes the mitigation of adverse effects for the historic property and will be implemented by this MOA (Attachment A). The OAS defined the undertaking's Area of Potential Effect (APE) as those areas which will be subjected to archeological excavations as described in the undertaking's Scope of Work (Attachment A); and

WHEREAS, this project is receiving federal monies under NPS jurisdiction, it is considered an undertaking that has the potential to effect historic properties as defined by the National Historic Preservation Act (NHPA) of 1966 (as amended) (54 USC 300101 et seq.); and

WHEREAS, the NPS has consulted with the Oklahoma State Historic Preservation Officer (SHPO) pursuant to 36 CFR part 800, the implementing regulations of Section 106 of the NHPA titled "Protection of Historic Properties," who has concurred that the undertaking will result in an adverse effect to Fort Gibson, a site that was designated a National Historic Landmark on December 19, 1960 and determined that this Memorandum of Agreement (MOA) is necessary to document how OAS/NPS will address the adverse effects; and

WHEREAS, the NPS has consulted with the Alabama-Quassarte Tribal Town, Apache Tribe of Oklahoma, Caddo Nation of Oklahoma, Cherokee Nation, Cheyenne and Arapaho Tribe of Oklahoma, Choctaw Nation of Oklahoma, Muscogee (Creek) Nation, Osage Nation, and Wichita and Affiliated Tribes on this project, pursuant to 36 CFR part 800, and invited those Tribes to review and sign the MOA; and

WHEREAS, the Muscogee (Creek) Nation, Osage Nation and Cherokee Nation expressed interest in attending and/or participating in the proposed OAS fieldwork; and

WHEREAS, the Osage Nation and Cherokee Nation accepted the NPS invitation to sign the MOA as an Invited Signatory and Concurring Party, respectively; and

WHEREAS, the SHPO and OAS have entered into a Cooperative Agreement under which the State Archeologist at the OAS provides special services to the SHPO in the Section 106 review process. OAS maintains the inventory of Oklahoma's prehistoric resources and provides professional services to the SHPO in prehistoric archeology. The State Archeologist at the OAS reviews federal undertakings for possible impacts on prehistoric archeological resources and provides written comments as the SHPO's

official representative. Accordingly, the NPS has invited OAS to participate and sign the MOA as an Invited Signatory and the OAS has accepted the invitation; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), the NPS has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effects finding with specific documentation. Attachment B includes the ACHP invitation letter to consult via e106 which was sent on October 18, 2018. The ACHP did not respond within their allotted 15-day review period and so the NPS assumes that ACHP has decided against participating pursuant to 36 CFR 800.6(a)(1)(iii).; and

NOW, THEREFORE, the NPS and SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on the historic property.

STIPULATIONS

The NPS shall ensure that the following measures are carried out for OAS's proposed geophysical and targeted archeological testing at Fort Gibson.

I. Guiding Principles

- a. The primary objective of data recovery is to capture and prevent the loss of significant archeological information. Data recovery will be conducted according to NPS standards, as outlined in Director's Order 28, NPS Cultural Resources Management Guideline, Revision (DO-28; NPS 1997) and in the Secretary of the Interior's *Standards and Guidelines for Archeological and Historical Preservation* (U.S. DOI 1983). Two weeks prior to work commencing, the historical archeologist at the Oklahoma SHPO will be notified, in addition to the signatories, invited signatories, and concurring party. Should the schedule change, a notification will be sent to all Signatories, Invited Signatories, and Concurring Party no less than forty-eight (48) hours before the work is carried out. All work will follow the project's Scope of Work as presented in Attachment A.

II. Geophysical Survey

- a. The OAS is contracting with the NPS to conduct a geophysical survey and subsequent targeted excavations of the laundresses' quarters at the Fort Gibson Historic Site (34MS94) in Muskogee County, Oklahoma. The proposed non-invasive geophysical survey will first cover a maximum of 4 ha (10 acres) using an electrical resistance meter, with selected areas being further surveyed using a different type of electrical resistance meter and a ground-penetrating radar array. Data will be processed and analyzed using specialized software. Additional information on the proposed geophysical survey can be found in the Scope of Work (Attachment A).

III. Test Excavations

- a. EXPOSURE OF IDENTIFIED ANOMALIES
 - i. No more than five 1 x 1-m test units will be positioned over anomalies identified by the geophysical survey as per Stipulation I. These units will be excavated in accordance with the proposed methods presented in the project's Scope of Work (Attachment A). Upon confirmation that a given anomaly represents an archeological feature, the feature will be excavated according to Stipulation III and the Scope of Work. No anomalies suspected of being graves will be excavated.

- ii. It is hoped that using several types of geophysical instruments will improve the accuracy of identifying anomalies that are archeological features. However, during the ground-truthing of select anomalies, it is possible that no cultural features are encountered. If a given anomaly is found *not* to be an archeological feature, then the unit will still be fully excavated to ensure no features are present below by excavating in standard 10-cm levels to 20 cmbs beyond sterile subsoil, in accordance with the Scope of Work (Attachment A).

IV. Mitigation of Adverse Effects

a. EXCAVATION OF SELECTED IDENTIFIED FEATURES

- i. Exposed features that are contained entirely within a given 1 x 1-m test unit will be excavated.
- ii. If an exposed feature is of a size and/or depth that requires more excavation than can be accommodated by the 1 x 1-m unit, it will be exposed to the extent possible, photographed, and mapped in planview. The intent will be to conduct initial documentation of such larger features, but then cover them and leave them in place so more appropriate documentation and perhaps data recovery may be planned for a later date when additional time and funding are available.

b. INADVERTENT DISCOVERIES

- i. In the event that human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered during the undertaking, work will immediately stop and the OAS will follow regulations mandated by applicable state (Title 21-1168.4) and Federal statutes (36 CFR Part 79) as described in the project's Scope of Work as presented in Attachment A.

c. REPORTING

- i. Reporting will occur for this OAS project in the form of a Draft Geophysical and Archeological Testing Report for review and a Final Geophysical and Archeological Testing Report, which are described in turn as follows.
- ii. Final Archeological Report
 - 1. A draft archeological report will be distributed to the Signatories, Invited Signatories, and Concurring Party by October 31, 2019. This report will share the data and results of the NPS-funded geophysical and archeological work carried out at Fort Gibson. The report will be provided in color and as a hard copy to the Signatories, Invited Signatories and Concurring Party.
 - 2. The final report will be comprehensive for the geophysical and archeological testing and will follow the Secretary of the Interior's *Standards for Archeological Documentation* and the guidance found in the Oklahoma Historical Society State Historic Preservation Office Fact Sheet #16:
<http://www.okhistory.org/shpo/factsheets/fs16archreports.pdf>
 - 3. A final report will be submitted to the Signatories, Invited Signatories, and Concurring Party no later than December 31, 2019. The report mapping will be provided in color. The reports will be provided to all Signatories, Invited Signatories, and Concurring Party in a hard copy.

4. The Signatories, Invited Signatories, and Concurring Party shall withhold from the public all information that may be of a confidential or sensitive nature pursuant to 36 CFR 800.11(c).

d. FINAL REPORTING AND CURATION

- i. The draft report will be sent to the Signatories, Invited Signatories, and Concurring Party for a thirty (30) day review period. Comments received during this review will serve as the basis of the final report and NPS will make the appropriate edits and submit to the Signatories, Invited Signatories, and Concurring Party a final report in thirty (30) days.
- ii. NPS shall ensure that all records and materials resulting from implementation of the data recovery are curated in accordance with 36 CFR 79. Artifacts will be washed, analyzed, and processed at the Oklahoma Archeological Survey. All field and lab analysis forms, field notes, photographs, artifacts, maps, and the final report will be permanently curated at the Fort Gibson Historic Site. Artifacts are the property of the Oklahoma Historical Society.
- iii. Associated funerary objects, if any, will be curated according to federal curation regulations (36 CFR Part 79) until the items may be offered for repatriation to lineal descendants or to claimant Tribe/s. In accordance with Title 21-1168.4, if the associated human remains are not related to a Tribe or if the remains are not claimed by the consulted entity, the Osage Nation, Cherokee Nation, State Archeologist, and the SHPO with the Director of the Oklahoma Museum of Natural History may designate a repository for curation of remains.

V. Dispute Resolution

- a. If there is an objection by any Signatories, Invited Signatories, and Concurring Party to this MOA to the manner in which the terms of the MOA are implemented, the objecting Signatories, Invited Signatories, and Concurring Party will notify the NPS in writing of the objection. The NPS will notify all other Signatories, Invited Signatories, and Concurring Party. All Signatories, Invited Signatories, and Concurring Party will consult to resolve the objection.
- b. Resolution of the objection will be documented in a written amendment to this MOA to be executed by all Signatories, Invited Signatories, and Concurring Party. If a Signatories, Invited Signatories, and Concurring Party fails to respond within sixty (60) working days of receipt of the written amendment, concurrence with the amendment will be assumed by other Signatories, Invited Signatories, and Concurring Party and the amendment will go into effect.
- c. If the objection cannot be resolved among the Signatories, Invited Signatories, and Concurring Party, the matter shall be referred to the ACHP per 36 CFR §800.2(b)(2). Any comments provided by the ACHP within thirty (30) working days after its receipt of all relevant documentation, and all other comments received, will be taken into account by the NPS in reaching a final decision regarding the objection. If the ACHP does not comment within the thirty (30) working-day period, the NPS will continue to come to a decision based on the available comments from the Signatories, Invited Signatories, and Concurring Party. The formal decision for resolution of the objection by any Signatories, Invited Signatories, and Concurring Party shall be made by the NPS.

VI. Amendment

The Signatories and Invited Signatories may request amendment of this MOA at any time, whereupon the Signatories and Invited Signatories will consult to consider such amendment. If Signatories and Invited Signatories fail to respond within sixty (60) working days of receipt of the written amendment, concurrence with the amendment will be assumed by other Signatories and Invited Signatories and the amendment will go into effect. The NPS will file the amendment with the ACHP.

VII. Technical Representatives of the Signatories, Invited Signatories, and Concurring Party

Each Signatory, Invited Signatories, and Concurring Party shall designate a project contact and notify the NPS of the person's name and full contact information within one (1) week of execution of this MOA. Notification shall be by letter or email. The NPS will distribute contact information to all Signatories, Invited Signatories, and Concurring Party within forty-eight (48) hours of receipt. Each Signatory, Invited Signatory, and Concurring Party shall promptly notify the NPS in the event there is a change in the designated project contact. The NPS will provide all Signatories, Invited Signatories, and Concurring Party with this information change within forty-eight (48) hours of receiving notification.

VIII. Duration

- a. This MOA shall remain in effect until completion of the federally-funded work only, as stipulated, but no more than five (5) years from its effective date following execution, unless extended by agreement among the Signatories, Invited Signatories, and Concurring Party.
- b. The NPS will ensure that the MOA will be reevaluated every year on December 31 by all parties until completion of the work stipulated. Prior to such time, NPS may consult with the other Signatories, Invited Signatories, and Concurring Party to reconsider the terms of the MOA and amend it in accordance with Stipulation III above.

IX. Post Review Discoveries

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, the NPS shall follow the provisions as set forth by 36 CFR 800.11.

X. Termination

- a. Signatories and Invited Signatories to this MOA may initiate termination by providing written notice to the other Signatories or Invited Signatories of their intent. After notification by the initiating Signatory or Invited Signatories, the remaining parties shall have sixty (60) working days to consult to seek agreement on amendments or any other actions that would address the issues and avoid termination. If such consultation fails, the termination will go into effect at the end of this sixty (60) working-day period, unless all the parties agree to a longer period.
- b. In the event of termination, the NPS shall refer to 36 CFR 800.6 regulations to address any remaining adverse effects to historic properties treated under this MOA or request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. NPS shall notify the Signatories, Invited Signatories, and Concurring Party as to the course of action it will pursue.

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

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Intermountain Region, National Park Service

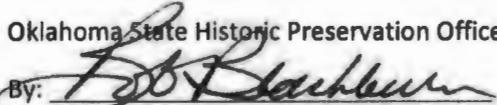
By:  Date: 4/25/19
Justin Henderson, IMR Heritage Partnerships Program Manager

SIGNATORY PAGE

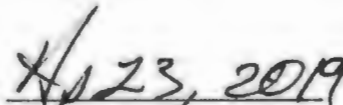
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Oklahoma State Historic Preservation Office

By:



Date:




Dr. Bob Blackburn, Oklahoma State Historic Preservation Officer and Executive Director for OHS

INVITED SIGNATORY PAGE

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Oklahoma Archeological Survey

By: 
Dr. Kary Stackelbeck, State Archeologist

Date: 4/22/2019

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Osage Nation

By: 
Geoffrey M. Standing Bear, Principal Chief

Date: May 8, 2019