

AMENDED MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT,
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICE, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE WHITE RIVER AND RELIEF STRUCTURES AND APPROACHES
(CLARENDON), (HWY. 79) IN MONROE COUNTY, ARKANSAS
AHTD JOB NUMBER 110123

WHEREAS, the Federal Highway Administration (FHWA) as the lead federal agency administers Federal Aid Program funding under 23 Code of Federal Regulations (CFR) that enabled the Arkansas State Highway and Transportation Department (AHTD) to fund the replacement of the White River and Relief Structures and Approaches on Highway 79 near Clarendon, Arkansas in Monroe County (undertaking); and

WHEREAS, the undertaking consists of the replacement of three bridges and their approaches: the White River Bridge (Bridge Number 01253), the West Old River Lake Bridge (Bridge Number B1253), and the Roc Roe Bayou Bridge (Bridge Number A1253); and

WHEREAS, the White River Bridge is a structure included as a part of the Clarendon Multiple Resource Area submission listed in the National Register of Historic Places (NRHP) on November 1, 1984;

WHEREAS, the FHWA, acting as the lead federal agency; and the U.S. Army Corps of Engineers, the U.S. Coast Guard, and the U.S. Fish and Wildlife Service (USFWS) acting as cooperating agencies; completed environmental documentation in accordance with the National Environmental Policy Act of 1969 (NEPA); and

WHEREAS, the FHWA and AHTD conducted public hearings on the undertaking in April, 2000 and March, 2006; and

WHEREAS, the project requires the removal of the White River Bridge (Bridge Number 01253), the West Old River Lake Bridge (Bridge Number B1253), and the Roc Roe Bayou Bridge (Bridge Number A1253), and the roadway on built embankment; and

WHEREAS, the FHWA determined that this undertaking would have an adverse effect on the National Register property Clarendon Multiple Resource Area; and consulted with the State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended (54 U.S. Code 306108); and

WHEREAS, the Memorandum of Agreement (MOA) to mitigate effects on the Clarendon Multiple Resource Area was developed pursuant to Section 106 of the NHPA, and executed on April 18, 1997, remains in effect, and can be found in Attachment A; and

WHEREAS, the AHTD began construction in April, 2009 of the White River and Relief Structures and Approaches; and in 2013, the Roc Roe Bayou Bridge (Bridge Number A1253) was demolished; and

WHEREAS, in June 2015, FHWA and AHTD were notified there was an error by the SHPO's office on the National Register nomination for the Clarendon Multiple Resource Area, stating the west approach of the Clarendon Bridge over the river bottoms was not listed, although it was eligible; and

WHEREAS, the remaining portions of the White River Bridge Structures and Approaches, including the western approach of the White River Bridge (Bridge Number 01253), the West Old River Lake Bridge (Bridge Number B1253), and the roadway on built embankment were added to the listing for the NRHP Clarendon Multiple Resource Area on September 28, 2015 and the FHWA has determined that the undertaking will have an adverse effect to these additional historic properties, necessitating the reopening of consultation with the SHPO to consider additional adverse effects pursuant to 36 CFR § 800, the regulations implementing Section 106 of the NHPA (54 U.S.C. § 306108); and

WHEREAS, FHWA has notified and invited the participation of the Osage Nation of Oklahoma, the Quapaw Tribe of Oklahoma, the Tunica-Biloxi Tribe of Louisiana, the Kickapoo Traditional Tribe of Texas, the Kialegee Tribal Town, the Ponca Tribe of Oklahoma, the Cherokee Nation of Oklahoma, United Keetoowah Band of Cherokee Indians of Oklahoma, the Chickasaw Nation of Oklahoma, the Choctaw Nation of Oklahoma, the Absentee-Shawnee Tribe, the Eastern Shawnee Tribe of Oklahoma, the Shawnee Tribe, the Otoe-Missouria Tribe of Oklahoma, the Kickapoo Tribe of Kansas, the Sac and Fox Nation of Missouri, the Sac and Fox Nation of Oklahoma, the Alabama-Quassarte Tribal Town, the Peoria Tribe, the Seminole Tribe of Florida, the Thoptlocco Tribal Town, the Mississippi Band of Choctaw Indians, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Pawnee Tribe, the Delaware Nation, and the Tonkawa Tribe for which the White River and Relief Structures could have religious and cultural significance. Responses to the tribal consultation letters did not object to the project, as long as construction halted if remains or other items falling under National American Graves Protection and Repatriation Act (NAGPRA) were discovered; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (ACHP) and SHPO of its amended adverse effect determination with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, the FHWA, AHTD, SHPO and the ACHP agree that the undertaking shall be implemented in accordance with the following amended 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 EFFECT TO THE HISTORIC PROPERTY

AHTD Bridge Numbers 01253 and B1253 structures and approaches will be documented by AHTD to the Arkansas Historic Preservation Program standards and provided to the Arkansas SHPO. The documentation will also be housed at the Arkansas State Archives in Little Rock, Arkansas, and at the University of Central Arkansas Archives and Special Collections at Conway, Arkansas.

II. DURATION

This MOA amendment will expire if its terms are not carried out within five (5) years from the date of its execution, or from the completion of the proposed project. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V below.

III. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, FHWA shall provide all parties to this MOA 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 objections received in FHWA's efforts to carry out the terms of this MOA.

IV. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any 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, it will request further comments from the ACHP pursuant to 36 CFR § 800.7:

1. Forward all documentation relevant to the dispute, including the 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.

V. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VI. 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 signatories to attempt to develop an amendment per Stipulation V, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

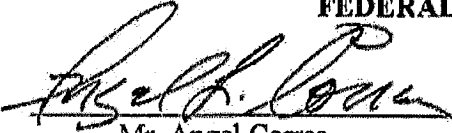
Once the MOA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the FWHA, AHTD, SHPO, and the ACHP and implementation of its terms evidence that FWHA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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SIGNATORY

FEDERAL HIGHWAY ADMINISTRATION



Mr. Angel Correa
Arkansas Division Administrator

5/15/2017

Date

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SIGNATORY

ARKANSAS STATE HISTORIC PRESERVATION OFFICER



Ms. Stacy Hurst

Arkansas State Historic Preservation Officer

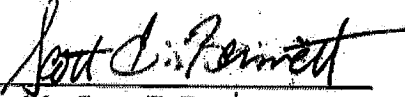
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SIGNATORY

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT



Mr. Scott E. Bennett, P.E.

Director of Highways and Transportation

5-19-2017

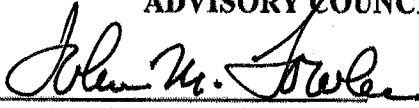
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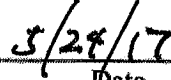
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SIGNATORY

ADVISORY COUNCIL ON HISTORIC PRESERVATION



Mr. John M. Fowler
Executive Director



Date