

**MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION,
OFFICE OF FEDERAL LANDS HIGHWAY,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER, AND
PONTOTOC COUNTY**

**REGARDING THE FARM TO MARKET BRIDGE REPLACEMENT PROJECT,
PONTOTOC COUNTY, OKLAHOMA
(OK SHPO FILE #0101-11)**

WHEREAS, the Federal Highway Administration, Office of Federal Lands Highway (FHWA) has determined that the replacement of the Farm to Market Bridge, a property determined eligible for inclusion in the National Register of Historic Places (NRHP), constitutes an adverse effect. The bridge spans Rodtky Creek and is located on Pontotoc County rights-of-way, Pontotoc County, Oklahoma. FHWA 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. Section 470f); and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation, and in a letter dated May 24, 2011, the Council has elected not to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii); and

WHEREAS, FHWA has consulted with both Chickasaw Nation and Pontotoc County regarding the effects of the undertaking on the Rodtky Creek Bridge and has invited both to sign this MOA as invited signatories. The Chickasaw Nation has elected not to be a signatory because there are no Chickasaw Nation lands affected (the bridge is on Pontotoc County rights-of-way) and the Chickasaw Nation has no responsibilities for implementation of this MOA; and

WHEREAS, FHWA, through consultation with the Chickasaw Nation, was informed that the Chickasaw Nation was unaware of any specific historic properties or traditional cultural, religious and/or sacred sites of concern to Chickasaw Nation within the proposed project area; and

WHEREAS, the historic property that will be affected by the Memorandum of Agreement is:

Farm to Market Bridge (Structure No. 62E1570N3500002): The Farm to Market Bridge, spanning Rodtky Creek on County Road 1570, has been determined eligible for the NRHP under Criterion A. The bridge was built by the Works Progress Administration (WPA) in 1941, and is significant at the local level for its association with the WPA as a major local project with long-term economic significance to Pontotoc County.

NOW, THEREFORE, FHWA 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 the historic property.

STIPULATIONS

The FHWA shall ensure that the following measures are carried out:

I. MITIGATION MEASURES

FHWA, in consultation with SHPO, shall ensure that the Farm to Market Bridge to be replaced will be recorded prior to demolition so that there will be a permanent record of its history, design, and present appearance. The recordation shall be consistent with the Historic American Engineering Record (HAER), Level II documentation requirements.

- A. FHWA and the SHPO shall consult to ensure that the photographic documentation is acceptable before any demolition work begins. This will include the following:
 - 1. High Quality, 35 mm archival-quality black and white photographs of the bridge, documenting its present appearance and major structural or decorative details. The photographs will be a minimum of 4" x 6" and no larger than 8" x 10" in size, 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.
 - 2. Historic photographs, provided they exist, shall be duplicated and provided to the SHPO.
- B. In addition to the photographic documentation specified above, a written description of the bridge and a history of the structure, which emphasizes the WPA's contribution to the local economy during the Great Depression and war years, and a single scaled elevation drawing (as built drawings do not exist for the bridge) shall be produced.
- C. FHWA shall ensure that all documentation activities will be performed or directly supervised by architects, historians, and/or other professionals meeting the minimum qualifications in their field as specified in the Secretary of the Interior's Professional Qualifications Standards (36 CFR 61, Appendix A).

- D. All documentation will be edited, catalogued, and packaged in a manner acceptable to the SHPO, and the SHPO will be the repository for the documentation.

II. DURATION

This agreement will be null and void if its terms are not carried out within (3) years from the date of its execution. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation IV below.

III. MONITORING AND REPORTING

Each year following the execution of this agreement until it expires or is terminated, FHWA shall provide all parties to this agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and/or objections received in FHWA's efforts to carry out the terms of this agreement. Failure to provide such summary report may be considered noncompliance with the terms of this MOA pursuant to Stipulation V, below.

IV. DISPUTE RESOLUTION

Should any party to this agreement object at any time to actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with the objecting party(ies) to resolve the objection. If FHWA determines, within 30 days, that such objection(s) cannot be resolved, FHWA will:

- A. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise FHWA on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by FHWA in reaching a final decision regarding the dispute.
- B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, FHWA may render a decision regarding the dispute. In reaching its decision, FHWA will take into account all comments regarding the dispute from the parties to the MOA.
- 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. FHWA will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. FHWA's decision will be final.

The parties may agree to engage in any alternative dispute resolution procedures authorized by their statutes, regulations, and court rules, including, but not limited to, 5 U.S.C. 575 and A.R.S. § 12-1518.

V. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this MOA, including any invited signatory, determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation VI, below.

The parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

VI. TERMINATION

If the MOA is not amended following the consultation set out in Stipulation IV above, it may be terminated by any signatory or invited signatory.

The State may terminate this agreement upon finding that a State employee that was significantly involved in the creation of this agreement is, at the time the agreement is in effect but no later than three years after its termination, an employee or consultant to any other party in the agreement.

Within 30 days following termination, the FHWA shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR 800.6(c)(1) or request the comments of the Council under 36 CFR 800.7(a) and proceed accordingly.

This agreement shall be subject to available funding, and nothing in this agreement shall bind the State to expenditures in excess of funds appropriated and allotted for the purposes outlined in this agreement.

Execution of this Memorandum of Agreement by FHWA and Oklahoma SHPO and the submission of documentation and filing of this Memorandum of Agreement with the Council pursuant to 36 CFR 800.6(b)(1)(iv) prior to FHWA's approval of this undertaking, and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

SIGNATORIES:

Federal Highway Administration, Office of Federal Lands Highway

John Baxter
Scott T. [Signature] *6/17/11* Date
John Baxter, Associate Administrator

Oklahoma State Historic Preservation Officer

[Signature] *6-28-11* Date
Bob L. Blackburn, SHPO

Pontotoc County

[Signature] *6-24-11* Date
Danny Davis, Commissioner