

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION, OKLAHOMA
DEPARTMENT OF TRANSPORTATION, AND THE
OKLAHOMA STATE HISTORIC PRESERVATION OFFICE
REGARDING
PROPOSED REPLACEMENT OF COUNTY ROAD 4050
BRIDGE OVER THE BRAZIL CREEK**

WHEREAS, the Federal Highway Administration (FHWA) has determined that Project CIRB-140D(161)RB; State Job 25097(04) will have an adverse effect to the existing Double-Intersection Warren through truss bridge over Brazil Creek in LeFlore County, Oklahoma (Structure 40N4575E1320002), 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) and

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) and

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
BRAZIL CREEK DOUBLE-INTERSECTION WARREN THROUGH TRUSS
BRIDGE 40N4575E1320002

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. The Oklahoma SHPO will be the repository for the documentation.

2. Pursuant to the LeFlore County Resolution, dated July 26, 2010 LeFlore County will retain the historic bridge in place unless and until the bridge becomes a safety issue, is in danger of collapse, or constitutes a concern for other environmental issues. LeFlore County will maintain access points to the bridge so that the bridge can be viewed by the public and will

provide a cast-in-place or precast concrete barrier median barriers at the bridge entrance points to eliminate vehicular traffic from the bridge.

Should the bridge become a safety issue, become in danger of collapse, or constitute a concern for other environmental issues, LeFlore County will notify the Oklahoma Department of Transportation (ODOT) of its intent to remove the bridge and provide adequate documentation of the problems for which the bridge requires removal.

3. Pursuant to Stipulation 2, should the bridge require removal the County will identify an appropriate local entity or party to relocate and assume ownership of the bridge. If no party is identified, the County agrees to include the bridge in the ODOT Statewide Historic Bridge marketing Program, which will include the following features:

A. ODOT will prepare an information packet containing a description of the bridge, photographs, a location map, information regarding its historic significance, requirements regarding relocation, rehabilitation, and maintenance.

B. ODOT will advertise the availability of the truss for relocation on the Department's Historic Bridge marketing website (www.okladot.state.ok.us/env-programs/bridges/index.php). In addition, a press release advertising the bridge will be submitted for dissemination by regional news outlets.

C. All respondents to the above advertisement process must provide a written statement of interest to ODOT that clearly indicates their willingness and ability to relocate, rebuild, and maintain the bridge at a new site, as well as provide an estimated time-frame for the undertaking. Information packets will be provided to all respondents whose written statement of interest meets the above requirements.

D. Respondents must then submit to ODOT a detailed written proposal for moving, relocating, and maintaining the bridge. These proposals must also identify the new site for the bridge and discuss any proposed alterations to its design and general appearance. Preference will be given to proposals that indicate (1) the recipient's ability to relocate the bridge in a reasonable period of time, and (2) the recipient's willingness to maintain the historic design and integrity of the bridge.

E. A period of 30 days will be allowed for the receipt of written statements of interest, with an additional 30 days for the review of any detailed written proposals received by ODOT during the advertising period.

F. If a new owner is found to relocate the bridge, ODOT may evaluate any possible cultural resource impacts caused by construction at the new site and confer with SHPO regarding the structure's continued eligibility to the National Register of Historic Places.

G. If no written statements of interest are received by ODOT within the 45-day advertisement period stipulated in Item 1(e), above, the bridge structure may be disposed of as the LeFlore County Commissioners see fit.

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, 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 Brazil Creek Double-Intersection Warren Through Truss bridge in Choctaw County (Bridge 40N4575E1320002) 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 25097(04) Double-Intersection Warren through
truss bridge over Brazil Creek in LeFlore County, Oklahoma
(Structure 40N4575E1320002)**

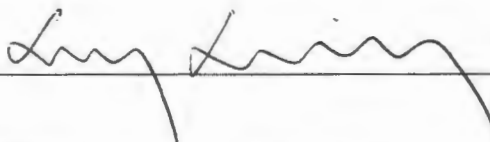
Federal Highway Administration

BY:  DATE: 9/28/2011

Oklahoma State Historic Preservation Officer

BY:  DATE: 9-20-11

Oklahoma Department of Transportation

BY:  DATE: 9/13/11

LeFlore County Board of County Commissioners

BY: ^x  DATE: aug. 29, 2011