

APPENDIX C: MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT

AMONG THE

**EASTERN FEDERAL LANDS HIGHWAY DIVISION
of the
FEDERAL HIGHWAY ADMINISTRATION,
ARKANSAS STATE HISTORIC PRESERVATION OFFICER,
CADDO NATION and the OSAGE NATION**

**PURSUANT TO 36 CFR § 800.6
regarding the
SHADY LAKE ENTRANCE ROAD
POLK AND HOWARD COUNTIES, ARKANSAS
FHWA Project ID # AR PFH 159-1(2)**

WHEREAS, the Eastern Federal Lands Highway Division (EFLHD) of the Federal Highway Administration (FHWA), in cooperation with the United States Department of Agriculture Forest Service (USFS) has determined that it is in the interest of the FHWA to construct a new entrance road to the Shady Lake Recreation Area, located in Polk and Howard Counties, Arkansas; and

WHEREAS, FHWA and USFS have determined that FHWA is the lead federal agency for the purposes of compliance with the National Environmental Policy Act of 1969 {42 U.S.C. 4321} (NEPA) and the National Historic Preservation Act of 1966{16 U.S.C. 470} (NHPA), as amended; and

WHEREAS, the FHWA has consulted with the Arkansas State Historic Preservation Office (SHPO) in accordance with 36 CFR 800.3(c) as it relates to the initiation of the consultation process pursuant to Section 106 of the National Historic Preservation Act of 1966 (16 USC 470f); and

WHEREAS, during an initial archeological survey of the area of potential effects, Site 3PL355 (Moore Homestead), and Site 3PL576 were revisited and determined to be eligible for the National Register of Historic Places; and

WHEREAS, during an initial archeological survey, a bridge constructed by the Civilian Conservation Corps, Site 3PL1325, was identified and determined to be eligible for the National Register of Historic Places; and

WHEREAS, pursuant to 36 CFR § 800.3(f)(2), the Caddo Nation and the Osage Nation may attach religious or cultural significance to Site 3PL576; and

WHEREAS, the Tribal Historic Preservation Officers (THPOs) of the Caddo Nation and Osage Nation (Tribes) accepted the FHWA invitation to participate in the Section 106 process; and

WHEREAS, FHWA notified the Advisory Council on Historic Preservation (Council) of the Undertaking's adverse effect on historic properties and the Council declined to participate in the consultation; and

WHEREAS, FHWA has notified USFS of the Undertaking's adverse effect on historic properties and USFS accepted the FHWA invitation to participate in the Section 106 process; and

WHEREAS, Sites 3PL355, 3PL576, and 3PL1325 may be adversely affected as a result of the construction activities; and

WHEREAS, the FHWA, in consultation with the USFS and SHPO have determined that the Undertaking's potential adverse effects cannot be avoided; and

WHEREAS, the FHWA, in consultation with the USFS and SHPO and THPOs, has determined that data recovery measures mutually agreed upon by the consulting parties of this agreement will mitigate the adverse effects of the proposed bridge replacement; and

WHEREAS, a Data Recovery Plan for the recovery of information by means of historic documentation/recordation and archeological excavation has been developed in consultation with the parties of this agreement and is attached; and

WHEREAS, there is no evidence to date that human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony, collectively termed cultural items and defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001) are present in the Undertaking's area of potential effects; and

WHEREAS, the possibility exists that cultural items could inadvertently be discovered during construction activities and will be governed by the inadvertent discovery clauses stipulated in Section III of this Agreement;

NOW THEREFORE, the FHWA, USFS, the SHPO, and the THPOs 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

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

I. MITIGATION OF ADVERSE EFFECTS TO SITE 3PL355 AND SITE 3PL 576

- A. PHASE III DATA RECOVERY:** FWA will continue to consult with the USFS, SHPO, and THPOs to develop a Data Recovery Plan (DRP). The DRP

will discuss the research potential of the archaeological site. Research design was tailored to the specific site and formulated to gain optimum information.

- B. CONSTRUCTION MONITORING:** FHWA shall contract the services of a qualified archaeologist, as defined in Section III.B of this MOA, to monitor all ground disturbing activity related to the construction of the new entrance road. The archaeological monitor will help identify any site components that may not have been uncovered previously. The archaeological monitor would also help expedite any consultation and assessments related to such inadvertent discoveries, as stipulated in Section IV of this MOA. A representative of the Caddo Nation will also monitor all ground disturbing activity related to the construction of the new entrance road.

II. MINIMIZATION OF ADVERSE EFFECTS TO SITE 3PL1325

- A. CCC BRIDGE REPAIRS:** Repairs to the bridge structure will be completed in a manner that will not adversely impact the historic integrity of the structure. Loose stones will be removed and replaced in the same location. Missing stones will be replaced with stones of a similar size and color. The existing mortar will be analyzed to ensure the new mortar matches the existing mortar. The mortar used to cement the stones in place will match the appearance of the existing mortar in color and consistency. The mortar will be repointed in the same style.

III. PRESERVATION STANDARDS & PROFESSIONAL QUALIFICATIONS

- A.** All archaeological studies resulting from this Agreement shall be consistent with SHPO guidelines, *A State Plan for the Conservation of Archeological Resources in Arkansas* (Davis and Early 2010); the Secretary of the Interior's *Standards and Guidelines for Archeological Documentation*; Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 Fed. Reg. 44716, September 29, 1983); and shall take into account the ACHP publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999 updated 2002) and *Section 106 Archaeology Guidance* (June 2007), or subsequent revisions or replacements to these documents. Refer to: <http://www.achp.gov/archguide.html> (Updated April 26, 2002).
- B.** All work carried out pursuant to this agreement shall be conducted by or under the direct supervision of an individual or individuals who meet, at a minimum, the proposed revisions to the Secretary of the Interior's Professional Qualifications Standards (62 Fed. Reg. 33708 (June 20, 1997)).

IV. POST-REVIEW OR INADVERTENT DISCOVERIES

The FHWA shall ensure that all contract documents contain the following provisions:

- A.** In the event that previously unidentified archaeological properties are identified by the archaeological monitor during ground disturbing activities, the construction contractor shall immediately halt all work involving subsurface disturbance in the area of the discovery, and immediately notify the FHWA. FHWA shall notify the USFS, SHPO, and THPOs of the discovery within two business days.
- B.** Using a qualified archeologist as described under Stipulation III.B., the FHWA, SHPO, and/or THPOs, shall immediately inspect the work site and determine the area and nature of the affected archaeological property. Construction work may then continue in the area outside the archaeological property as defined by the FHWA, SHPO and THPOs, or their designated representative.
- C.** Within five working days of the original notification, the FHWA, in consultation with the SHPO and THPOs, shall assess the significance of the discovery.
- D.** Work in the affected area shall not proceed until either:
 - 1. The development and implementation of appropriate data recovery or other recommended mitigation procedures, or
 - 2. The determination is made that the located site or site component is not eligible for inclusion on the NRHP.
- E.** Any disputes over the evaluation or treatment of previously unidentified properties shall be resolved as provided in Stipulation VI of this MOA.

V. TREATMENT OF HUMAN REMAINS, SACRED OBJECTS, OBJECTS OF CULTURAL PATRIMONY, AND/OR ASSOCIATED FUNERARY OBJECTS

It is possible that potential graves or human remains will be identified during the excavations. In the event that potential graves are identified, information regarding their number and location will be provided to the parties to the MOA so that consultations can be conducted concerning their treatment. No potential graves will be disturbed or investigated until such consultations are completed and the Contractor receives instructions from the FHWA.

If human remains are discovered during the fieldwork, work within 150 feet of the remains shall stop immediately. The consultant shall immediately notify the FHWA, the THPOs, the Arkansas State Archaeologist, and the Polk County Medical Examiner. In accordance with Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR 800), the FHWA shall

then consult with the other parties to the MOA concerning the treatment and disposition of these remains.

Throughout the fieldwork, analysis, and reporting, the FHWA, in consultation with the parties to the MOA, shall ensure that the treatment of any human remains and associated funerary objects discovered within the project area complies with all applicable state and federal laws, and that the remains are treated with respect to the deceased per the ACHP's Policy Statement on the Treatment of Human Remains and Grave Goods; the Native American Graves Protection and Repatriation Act; the Arkansas Burial Law (Act 753 of 1991, as amended). A burial excavation permit must be secured from the Arkansas Historic Preservation Program prior to the excavation of human remains.

VI. CONFIDENTIALITY

The FHWA acknowledges the need for confidentiality of certain tribal spiritual and cultural information that may be provided by the Tribes during the course of consultations and other aspects of tribal consultation conducted on cultural resource issues. Information identified as sensitive by consulted tribal members, and requested to remain confidential will remain confidential to the extent permitted by State and Federal law [Section 304 of NHPA].

VII. DISPUTE RESOLUTION

Should any signatory to this MOA object within 30 days to actions or plans for review pursuant to this MOA, or dispute the completion of the terms of this agreement, the FHWA shall consult with the objecting party to resolve the objections. If the FHWA determines that the objection cannot be resolved, the FHWA shall forward all documentation relevant to the objection to the Council and request the Council's comments pursuant to 36 CFR 800.2(b)(2).

VIII. AMENDMENT

- A.** In the event that the FHWA must make substantive changes to the agreed-upon treatments and design plans specified in Stipulation I.A during implementation of the Undertaking, the FHWA shall notify and request the comments of the USFS, SHPO, and THPOs regarding the modifications to the Undertaking.
- B.** Any signatory to this MOA may request that the MOA be amended, whereupon the signatories and concurring parties will consult to develop an amendment.
- C.** Any resulting amendments shall be developed and executed among the FHWA, USFS, SHPO, THPOs, and the Council, when applicable, in the same manner as the original MOA.

IX. TERMINATION

FHWA, USFS, SHPO, and the THPOs may terminate this MOA by providing 30 days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

X. DURATION

This MOA shall expire if its terms are not carried out within 5 years form the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

XI. ATTACHMENT

The Archeological Data Recovery Plan for Sites 3PL355 and 3PL576, AR PFH 159-1(2), Polk and Howard Counties, Arkansas is made a part of this MOA.

EXECUTION

Execution of this Memorandum of Agreement between the FHWA, USFS, SHPO, and THPOs, and implementation of its terms, provide evidence that the FHWA has afforded the Signatories an opportunity to comment on the undertaking and its effects on historic properties and that the FHWA has taken into account the effects of the undertaking on historic properties.

ARKANSAS STATE HISTORIC PRESERVATION OFFICER

By: Cathie Matthews Date 11/2/10
Cathie Matthews, State Historic Preservation Officer

**FEDERAL HIGHWAY ADMINISTRATION - EASTERN FEDERAL LANDS
HIGHWAY DIVISION**

By: Karen A. Schmidt Date 01 JULY 2010
Karen A. Schmidt, Director of Program Administration

USDA FOREST SERVICE – OUACHITA NATIONAL FOREST

By: *Norman Wagoner* Date 11/19/10
Norman Wagoner, Forest Supervisor

CADDO NATION OF OKLAHOMA

By: *Brenda Sheymayne Edwards* Date 10/01/10
Brenda Sheymayne Edwards, Chairwoman

OSAGE NATION

By: *Jim Gray* Date 7/20/11
Jim Gray, Principal Chief