

**PROGRAMMATIC AGREEMENT (PA)
BETWEEN
THE CITY OF MIDWEST CITY, OKLAHOMA,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER,
AND
THE OKLAHOMA ARCHEOLOGICAL SURVEY
REGARDING
THE ADMINISTRATION OF CERTAIN HUD-FUNDED ACTIVITIES**

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) through but not limited to the office of Community Planning and Development, provides funding to the City of Midwest City, Oklahoma (CITY); and

WHEREAS, the CITY, now, administers HUD entitlement programs which include, but are not limited to, the following programs (HUD Programs); and

Community Development Block Grant (CDBG)

WHEREAS, HUD regulations at 24 CFR Part 58 implement statutory authorities that permit certain entities, including the CITY, to assume HUD's environmental responsibilities for various HUD programs, and included among the statutory authorities under which this responsibility is assumed is in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended [16 USC 470f] (Section 106); and

WHEREAS, the CITY has determined that implementation of its HUD Programs may include activities, such as rehabilitation, demolition, and new construction, that may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (Historic Properties); and

WHEREAS, the CITY has determined that certain activities funded by its HUD Programs have limited potential to affect Historic Properties and has consulted with the Advisory Council on Historic Preservation (ACHP) and the Oklahoma State Historic Preservation Officer (SHPO) pursuant to 36 CFR 800.14 of the regulations implementing Section 106 and with the Oklahoma Archeological Survey (OAS), which provides professional expertise pursuant to a cooperative agreement to the SHPO concerning effects of federal undertakings on significant archaeological resources; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the CITY has notified ACHP of its intention to prepare a programmatic agreement under 36 CFR 800.14(b), and the ACHP has chosen not participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the CITY invited the federally recognized Indian tribes closest in proximity to the CITY, the Citizen Potawatomi Nation and the Absentee Shawnee Tribe, to engage in consultation regarding the PA and its implementation in correspondence dated February 15, 2018; and

WHEREAS, the Citizen Potawatomi Nation and the Absentee Shawnee Tribe did not contact or communicate to CITY any concerns with potential effects to historic properties of traditional, religious and/or cultural significance within the CITY; and

WHEREAS, CITY provided the public an opportunity to comment on the PA by posting the draft PA on the CITY's public internet site at midwestcityok.org and publishing a public notice in the MIDWEST CITY

BEACON on December 23, 2020. The posting and public notice conveyed that the PA documentation was publicly available at midwestcityok.org, the Midwest City Library, and the City of Midwest City Grants Office, 100 N. Midwest Blvd., Midwest City, Oklahoma 73110 and would receive comments for a twenty-one (21) day comment period. No comments from the public were received; and

NOW THEREFORE, the CITY, the SHPO, and the OAS agree that the CITY's HUD Programs shall be administered in accordance with the following stipulations to satisfy the CITY's Section 106 responsibilities for the HUD programs it administers.

STIPULATIONS

The CITY will ensure that the following measures are carried out.

I. COORDINATION AND TRAINING

A. The CITY shall, upon execution of this agreement, ensure that all staff responsible for the administration and / or conduct of the HUD Programs are informed about the terms of this agreement and that adequate internal procedures are established to ensure compliance with the terms of the agreement.

B. The CITY shall ensure that appropriate CITY staff members annually attend at least one (1) training session on the Section 106 process provided by either the ACHP or the SHPO / OAS. CITY staff participation in such training session shall be discussed in the CITY's annual report to the SHPO / OAS (Stipulation V).

II. ACTIVITIES EXEMPT FROM STANDARD SHPO / OAS REVIEW

The following proposed undertakings have limited potential to affect historic properties and may be approved / carried out by the CITY without further consultation with the SHPO / OAS.

All undertakings not identified under either (A) or (B) of this Stipulation must be reviewed in accordance with 36 CFR Part 800 (standard SHPO / OAS review). For guidance on standard SHPO / OAS review, reference the SHPO's *Review and Compliance Manual*.

A. General Exemptions

1. Projects for residential or non-residential buildings, structures, or facilities less than forty-five (45) years old. Projects may include demolition and rehabilitation, but not new construction.
2. Refinancing without demolition, rehabilitation, or construction.
3. Leasing without demolition, rehabilitation, or construction.

B. Exempt Activities

The list of exempt activities applies to all projects not otherwise made exempt under Section II.A “General Exemptions.” For purposes of this agreement, the term “in-kind replacement” is defined as installation of a new element that duplicates the material, dimensions, configuration, and detailing of the original element.

1. Site Work

- a. Streets, driveways alleys, and parking areas. Repair of existing concrete or asphalt surfaces or in-kind repair / replacement of brick, rock, or stone materials on streets, driveways, alleys, and parking areas.
- b. Curbs, gutters, sidewalks, retaining walls. Repair of existing concrete or asphalt surfaces or in-kind repair / replacement of brick, rock, or stone materials for curbs, gutters, sidewalks, and retaining walls. Construction of new curbs, gutters, and sidewalks provided that no removal or replacement of such items is required.
- c. Site improvement. Repair or in-kind repair / replacement of site improvements, including, but not limited to, fences, landscaping, and steps not attached to any building.
- d. Utilities. Repair, or replacement of gas, sanitary and storm sewer, water, residential water well/pump, septic system, electrical, cable or other underground utilities in the same location on previously developed land and public rights-of-way located within city limits. New residential utility installations are allowable in emergency circumstances when a new line is needed to avert a public health hazard or to provide potable water service. In the event of unanticipated archaeological discoveries, the SHPO / OAS shall be contacted immediately.
- e. Park and Playground equipment. Installation of temporary construction-related structures including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers or restrooms.
- f. Hazardous trees. Removal of dead, hazardous trees or overhanging tree limbs of potential threat to structure, leaving stump and roots intact.

2. Exterior Rehabilitation

- a. Foundations. Below-grade repair of brick or stone foundations and repair to all other types of foundations, to include structural repairs to sustain the existing structure (floor joist, sills, piers, etc.) that do not alter the existing building configuration.
- b. Windows and doors. Repair of windows and doors, including caulking and weather stripping of existing window or door frames, and installation of new

clear glass in existing sashes or doors, including retrofitting for double and triple glazing, and replacement of glazing putty.

- c. Storm windows and storm doors. Installation of exterior storm windows and doors, provided they conform to the shape and size of the historic windows and doors, and that the meeting rails of storm windows coincide with that of existing sash.
- d. Walls and Siding. Repair of walls or siding material or in-kind replacement brick, stone, or stucco materials and wood siding.
- e. Painted Surfaces.
 - 1. Removal of exterior paint by non-destructive means, limited to hand scraping, low pressure water wash (less than 200 p.s.i.), heat plates or heat guns, or paint-removal chemicals, provided that the removal method is consistent with the provisions of 24 CFR Part 35, "Lead-Based Poisoning Prevention in Certain Residential Structures," including § 35.140, "Prohibited methods of paint removal."
 - 2. All lead paint abatement that does not involve removal or alteration of exterior features and / or windows.
 - 3. Application of exterior paint and caulking, other than on previously unpainted masonry.
- f. Porch elements. Repair or in-kind replacement of existing porch elements, such as columns, flooring, floor joists, ceiling, railing, balusters, and balustrades, and lattice.
- g. Accessibility ramps. Replacement or repair of existing accessibility ramps and installation of new accessibility ramps in a manner that does not remove, compromise or damage existing historic materials or features and would be completely reversible without damage to the historic fabric. See Appendix A for sample specifications.
- h. Roofing. Repair or in-kind replacement of roof cladding and sheeting, flashing, gutters, soffits, and downspouts with no change in roof pitch or configuration.
- i. Awnings. Repair or in-kind replacement of awnings.
- j. Mechanical systems. Placement and installation of exterior HVAC mechanical units and vents not on the front elevation.
- k. Basement bulkhead doors. Replacement or repair of basement bulkhead doors and installation of basement bulkhead doors not on the front elevation.
- l. Lighting. Repair or in-kind replacement of existing light fixtures and installation of additional decorative or security lights.
- m. Mothballing. Securing or mothballing a property by boarding over windows and door openings, making temporary roof repairs, and / or ventilating the building.

3. Interior Rehabilitation

- a. Mechanical systems. Installation, replacement, or repair of plumbing, HVAC systems and units, electrical wiring and fire protection systems, provided no structural alterations are involved. Included are accessible restroom improvements, provided the work is contained within the existing restroom walls.

- b. Surfaces. Repair or in-kind replacement of interior surface treatment, such as floors, walls, ceilings, plaster and woodwork. If covering historic features, such as wood floors, then carpet or sheeting goods (linoleum or vinyl) shall be installed in a reversible manner, either through tacking or with an underlayment so historic floors shall not be irreversibly damaged.
- c. Insulation. Installation of non-spray insulation in ceilings and attic spaces.
- d. Basement floor. Installation or repair of concrete basement floor in an existing basement.
- e. Lead paint and asbestos abatement. Abatement or control of lead-based paint, consistent with the provisions of 24 CFR Part 36 (“Lead-Based Poisoning Prevention in Certain Residential Structures”), and / or asbestos abatement that does not involve removal or alteration of interior features.

III. DISCOVERIES AND UNFORSEEN EFFECTS

If, during the implementation of these programs, a previously unidentified property that may be eligible for inclusion in the National Register (property forty-five years old or older) is encountered, or a property listed in or previously determined eligible for the National Register may be affected in an unanticipated manner, the CITY will assume its responsibilities pursuant to 36 CFR 800.13(b).

IV. DURATION

This Agreement shall take effect on the date it is signed by all parties and filed with the ACHP and shall continue in full force and effect until ten (10) years after the effective date, unless otherwise terminated or extended. At any time in the six-month period prior to the expiration date, the CITY may request, in writing, that SHPO review the CITY's Program and consider an extension or modification to this Agreement. No extension or modification shall be effective unless all parties to the Agreement have agreed to it in writing.

V. MONITORING AND REPORTING

Each year by July 31st, following the execution of this PA until it expires or is terminated, the CITY shall provide all parties to this PA 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 the CITY's efforts to carry out the terms of the PA. The summary report shall list all projects carried out under the terms of this agreement and include a discussion of CITY staff participation in Section 106 training sessions as provided in Stipulation I.B. The list of projects carried out during the year shall include, at a minimum, the project title; address; identification of the historic district, if applicable, in which the project is located; and a brief statement of project work.

VI. DISPUTE RESOLUTION

Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, CITY shall consult with such party to resolve the objection. If CITY determines that such objection cannot be resolved, CITY will:

- A. Forward all documentation relevant to the dispute, including the CITY with its proposed resolution, to the ACHP. The ACHP shall provide CITY 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, CITY 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. CITY 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, CITY may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, CITY 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. The CITY is responsible 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

Any party to this PA may request that it be amended or modified, whereupon the parties will consult in accordance with 36 CFR 800.14(b) to consider such amendments. Any resulting amendments will be developed and executed in the same manner as the original document.

VIII. TERMINATION

If any signatory to this PA 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 an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

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

EXECUTION of this PA by the CITY and SHPO and implementation of its terms evidences that the CITY has taken into account the effects of its undertaking on historic properties and afforded the ACHP an opportunity to comment on them.

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER

By: _____

Printed Name/Title: _____

Date: _____

CITY OF MIDWEST CITY

By: Matthew D. Dukes II

Printed Name/Title: Matthew D. Dukes II, Mayor

Date: 6.28.22



ATTEST:

By: Sara Hancock

Printed Name/Title: Sara Hancock, City Clerk

Date: 6.28.22

OKLAHOMA ARCHEOLOGICAL SURVEY

By: Kary Stackelbeck

Printed Name/Title: Dr. Kary Stackelbeck, State Archaeologist

Date: 6/13/22