

**MEMORANDUM OF AGREEMENT
PURSUANT TO
SECTION 106 OF REGULATIONS IMPLEMENTING THE
NATIONAL HISTORIC PRESERVATION ACT (NHPA)
FOR
RECONSTRUCTION OF STATE HIGHWAY 51 BRIDGE AND CAUSEWAY
FORT GIBSON LAKE, WAGONER COUNTY, OKLAHOMA**

This Agreement is made and entered into by and between the Caddo Nation of Oklahoma (“Caddo Nation”); the Wichita and Affiliated Tribes (“Wichita Tribe”); the Oklahoma Archeological Survey (“OAS”); the Oklahoma State Historic Preservation Office (“SHPO”); the Federal Highway Administration (“FHWA”); and the Oklahoma Department of Transportation (“ODOT”), and specifically pertains to the reconstruction and expansion of the Fort Gibson Causeway on Oklahoma State Highway 51 (“SH51”) and the potential effect this undertaking may have on cultural materials deriving from the Norman Site (34WG2).

WHEREAS, ODOT is employing funds provided by FHWA for the reconstruction of SH51 in Wagoner County, Oklahoma, including the construction of a new causeway and replacement of the existing bridge over Fort Gibson Lake; and

WHEREAS, ODOT and FHWA are charged with compliance with Section 106 of the NHPA in the implementation of federally supported undertakings; and

WHEREAS, ODOT and FHWA have executed Programmatic Agreements with the Caddo Nation and Wichita Tribe regarding Section 106 consultation and the treatment of cultural resources important to these Tribes (Attachments A and B); and

WHEREAS, the United States Army Corps of Engineers (USACE) is the owner of the property upon which the existing SH51 Fort Gibson Causeway easement exists; and

WHEREAS, the SH51 reconstruction project occurs on the Norman Site (34WG2), a prehistoric mound and village complex ancestral to the Caddo Nation and Wichita Tribe which has been determined by the USACE and OAS as eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, archaeological excavations at 34WG2 conducted by the Works Progress Administration (WPA) and the University of Oklahoma in the 1930’s-1940’s documented the presence of several archeological features including burial mounds and other grave locations, house patterns, a large trash midden and trash filled storage pits, many of which were not fully excavated prior to construction activities associated with the Fort Gibson reservoir (Attachment C); and

WHEREAS, earth from the area including 34WG2 was used to construct a large earthen causeway to elevate SH51 and the Fort Gibson Lake Bridge above the water level of Fort Gibson Lake; and

WHEREAS, the fill dirt composing the interior of the SH51 Causeway may contain archeological materials associated with 34WG2 and of potential significance in American history and prehistory and include the possibility of human remains and funerary objects of cultural and ritual significance to the Caddo Nation and Wichita Tribe; and

WHEREAS, ODOT proposes to retain the existing earthen causeway in place, but will need to engage in limited excavation activities along the sides, top, and bridge abutment areas to form a base for the enlarged causeway for the new bridge; and

WHEREAS, it is uncertain if significant archaeological materials or human remains and funerary objects are present in the areas of the causeway subject to disturbance by the reconstruction activities; and

WHEREAS, USACE, as stewards of any cultural materials within the Fort Gibson Causeway is obligated to comply with the Native American Graves Protection and Repatriation Act (NAGPRA);

WHEREAS, in accordance with 36 C.F.R. Part 800.6(a)(1). FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R Part 800.6(a)(1)(iii); and

NOW THEREFORE, in consideration of these facts, the parties hereto agree that the undertaking shall be implemented in accordance with Section 106 of the NHPA and NAGPRA, as well as in accordance with the following specific stipulations in order to take into account the possible effects on any prehistoric archaeological materials contained in the fill dirt of the Fort Gibson Causeway.

- 1) Archaeological Monitor. ODOT and FHWA shall ensure that construction-related excavation activities associated with the construction of the new causeway and abutments of the SH51 bridge south of 34WG2 are monitored by qualified archaeological personnel. The archaeological monitor shall oversee the following:
 - (a) Removal of vegetation and rip-rap along the sides of the existing causeway embankment;
 - (b) Excavations on the sides of the existing embankment that are necessary to facilitate the addition of new fill or rip-rap to the causeway;
 - (c) Any excavations beneath the roadbed on the present top surface of the causeway to install lighting, utilities or pavement/roadbed reconstruction;
 - (d) Any excavations in and near the abutments of the existing bridge that are necessary to construct the new bridge abutments; and

(e) Any other activities determined by the ODOT Cultural Resources Program (ODOT-CRP) to have a potential effect on archaeological remains within the fill of the existing causeway.

The archaeological monitor will directly observe construction-related excavations on the causeway, as well as the screening of back dirt samples from selected locations during the project.

- 2) Monitor Personnel. The archaeological monitor shall be under the overall direction of the ODOT-CRP. At the discretion of ODOT, field supervisors and monitor personnel may consist of ODOT-CRP staff, private cultural resources consultants retained either by ODOT or ODOT's construction contractors, or monitors designated by the Caddo Nation and Wichita Tribe. All monitor personnel shall meet appropriate Secretary of the Interior Standards for conducting archaeological fieldwork, including at least one person qualified in the identification of human skeletal remains.

- 3) Identification of Archaeological Remains. In the event archaeological remains of potential significance are observed during the monitoring of construction activities, all earth disturbing activities in the immediate location of the discovery shall be temporarily discontinued to allow further evaluation according to Section 106 of the NHPA. All such remains shall be reported to the archaeological field supervisor for assessment and evaluation. At the discretion of the archaeological field supervisor, limited controlled excavations may be implemented to evaluate the content and local integrity of any discovery. If, in the opinion of the archaeological field supervisor, the discovery locale contains archeological materials of scientific significance which could potentially contribute to our knowledge and understanding of the prehistoric occupation of 34WG2, the archaeological field supervisor shall have the authority to suspend construction activities in the find location to allow for full evaluation by appropriate, ODOT, OAS, SHPO, USACE, Caddo Nation and Wichita Tribe authorities. Should any finds be determined to be human remains or funerary objects (see Attachment C, Table 1.), the materials will be treated pursuant to the Native American Graves and Repatriation Act (NAGPRA).

- 4) Treatment of Archaeological Remains. Because any archeological remains present within the causeway have been removed from their original context and lack basic integrity of location and setting, the causeway itself is not considered a contributing element to the NRHP eligibility of 34WG2. However, it is recognized that the causeway may contain archeological materials which could potentially contribute useful information regarding the prehistoric occupations of 34WG2. Such materials should be evaluated as to if they may be contributing to the NRHP eligibility of 34WG2 under Criterion D. Treatment of any human remains, funerary items, sacred items or items of cultural patrimony identified by the monitor which may have cultural and religious significance to the Caddo Nation and Wichita Tribe will be treated according to stipulations pursuant to NAGPRA and agreements between the USACE and the appropriate Tribes.

- 5) Monitor Reporting. ODOT will prepare a report summarizing the results of the archaeological monitoring. If no significant cultural remains are identified, this report will

contain a brief discussion of the reasons for the monitor, a discussion of monitor methodology, and a brief discussion of the findings. If remains are encountered, the contents of the report will be commensurate with a need to fully describe the findings, interpret them in an appropriate archaeological, historical, and cultural context, and describe their treatment. This report will be submitted to the Caddo Nation, Wichita Tribe, USACE, FHWA, and OAS.

- 6) Disposition of Collections. All parties recognize that any human remains or cultural materials recovered during monitoring activities are under the regulatory authority of the USACE. Consistent with existing Programmatic Agreements with the Caddo Nation and Wichita Tribe (Attachments A and B), ODOT shall defer to the USACE regarding the final disposition of materials collected during these investigations.
- 7) Consultation Time Frames. Without limiting any right to communicate concerns as provided by the National Environmental Policy Act (NEPA), Section 106 of the NHPA, and any other Federal law guiding relationships between Indian Nations and the United States government, all parties agree that coordination regarding the monitor shall be expedited so as to not unnecessarily delay the ongoing construction project. ODOT shall notify all parties of the discovery of potentially significant remains within 2 working days of their discovery and initial assessment. All parties commit to commenting on any discoveries of potential significance within five (5) working days upon receipt of notification by the appropriate personnel. Following evaluation and appropriate resolution of any concerns, it is understood that verbal communications from the appropriate USACE, ODOT, OAS, SHPO, Caddo Nation, or Wichita Tribe contact personnel are sufficient to permit resumption of construction activities. However, all parties will provide written confirmation of verbal communications. All parties understand that the absence of a response to a request for comment from ODOT within the five (5) day stipulation above may be interpreted as no objection to the initial assessments or treatment measures offered by the ODOT archaeologist. A contact list shall be prepared prior to initiation of construction containing the names, phone numbers, addresses and email for all designated contacts for the Caddo Nation, Wichita Tribe, USACE, ODOT, OAS, and SHPO.
- 8) Confidentiality. The parties agree that the location of cultural resources determined important to the Caddo Nation and the Wichita Tribe shall be kept confidential, notwithstanding any requirements of Federal and State freedom of information legislation. Such information shall be made available only to those agencies and individuals charged with ensuring ODOT's, FHWA's and USACE's compliance with Federal environmental law. ODOT, FHWA and USACE shall take all reasonable measures to preclude the disclosure of confidential or sensitive information regarding Native American cultural properties to the general public.
- 9) Dispute Resolution. Should any signatory that is party to this MOA object at any time to the actions proposed herein 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 Advisory Council on Historic Preservation (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 advice regarding the dispute within thirty (30) days, 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 signatory parties to the MOA, and provide them and the ACHP with a copy of such written response.
 - c. Carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.
- 10) 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 executed.
 - 11) Termination. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation #10, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate this MOA upon written notification to the other signatories. Once the MOA is terminated, and prior to work continuing on the undertaking, another MOA must be executed

Execution of this Memorandum of Agreement and implementation of its terms evidence that FHWA has afforded the ACHP an opportunity to comment on the reconstruction on the SH51 bridge over Fort Gibson Lake and its effect on historic properties, and that FHWA has taken into account the effects of the undertaking on historic properties.

Federal Highway Administration

By: *Elizabeth R. Brown* DATE: *10/21/08*

Oklahoma Department of Transportation

By: *D. Dill* DATE: *8/27/2008*

Caddo Nation of Oklahoma

By: *Robert Cook* DATE: *8/5/08*

Wichita and Affiliated Tribes

By: *Leslie Standing* DATE: *10-10-08*

Oklahoma State Historic Preservation Officer

By: *Bob Lamm* DATE: *Aug 25, 2008*

Oklahoma State Archaeologist

By: *Walter B...* DATE: *8/5/08*