

**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-115C(026); State Job Piece 20967(04) for SH-48 Bridge Replacement over Clear Boggy Creek will have an adverse impact to archeological site 34CO29 Coal County, Oklahoma, a property determined eligible for inclusion in the National Register of Historic Places under Criteria D for recoverable data the site contains regarding prehistoric activities and occupations in Coal County, Oklahoma, and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) and Caddo Nation of Oklahoma 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 (ODOT), and the Oklahoma State Archeologist, SHPO, and the Caddo Nation of Oklahoma 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
ARCHEOLOGICAL SITE 34CO29**

FHWA will ensure that the following measures are carried out:

- I. Prior to the initiation of construction, the portion of 34CO29 falling within the Area of Potential Effect (APE) will be subject to data recovery efforts. Previous investigation has determined the site contains Woodland period cultural material, which relate to prehistoric occupations in what is now Coal County, Oklahoma approximately 2000 years ago. The data recovery will include the following:
 - A. Hand excavation of four 1 x 2 meter units within the approximately 33' x 200' portion of the site falling within the APE west of SH-48. The units will be enlarged as needed to adequately uncover, document and recover any potential feature that may be encountered in any unit.
 - B. Hand excavation of ten 1 x 2 meter units within the portion of the site falling within the triangular shaped APE east of SH-48. The site area in the APE here is approximately 200' long and 50' wide at its widest and tapers down from that point. The units will be enlarged as needed to adequately uncover, document and recover any potential feature that may be encountered in any unit.
 - C. Subsequent to completion of the hand excavations, the site area within the APE west and east of the highway will be machine stripped of top soil to identify any potential features not encountered during hand excavations. Any features that may be exposed will be documented and recovered.
 - F. All recovered items will be curated in an Oklahoma based facility in accordance with

36 CFR 79 upon completion of all analyses.

- II. Unless an unforeseen amount of cultural material or features is recovered, a draft report will be completed within 18 months of the completion field work and a total of 100 copies of a final report will be produced including an analysis, description and interpretation of all recovered data, including all cultural material and organic remains. In addition, the research will include but is not limited to:
 - A. Radio carbon dating of charcoal samples recovered from below the plow zone. If sufficient examples are recovered, at least 6 radio carbon dates will be produced. In lieu of charcoal, at least two bulk soil dates will be produced from soil thought to have potential to produce an accurate date. Radio carbon dates will also be obtained from datable charcoal recovered from any feature.
 - B. Soil samples will be collected from any features, or in any test unit which appears to have good potential for preserved floral remains. Flotation analysis of these soils will be conducted.
 - C. Obsidian flakes recovered from the site of sufficient size to conduct a source analysis will be subject to such analysis.
- III. Discovery of Human Remains. Any human remains discovered during any phase of this work will be handled in accordance with all applicable State and Federal laws and regulations and in accordance with Section IIB(a & b) contained in the 2005 Memorandum of Understanding between FHWA, ODOT and the Caddo Nation of Oklahoma.
- IV. 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.
- V. 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.

- VI. 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 reconstruction of SH-48 Bridge over Clear Boggy Creek 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: 11/17/2010

Oklahoma State Archaeologist

BY:  DATE: Nov 4, 2010

Caddo Nation of Oklahoma

BY:  DATE: 06-04-10

Oklahoma State Historic Preservation Officer

BY:  DATE: 10.26.10

Oklahoma Department of Transportation

BY:  DATE: 11/16/2010