MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE NEBRASKA DEPARTMENT OF ROADS, AND THE NEBRASKA STATE HISTORIC PRESERVATION OFFICE REGARDING THE TALMAGE NORTH BRIDGES PROJECT NUMBER STP-67-2(109) CONTROL NUMBER 12974A

WHEREAS, the Nebraska Department of Roads (NDOR) plans to carry out the Talmage North Bridges project to reconstruct structures located over the North Fork of the Little Nemaha River and one of its tributaries on Highway N-67 in Otoe County east of the community of Lorton using funds from the Federal Highway Administration (FHWA); and,

WHEREAS, the subject property is a state-owned historic bridge (structure number S067 05206, site number OT05-011) over the Little Nemaha River on N-67; and,

WHEREAS, FHWA has defined the undertaking's area of potential effects (APE) as described in Attachment A Item 7; and,

WHEREAS, NDOR has determined that the deteriorated physical condition of this bridge does not make the bridge suitable: to use in place; to make available for an alternative use; to relocate; or, to market the bridge to a third party; and,

WHEREAS, NDOR has determined that the undertaking may have an adverse effect on the historic bridge structure number S067 05206, site number OT05-011 which is eligible for listing in the National Register of Historic Places (NRHP), and has consulted with the Iowa Tribe of Kansas and Nebraska, the Ponca Tribe of Nebraska and the Nebraska State Historic Preservation Office (Nebraska SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f); and,

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), 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 Section 800.6(a)(1)(iii); and,

NOW, THEREFORE, FHWA, NDOR and the Nebraska 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 historic properties.

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

I. NDOR shall record the bridge to include the following information:

a. Digital photographs of the bridge prior to any demolition activity at the site. Photographs shall be numbered and labeled according to NRHP standards and include at a minimum the following images:

i. Images of the structural components that define the significant character defining features of the bridge as identified in the Historic Bridge Inventory including, but not limited to the deck, truss system, floor beams and cross bracing.

ii. Images of the setting and surrounding area including landscape and highway to put the bridge into a geographical context.

iii. Images of the travelling surface of the bridge itself.

b. A site plan including the highway, the bridge, and its proximity to Lorton.

c. A photo key to identify the location of digital images.

d. A narrative description of the bridge documenting the current condition.

e. An index and copies of pertinent documents identifying the evolution of the project including the historic bridge inventory form, the alternatives analysis, the structural deficiency report, and any and all appropriate correspondence and supporting documentation.

II. An electronic copy of the final report shall be submitted to NDOR and Nebraska SHPO

III. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. 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 VIII below.

IV. POST-REVIEW DISCOVERIES

If properties are discovered after project construction begins, that may be historically significant or unanticipated effects on historic properties found, NDOR and FHWA shall follow Stipulation XI (C) p. 19 of the *Programmatic Agreement Among The Federal Highway administration, The Nebraska State Historic Preservation Officer, The Advisory Council on Historic Preservation And The Nebraska Department of Roads to Satisfy the Requirements of Section 106 for the Federal-Aid Highway Program in the State of Nebraska* (Attachment B).

V. 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. If the stipulations identified herein are carried out prior to the yearly anniversary, then no reporting is required.

VI. DISPUTE RESOLUTION

Should any signatory or concurring party 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 objections cannot be resolved, FHWA will:

a. 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.
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.

VII. 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.

VIII. 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 VII, 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 Section 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Section 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

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

SIGNATORIES:

_____ Date 5-13-2016
Joseph A. Werning, Division Administrator
Federal Highway Administration, Nebraska Division

_____ 05-10-2016 Date
Michael J. Smith, Director
State Historic Preservation Officer
Nebraska State Historical Society

INVITED SIGNATORIES:

For _____ Date 5-11-16
Kyle Schneweis, P.E., Director
Nebraska Department of Roads