



Division of Historic Preservation & Archaeology-402 W. Washington Street, W274 Indianapolis, IN 46204-2739  
Phone 317-232-1646-Fax 317-232-0693 dhpa@dnr.IN.gov



September 11, 2017

Brad King  
Community Development  
City of Muncie  
300 N. High St.  
Muncie, IN 47305

Federal Agency: City of Muncie as the delegatee of the U.S. Department of Housing and Urban Development

Re: Signature request for the City of Muncie's Programmatic Agreement among the City and the State Historic Preservation Office for future HUD grant funded programs (DHPA #21183)

Dear Mr. King:

Enclosed please find the programmatic agreement ("PA") between the City of Muncie and the Indiana SHPO for programs originating from the U.S. Department of Housing and Urban Development. Deputy State Historic Preservation Officer ("Indiana SHPO") Mitchell K. Zoll, on behalf of Cameron F. Clark, has signed the enclosed PA, indicating his approval of the agreement.

We are returning the PA to you, so that it may be transmitted with the supporting documentation to the Advisory Council on Historic Preservation, pursuant to 36 CFR § 800.6(b)(1)(iv). The PA may be transmitted to:

Reid J. Nelson, Director  
Office of Federal Agency Programs  
Advisory Council on Historic Preservation  
Pension Building  
401 F Street NW, Suite 308  
Washington DC 20001-2637

If you have questions about our comments, please contact Ashley Thomas of our office at (317) 234-7034 or [asthomas@dnr.IN.gov](mailto:asthomas@dnr.IN.gov).

Very truly yours,



Mitchell K. Zoll  
Deputy State Historic Preservation Officer

MKZ:ADT:adt

Enclosures (3)

20171612

PROGRAMMATIC AGREEMENT  
AMONG THE CITY OF MUNCIE  
AND THE  
INDIANA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE ADMINISTRATION OF CERTAIN  
HUD-ASSISTED PROJECTS AND PROGRAMS SUBJECT TO  
24 C.F.R. PART 58  
IN  
THE STATE OF INDIANA

**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 of Muncie (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 Downpayment Initiative Program
- Community Development Block Grant Program
- 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

**HIST. PRES. & ARCH.**

**AUG 23 2017**

**RECEIVED**

**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;

**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 Programmatic Agreement (Agreement) and the Council has decided not to participate and sign this Agreement; and

**WHEREAS**, the City has invited the Delaware Nation, the Miami Tribe of Oklahoma, and the Delaware Tribe of Indians 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 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 Delaware County Historian, Delaware County Historical Society, Indiana Landmarks Eastern Regional Office, and the Muncie Historic Preservation Commission 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: published notice in The Star Press, posted notice in City Hall, posted notice on City's Facebook and website;

**NOW, THEREFORE**, the City and the Indiana SHPO 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 C.F.R. 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 C.F.R. 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 Area of Potential Effects (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 Delaware County and the IHSSI for the City of Muncie 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 C.F.R. 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 C.F.R. 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 State Historic Preservation Office 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 C.F.R. 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 area of potential effects (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 C.F.R. 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 consultation to resolve adverse effects. Documentation required by the SHPO for consultation per the provisions of this

Agreement shall meet the requirements in 36 C.F.R. 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 C.F.R. 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 C.F.R. 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 C.F.R. Section 800.6(b)(2) or 36 C.F.R. 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 each tribe claiming interest in the county 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 and each tribe claiming interest in the county, 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 and each tribe claiming interest in the county. Archaeological testing, as appropriate,

shall be undertaken in consultation with the Indiana SHPO and each tribe claiming interest in the county 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 and each tribe claiming interest in the county 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), each tribe claiming interest in the county 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 C.F.R. 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 which are not ground-disturbing.
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 and each tribe claiming interest in the county 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 and each tribe claiming interest in the county 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.
- g) Bath and kitchen fixtures. Repair or replacement of non-historic bathroom and kitchen equipment and fixtures.
- h) 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

- A. 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, Tribal Historic Preservation Officers, 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 C.F.R. Part 58.
- B. The City has sent the letter in Exhibit C to the tribes listed in Exhibit B. 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 C.F.R. 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 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 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 Delaware County and the IHSSI for the City of Muncie. 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 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, SHPO/THPO, and other consulting party signatories within 48 hours, and shall take appropriate steps to immediately secure the site.
- B. If necessary, the project manager shall notify local and/or state law enforcement. If human remains are encountered, the project manager shall contact the county coroner.
- C. The City shall consult with the 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 SHPO for review and comment. The treatment plan shall be consistent with the ACHP's handbook Treatment of Archaeological Properties and subsequent amendments and 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.

- E. The Miami Tribe of Oklahoma reserves the legal right to be notified and consulted with regarding any unanticipated discoveries which are determined to have Native American affiliation. This includes the ability to be consulted with in a timely manner regarding identification and evaluation of discovered properties to determine if they are properties to which the tribe attaches religious or cultural significance. Additionally, if a discovered property is one to which the Tribe attaches religious or cultural significance, the Tribe maintains the full array of rights regarding consultation and involvement in the Section 106 process.

### **XIII. NOTIFICATION**

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

### **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**

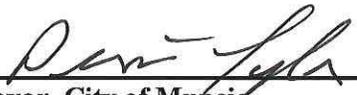
Any party to this Agreement may terminate its participation by providing thirty (30) days written notice to all other parties. In the event of termination, the City will comply with 36 C.F.R. Part 800 with respect to individual undertakings covered by this Agreement.

### **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, 2022. 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:**

  
\_\_\_\_\_  
Mayor, City of Muncie 8-7-17  
Date

  
\_\_\_\_\_  
Indiana Deputy State Historic Preservation Officer 7-6-2017  
Date

  
\_\_\_\_\_  
Delaware Nation President 8/21/17  
Date

**EXHIBIT A**

**Mayor**  
City of Muncie  
300 N. High Street  
Muncie, IN 46204  
(765) 747-4845

**Indiana State Historic Preservation Officer**  
402 West Washington Street, Room W256  
Indianapolis, Indiana 46204-2739  
(317) 232-1646

**Delaware Nation**  
31064 State Highway 281  
PO Box 825  
Anadarko, OK 73005  
(405) 247-2448 x1403

**Advisory Council on Historic Preservation**  
401 F Street NW, Suite 308  
Washington, DC 20001-2637  
Phone: (202) 517-0200

**EXHIBIT B**

The following have been invited to be Consulting Parties to the PA process:

Ms. Ashley Thomas  
Indiana Division of Historic Preservation  
& Archaeology  
402 W. Washington Street, Room W274  
Indianapolis, IN 46204

Mr. J.P. Hall  
Indiana Landmarks  
Eastern Regional Office  
P.O. Box 284  
Cambridge City, IN 47327

Mrs. Margaux Dever  
Muncie Historic Preservation Commission  
2708 N Belmont Dr.  
Muncie, IN 47304

Mr. Jim Waechter  
Delaware County Historical Society  
120 E. Washington St.  
Muncie, IN 47305

Ms. Susan Smith  
Delaware County Historian  
1200 N. Minnetrista Parkway  
Muncie, IN 47303

Mr. Cleanan Watkins, President  
Delaware Nation  
P.O. Box 825  
Anadarko, OK 73005

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

Mr. Chester Brooks, Chief  
Delaware Tribe of Indians  
5100 Tuxedo Blvd.  
Bartlesville, OK 74006

## EXHIBIT C

Letters to Consulting Parties:

DATE

NAME  
ADDRESS  
ADDRESS

Re: Notification of intention to implement Programmatic Agreement for HUD-funded programs and invitation to participate in consultation regarding projects carried out under these programs.

Dear Mr./Ms. NAME:

Section 106 of the National Historic Preservation Act requires that the City of Muncie identify organizations with an interest in historic preservation and invite them to participate in consultation regarding the effects of projects carried out by the City using federal funds on historic properties.

The City intends to enter into a new Programmatic Agreement with the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (DHPA) to facilitate Section 106 compliance for programs using funding originating from the U.S. Department of Housing and Urban Development (HUD). The agreement requires that the City notify local/county historical societies, preservation organizations, and other concerned parties about the execution of this agreement so that they will be aware of the process that the City will follow to consider the effects of projects on historic properties. The City must also provide information to the organizations regarding how they can obtain information and submit comments regarding specific projects utilizing federal funds.

You will find enclosed a copy of the most recent public notice issued for this program on March 10, 2017. This notice provides information about how your organization may obtain information about specific projects and the process that has been established for interested parties to provide comments. Also enclosed is a copy of the draft Programmatic Agreement.

The City welcomes your participation in consultation regarding the effects of federally funded projects on historic properties. Please provide any questions or comments regarding the proposed programmatic agreement within 30 days of receipt of this letter. You may contact me by phone at (765) 747-4825 or email at [bking@cityofmuncie.com](mailto:bking@cityofmuncie.com). Thank you.

Sincerely,

Brad King, Historic Preservation Officer  
Office of Community Development  
City of Muncie

Enclosures;  
Draft Programmatic Agreement for HUD-funded programs  
Public notice for HUD-funded programs

## EXHIBIT D

Notice of Public Invite to Consult on PA:

### **Section 106, National Historic Preservation Act Invitation to Consulting Parties**

Section 106 of the National Historic Preservation Act requires that the City of Muncie identify organizations with an interest in historic preservation and invite them to participate in consultation regarding the effects of projects carried out by the City using federal funds on historic properties. As a Certified Local Government, the City performs many of the Section 106 responsibilities under a Programmatic Agreement for its programs using funding originating from the U.S. Department of Housing and Urban Development (HUD).

The City intends to enter into a new Programmatic Agreement with the Indiana Department of Natural resources, Division of Historic Preservation and Archaeology (DHPA) to facilitate Section 106 compliance for programs using HUD funding. The agreement requires that the City notify local/county historical societies & preservation organizations about the execution of this agreement so that they will be aware of the process that the City will follow to consider the effects of projects on historic properties. The City must also provide information to the organizations regarding how they can obtain information and submit comments regarding specific projects utilizing federal funds.

Persons or organizations wishing to view or comment on the proposed Programmatic Agreement or who want further information should contact Brad King, Historic Preservation Officer, City of Muncie, 300 N. High St., Muncie, Indiana 47305 or (765)747-4825 or [bking@cityofmuncie.com](mailto:bking@cityofmuncie.com) by Wednesday, July 7, 2017.

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Please publish in the Muncie Star Press on Wednesday, June 3, 2017

## EXHIBIT E

Notice to the Public on HUD-funded Programs:

### PUBLIC MEETING NOTICE

The City of Muncie Community Development Office is seeking input in finalizing the Annual Action Plan for Program Year 2017 (06/01/2017 – 05/31/2018) for the Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) funds. Muncie citizens are invited to participate in a discussion about the city's community development needs, and how we plan to address those needs during the program year. A public meeting for these purposes will be held on Wednesday, April 29th from 10:30-11:30 a.m. in the City Hall Auditorium, 300 N. High Street, Muncie, IN. Accommodations will be made for those who request them.

The City's HUD allocation is anticipated to be approximately \$1,107,934 (CDBG) and \$404,351 (HOME). The CDBG program typically includes funding for street paving, sidewalks, park improvements, rehabilitation of public facilities, public services, demolition/deconstruction of blighted structures, planning and administration. HOME activities typically include rental housing rehabilitation, HOME program administration, Community Housing Development Organization (CHDO) set-aside and administration. Proposed budgets, projects and activities for PY2017 CDBG and HOME will be presented at this public meeting.

For more information regarding the public meeting, contact the Community Development Office Monday through Friday 8:00 a.m. – 4:00 p.m. by phone (765-747-4825) or email ([communitydev@cityofmuncie.com](mailto:communitydev@cityofmuncie.com)). The public is invited to comment on the draft PY2017 Action Plan, which will be posted on the CD Website ([www.cityofmuncie.com](http://www.cityofmuncie.com)) from 3/15/17 through 4/14/17. Hard copies will be available for review at Muncie Public Libraries, and Mayor Tyler's Office and the Community Development Office (3rd floor of City Hall). Individuals requiring special accommodations or alternative formats may contact the office.