

PROGRAMMATIC AGREEMENT  
AMONG THE CITY OF SOUTH BEND, THE  
INDIANA STATE HISTORIC PRESERVATION OFFICER, AND THE HISTORIC  
PRESERVATION COMMISSION OF SOUTH BEND AND ST. JOSEPH COUNTY,  
INDIANA REGARDING THE ADMINISTRATION OF CERTAIN  
HUD-ASSISTED PROJECTS AND PROGRAMS SUBJECT TO  
24 CFR PART 58 IN THE STATE OF INDIANA

THIS PROGRAMMATIC AGREEMENT (Agreement) is between the City of South Bend, by and through its Board of Public Works on behalf of its Department of Community Investment (City), the Indiana State Historic Preservation Officer (Indiana SHPO), and the Historic Preservation Commission of South Bend and St. Joseph County, Indiana (HPC), and is entered into effective the 1<sup>st</sup> day of January 2020.

**WHEREAS**, the U.S. Department of Housing and Urban Development (HUD) through various offices, including the Offices of the Assistant Secretaries for Housing – Federal Housing Commissioner, Public and Indian Housing, and Community Planning and Development, provides grant and/or entitlement funding to the State of Indiana and to entitlement communities in Indiana; and

**WHEREAS**, the City is an entitlement community in the State of Indiana; and

**WHEREAS**, the City, now, or may in the future, administer HUD grant and/or entitlement programs which include, but are not limited to, the following HUD Programs:

American Dream Down payment Initiative Program  
Community Development Block Grant Program (CDBG)  
Emergency Solutions Grant Program  
HOME Investment Partnerships Program  
Housing Opportunities for People with AIDS Program  
Lead-Based Paint Hazard Control Grant Program  
Lead Hazard Reduction Demonstration Grant Program  
Neighborhood Stabilization Program  
Rental Rehabilitation Program  
Continuum of Care Grants  
Special Projects Appropriated Under an Appropriations Act for HUD Supportive  
Housing Program; and

**WHEREAS**, HUD regulations at 24 C.F.R. Part 58 implement statutory authorities that permit certain entities to assume HUD's environmental responsibilities for various HUD programs, and included among the statutory authorities under which this responsibility is assumed in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. § 300101 et seq] (Section 106); and

**WHEREAS**, the City has determined that implementation of the HUD Programs may include but are not limited to activities such as housing and commercial building rehabilitation, façade improvement, relocation of buildings and structures, demolition of buildings and structures, new construction, and site preparation each of which is an undertaking (Undertaking) as defined pursuant to 36 C.F.R. 800.16(y); and

**WHEREAS**, the City has determined that certain activities funded by the HUD Programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (Historic Properties) pursuant to 36 C.F.R. Section 800.14 of the regulations implementing Section 106; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.14(b)(3), the City has notified the Advisory Council on Historic Preservation (ACHP) and invited the ACHP to participate in the development of this Agreement and the Council has declined to participate in consultation for this Agreement; and

**Commented [KDM1]:** "Programmatic Agreement" has already been abbreviated in paragraph one.

**WHEREAS**, the City has invited federally-recognized American Indian tribes listed in Exhibit A to comment and/or consult in the development of this Agreement, in recognition of the unique government-to-government relationship between the Federal government and federally-recognized American Indian tribes and all those tribes who commented are invited to participate in this agreement as invited signatory parties; and

**WHEREAS**, this agreement is not applicable to undertakings located in tribal lands subject to the purview of a Tribal Historic Preservation Officer (THPO) pursuant to Section 101(d)(2)(D)(iii); and

**WHEREAS**, the City will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

**WHEREAS**, the City acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of properties with tribal religious and cultural significance; and

**WHEREAS**, the City has consulted with the entities listed in Exhibit C in the development of this Agreement, and invited those parties to be concurring parties to this Agreement; and

**WHEREAS**, the City has invited the public to consult on the development of this Agreement in the following ways: a notice of availability of the proposed Agreement and of a public hearing, as well as solicitation to comment, was published in the local newspaper of highest circulation and the local Spanish-language newspaper; and the proposed Agreement was made available in the City's Department of Community Investment and on the City's website.

**NOW, THEREFORE**, the City, the Indiana SHPO, and the HPC agree that the HUD Programs covered by this Agreement shall be administered in accordance with the following stipulations to satisfy the Section 106 responsibilities of the City for all individual undertakings of the program.

### **STIPULATIONS**

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

#### **I. PERSONNEL**

The City shall ensure that all historic preservation work carried out pursuant to this Agreement is performed by or under the direct supervision of a person or persons meeting at least the minimum qualifications for a professional in architecture, architectural history, or a related preservation field, as specified in the Secretary of the Interior's Professional Qualifications Standards (36 CFR

Part 61). The professional shall be either an employee of the City or an outside consultant retained by the City to perform historic preservation work. The City shall advise the Indiana SHPO in writing of all professional personnel selected to perform the historic preservation work and provide personnel qualifications. In the event the professional changes, the City shall notify the Indiana SHPO in writing of the change and submit the qualifications of the personnel selected to perform the historic preservation work using the appropriate form found on the Qualified Professionals section of the Indiana SHPO's website at <http://www.in.gov/dnr/historic>. If the City does not have a qualified professional in place or does not utilize a qualified outside consultant, then the City will comply with 36 CFR Sections 800.3 through 800.7 with regard to individual undertakings covered by this agreement.

## II. IDENTIFICATION OF HISTORIC PROPERTIES

- A. The City shall define the Area of Potential Effects (APE) for each undertaking and identify historic properties within the APE that may be affected by the project. The APE means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (see 36 C.F.R. § 800.16[d] for further guidance).
- B. In the course of conducting project reviews, the City shall note and continue to update the existing or current Indiana Historic Sites and Structures Inventory (IHSSI) for St. Joseph County and the IHSSI for the City of South Bend in consultation with the Indiana SHPO and according to the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation: (Standards and Guidelines for Identification and Evaluation; (48 FR 44720-26). Please note that, when available, the State Historic Architecture and Archaeological Research Database (SHAARD) should be used in place of the Interim Report book version of the IHSSI. Access to SHAARD is available through the Indiana SHPO's website. Updates to the inventory shall be provided in an annual report by the City to the Indiana SHPO as required by Stipulation IX.
- C. For projects involving properties that are not identified in the inventory but are 40 years old or older, the City shall apply the National Register of Historic Places (National Register) Criteria for Evaluation (36 CFR Section 36.6) to determine those properties' eligibility for inclusion in the National Register, and follow the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-42). If there is any question as to whether a property may meet the criteria, the City shall submit documentation to the Indiana SHPO for evaluation. If the City disagrees with the opinion of the Indiana SHPO, the City shall request a determination of eligibility from the Secretary of the Interior in accordance with applicable National Park Service regulations.
  1. To ensure application of the criteria for evaluation, properties that are not identified in the survey, but are 40 years old or older, shall be evaluated by a professional as defined in Stipulation I.

2. The City shall keep a written record of the reason why any property 40 years old or older does not appear to meet the criteria.
- D. If an undertaking may adversely affect a National Historic Landmark, the City shall request the Council and the Secretary of the Interior to participate in consultation to resolve any adverse effects, as outlined in 36 CFR 800.10.

### III. TREATMENTS

- A. Properties identified in the inventory as being individually rated Outstanding or Notable, rated Contributing to an identified district or properties that are individually listed or contributing to a listed district, or properties determined to be eligible for inclusion in the National Register by both the City and the Indiana SHPO shall be rehabilitated in accordance with the recommended approaches in the Secretary of the Interior's Standards for the Treatment of Historic Properties; Guidelines for Rehabilitation of Historic Buildings (Standards and Guidelines for Rehabilitation; National Park Service, 1995; 36 CFR Section 67.7).
1. To ensure conformance with the Standards and Guidelines for Rehabilitation, rehabilitation plans shall be reviewed by a professional, as defined in I, above, before construction begins.
  2. When conformance with the Standards and Guidelines for Rehabilitation is ensured, the City shall document that the project will have no adverse effect on historic properties within the project APE and retain documentation in individual project files.
  3. The City shall document the property, including photographs, work write-ups/journal, professional review, etc. before work begins and upon completion of the rehabilitation to evidence adherence to the Standards and Guidelines for Rehabilitation. The City shall retain documentation in individual project files.
- B. When it is determined that a project cannot adhere to the Standards and Guidelines for Rehabilitation or when demolition or relocation of, or any other adverse effect as defined in 36 CFR Part 800.5(a) on a property that meets the National Register criteria is proposed, the City shall apply the Criteria of Adverse Effect. Upon the City's conclusion of a Finding of Adverse Effect, or if there is any question as to whether a property may meet the Criteria of Adverse Effect, the City shall consult with the Indiana SHPO.
1. If the Criteria of Adverse Effect are met, the City will determine if project activities can be modified to avoid adverse effects. If adverse effects can be avoided through project modification, the City will document that the project will have no adverse effect on historic properties and retain documentation in individual project files.
    - a. If adverse effects cannot be avoided through project modification, the City will prepare documentation for individual submission to the Indiana SHPO that includes all project information and any mitigation proposals, requesting

Commented [KDM2]: APE already abbreviate in II.A

consultation to resolve adverse effects. Documentation required by the Indiana SHPO for consultation per the provisions of this Agreement shall meet the requirements in 36 CFR 800.11 and include, but may not be limited to, written descriptions of the project and affected historic properties (if any), reports demonstrating that properties are eligible (or not) for listing in the National Register, evaluations of effect, alternatives analysis, maps showing specific project locations and APes, and photographs.

- b. The Indiana SHPO will review and respond to the information submitted and may concur with the adverse effect determination, request additional information, or object to the finding or its basis. Upon receipt of concurrence from the Indiana SHPO, the City will also notify the ACHP as required by 36 CFR Section 800.6(a)(1).
  - c. The City will consult with the Indiana SHPO, the ACHP (if participating) and consulting parties to resolve adverse effects. Agreement among required signatories regarding the terms of mitigation proposed for the project will be memorialized in an MOA executed under 36 CFR Section 800.6.
- C. At any time during consultation, the City or the Indiana SHPO may request advice from the ACHP or ask for their involvement in consultation, in accordance with either 36 CFR Section 800.6(b)(2) or 36 CFR Section 800.7.

#### **IV. ARCHAEOLOGY**

- A. Prior to any ground-disturbing activities as part of new construction or demolition, site improvements, or other undertakings, the City shall notify the Indiana SHPO and request an opinion of the potential existence of significant archaeological resources. This stipulation shall not be applied to the rehabilitation of residential properties, when no additions are proposed.
  - 1. The City will provide information describing the proposed project activities and information about the project area's history and current condition to the Indiana SHPO, including maps and photographs. Indiana SHPO staff will then make a recommendation about whether an archaeological survey should be conducted.
  - 2. If the Indiana SHPO recommends that no survey is justified, then the City will document the outcome of this consultation within the individual project file. Projects that would otherwise be exempt from review may then conclude review and all documentation will be retained in the individual project file.
  - 3. For projects where the Indiana SHPO recommends that an archaeological survey is justified, an archaeological survey of the affected area shall be carried out in consultation with the Indiana SHPO. Archaeological testing, as appropriate, shall be undertaken in consultation with the

Indiana SHPO to determine if properties identified in the survey meet National Register criteria. If archaeological resources are found to meet the criteria, whenever feasible, they shall be avoided or preserved in place. When this is not feasible, the Indiana SHPO shall be consulted, and a treatment plan consistent with the ACHP's handbook, Treatment of Archaeological Properties, and approved by the Indiana SHPO shall be developed and implemented. The City will consult with the Indiana SHPO, the ACHP (if participating) and any consulting parties to resolve adverse effects. Agreement among required signatories regarding the terms of mitigation proposed for the project will be memorialized in an MOA executed under 36 CFR Section 800.6. All identification and testing efforts shall be in accordance with the Standards and Guidelines for Identification and Evaluation and appropriate internal guidance and regulation from the Indiana SHPO as well as the appropriate state statutes and rules.

- B. This stipulation shall not be interpreted to include projects where sidewalks or other minor paving or resurfacing shall occur in areas where previous sidewalks or paving already exists. It shall not be interpreted to include projects for the repair or replacement of existing water lines, sewer lines or septic systems within previously excavated trenches, or other exempt activities described in Stipulation V below.

#### V. EXEMPTED ACTIVITIES

The following proposed undertakings have limited potential to affect historic properties and may be approved by the City without further consultation with the Indiana SHPO or ACHP.

All undertakings not identified under either (A) or (B) of this Stipulation must be reviewed in accordance with 36 C.F.R. Part 800.

##### A. General Exemption

1. Projects on residential or non-residential buildings, structures, or facilities less than 40 years old. Projects may include rehabilitation, but not construction or demolition.
2. Acquisition of property which is limited to the legal transfer of title with no physical improvements or changes proposed.
3. Projects consisting of grants or loans to eligible families or entities to be applied solely to the purchase, refinancing, or leasing of residences or businesses.
4. Grants or loans to participants in any Economic Development program funded by CDBG which may be used for working capital, equipment, furniture, fixtures, and debt refinancing, or acquisition of non-historic building for reuse. Such activities shall require the Indiana SHPO review only if such activities should involve changes to structures which are either listed in or are considered eligible for inclusion in the National Register.
5. Purchase of equipment; including but not limited to maintenance tools, or supplies, school buses, lawn mowers, kitchen appliances, books, furniture that does not require permanent installation, etc.

6. Environmental and other studies
7. Information and financial services
8. Administrative and management activities
9. Inspections and testing of properties for hazards or defects
10. Purchase of insurance
11. Engineering and design costs
12. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.

## **B. Exempt Activities**

The list of exempt activities applies to all projects not otherwise made exempt under Section V(A) "General Exemption." 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**

In the event of unanticipated archaeological discoveries for any of the activities mentioned below, the Indiana SHPO shall be contacted within two (2) business days.

- a) Streets, driveways, alleys, and parking areas. Line painting, maintenance, repair or resurfacing 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.
- c) Site improvements. Repair or in-kind repair/replacement of site improvements, including, but not limited to fences, landscaping, steps not attached to any building
- d) Utilities. Installation, repair or replacement of gas, sanitary and storm sewer, water, electrical, cable or other underground utilities within previously disturbed land and public right-of-ways located within city limits.
- e) Park and playground equipment. Installation, repair or replacement of park and playground equipment, excluding buildings.
- f) Temporary structures. Installation of temporary construction-related structures including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers or restrooms.
- g) Street lighting and traffic signals. Repair and replacement of non-historic street lights, traffic signals, and traffic signs, outside of a listed or eligible historic district.
- h) Generators. Temporary installation of generators, and permanent installation of generators that are placed inside existing buildings or that occupy an area under 50 square feet behind the building they serve.
- i) Above Ground Utilities. Repair or replacement of existing wires, anchors, crossarms, and other miscellaneous hardware on existing overhead lines; not

including pole replacement or installation outside city limits. Water tower replacement is not exempt.

## 2. Exterior Rehabilitation

In the event of unanticipated archaeological discoveries for any of the activities mentioned below, the Indiana SHPO shall be contacted within two (2) business days.

- a) Foundations. Below-grade repair of brick or stone foundations and repairs to all other types of foundations.
- 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 or in-kind replacement of wall or siding material, including 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 when used according to Preservation Briefs listed below, heat plates or heat guns, or paint-removal chemicals, provided that the removal method is consistent with the provisions of 24 C.F.R. Part 35, "Lead-Based Poisoning Prevention in Certain Residential Structures," including Section 35.140, "Prohibited methods of paint removal" and National Park Service Preservation Briefs #1: *Cleaning and Water-Repellent Treatments for Historic Masonry Buildings*, #10: *Exterior Paint Problems on Historic Woodwork*, and #37: *Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*.
  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, ceilings, railing, balusters and balustrades, and lattice.
- g) Roofing. Repair or in-kind replacement of roof cladding and sheeting, flashing, gutters, soffits, and downspouts with no change in roof pitch or configuration.
- h) Awnings. Repair or in-kind replacement of awnings.
- i) Mechanical systems. Placement and installation of exterior HVAC mechanical units and vents not on the front and/or primary elevation, unless occurring in undisturbed areas.
- j) Accessibility ramps. Replacement or repair of existing accessibility ramps and installation of new accessibility ramps not on the front and/or primary elevation, unless occurring in undisturbed areas.
- 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. Installation of additional decorative or security lights not on the front and/or primary elevation.



m) Mothballing. Securing or mothballing a property by boarding over window and door openings, making temporary roof repairs, and/or ventilating the building in accordance with *Preservation Brief 31: Mothballing Historic Buildings*.

### 3. Interior Rehabilitation

- a) Mechanical systems. Installation, replacement or repair of plumbing, HVAC systems and units, hot water heaters, furnaces, electrical wiring and fire protection systems, provided no structural alterations are involved. Included are restroom improvements for handicapped access, 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 sheet 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, basements, attics and crawl 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 provisions of 24 C.F.R. Part 35 (“Lead-Based Poisoning Prevention in Certain Residential Structures”) and the lead based paint abatement or “Management in Place” activities carried out in accordance with *Preservation Brief #37: Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*, and/or asbestos abatement that does not involve removal or alteration of interior features.
- f) Bath and kitchen fixtures. Repair or replacement of non-historic bathroom and kitchen equipment and fixtures.
- g) Accessibility. Modification of a bathroom for handicapped access within the walls of the existing bathroom. Installation of wedges and removal of thresholds to facilitate access through door openings.

## VI. CONSULTING PARTIES

The City shall invite the participation of consulting parties as appropriate to the scale of the undertaking and the scope of Federal involvement. Parties that may have a consultative role in the Section 106 process include, but are not limited to the following: Federally recognized Indian tribes, THPO, representatives of local governments, county and municipal historic preservation commissions including those established under the Certified Local Governments (CLG) program, the public, and individuals and organizations with a demonstrated interest due to the nature of their legal or economic relation to the undertaking, or their concern for the undertaking's effects on historic properties.

## VII. TRIBAL CONSULTATION

- A. The City shall follow HUD Notice CPD-12-006: Process for Tribal Consultation in Projects That Are Reviewed Under 24 CFR Part 58.
- B. The City has sent the letter in Exhibit B to the tribes listed in Exhibit A. These letters have been individually addressed to the tribal leaders of the listed tribes which have expressed interest in Indiana, and those identified by referencing the

HUD Tribal Directory Assessment Tool (TDAT) at  
<http://egis.hud.gov/tdat/Tribal.aspx>.

- C. Unless a Tribe has indicated to the City that it wants to engage in government-to-government consultation with HUD, the City may initiate consultation with Tribes for individual undertakings carried out under the provisions of this Agreement. The City shall ensure that Tribes are provided information regarding proposed undertakings early in project planning and are invited to participate in consultation in accordance with the requirements of Section 101(d)(6) of the NHPA and 36 CFR Part 800. Upon receipt of a written request from any Tribe or officially designated representative of a Tribe to consult with the City, the City shall consult with that Tribe for the particular undertaking or program.
- D. If a Tribe indicates to the City that it wishes to engage in government-to-government consultation with HUD for an undertaking:
  - a. The City will forward that request to HUD
  - b. HUD may utilize the processes and exemptions in this Agreement in conducting its Section 106 review of the relevant undertaking.
  - c. Ground disturbing activities on the relevant undertaking will not proceed until HUD has concluded its government-to-government consultation with the requesting Tribe.

#### **VIII. PUBLIC NOTIFICATION AND INVOLVEMENT**

Each year the City shall notify the public of its current HUD programs and make available for public inspection documentation related to these programs. This documentation shall include:

- A. Types of activities undertaken with program funds during the prior year and activities projected for the current year.
- B. Information on identified historic properties that might be affected and the location of said properties.
- C. Funding level for the current program year.
- D. The way in which interested persons can obtain additional information on programs and advise the City, HUD, the Indiana SHPO, or the ACHP of any concerns they might have relative to program effects on historic properties.

#### **IX. MONITORING AND OVERSIGHT**

- A. The Indiana SHPO shall provide technical assistance, consultation, and advice as requested by the City in order to assist in carrying out the terms of this programmatic agreement.
- B. Documentation of all work undertaken in the HUD programs shall be retained by the City and available to the Indiana SHPO. The City shall submit a brief, written report to the Indiana SHPO on an annual basis, by January 31 of the following year, summarizing HUD-funded activities covered by the programmatic agreement; including information of how the City has evaluated historic resources and applied the Secretary of Interior's Standards (as necessary)

to projects and updates to the IHSSI for St. Joseph County and the IHSSI for the City of South Bend. The Indiana SHPO may request documentation be submitted or make a site visit to review the work outside of the annual reporting with reasonable notice.

- C. This Annual Report shall include:
  - 1. a list of projects, categorized by name, exempt status, whether or not a historic property was involved, the address and IHSSI site number of any historic properties involved, determination of effect
  - 2. the views of the City regarding the effectiveness of the Programmatic Agreement
  - 3. suggestions for additional actions that could be considered for inclusion in the Exempt Activities list.

## **X. DISPUTE RESOLUTION**

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

- A. Forward all documentation relevant to the dispute, including the City's proposed resolution, to the ACHP. The ACHP shall provide the 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, the 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. The 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, the City may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the City shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement and provide them and the ACHP with a copy of such written response.
- C. Carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

## **XI. EMERGENCIES**

- A. When an emergency undertaking is required, the City shall allow the Indiana SHPO five (5) business days from receipt of the information to respond, if feasible. Emergencies exist when there is a need to eliminate an imminent threat to health and safety of residents as identified by local or County building inspectors, fire department officials, or other local or County officials.
  - 1. The City shall forward documentation to the Indiana SHPO for review immediately upon notification that an emergency exists. Documentation should include a) nature of the emergency; b) the address of the historic

property involved; c) photographs showing the current condition of the building; and d) the time-frame allowed by local officials to respond to, or correct, the emergency situation.

2. The City shall consider mitigation measures recommended by the Indiana SHPO and implement them, if feasible.
- B. Undertakings limited to immediate rescue and salvage operations are exempt from this stipulation.

## **XII. POST REVIEW DISCOVERIES AND UNFORESEEN EFFECTS**

If, during the implementation of these programs, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or a known National Register historic property may be affected in an unanticipated manner, the City will assume its responsibilities pursuant to 36 C.F.R. Part 800.13.

- A. In the event that previously unidentified archeological sites or human remains are discovered during project construction, that portion of the project shall stop immediately within 100 feet of the discovery and the project manager shall notify the City, Indiana SHPO/THPO, and other consulting party signatories within 48 hours, and shall take appropriate steps to immediately secure the site.
- B. In addition, the project manager shall notify local and/or state law enforcement authorities including the county coroner and the Indiana SHPO.
- C. The City shall consult with the Indiana SHPO and Tribes to determine if the discovered site appears eligible for the National Register. If it does appear eligible, the City shall submit a treatment plan for the avoidance, protection, recovery of information, or destruction without data recovery to the Indiana SHPO for review and comment. The treatment plan shall be consistent with the ACHP's handbook Treatment of Archaeological Properties and subsequent amendments and Indiana SHPO guidelines. If human remains are discovered, the treatment plan shall follow the guidance in Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects, including appropriate consultation with descendent communities. Construction work in the area of the discovery shall not continue until the plan has been accepted by the signatory parties and implemented.
- D. All human burial sites in Indiana are protected under state statutes, and any undertaking that may affect a human burial site shall comply in accordance with any applicable Federal and State statutes and codes before the project resumes. If any archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (Indiana Code 14-21-1-27 and 29) requires that the discovery must be reported to the Department of Natural Resources within two (2) business days. In that event, please call (317) 232-1646. Be advised that adherence to Indiana Code 14-21-1-27 and 29 does not obviate the need to adhere to applicable federal statutes and regulations

**XIII. NOTIFICATION**

Notification or other communication between parties to this agreement should be made in care of addresses provided in Exhibit C.

**XIV. AMENDMENT**

Any party may request that this Agreement be amended, whereupon the City and the Indiana SHPO will consult with the other parties in accordance with 36 C.F.R. Part 800.14(b) to consider an amendment. Amendments will only be considered if made in writing and must be approved in writing by all parties to this Agreement to go in effect.

**XV. TERMINATION**

Any party to this Agreement may terminate its participation by providing thirty (30) days written notice to all other parties. In the event of termination, the City will comply with 36 C.F.R. Part 800 with respect to individual undertakings covered by this Agreement.

**XVI. TERM OF THE AGREEMENT**

Following signature by the City and the Indiana SHPO, this Agreement will be binding on a party upon the date of its signature and shall be in force until December 31, 2024. At any time in the twelve-month period prior to that date, any signatory may request an amendment to extend the duration of this Agreement in accordance with stipulation XIV.

**EXECUTION AND IMPLEMENTATION** of this Agreement evidences that the City has satisfied its responsibilities under Section 106 for undertakings as described in this Agreement and funded by the HUD Programs.

**SIGNATORIES:**

**Commented [KDM3]:** Question regarding these signatories and the list in Exhibit C – they do not match.

\_\_\_\_\_  
**Interim Director, Dept. of Community Investment, City of South Bend, Indiana** **Date**

\_\_\_\_\_  
**President, Historic Preservation Commission of South Bend and St. Joseph County, Indiana** **Date**

\_\_\_\_\_  
**Indiana Deputy State Historic Preservation Officer** **Date**

**APPROVED:**

**CITY OF SOUTH BEND, INDIANA,  
by and through its Board of Public Works**

\_\_\_\_\_  
Gary A. Gilot, President

\_\_\_\_\_  
Therese J. Dorau, Member

\_\_\_\_\_  
Elizabeth A. Maradik, Member

\_\_\_\_\_  
Genevieve E. Miller, Member

\_\_\_\_\_  
Laura O'Sullivan, Member

**ATTEST:**

\_\_\_\_\_  
Linda M. Martin, Clerk

DRAFT

**EXHIBIT A**

Kelli Mosteller, THPO  
Citizen Potawatomi Nation, Oklahoma  
1899 S. Gordon Cooper Drive  
Shawnee, OK 74801

Diane Hunter, THPO  
Miami Tribe of Oklahoma  
P.O. Box 1326  
Miami, OK 74355

Kenneth Meshigaud, Chairperson  
Hannahville Indian Community, Michigan  
N14911 Hannahville B1 Road  
Wilson, MI 49896

John Warren, Chairperson  
Pokagon Band of Potawatomi Indians,  
Michigan and Indiana  
P.O. Box 180  
Dowagiac, MI 49047

Wesley Andrews, THPO  
Little Traverse Bay Bands of Odawa Indians,  
Michigan  
7500 Odawa Circle  
Harbor Springs, MI 49740

Thomas Wabmum, THPO  
Prairie Band Potawatomi Nation  
16281 Q Road  
Mayetta, KS 66509

Harold Frank, Chairperson  
Forest County Potawatomi Community of Wisconsin  
P.O. Box 340  
Crandon, WI 54520

John Barrett, Chairperson  
Citizen Potawatomi Nation, Oklahoma  
1601 S. Gordon Cooper Drive  
Shawnee, OK 74801

Douglas Lankford, Chief  
Miami Tribe of Oklahoma  
P.O. Box 1326  
Miami, OK 74355

Brett Barnes, THPO  
Eastern Shawnee Tribe of Oklahoma  
12705 E. 705 Road  
Wyandotte, OK 74370

Marcus Winchester, THPO  
Pokagon Band of Potawatomi Indians,  
Michigan and Indiana  
P.O. Box 180  
Dowagiac, MI 49047

Regina Gasco-Bentley, Chairperson  
Little Traverse Bay Bands of Odawa Indians,  
Michigan  
7500 Odawa Circle  
Harbor Springs, MI 49740

Liana Onnen, Chairperson  
Prairie Band Potawatomi Nation  
16281 Q Road  
Mayetta, KS 66509

## EXHIBIT B

**Date**

[Name, Title]  
[Organization]  
[Address]

Re: Notification of Intention to Implement a Programmatic Agreement for HUD-Funded Programs and  
Invitation to Participate in Consultation Regarding Projects Carried out Under These Programs

Dear [Mr./Ms. Name]:

The City of South Bend intends to enter into a Programmatic Agreement (PA) with the Indiana State Historic Preservation Office (SHPO) to facilitate Section 106 compliance for programs using funding originating from the U.S. Department of Housing and Urban Development (HUD).

Under the provisions of this PA, the City would assume the function of initiating the Section 106 process for projects utilizing HUD funding within their jurisdiction. Accordingly, under the PA, the City would be initiating Section 106 consultation with the SHPO and other consulting parties, including your tribe.

The City takes its responsibility to consult with Indian Tribes seriously and therefore wants to ensure that your tribe is comfortable proceeding under such an arrangement. Accordingly, under the terms of this PA, on receipt of a written request from any Indian Tribe or officially designated representative of an Indian Tribe, the City will consult with that Indian Tribe in completing the Section 106 review process with regard to ground-disturbing activities located in areas designated as being of concern to any Indian Tribe. Please respond to this letter stating such a preference and identifying if there are areas of concern to your tribe within the City of South Bend.

If your tribe prefers to conduct government-to-government consultations directly with the Department of Housing and Urban Development, as opposed to the City, please use the following address for such letters:

U.S. Department of Housing and Urban Development  
Attn: Secretary of HUD  
451 7<sup>th</sup> Street S.W.  
Washington, DC 20410

Understand that if we do not get a response from your tribe, we will assume that your tribe does not object to the City's initiation of consultation with your tribe regarding undertakings under the scope of the PA. We appreciate your attention to this matter. If you have any questions, please contact me by phone (574) 235-5841 or email [ltimmer@southbendin.gov](mailto:ltimmer@southbendin.gov). Thank you.

Sincerely,

Lory L. Timmer  
Manager, Neighborhood Grants  
Department of Community Investment  
City of South Bend

Enclosures:

Draft Programmatic Agreement for HUD-funded programs

Copy:

Chad Slider, DHPA, 402 W Washington Street, Room W274, Indianapolis, IN 46204



## EXHIBIT C

### REQUIRED SIGNATORIES

**Interim Director, Department of Community Investment, City of South Bend**

227 W. Jefferson Boulevard, Suite 1400S  
South Bend, IN 46601  
(574) 235-9371

**President, Historic Preservation Commission of South Bend and St. Joseph County, Indiana**

227 W. Jefferson Boulevard, Suite 1400S  
South Bend, IN 46601  
(574) 235-7672

**Indiana State Historic Preservation Officer**

402 W. Washington Street, Room W274  
Indianapolis, IN 46204-2739  
(317) 232-1646

**South Bend Board of Public Works**

Attn. Clerk  
227 W. Jefferson Boulevard, Suite 1300N  
South Bend, IN 46601  
(574) 235-9253

### INVITED CONSULTING PARTIES

**Advising Council on Historic Preservation**

401 F Street NW, Suite 308  
Washington, DC 20001-2637  
(202) 517-0200

**Travis Childs, St. Joseph County Historian**

808 W. Washington Street  
South Bend, IN 46601  
(574) 235-9664 ext. 242  
[tchilds@historymuseumSB.org](mailto:tchilds@historymuseumSB.org)

**History Museum**

<https://historymuseumSB.org>  
808 W. Washington Street  
South Bend, IN 46601  
(574) 235-9664 ext. 227  
Randy Ray, Executive Director  
[director@historymuseumSB.org](mailto:director@historymuseumSB.org)

**Michiana Jewish Historical Society**

<https://michianajewish.org>

3202 Shalom Way

South Bend, IN 46615

(574) 245-5850

Margaret Goldberg, Executive Director

[history@michianajewish.org](mailto:history@michianajewish.org)

**South Bend Area Genealogical Society**

<https://www.sbags.org/main.htm>

209 Lincolnway East

Mishawaka, IN 46544

Alice Clark, President

[c.alice@sbcglobal.net](mailto:c.alice@sbcglobal.net)

**Indiana Landmarks – Northern Regional Office**

<https://www.indianalandmarks.org/contact/northern-regional-office/>

801 W. Washington Street

South Bend, IN 46601

(574) 232-4534

Todd Zeiger, Director

[tzeiger@indianalandmarks.org](mailto:tzeiger@indianalandmarks.org)

DRAFT