

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION, OKLAHOMA
DEPARTMENT OF TRANSPORTATION, AND THE
OKLAHOMA STATE HISTORIC PRESERVATION OFFICE
REGARDING
PROPOSED REPLACEMENT OF COUNTY ROAD NS-480.2
BRIDGE OVER THE POTEAU RIVER**

WHEREAS, the Federal Highway Administration (FHWA) has determined that Federal-Aid Project CIRB-140D(162)RB; State Job 25101(05) will have an adverse effect to the existing Pennsylvania (petit) through truss bridge over the Poteau River in LeFlore County, Oklahoma (Structure 40N4802E1470002), a property determined eligible for inclusion in the National Register of Historic Places, and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f);

WHEREAS, the FHWA has consulted with the Caddo Nation, Choctaw Nation, Osage Nation, and 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 36 CFR Part 800.6(a)(1), the 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 Part 800.6(a)(1)(iii);

WHEREAS, in accordance with 36 CFR 800.6(b)(1)(iv), this Agreement will become final upon submitting a copy of the executed Agreement, along with the documentation specified in 36 CFR 800.11(f), to the ACHP prior to approving any undertaking in order to meet the requirements of Section 106 and 36 CFR 800.6(b)(1);

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
POTEAU RIVER PENNSYLVANIA (PETIT) THROUGH TRUSS
BRIDGE 40N4802E1470002

I. Stipulations. FHWA will ensure that the following measures are carried out:

1. Prior to the construction of the new bridge, the existing bridge will be recorded at the equivalent of Level II documentation as specified by the Historic American Engineering Record (HAER) and incorporated into the 1993 *Oklahoma Historic Bridge Project Preservation and Management Plan*, as approved by the Oklahoma SHPO. This will include the following:

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. 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;
- g. Number of photograph in series.

Photographs are to be submitted 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 construction plans and historic photographs, if they exist.

C. Preparation of a brief written technical description of the bridge and historical summary.

All documentation will be edited, catalogued and packaged in a manner acceptable to the Oklahoma SHPO within 2 years of the execution of this document. The Oklahoma SHPO will be the repository for the documentation.

2. In response to the Legal Notice made available through the *Heavener Ledger* by the LeFlore County Commissioners, the landowner of the property surrounding the bridge has requested that the bridge remain in place on his property. The landowner wishes that the existing structure remain where it is, in its natural scenic and historic setting.

3. Should the bridge require removal, the bridge will be marketed according to procedures established by ODOT and FHWA (www.okladot.state.ok.us/env-programs/briges/index.php)
- II. Dispute Resolution. Should any signatory party to this MOA object at any time to the 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:
1. 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.
 2. 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.
 3. 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.
- III. Amendment. This MOA may be amended when such amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all the signatories is filed with the ACHP.
- IV. Termination. If any signatory to this MOA determines that its terms will or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per stipulation IV, above. If within thirty (30) days 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.
- V. Duration. This MOA shall be in effect for ten (10) years from the date of its execution.

Within six (6) months of the expiration date, any signatory party may consult with other signatories to consider renewal of the MOA if its stipulations have not been implemented, or reconsider the terms of the MOA and amend it in accordance with Stipulation V above. No extension or amendments shall be effective unless all signatory parties to the MOA have agreed in writing.

Execution of this Memorandum of Agreement and implementation of its terms evidence that FHWA has afforded the Council an opportunity to comment on the replacement of the Poteau River Pennsylvania (Petit) Through Truss bridge in Choctaw County (Bridge 40N4802E1470002) and its effects on historic properties, and that FHWA has taken into account the effects of the undertaking on historic properties.

**MOA for CIRB-140D(161)RB; State Job 25101(04) Pennsylvania (petit) through truss
bridge over the Poteau River in LeFlore County, Oklahoma (Structure 40N4802E1470002)**

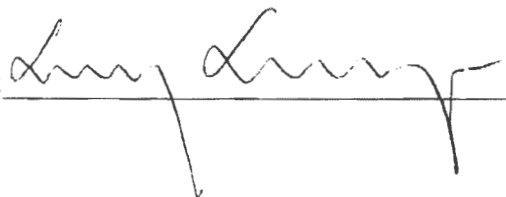
Federal Highway Administration

BY:  DATE: 8/8/2011

Oklahoma State Historic Preservation Officer

BY: Bob Blackburn DATE: July 29, 2011

Oklahoma Department of Transportation

BY:  DATE: 8/4/11