WHEREAS, the Federal Highway Administration (FHWA) has determined that construction of the U.S. 71 Relocation between Texarkana Arkansas and DeQueen, Arkansas (the Project) in Little River, Miller, and Sevier counties, Arkansas is necessary to serve the transportation needs of western Arkansas and to improve traffic flow, safety and capacity on existing U.S. 71; and

WHEREAS, the FHWA has determined that the Project may have an effect on properties on or eligible for listing in the National Register of Historic Places (the Register) and in accordance with 36 CFR 800, Protection of Historic Resources, regulations implementing Section 106 of the National Historic Preservation Act of 1966, (16 USC 470f), as amended, must address these effects; and

WHEREAS, a Preferred Alignment for the Project was identified in the December 1999 Draft Environmental Impact Statement (DEIS) based on the review of records of archeological resources, an analysis of high probability areas (as determined through consultation with the Caddo Tribe and coordination with AHTD staff archeologists), and a reconnaissance of high probability areas and survey of architectural resources within the area of potential effect (APE) of alternative routes. The architectural resources assessment for the DEIS has been evaluated by the Arkansas State Historic Preservation Officer (SHPO). The APE of the Preferred Alignment contains five eligible architectural properties, none of which will suffer any adverse effect from the project; and

WHEREAS, a Phase I cultural resources pedestrian survey has been completed on 38.5 kilometers (61 %) of new right-of-way areas of the Preferred Alignment in Arkansas, which corresponds to all survey areas in Little River and Sevier counties for which property access could be obtained. The Phase I report has not been completed or evaluated by SHPO or the Caddo Tribe, but once completed will be provided to both parties for review and comment: and

WHEREAS, the FHWA, the Caddo Tribe, the Advisory Council on Historic Preservation (Council) and the SHPO agree that all identification, evaluation and reporting efforts will follow guidance obtained through consultation with the Caddo Tribe, the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716), A Foundation for the Future: The Arkansas Historic Preservation Plan (Baker ed. 1990, revised 1996), and A State Plan for the Conservation of archeological Resources in Arkansas (Davis ed. 1982, revised 1994); and

WHEREAS, the treatment of human remains and cultural items will follow guidance obtained through consultation with the Caddo Tribe, the Advisory Council's Policy Statement and Policy Interpretation Memorandum 89-1 regarding the treatment of human remains and grave goods, and the procedures set forth in the Native American Grave Protection and Repatriation Act (P.L. 101-601), and guidelines promulgated under the Arkansas State Burial Law (Act 753 of 1991); and
WHEREAS, the Caddo Tribe of Oklahoma has participated in the development of this Programmatic Agreement and has been afforded the opportunity to comment; and

WHEREAS, the definitions of 36 CFR 800.2 are applicable throughout this memorandum;

NOW, therefore, the FHWA, SHPO and Council agree that this Project shall be implemented in accordance with the following stipulations in order to take into account the effect of this Project on historic properties.

STIPULATIONS

The FHWA shall ensure that the following Stipulations are carried out prior to taking any action that could have an effect on properties listed on or eligible for the Register:

I. PROJECT SCHEDULING

The schedule for Project implementation will be developed as funding becomes available and once developed, will be coordinated with the SHPO. As a result, the Stipulations in this memorandum may be carried out over a period of several years. However, evaluation of architectural properties is effective only through 2005. If project construction continues beyond 2005, reevaluation of architectural properties will be necessary.

II. AREA OF POTENTIAL PROJECT EFFECT

The APE is defined as the Selected Alignment identified in the Final Environmental Impact Statement. Should the APE change, FHWA shall follow the stipulations for identification, evaluation and treatment of archeological and architectural resources (Stipulations IIIA, IIIB, IIIC and IV).

III. ARCHAEOLOGICAL RESOURCES

A. As no report of archaeological resources has yet been submitted to the SHPO, no archeological sites that will be affected by construction of the Project have been determined to be eligible for the NRHP. If NRHP eligible sites are identified, they will require Phase II archeological testing in order to determine significance.

1. FHWA shall ensure that additional research and investigations are conducted as necessary to assess or consider the eligibility of identified archeological sites for nomination to the Register. Phase II fieldwork will be sufficient to assess or consider the eligibility of identified archeological sites for nomination to the Register and will establish the area of potential effect, and as appropriate, include site size and boundary, contents of the archeological record, depth and integrity of cultural deposits, presence or absence of cultural features, site functions, age and cultural affiliation. The Caddo Tribe will be consulted with for their expertise and guidance in proceeding with and conducting these Phase II investigations. The Phase II investigations will conform to the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716-39) and the standards for fieldwork and report writing in A State Plan for the Conservation of Archeological Resources in Arkansas (Davis ed. 1982, revised 1994).
2. FHWA shall determine National Register eligibility in consultation with the Caddo Tribe and the SHPO. All National Register evaluations will follow the guidelines established in National Register Bulletin 15 (U.S. Department of the Interior, 1990). Disputes concerning eligibility will be resolved by the Keeper of the National Register (the Keeper).

3. FHWA shall ensure that a treatment plan is developed for any archeological sites that are determined eligible for listing in the Register that are adversely affected by the Project. This treatment plan will consider measures to mitigate adverse effects on archeological sites such as avoidance by design adjustments, buffer zone establishment, protective fencing, construction monitoring, and education of construction personnel. The treatment plan will also take into account engineering feasibility, cost and other factors considered appropriate by FHWA. If adverse effects on archeological sites cannot be avoided, FHWA shall consult with the SHPO, the Caddo Tribe, and other interested parties to determine the appropriate measures to mitigate adverse effects. These measures will be included in the treatment plan.

4. Avoidance will be the preferred treatment of adverse effects to archeological sites, if possible. Any site that warrants preservation in place will be avoided, provided that prudent and feasible alternatives to the use of that site for highway construction exist.

5. If the appropriate treatment of archeological sites involves data recovery, FHWA shall ensure that a data recovery plan is developed in consultation with the Council, the SHPO, and the Caddo Tribe. Data recovery plans shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37) and take into account the Council's Publication, "Treatment of Archeological Properties" (Advisory Council on Historic Preservation 1980) and the standards in a State Plan for the Conservation of Archeological Resources in Arkansas (Davis ed. 1982, revised 1994), and any tribal standards gained through consultation with the Caddo Tribe.

6. FHWA shall provide treatment plans and data recovery plans to the Council, the SHPO and the Caddo Tribe for review. Comments shall be provided by these reviewing agencies within thirty (30) calendar days. Failure to comment within thirty (30) calendar days of receipt shall be taken as concurrence with the submitted plan. Unless the reviewers object to the plan within thirty (30) days, FHWA shall ensure that they are implemented. If the SHPO or other reviewers request minor revisions to any plan, the reviewers shall be provided with fourteen (14) calendar days from receipt to review the revised plan; if in the opinion of FHWA the revisions are major, the reviewers shall be provided with thirty (30) calendar days from receipt for review of the revised plan. Failure to provide comments on the revised plan within the fourteen (14) day or thirty (30) day review period shall be taken as concurrence with the revised plan. Any disputes arising from such review shall be resolved in accordance with Stipulation XIII of this memorandum.

B. FHWA shall ensure that a Phase I cultural resources pedestrian survey is conducted on the remaining 24 kilometers (39 %) of the new right-of-way areas of the Preferred Alignment in Arkansas. Eligible archeological sites identified by the pedestrian survey will be investigated as defined in Stipulation IIIA above. The areas that remain to be subjected to the pedestrian survey fall into the following categories:

1. Parcels for which landowners denied access to conduct the pedestrian survey.
2. Other areas of the Selected Alignment that, for whatever reason, could not be completed prior to execution of this memorandum.

C. Following completion of data recovery or other treatment plan, appropriate analysis shall be conducted and the final reports shall be prepared. The FHWA shall ensure that all final archeological reports resulting from actions pursuant to this Programmatic Agreement are provided to all signatories and to the National Park Service for possible submission to the
National Technical Information Services. The FHWA shall ensure that all such reports are responsive to the contemporary professional standards identified in the Council's current Preparing Agreement Documents, and meet the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" and the standards in A State Plan for the Conservation of Archeological Resources in Arkansas, (Davis ed. 1982, revised 1994). Precise location data may be provided only in a separate appendix if it appears that its release could jeopardize archaeological sites.

D. Following appropriate analysis, all material and data recovered as a result of the Project from public land and from private land with permission of the landowners shall be curated in a permanent curation facility approved by the SHPO in accordance with 36 CFR Part 79 and any tribal standards regarding curation obtained through consultation with the Caddo Tribe.

IV. ARCHITECTURAL RESOURCES

A. Architectural resources are defined as all non-archeological resources consisting of historic buildings, structures, objects, and districts.

B. The FHWA shall identify and evaluate any additional architectural resources located within the APE for National Register eligibility in accordance with 36 CFR 800.4. The assessment of architectural resources will consist of a level of effort required to determine National Register eligibility and adverse effect determination.

C. If concurrence on eligibility of an architectural resource cannot be reached, FHWA shall obtain a determination from the Keeper in accordance with 36 CFR 800.4. If an adverse effect to an architectural resource determined eligible for inclusion in the Register occurs, a treatment plan as discussed in Stipulation III will be prepared. Avoidance shall be the preferred treatment in such instances, provided that prudent and feasible alternatives to the use of that land for highway construction exists. Any evaluations of an adverse effect to an architectural resource shall be conducted in accordance with FHWA 4(f) regulations.

V. HUMAN REMAINS

If human remains are encountered during the implementation of the terms of this memorandum or during the implementation of the Project, all activity in the vicinity of the discovery will cease and the Arkansas Highway and Transportation Department (AHTD) will notify FHWA who will immediately notify the SHPO and the Caddo Tribe. If it can be determined that the remains are not Native American, there will be no need to consult with the Caddo Tribe. Instead, consultation should be with the descendants or other interested parties. FHWA shall consult with the SHPO and the Caddo Tribe, the descendants, or other interested parties, to determine treatment of the human remains, including analysis, if any, and proposed plans for reburial.

VI. CADDO TRIBE CONSULTATION

Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.
The FHWA shall ensure that the Caddo Tribe will be consulted concerning historic properties which will be affected by construction of the Project and which the tribe may attach religious or cultural significance in accordance with 36 CFR 800.2(C)(2)(II).

VII. QUALIFICATIONS

The Caddo Tribe will be consulted regarding any specific requirements the tribe has for the professional qualifications of archeologists completing work on Caddoan archeological sites. In addition, the FHWA shall ensure that all historic, architectural, and/or archeological work pursuant to this Programmatic Agreement is carried out by, or under the direct supervision of, a person or persons meeting the appropriate qualifications set forth in the Secretary of the Interior's "Professional Qualifications Standards for Historic Architecture" (48 CFR 44739) and the Secretary of the Interior's "Professional Qualifications Standards for Archeology" (48 FR 44739).

VIII. COMMENCEMENT OF CONSTRUCTION

Construction may commence in a portion of the Project area once appropriate efforts to identify, evaluate, and mitigate adverse affects on historic properties in that portion have been completed and SHPO and FHWA have reviewed and commented on the results of the investigation and the SHPO concurs that the effort is consistent with the agreed upon treatment plan or data recovery plan. Construction may commence if FHWA and SHPO concur that no adverse effect on eligible or listed cultural resources will occur as a result of construction in a specific area of the Project.

IX. CONSULTING PARTY PARTICIPATION

A. The FHWA shall ensure access by the public and the Caddo Tribe to all determinations made pursuant to this memorandum and shall consider or respond to comments or objections by interested parties in a timely manner. Views of the public, Indian tribes, and other consulting parties will be solicited by the FHWA and will be taken into account in the consultation process when eligible Native American properties are affected.

B. The Caddo Tribe, or members of the public may ask the Council to review a finding, become a party to consultation, or request the Keeper to review a determination of eligibility made under this memorandum by the FHWA and/or the SHPO.

C. Stipulation III.A.5 provides for Caddo Tribe consultation in data recovery plans developed by FHWA and SHPO if the site involves prehistoric or historic Native American properties. If the tribe objects to the data recovery plan agreed to by FHWA and SHPO, the FHWA shall consult with the Council pursuant to 36 CFR Part 800 (see also Stipulation XII, Dispute Resolution).

X. PROTECTING NATIONAL HISTORIC LANDMARKS

The FHWA shall follow the procedures for the Protection of National Historic Landmarks as set forth in the Council's regulations at 36 CFR Part 800.10.

XI. DISCOVERY SITUATIONS
Pursuant to 36 CFR 800.11, if cultural material is discovered during the implementation of the project, the FHWA shall ensure that all construction activities will cease in the area of the discovery and the SHPO, the Caddo Tribe, and other interested parties shall be notified. The FHWA, through consultation with the Caddo Tribe and the SHPO, will determine eligibility of the discovered properties for the Register and the treatment of historic properties. The Caddo Tribe will be provided with an opportunity to review and comment on proposed treatment measures. Disputes arising from such review will be resolved in accordance with Stipulation XIII below.

XII. DOCUMENTATION AND REPORTING REQUIREMENTS

A. A management summary and report for each phase of work will be prepared for the Phase I effort and the Phase II effort individually as they are completed. One final report will be prepared to document the Phase I, and one final report will be prepared to document Phase II efforts. A management summary followed by a final report will be prepared on all of the Phase III investigations. Additional management summaries will be needed for Phase I and possibly Phase II efforts in the areas outlined in IIIB above.

B. All archaeological reports must meet the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 CFR 44716) and the standards for fieldwork and report writing in A State Plan for the Conservation of archeological Resources in Arkansas (Davis ed, 1982, revised 1994).

C. Standards for documenting architectural sites will conform to state requirements outlined in the Arkansas Historic Preservation Program Architectural Resources Handbook.

D. The FHWA and the SHPO will ensure that site location information will be made available only to qualified persons and qualified members of the Caddo Tribe in accordance with state and federal guidelines.

E. The FHWA shall provide management summaries and Phase I, Phase II and Phase III reports to the SHPO for review. Appropriate documentation of architectural resources to determine eligibility and adverse effect findings will be provided to the Caddo Tribe and the SHPO for review. Both the Caddo Tribe and the SHPO will be contacted to verify receipt of this deliverable. Caddo Tribe and SHPO comments shall be provided to FHWA within thirty (30) calendar days. Failure to comment within thirty (30) calendar days will be taken as concurrence with the findings of the report and any recommendations for future cultural resource investigations.

F. All final reports will be distributed to the FHWA, the SHPO, the Caddo Tribe and the Arkansas Archeological Survey.

XIII. DISPUTE RESOLUTION

Should the SHPO, the Council or the Caddo Tribe, as appropriate, object within thirty (30) days to any findings, proposed actions or determinations made pursuant to this memorandum, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, it shall request the further comments of the Council pursuant to 36 CFR Part 800.6(b). Any Council comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR Part 800.6(c)(2) with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this memorandum that are not subject to the dispute will remain
The Council, SHPO, FHWA, Caddo Tribe, or one or more of the parties in cooperation may monitor the undertaking carried out pursuant to this Programmatic Agreement.

XIV. AMENDING THE PROGRAMMATIC AGREEMENT

Should any of the parties to this agreement believe that the terms of this agreement are not being met or cannot be met, that party shall immediately notify the other signatories and request consultation in accordance with 36 CFR Part 800.0 to amend this agreement. The process to amend this agreement shall be conducted in a manner similar to that leading to the execution of this agreement.

XV. TERMINATING THE PROGRAMMATIC AGREEMENT

Any party to this agreement may terminate it by providing thirty (30) calendar days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA shall comply with 36 CFR Part 800.4 through 800.6 with regard to the Project covered by the Programmatic Agreement.

XVI. FAILURE TO CARRY OUT THE PROGRAMMATIC AGREEMENT

In the event the FHWA does not carry out the terms of this Programmatic Agreement, the FHWA shall comply with 36 CFR 800.4 through 800.6 with regard to the Project covered by this agreement.

XVII. FULFILLMENT OF SECTION 106 RESPONSIBILITIES

Execution and implementation of this Programmatic Agreement evidences that the FHWA has afforded the Council a reasonable opportunity to comment pursuant to 36 CFR Part 800.13 on the construction of U.S. 71, Texarkana to DeQueen to Interstate 40 in Little River, Miller, and Sevier counties, Arkansas and its effect on cultural resources and that FHWA has taken into account the effect of the Project on cultural resources.

SIGNATORY PARTICIPANTS

FEDERAL HIGHWAY ADMINISTRATION

Ms. Sandra L. Otto        Date
Division Administrator

CADDIO TRIBE OF OKLAHOMA
Ms. LaRue Parker
Chairperson

ARKANSAS STATE HISTORIC PRESERVATION OFFICER

Ms. Cathie Matthews
Arkansas State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Mr. John M. Fowler
Executive director

CONCURRING PARTIES

ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT

Mr. Dan Flowers
Director