

MEMORANDUM OF AGREEMENT
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO CFR 800.6(A)

WHEREAS, the Federal Highway Administration (FHWA) has determined that Federal-Aid Project BRFY-068C(235); State Job 12309(04) will have an adverse impact to the existing K Through truss over Big Lee Creek in Sequoyah County, Oklahoma (Structure 6817 1865 X), 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, 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);

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
BIG LEE CREEK K THROUGH TRUSS
BRIDGE 6817 1865 X

I. 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 or large format, black and white prints of the bridge, a minimum of 4" by 6" and no larger than 8" by 10," documenting the bridge's present appearance and major structural or decorative details, together with all negatives. The photographs 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 the 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. The Oklahoma SHPO will be the repository for the documentation.

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:

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.

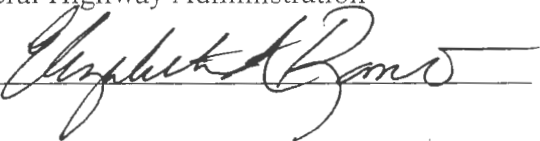
III. Amendment. This MOA may be amended when such amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all the signatories is filed with the ACHP.

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.

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 Big Lee Creek K Through Truss bridge in Sequoyah County (Bridge 6817 1865 X) and its effects on historic properties, and that FHWA has taken into account the effects of the undertaking on historic properties.

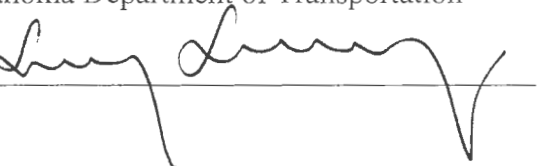
Federal Highway Administration

BY:  DATE: 8-4-08

Oklahoma State Historic Preservation Officer

BY:  DATE: July 24, 2008

Oklahoma Department of Transportation

BY:  DATE: 7/31/08