

DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

MEMORANDUM OF AGREEMENT
AMONG
THE TEXAS DEPARTMENT OF TRANSPORTATION,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE AMARILLO HELIUM PLANT

This Memorandum of Agreement (MOA) is between the Texas Department of Transportation (TxDOT), the Texas Historical Commission (THC) acting as the Texas State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP). TxDOT, SHPO, and ACHP are collectively referred to herein as the "Signatories," and individually as a "Signatory."

WHEREAS, Federal Highway Administration (FHWA) provides and administers funds to the State of Texas through TxDOT under the Federal-Aid Program as authorized by 23 U.S.C. 104(D); and

WHEREAS, FHWA assigned to TxDOT the responsibility for compliance with Section 106 of the National Historic Preservation Act (NHPA) as pursuant to the "Memorandum of Understanding between Federal Highway Administration, Texas Division (FHWA) and the Texas Department of Transportation Concerning State of Texas' Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327 (December 16, 2014)" (NEPA Assignment MOU); and

WHEREAS, TxDOT is responsible for assuring compliance with Section 106 of the NHPA of 1966, as amended (54 USC 306108), in accordance with regulations outlined in 36 CFR 800 and Texas' apportioned federal funds under the Federal-Aid Program; and

WHEREAS the "Programmatic Agreement Among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings" (Section 106 PA, 2015) established protocols for streamlined Section 106 project review in Texas; and

WHEREAS, on October 15, 2007, the United States of America through the Administrator of General Services included a perpetual preservation covenant (Covenant) in the Deed Without Warranty (Deed), attached as Attachment A, that conveyed the Amarillo Helium Plant (the Helium Plant) to AHP, L.L.C.; and

WHEREAS, the Helium Plant is currently privately owned; and

WHEREAS, the owner of the Helium Plant has a demonstrated interest in preserving and maintaining the property and enabling its long-term future use; and

WHEREAS, TxDOT proposes to construct Loop 335, Segment B-2 (the Loop 335 Project), through part of the Helium Plant. The Helium Plant was previously determined eligible for listing in the National Register of Historic Places at the national level of significance. In consultation with TXDOT, SHPO has determined that such an action would cause an adverse effect under 36 CFR 800, and

WHEREAS, The Loop 335 Project will require the acquisition of part of the Helium Plant property (the TxDOT Acquisition) from a private owner, the specific parcel more particularly described in Attachment B to this document, which is incorporated for all purposes as if it were set forth fully herein; and

WHEREAS, subsequent to the execution of this MOA, TxDOT shall separately negotiate acquisition of the section of the Helium Plant parcel required to construct Loop 335 through the facility according to state law and TxDOT policy; and

WHEREAS, all of the parties agree that there are strong public interests and benefits to be gained by both (1) constructing the Loop 335 Project in the proposed Helium Plant location, and (2) dedicating funds

DRAFT

57 from the Loop 335 Project to protect and enhance the historic value of the Helium Plant and its long-term
58 stability; and

59
60 **WHEREAS**, continuation of the Covenant restrictions on the remainder of the Helium Plant property and
61 the stipulations below, including the stipulation related to the disbursement of monies from the Texas
62 Preservation Trust Fund (TPTF) program for the preservation of the Helium Plant, ensures that this MOA
63 accomplishes a public purpose and protects the public interest; and

64
65 **WHEREAS**, the SHPO consulted with the ACHP, as set forth under Section V.G. of the Deed, on
66 modifying the Covenant; and

67
68 **WHEREAS**, TxDOT consulted with the Amarillo Historical Preservation Foundation (AHPF), Preservation
69 Texas (PT), the Society for Industrial Archeology (SIA), and the National Trust for Historic Preservation
70 (Trust) and invited them to sign this MOA as Concurring Parties; and

71
72 **WHEREAS**, TxDOT, SHPO, and the ACHP are the Signatories to this Agreement and as such have the
73 sole authority to execute, amend, or terminate it; pursuant to the terms set out in stipulations; and

74
75
76 **NOW, THEREFORE**, in accordance with the provisions of the Section 106 PA, 2015, the following sets
77 forth commitments to mitigate adverse effects triggered by the Loop 335 Segment B-2 project's
78 implementation.

80 81 **STIPULATIONS**

82
83 TxDOT, as assigned by FHWA under the NEPA Assignment MOU, shall ensure that the following
84 stipulations are carried out:

85 86 **APPLICABILITY**

87 This MOA memorializes understandings between TxDOT and the THC with respect to the acquisition,
88 treatment, and resolution of adverse effects to the Amarillo Helium Plant.

- 89
90 I. Use of TxDOT Funds
- 91 a. In consideration of a payment from TxDOT to THC of an amount to be negotiated (the
92 TxDOT Funds), the THC shall cancel the Covenant for the TxDOT Acquisition, as
93 described in Attachment B.
 - 94
95 b. The THC shall exercise its discretion in use of the TxDOT Funds. In general terms, THC
96 contemplates using the TxDOT Funds to minimize and mitigate harm to the Helium Plant
97 from the Loop 335 Project. THC will use the TxDOT Funds in such ways that result in an
98 overall enhancement of the Helium Plant when compared to both the future do-nothing or
99 avoidance alternatives, as well its present condition.
 - 100
101 c. THC currently contemplates the following with respect to the TxDOT Funds.
 - 102 i. Supplement the statewide covenant and easement monitoring program.
 - 103 ii. Use of the Texas Preservation Trust Fund (TPTF) grant program to hold monies
104 dedicated to the long-term preservation of the Helium Plant site. The monies
105 would be used for both preservation planning and building stabilization and
106 rehabilitation, as per Stipulation III.
 - 107
108 d. THC agrees and acknowledges that the Helium Plant property, taken as a whole, will
109 realize substantial and significant long-term historic preservation benefits through its use

of the TxDOT Funds. THC acknowledges that these benefits far outweigh losses from the TxDOT Acquisition.

II. Mitigation for Adverse Effects to the Amarillo Helium Plant

- a. TxDOT shall prepare a National Register Nomination for the Amarillo Helium Plant and present copies to the private owner and the THC to use as they see fit.
- b. TxDOT shall reformat existing research on the history of helium production in Texas for electronic distribution by the THC and Consulting Parties.
- c. TxDOT shall construct a pull-off in its existing right-of-way that would improve access to the THC historical marker in front of the Helium Plant if doing so is consistent with public safety.
- d. SHPO shall publish materials produced by TxDOT on the SHPO website, and social media sites as appropriate, and may write content to summarize, publicize, and otherwise highlight information related to this MOA.
- e. Consulting Parties and SHPO shall comment on educational materials produced per this MOA within a concurrent 30-day period to TxDOT.

III. Use of THC's Texas Preservation Trust Fund

- a. Attachment D outlines use of the Texas Preservation Trust Fund (TPTF) that will be set aside for planning and preservation activities at the Amarillo Helium Plant property
- b. Through the TPTF program and the preservation covenant on the site, THC will encourage planning for the site, for which access to the property will be negotiated with the owner or the owner's delegate.
 - i. The priorities and standards for projects that will be funded through the TPTF will follow Attachment D.
 - ii. The owner shall lead, or delegate lead of, Preservation Planning efforts.
 - iii. Preservation Planning may also include development of architectural and/or engineering drawings for rehabilitation of one or more components of the Helium Plant site, such as the Administration Building.
- c. The remainder of the TPTF funds shall be set aside for development projects at the site in accordance with Attachment D.

IV. Review

A compliance review shall be completed within two months on written request of a Signatory or Concurring Party.

V. Dispute Resolution

Disputes will be resolved using the process outlined in Stipulations X(B) and X(C) of the Section 106 PA, 2015 (Attachment C) and successor agreements.

VI. Amendment

This MOA may be amended by the written concurrence of all Signatories. Any Signatory to this Agreement may request that it be amended, whereupon the Signatories will consult to reach a consensus on the proposed amendment. TxDOT will seek input from the Concurring Parties on any proposed amendments. Any amendment to this Agreement must be signed by all Signatories. TxDOT will provide copies of any amendment to the Concurring Parties.

161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201

VII. Annual Consultation

The Signatories and Consulting Parties shall consult annually to update each other on activities and assess the effectiveness of this MOA.

VIII. Assignment

The Signatories to this agreement may not assign this agreement to any other person or entity without the express prior written consent of the other Signatories or their successors in interest, as applicable. A putative assignment made without such required consent will have no effect.

IX. Termination

Any Signatory to this MOA may terminate it by submitting a thirty (30) calendar-day notice in writing to all Signatories and Consulting Parties, provided the Signatories and Consulting Parties continue to consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination.

Regardless of termination of this MOA, the obligations under the Covenant on the remaining Helium Plant property will remain in effect in perpetuity. In addition, termination of this MOA will have no effect on any contractual obligations separately entered into, including the acquisition by TxDOT, the Covenant on the remaining Helium Plant property, or any agreements entered into under the TPTF for the use of grant funds.

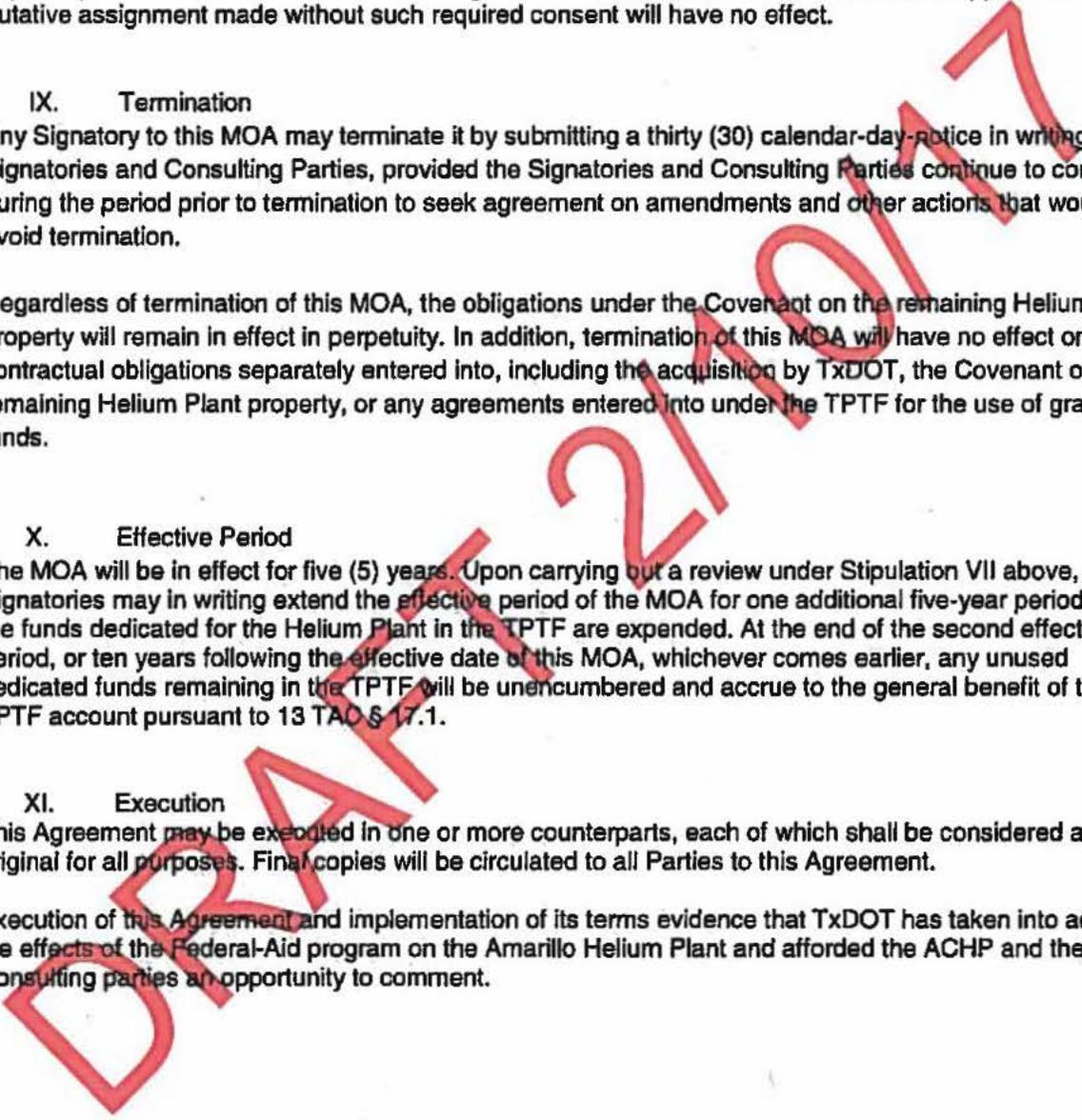
X. Effective Period

The MOA will be in effect for five (5) years. Upon carrying out a review under Stipulation VII above, the Signatories may in writing extend the effective period of the MOA for one additional five-year period until the funds dedicated for the Helium Plant in the TPTF are expended. At the end of the second effective period, or ten years following the effective date of this MOA, whichever comes earlier, any unused dedicated funds remaining in the TPTF will be unencumbered and accrue to the general benefit of the TPTF account pursuant to 13 TAC § 17.1.

XI. Execution

This Agreement may be executed in one or more counterparts, each of which shall be considered an original for all purposes. Final copies will be circulated to all Parties to this Agreement.

Execution of this Agreement and implementation of its terms evidence that TxDOT has taken into account the effects of the Federal-Aid program on the Amarillo Helium Plant and afforded the ACHP and the Consulting parties an opportunity to comment.



202

List of Attachments

203

204 **Attachment A** – Original Deed (with original covenant)

205 **Attachment B** – Document describing proposed TxDOT acquisition

206 **Attachment C** – Section 106 PA, 2015

207 **Attachment D** – Application of Texas Historical Commission Rules for the Texas Preservation
208 Trust Fund to the Earmarked Funds for the Amarillo Helium Plant

209 **Attachment E** – List of Consulting Parties

210

DRAFT 2/10/17

Return to: ND2
Republic Title of Texas, Inc.
2626 Howell Street, 10th Floor
Dallas, Texas 75204
OTR 31642 ND2

01114568

VOL. 3934 PAGE 66

DEED WITHOUT WARRANTY

STATE OF TEXAS X

KNOW ALL BY THESE PRESENTS:

COUNTY OF POTTER X

This Deed Without Warranty is made this 25 day of October, 2007, by and between the United States of America, acting by and through the Administrator of General Services, 819 Taylor St., Fort Worth, Texas 76102, (hereinafter sometimes called "Grantor"), under and pursuant to the powers and authority of 40 U.S.C. 541, as amended, and the regulations and orders promulgated thereunder, and AHP, L.L.C., 11506 Nicholas Street, Suite 200, Omaha, NE 68154 (hereinafter sometimes referred to as "Grantee").

NOW, THEREFORE, Grantor and Grantee make the following respective agreements, assignments, reservations, restrictions, covenants, exceptions, notifications, and conditions hereinafter set forth.

I. Consideration and Conveyance of the Fee Estate

Grantor, for and in consideration of: (i) the sum of Four Hundred Eighty Thousand Dollars (\$480,000.00), duly paid by the Grantee, the receipt of which is hereby acknowledged, and (ii) the specific agreements hereinafter made by Grantee, for itself and its heirs, successors and assigns, to abide by and take subject to all reservations, restrictions, covenants, exceptions, notifications, conditions and agreements herein set forth in this Deed Without Warranty, does hereby grant, convey, remise, release and forever deed to Grantee, its heirs, successors and assigns, without any warranty whatsoever, under and subject to the reservations, restrictions, covenants, exceptions, notifications, conditions and agreements herein set forth, all right, title and interest in and to the real property hereinafter described, together with all hereditaments, appurtenances and tenements therein and all reversions, remainders, issues, profits, and other rights belonging or related thereto, situate, lying, and being in the City of Amarillo, Potter County, State of Texas, and described in detail as follows:

FEE ESTATE

A 18.38 acre tract of land being that same tract of land described in that certain Warranty Deed recorded in Volume 181, Page 702 of the Deed Records of Potter County, Texas all situated in Section 61, Block 9 B.S.& F. Survey, Potter County, Texas, and said 18.38 acre tract being further described by metes and bounds as follows:

Commencing at a 1/2 inch iron rod, found the northwest corner said Section 61;

Thence S. 00°10'41" E. bearings contained herein are relative to true north as determined by G.P.S. observation 40.0 feet along the west line of said Section 61, from whence a 1/2 inch iron rod, found at the southwest corner of said Section 61 bears 00°10'41" E. 5332.40 feet;

Thence S. 89°45'08" E., 40.0 feet to a 1/2 inch iron rod with a cap stamped "KEYS R.P.L.S. 2507," set at the northwest and the beginning corner of this tract of land;

Thence S. 89°45'08" E., 1200.29 feet to a 1/2 inch iron rod with a cap stamped "KEYS R.P.L.S. 2507," set at the northeast corner of this tract of land same being and most northerly northwest corner of Soncy Heights an addition to the City of Amarillo, Potter County, Texas, according to the recorded map or plat thereof, of record in Volume 151, Page 173 of the Deed Records of Potter County, Texas from whence a 3/8 inch iron rod with a cap stamped "R.P.L.S. 4664," found bears S. 89°45'08" E. 1362.58 feet.

Thence S. 00°10'41" E. along the west line of said Soncy Heights at 218.84 feet pass a ½ inch iron rod with a cap stamped "DORSEY R.P.L.S. 1912," found at the northwest corner of a 7.78 acre tract of land as described in that certain Warranty Deed recorded in Volume 2304, Page 348 of the Deed Records of Potter County, Texas a total distance of 682.68 feet to a ½ inch iron rod with a cap stamped "KEYS R.P.L.S. 2507," set at the southeast corner of this tract of land and on the north boundary line of a 20 foot wide Southwestern Public Service Company easement as described in said Volume 181, Page 702;

Thence N. 88°15'55" W. along the north line of said easement and parallel to an abandoned railroad right-of-way as described in that certain Warranty Deed recorded in Volume 2908, Page 456 of the Official Public Records of Potter County, Texas, at 1097.08 pass a 4" fence post, found at the southeast corner of a 0.26 acre tract of land described herewith a total distance of 1200.92 feet to a point on a 4" fence corner post, found at the southwest corner of this tract of land;

Thence N. 00°10'41" W. parallel with and 40 feet west of the west line of said Section 61, at 107.54 past a 4" fence post, found at the northwest corner of said 0.26 acre tract of land described herewith, a total distance of 651.51 feet to the Point of Beginning.

A 0.26 acre tract of land out of a tract of land as described in that certain Warranty Deed recorded in Volume 181, Page 702 of the Deed Records of Potter County, Texas all situated in Section 61, Block 9 B.S.&F. Survey, Potter County, Texas, and said 0.26 acre tract being further described by metes and bounds as follows:

COMMENCING at a ½ inch iron rod, found at the northwest corner said Section 61;

Thence S. 00°10'41" E. bearings contained herein are relative to true north as determined by G.P.S. observation 582.94 feet along the west line of said Section 61, from whence a ½ inch iron rod, found at the southwest corner of said Section 61 bears S. 00°10'41" E. 4789.46 feet;

Thence S. 88°16'20" E. 40.0 feet to a point on a 4" fence post, found at the northwest and BEGINNING CORNER of this tract of land from whence a ½ inch iron rod with a cap stamped "KEYS R.P.L.S. 2507," found at the northwest corner of a 18.38 acre tract of land described herewith bears N. 00°10'41" W. 543.97 feet;

Thence S. 88°16'20" E. 103.67 feet along a fence to a 3" fence corner post, found at the northeast corner of this tract of land;

Thence S. 00°16'10" E., 107.56 along a fence to a point on a 4' fence post, found at the southeast corner of this tract of land and on the north line of a 20 foot wide Southwestern Public Service Company easement as described in said Volume 181, Page 702 from whence the southeast corner of said 18.38 acre tract of land bears S. 88°15'55" E. 1097.08 feet;

Thence N. 88°15'55" W. along the north line of said easement and parallel to abandoned railroad right-of-way as described in that certain Warranty Deed recorded in Volume 2908, Page 456 of the Official Public Records of Potter County, Texas, 103.84 feet to a point on a 4" fence corner post, found at the southwest corner of this tract of land and the southwest corner of said 18.38 acre tract of land;

Thence N. 00°10'41" W. parallel with and 40 feet west of the west line of said Section 61, 107.54 feet to the POINT OF BEGINNING.

The tracts of land herein described contain 18.38 acres, more or less.
This legal description was obtained from a previous recorded instrument.

The fee estate herein referred to as the Property.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest or claim whatsoever of the **Grantor**, either in law or in equity, and subject to the reservations, restrictions, covenants, exceptions, notifications, conditions and agreements set forth in this Deed Without Warranty to the use, benefit and behalf of the **Grantee**, its heirs, successors and assigns forever.

II. GENERAL EXCEPTIONS AFFECTING THE PROPERTY

This Deed covering the Property is expressly made subject to the following matters to the extent and only to the extent the same are valid and subsisting and affect the Property:

A. All existing licenses, permits including, but not limited to easements and rights-of-way for public streets, roads and highways, public utilities, electric power lines, electric transmission facilities, railroads, pipelines, ditches, conduits and canals on, over and across said land, whether or not of record.

B. All existing interest(s) reserved to or outstanding in third parties in and to water rights, ditch and reservoir rights, as well as oil, gas, and/or minerals, whether or not of record.

C. All other existing interests reserved by any grantor(s) in chain of title unto said grantor(s), their respective successors and assigns, which affect any portion of the Property interest(s) hereinabove described, whether or not of record.

D. Any survey discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, or protrusions, or any overlapping of improvements which may affect the subject Property.

E. Existing ordinances or resolutions, special purpose district rules and regulations, including soil conservation district rules and regulations and water conservancy district rules and regulations, filed of public record and affecting all or any portion of the subject Property.

F. Any unpaid taxes.

SAVE AND EXCEPT and there is hereby reserved unto Grantor, and its assigns, all rights and interests which have been previously reserved to the United States in any Patent(s) which cover(s) the Property.

III. CERCLA NOTICES, COVENANTS AND RESERVATIONS

This Deed Without Warranty is expressly made subject to the following CERCLA information and specific reservations, covenants and agreements in favor of Grantor, and its assigns.

A. **Notice of Hazardous Substance Activity.** Pursuant to Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States of America gives notice that the following hazardous substances have been released or disposed of or stored for one year or more on the Property:

Substance	Quantity	Dates	Chemical Abstracts Services Registry Number	RCRA Hazardous Waste Number
Gasoline	7896kg/17418 lbs	Used as an UST from 12/1991 to 7/2003, disposed of gasoline in 7/2005	8006-61-9	D001

B. **CERCLA Covenant.** Grantor warrants that all remedial action necessary to protect human health and the environment has been taken before the date of this deed. Grantor warrants that it shall take any additional response action found to be necessary after the date of this deed regarding hazardous substances located on the Property on the date of this deed.

1. This covenant shall not apply:

a. in any case in which Grantee, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this Deed; **OR**

b. to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successor(s) or assign(s), or any party in possession after the date of this Deed that either:

(1) results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this Deed; **OR**

(2) causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which were known and identified to the applicable regulatory authority as of the date of this Deed; **OR**

(3) in the case of a hazardous substance(s) previously unknown by Grantor and Grantee as of the date of this conveyance but which is hereafter discovered by Grantee, its successor(s) or assign(s), or any party in possession and where after such discovery, Grantee, its successor(s) or assign(s), or any party in possession thereafter causes or exacerbates a release or threatened release of such hazardous substance(s).

2. In the event Grantee, its heir(s), successor(s) or assign(s), seeks to have Grantor conduct or pay for any additional response action, and, as a condition precedent to Grantor incurring any additional cleanup obligation or related expenses, the Grantee, its heir(s), successor(s) or assign(s), shall provide Grantor at least 45 days written notice of such a claim and provide credible evidence that: (a) the associated contamination existed prior to the date of this Deed; and (b) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its heir(s), successor(s) or assign(s), or any party in possession.

C. Access. Grantor reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

D. Non-Interference. Grantee covenants and agrees for itself, its heirs, successors and assigns and every successor in interest to the Property, or part thereof, that a party occupying any of the Property shall not interfere, hinder or prevent Grantor, the United States Government, and its officers, agents, employees, contractors and subcontractors, in conducting any required remedial investigations, response actions or oversight activities on the Property or adjoining property.

E. Indemnity. To the extent permitted by applicable law, Grantee, its heirs, successors and assigns, agree to indemnify, protect, defend, save and hold harmless, Grantor, and its employees, officers, representatives, attorneys and agents, from and against any and all debts, duties, obligations, liabilities, suits, claims, demands, causes of action, damages, losses, costs and expenses (including, without limitation, attorney fees and expenses and court costs) in any way relating to, connected with, and/or arising out of the release, remedial investigations, response actions, remedial actions, corrective actions, or oversight activities concerning any hazardous substance(s) or petroleum product(s) or their derivatives, at, on, or from the Property after the date of this quitclaim in which: (1) Grantee, or its heirs, successors and assigns of any of the Property is a Potentially Responsible Party (PRP) with respect to the Property; or (2) any response action required or part thereof is the result of any act or failure to act of the Grantee or any party in possession that causes, results in or exacerbates a release of hazardous substances after the date of this Deed.

IV. OTHER ENVIRONMENTAL NOTICES, COVENANTS AND RESERVATIONS

This Deed Without Warranty covering the Property is expressly made subject to the following environmental notices, exceptions, restrictions and covenants affecting the Property to the extent and only to the extent the same are valid and affect the property.

A. Notice of Pesticides Application

Grantee is notified that the Property may contain the presence of pesticides that have been applied in the management of the Property. The United States of America knows of no use of any registered pesticide in a manner inconsistent with its labeling, and believes that all applications were made in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USC §§136; et seq.), its implementing regulations, and according to the labeling provided with such substances. Furthermore, in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC §§ 9601, et seq.), the use of such substances is not a "release" (as defined in CERCLA, §9601(22)), but instead the use of a consumer product in consumer use (42 USC §9601(9)), and application of a pesticide product registered under FIFRA for which recovery for response costs is not allowed (42 USC §9607(i)).

B. Notice of Lead-Based Paint for Non-Residential Real Property Constructed Prior to 1978

Grantee, for itself and its successors and assigns, acknowledges and agrees that every future purchaser of any interest in real property on which a building was built prior to 1978 will be notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. Grantee, for itself and its successors and assigns, further acknowledges and agrees that any future seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to converting the property to a residential dwelling.

C. Notice of the Presence of Asbestos— WARNING!

The Grantee is warned that the property contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

Grantee is invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist Grantee in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). Grantee shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose.

The description of the property set forth in the Conveyance Document and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but any error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds for any claim by the Grantee against the Government.

The Government assumes no liability for damages for personal injury, illness, disability or death, to the Grantee, or to the Grantee's successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property which is the subject of this conveyance, whether the Grantee, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

The Grantee further agrees that in its use and occupancy of the property it will comply with all Federal, state, and local laws relating to asbestos.

D. Vapor Intrusion Notice

The Grantee, its successors and assigns, is hereby notified that certain petroleum products that are characterized as volatile chemicals may have been released on the property. These releases have the potential of being sources of contamination that, when accumulated within structures, are characterized as forms of "vapor intrusion" by various Federal and State environmental regulatory agencies and environmental consensus standard organizations. In particular:

1. The U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, has published draft guidance entitled, "OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils,"
2. The Interstate Technology and Regulatory Council has a vapor intrusion team in place which has, in turn, developed guidance for its member States on how to address the risks posed by vapor intrusion, including:

VI-1 – Vapor Intrusion Pathway: A Practical Guideline, and

VI-1A – Vapor Intrusion Pathway: Investigative Approaches for Typical Scenarios

3. The American Society for Testing and Materials (ASTM) has established a task group entitled ASTM E 50.02.06 to develop a standard to assess vapor intrusion as it relates to property transactions.

The levels of these volatile chemical-based petroleum products, whether present in either underlying soils or groundwater, have been determined, in their current state and in light of the current state of property use, to not be actionable by Federal and State environmental regulatory authorities. Nonetheless, the Grantee is placed on notice that based on current scientific understanding of the risks associated with volatile chemical vapor intrusion, it is possible that future development on the property that involves the alteration of current structures or creation of new structures, may provide a preferential pathway for such volatile chemical vapor intrusions, and thus may require consideration of construction methods to limit or prevent such intrusions.

Should such construction methods be undertaken by the Purchaser, its successors or assigns, the costs of addressing such intrusion shall be born exclusively by the Purchaser and its assigns or successors, and not the United States. Furthermore, the determination to pursue methodologies to reduce the potential for vapor intrusion is not within the scope of releases that make a response action necessary under CERCLA Sec. 120(h)(3)(A).

V. HISTORICAL COVENANTS AFFECTING THE PROPERTY

The GRANTEE covenants for itself, its successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof that the real property described above is hereby conveyed subject to the following conditions, restrictions, and limitations.

- A. The owner shall maintain and repair the Property as required to ensure that the historic architectural integrity of the Property at the time of conveyance, is not permitted to deteriorate in any additional material way.
- B. Without the prior written consent of the Texas State Historical Preservation Officer (SHPO), which shall not unreasonably be withheld, the owner shall not cause or permit any construction, alteration, remodeling, dismantling, destruction, or other activity which would affect or alter in any material way the historic architectural integrity of the Property, except for routine maintenance.
- C. The owner and any and all successors in interest further agree to deliver to the SHPO for review and approval the information (including plans, specifications, and designs where appropriate) identifying any proposed permanent changes to the property along with 4" x 6" color photographs of the areas to be affected. In connection therewith, the owner shall also submit to the SHPO a timetable for the proposed activity sufficient to permit the SHPO to monitor such activity. The owner shall make no change or take any action

subject to the approval of SHPO until receipt of written approval by an authorized representative of SHPO. Whenever such consent or written approval of the SHPO is required, it shall not be unreasonably withheld or delayed. In any event, SHPO shall respond to any request for consent within thirty (30) days (except under extraordinary circumstances) or such consent shall be deemed to have been given. Proposed changes will conform to the Secretary of Interior's Standards for the Treatment of Historic Properties, 1995, as administered by the SHPO.

D. The SHPO shall be notified within 30 days of any conveyance of some or all of the Property. Notification shall include the name and contact information for the new owner(s).

E. Notifications required by this covenant shall be made in writing to the Texas State Historic Preservation Officer, Texas Historical Commission, P.O. Box 12276, Austin, TX 78711-2276.

F. Representatives of the SHPO shall have the right to inspect the premises from time to time, upon reasonable notice, to determine whether the purchaser is in compliance with the terms of the agreement.

G. These restrictions shall be binding on the Parties hereto, their successors, and assigns in perpetuity; at its discretion and upon consultation with the Advisory Council on Historic Preservation, the SHPO may, for good cause, modify or cancel any or all of the foregoing restrictions upon written application of the owner, its successors or assigns.

H. The acceptance of the delivery of a Deed conveying title to the property shall constitute conclusive evidence of the agreement of the owner to be bound by the conditions, restrictions, and limitations, and to perform the obligations herein set forth.

I. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the General Services Administration, SHPO, or other interested party may following reasonable notice to the owner, institute suit to enjoin said violation, or to require the restoration of the improvements on the property to that of the time of conveyance. The successful party shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorneys' fees.

The Property has a national level of historic significance, and the Property may be eligible for federal tax credits worth 20% of the rehabilitation costs.

VI. MISCELLANEOUS NOTICES, TERMS, CONDITIONS, AGREEMENTS, AND COVENANTS

Except as otherwise provided by 42 U.S.C. 9620(h)(3), Grantee covenants for itself, its heirs, assigns and every successor in interest to the Property herein described or any part thereof that it shall abide by each of the following covenants, each of which will be covenants running with the land. In addition, the United States of America shall be deemed a beneficiary of each of the following covenants without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have a right to enforce each of the covenants herein in any court of competent jurisdiction; provided, however, the United States of America shall have no affirmative duty to any successor in title to this conveyance to enforce any of the following covenants herein agreed.

A. Grantee has inspected the described and conveyed Property and has satisfied itself that the property is free of any hazardous substances or petroleum products or their derivatives, calcium hypochlorite, batteries and insecticides, and Grantee, for itself and its heirs, successors and assigns, covenants and agrees to indemnify, protect, defend, save and hold harmless the United States of America, and its employees, officers, representatives, attorneys and agents, from and against any and all debts, duties, obligations, liabilities, suits, claims, demands, causes of action, damages, losses, cost and expenses (including without limitation, attorneys' fees and expenses and court costs) in any way relating to, connected with, and/or arising out of the discovery of any hazardous substance(s) or petroleum product(s) or their derivatives, calcium hypochlorite, batteries and insecticides which may have contaminated the hereinabove and conveyed Property after the date of the delivery of this conveyance, including but not limited to, any environmental response action, corrective action, or removal, monitoring, investigation, sampling, or testing in connection therewith.

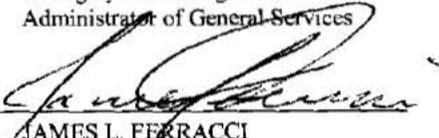
C. Grantee covenants for itself, its successors and assigns and every successor in interest to the property herein described of any part thereof, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the FAA in accordance with title 14, Code of Federal Regulations, Part 66, entitled, "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

B. The Property is conveyed "As is" and "Where is" without any representation or warranty on the part of Grantor to make any alterations, repairs or additions. Grantee, for itself and its successors and assigns, further acknowledges that Grantor has made no representations or warranty concerning the condition and state of repair of the Property nor has Grantor made any other agreement or promise to alter, improve, adapt or repair the Property not otherwise contained herein.

IN WITNESS WHEREOF, the United States of America has caused these presents to be executed this 25th day of October, 2007.

UNITED STATES OF AMERICA

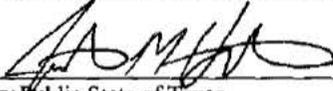
Acting by and through the
Administrator of General Services

By: 
JAMES L. FERRACCI
Director
Office of Real Property Disposal
Greater Southwest Region
General Services Administration

THE STATE OF TEXAS X
COUNTY OF TARRANT X

BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared JAMES L. FERRACCI, known to me to be the person whose name is subscribed to the foregoing quitclaim deed, and known to me to be the Director, Real Property Disposal Division, Greater Southwest Region, General Services Administration, Fort Worth, Texas, and acknowledged to me that the same was the act and deed of the United States of America and of the Administrator of General Services and that he executed the same as the voluntary act of the United States of America and of the Administrator of General Services for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE at Fort Worth, Texas, this 25th day of October, 2007.


Notary Public State of Texas
Notary's Name: _____
My Commission Expires: _____



Filed AND Recorded
OFFICIAL PUBLIC RECORDS
On: Oct 31, 2007 at 03:50P

Receipt# - 108807

Document Number 01114568:

Amount 39.00

Julie Smith
County Clerk, Potter County

by lae _____, Deputy

STATE OF TEXAS COUNTY OF POTTER
I hereby certify that this instrument was
FILED on this date and at this time stamped
hereon by me and was duly RECORDED in the
OFFICIAL PUBLIC RECORDS OF POTTER COUNTY TEXAS,
in the volume and page as shown.



Julie Smith, County Clerk
Potter County

Barbara Swell, Deputy

Any provision herein which restricts the sale,
rental or use of the described real property
because of color or race is invalid and
unenforceable under federal law.

COUNTY CLERK'S MEMO

Portions of this document may
not be legible and/or reproducible
when received for recording

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE TEXAS DEPARTMENT OF TRANSPORTATION,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE IMPLEMENTATION OF TRANSPORTATION UNDERTAKINGS**

WHEREAS, the Federal Highway Administration (FHWA), the Texas Historical Commission (THC) acting as the Texas State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and the Texas Department of Transportation (TxDOT) enter into an agreement pursuant to 36 CFR 800.14(b)(1) ; and

WHEREAS, pursuant to the assignment of National Environmental Policy Act (NEPA) compliance responsibilities to TxDOT per the December 16, 2014 “Memorandum of Understanding between Federal Highway Administration, Texas Division and the Texas Department of Transportation Concerning State of Texas’ Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327” (NEPA Assignment MOU), prepared in accordance with Section 1312 of the Moving Ahead for Progress in the 21st Century (P.L. 112-141), amended 23 U.S.C. 327, the Secretary of the United States Department of Transportation, acting by and through the FHWA, also assigned to TxDOT the responsibility for project compliance with Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, FHWA intends for TxDOT to assume FHWA responsibilities for compliance with Section 106 of the NHPA for other highway programs that are administered by TxDOT under 23 U.S.C, Chapter 2, such as the Recreational Trails Program; and

WHEREAS, FHWA, SHPO, the ACHP and TxDOT consulted to enter into this programmatic agreement (PA) to recognize that the Director of the Environmental Affairs Division (ENV) at TxDOT is the “Agency Official” responsible for ensuring that the FHWA undertakings assigned to TxDOT under the NEPA Assignment MOU or this PA comply with Section 106 of the NHPA; and

WHEREAS, TxDOT sought review and comments regarding this agreement by posting the draft agreement on its website, in addition to emailing on March 25, 2015 all federally-recognized Indian tribes, Federal agencies, and organizations listed in Appendix 1. TxDOT responded to all received comments by email, taking comments received from those parties into account in finalizing this PA; and

WHEREAS, this PA supersedes and replaces the first amended PA executed by the FHWA, the ACHP , the SHPO and TxDOT on December 28, 2005 (entitled First Amended Programmatic Agreement Among the Federal Highway Administration, Texas State Historic Preservation Officer, Advisory Council on Historic Preservation, and the Texas Department of Transportation); and

WHEREAS, for FHWA undertakings, this PA supersedes the MOU between TxDOT and THC codified in TxDOT’s rules at 43 T.A.C. 2.251-2.278 and in THC’s rules at 13 T.A.C. 26.25; and

WHEREAS, the application of the MOU between TxDOT and THC codified in TxDOT's rules at 43 T.A.C. 2.251-2.278 and in THC's rules at 13 T.A.C. 26.25 to non-federal undertakings is unaffected by this PA;

NOW, THEREFORE, the ACHP, the SHPO and TxDOT agree that FHWA undertakings administered by TxDOT in the state of Texas shall be administered pursuant to the following stipulations to satisfy the requirements of Section 106 of the NHPA for all individual undertakings of the program.

STIPULATIONS

TxDOT, either as assigned by FHWA under the NEPA Assignment MOU or under FHWA's authority through this PA, shall ensure that the following stipulations are carried out. In coordination with TxDOT where FHWA's responsibilities have not been assigned to and assumed by TxDOT, FHWA shall ensure that the following stipulations are carried out.

I. Definitions

A. Historic properties – cultural resources that meet the definition outlined per 36 CFR 800.16(l).

1. Archeological - artifacts, archeological sites, and cemeteries; or
2. Non-archeological– buildings, structures, sites, districts, and objects.

B. Area of potential effects (APE) - 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 (36 CFR 800.16(d)) as defined below or identified through the consulting party process.

1. Archeological - The APE for archeological properties will be confined to the limits of the proposed project right-of-way (including permanent and temporary easements), utility relocations designated by TxDOT, and project-specific locations designated by TxDOT. The APE also extends to the depth of impacts caused by the undertaking.

2. Non-archeological - The APE for non-archeological properties shall be defined as:

- a) 300 feet beyond the proposed right-of-way for projects constructed on new location not involving an existing transportation corridor;
- b) 150 feet beyond the proposed right-of-way for projects constructed in existing transportation corridors, including abandoned railroad lines; or
- c) The existing right-of-way for project activities confined to existing right-of-way;
- d) TxDOT and SHPO may consult on the need for specialized APEs to address:

- (1) Elevated roadways and multi-level interchanges;
- (2) Unusual design features;

- (3) consulting party comments; or
- (4) cultural landscapes.

C. Department delegate – the TxDOT organizational unit delegated responsibility for approval of environmental work and documents by the Executive Director as defined in TxDOT's rules at 43 TAC 2.8.

D. Minor widening – roadway projects resulting in pavement profile widened to less than double their original width, resulting from adding travel/center-turn lanes or paved shoulders.

II. Responsibilities of the FHWA

A. For all transportation projects that entail Federal-aid funding or a FHWA approval, FHWA retains responsibility for conducting government to government consultation with federally-recognized Indian tribes.

B. FHWA may re-assume the Section 106 responsibility for a project from TxDOT under limited circumstances. In particular, FHWA may re-assume Section 106 responsibility for a project if government to government consultation issues are not adequately resolved. When this occurs, FHWA will notify all consulting parties.

C. FHWA recognizes its oversight responsibilities regarding Section 106 compliance for Federal-aid projects or projects that require FHWA approval. In furtherance of this responsibility, FHWA may audit, monitor, or take other actions to ensure TxDOT is adequately complying with 36 CFR 800 and the provisions of this PA.

III. Responsibilities of the TxDOT

A. TxDOT shall assume FHWA's responsibilities as lead federal agency for compliance with Section 106 of the NHPA, except as provided in Stipulation II.

B. TxDOT shall employ the risk assessment and scoping procedures described in Appendix 2 in order to consider the presence of historic properties and the potential for effects when categorizing projects under Stipulations VII, VIII, or IX of this agreement.

C. TxDOT shall employ personnel trained, experienced and qualified in the fields of archeology, architecture, architectural history, history and other closely related fields (as defined in 48 Federal Register (FR) 44716) in ENV. Qualified ENV staff in the field applicable to the resources under consideration shall be responsible for the following actions:

1. the identification and evaluation of historic properties as described in Appendix 5;
2. the reporting or documentation of the actions described in Appendix 5;
3. treatment plan development, and reporting and documentation on the treatment of historic properties.

D. TxDOT shall apply the procedures outlined in this PA to FHWA undertakings sponsored by local government project sponsors, including – but not limited to – documentation standards and consultation procedures.

1. Local government project sponsors may produce documentation following the standards of this PA.
 2. TxDOT retains responsibility for the conduct and conclusion of all consultation.
- E. TxDOT will conduct consultation in accordance with the procedures detailed in Appendix 6.

IV. Responsibilities of the SHPO

- A. The SHPO shall respond to TxDOT's request for comment on a non-emergency undertaking within twenty (20) calendar days of transmittal of the request by TxDOT.
- B. The SHPO response to a request for comment will include:
 1. a statement of concurrence or non-concurrence with TxDOT's findings and recommendations; and/or
 2. a determination of eligibility or ineligibility for inclusion in the National Register of Historic Places for all evaluated properties; and
 3. any comments related to effects findings.
- C. The SHPO shall integrate archeological survey data into the archeological section of the THC's Texas Historic Sites Atlas and shall integrate new historical markers and designated historic properties into the public section of the THC's Texas Historic Sites Atlas.

V. Responsibilities of the ACHP

- A. The ACHP shall provide technical assistance upon request.
- B. The ACHP shall assist with dispute resolution as described in Appendix 6, Stipulation 4(f)(ii).
- C. Pursuant to the NEPA assignment MOU and at the request of FHWA, the ACHP may assist audits or monitoring conducted of the Section 106 process.

VI. Cooperating Federal Agencies

Cooperating Federal agencies who recognize TxDOT as the lead agency for an undertaking and notify TxDOT or SHPO in writing may fulfill their obligations under Section 106 of the NHPA according to 36 CFR 800.2(a)(2), provided that TxDOT follows the requirements of this PA and the cooperating Federal agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by TxDOT. TxDOT and SHPO agree to share with each other any written notifications that they receive pursuant to this stipulation.

VII. Undertakings with No Potential to Cause Effects

- A. Pursuant to 36 CFR 800.3(a)(1), the signatories to this PA agree that certain routine projects, by their nature and definition, constitute undertakings with no potential to cause effects on historic properties.
- B. Undertaking types listed in Appendix 3 meet these requirements and shall be reviewed, documented, and approved under Section 106 of the NHPA by following the

procedures described in Appendices 2 and 3. TxDOT and the SHPO may consult to identify other classes of undertakings with no potential to cause effects.

1. Other classes of undertaking may be added upon execution of a standard two-party agreement between TxDOT and the SHPO, following consultation between TxDOT and SHPO on the agreement.
2. TxDOT will notify FHWA and ACHP in writing of any other classes of undertaking added to Appendix 3; this notification will occur before those undertakings can be processed under Appendix 3.
3. TxDOT will announce the addition to the public through its Review and Reporting process (Stipulation XV).

VIII. Undertakings with Minimal Potential to Cause Effects

- A. The signatories to this PA agree that certain undertakings have minimal potential to cause effects on historic properties.
- B. Undertaking types listed in Appendix 4 shall be reviewed, documented, and approved under Section 106 of the NHPA by following the procedures described in Appendices 2 and 4.
- C. TxDOT and the SHPO may consult to identify other classes of undertakings with minimal potential to cause effects.
 1. Other classes of undertaking may be added upon execution of a standard two-party agreement between TxDOT and the SHPO, following consultation between TxDOT and SHPO on the agreement.
 2. TxDOT will notify FHWA and ACHP in writing of any other classes of undertaking added to Appendix 4; this notification will occur before those undertakings can be processed under Appendix 4.
 3. TxDOT will announce the addition to the public through its Review and Reporting process (Stipulation XV).

IX. Undertakings with the potential to cause effects per 36 CFR 800.16(i)

For undertaking types that are neither listed in Appendix 3 nor in Appendix 4, TxDOT shall follow the procedures in Appendix 6.

X. Treatment of Adverse Effects per 36 CFR 800.5(a)(1)

- A. TxDOT shall consult with the SHPO and other consulting parties on FHWA undertakings with the potential to cause adverse effects.
- B. TxDOT will notify ACHP on undertakings with the potential to cause adverse effects
 1. TxDOT will provide ACHP with copies of technical reports and consultation correspondence produced per the standards and procedures of Appendices 5 and 6.
 2. ACHP will respond within fifteen (15) calendar days with a determination regarding whether ACHP will join consultation.

C. In cases where TxDOT determines through consultation that adverse effects to a historic property may occur, TxDOT shall further consult with appropriate parties in accordance with 36 CFR 800.2 and 800.6 to resolve adverse effects, and TxDOT shall document its decision regarding the resolution of adverse effects. Except as provided in subsections (1) and (2) of this section, TxDOT will execute a standard two-party agreement with the SHPO that documents this commitment, following consultation with SHPO

1. If a project is controversial or consulting parties have played a significant role in the resolution of adverse effects, TxDOT may memorialize the agreed upon resolution of adverse effects in a Memorandum of Agreement (MOA) executed by TxDOT and SHPO. TxDOT or SHPO may invite other parties to become a signatory to the MOA.

2. If the resolution of adverse effects requires actions to be taken by a party other than TxDOT, TxDOT shall memorialize the agreed upon resolution of adverse effects in a MOA executed by TxDOT, SHPO, and any other parties with responsibilities for some aspect of the resolution of adverse effects.

3. TxDOT will file any MOA executed under subsections (1) or (2) of this section with the ACHP.

XI. Consultation

TxDOT will adhere to the following stipulations in partial satisfaction of the consultation requirements of Section 106 of the NHPA and 36 CFR Part 800. Appendix 6 provides comprehensive details regarding TxDOT's review and consultation process.

A. Consulting parties. Consulting parties will be identified as described in Appendix 6, Stipulation 1.

1. TxDOT and FHWA have developed and executed agreements for the conduct of consultation with federally recognized Indian tribes in accordance with 36 CFR 800.2(c)(2)(ii)(E).

2. TxDOT, to the extent authorized under a separate agreement with FHWA, shall consult with federally recognized Indian tribes regarding FHWA undertakings based on those tribes' areas of interest, previously developed in consultation with tribes (see Appendix 6, Stipulation 1(a)). Documentation of the areas of interest shall be revised as needed in consultation with the affected tribes and maintained at TxDOT.

3. TxDOT will satisfy its obligation to consult with the general public on FHWA undertakings per 36 CFR 800.2(d) through incorporating Section 106 of the NHPA consultation requirements into public participation programs carried out under NEPA, and 43 TAC 2, Subchapter E. Communications to the public will reflect the nature and complexity of the undertaking and its effects on historic properties.

4. TxDOT need not conduct individual, project-specific consultation with SHPO for undertakings with no potential to adversely affect historic properties. Undertakings with no potential to adversely affect historic properties include:

- a) those projects listed in Appendices 3 and 4, and
- b) those projects for which TxDOT determines through identification efforts that no historic properties are present per Appendix 6, Stipulation 1(e).

B. TxDOT may consult separately with SHPO and other consulting parties regarding archeological and non-archeological historic properties. See Appendix 6, Stipulation 1(c).

- 1. SHPO comments on archeological properties shall not be applied to non-archeological properties, and vice-versa. See Appendix 6, Stipulation 1(d).
- 2. Completion of consultation on archeological properties shall not constitute completion of consultation on non-archeological properties, and completion of consultation on non-archeological properties shall not constitute completion of consultation on archeological properties.

C. Per 36 CFR 800.8, TxDOT may conduct early consultation with SHPO and other parties in order to coordinate compliance with Section 106 and the requirements of the NEPA (42 USC 4321 through 4347 et seq.) See Appendix 6, Stipulation 2.

D. TxDOT shall, when appropriate for streamlining the consultation process, address multiple steps under 36 CFR 800.3 through 800.6 in its consultation with appropriate parties. See Appendix 6, Stipulations 2(b) and 3(c).

E. In the event that access is denied to private lands:

1. Archeological historic property consultation may be deferred regarding the identification, evaluation and treatment of archeological properties within the APE until right-of-way is acquired or access otherwise obtained. In this case, pursuant to 36 CFR 800.4(b)(2), TxDOT may proceed with project planning, NEPA activities, and right-of-way acquisition prior to completing the identification and evaluation of archaeological properties in the APE, provided that:

- a) when TxDOT obtains access, it will complete the requirements of this PA; and
- b) in consultation with SHPO and other consulting parties, if any, TxDOT considers alternatives to avoid, minimize or mitigate any adverse effects that may occur to archaeological historic properties; and
- c) TxDOT takes no action that precludes the consideration of the undertaking's effects to archaeological historic properties.

2. Non-archeological historic property consultation may be based on findings drawn from additional archival research into a property's history, including but not limited to public involvement results, aerial photography analysis, deed research and links to specific historic contexts.

- a) Properties will be considered non-historic based on conclusive findings that demonstrate a lack of historical significance within specific historic contexts or compromised aspects of integrity.

- b) Properties will be assumed historic for purposes of coordination for a project if the research does not support conclusive findings on historical significance or compromised aspects of integrity.
- c) Reevaluation of these findings at a future date may be warranted with additional research.

F. In the event of a dispute during consultation regarding proposed findings or proposals for resolution of adverse effects between TxDOT, SHPO and other consulting parties (see Appendix 6, Stipulation 4(f)):

- 1. TxDOT's Director of the Environmental Affairs Division or his/her delegate will continue consulting with representatives of the consulting party.
- 2. SHPO will be represented by the Executive Director of the Texas Historical Commission or his/her delegate during any dispute resolution meetings in which it is involved.
- 3. If these dispute resolution meetings do not resolve the issue, the ordinary dispute resolution procedures in 36 CFR 800 shall be followed.

XII. Emergency Undertakings

If TxDOT determines that an emergency situation exists, resulting from a hazardous materials incident; tree, wind, water, earthquake, or landslide damage; sudden failure of water, sewer, storm drainage, electrical, or telephone lines; or the failure of a roadway or bridge structure; TxDOT shall undertake emergency repairs.

A. Notification and consultation with SHPO is not required for any emergency repair project that conforms to a type that does not require review and consultation, as described in Appendices 2 and 3.

B. If the emergency repair project is a type with potential to affect historic properties, TxDOT shall notify the SHPO as soon as possible under the circumstances. This provision applies only to emergency undertakings initiated within thirty (30) calendar days after the declaration of the emergency or disaster as stipulated in 36 CFR 800.12(d).

- 1. In the event of a large-scale disaster where local communications could be interrupted, TxDOT may undertake facility repairs or stabilization without prior consultation with the SHPO. Where possible, emergency actions will be undertaken in a manner that does not foreclose future preservation or restoration of historic properties affected by the emergency action.
- 2. Otherwise, TxDOT will consult with the SHPO on all emergency undertakings that affected or will affect historic properties.

XIII. Post-Review Discoveries

When potential historic properties are identified during implementation of an undertaking or unanticipated effects on historic properties are determined, the process for addressing the discovery shall be as follows:

A. Work in the immediate area of the discovery shall cease, and TxDOT shall be notified of the discovery; if appropriate, security measures will be initiated to protect the discovery.

B. TxDOT will notify the SHPO and, if the property or properties may be of religious or cultural significance to federally recognized Indian tribes, TxDOT will notify such tribes within 48 hours of the discovery.

C. For unanticipated discoveries of archeological materials that do not contain human burials, TxDOT will undertake the following additional actions;

1. TxDOT will verify that the discovery does not contain human burials.
2. Upon confirmation that the discovery does not contain human burials, TxDOT may allow construction at the site to proceed.
3. TxDOT shall complete or update a State of Texas Archeological Site Data Form based on the available information.
4. TxDOT will find that the property comprises an archeological historic property that is valuable chiefly for the data that it contains and does not warrant preservation in place.
5. TxDOT will develop a mitigation proposal to resolve the adverse effects of the undertaking on the archeological historic property. This proposal shall not necessarily involve any further excavations at the historic property.
6. The level of effort described in the proposal shall be commensurate with the nature of the resource, based on the available information.
7. TxDOT will develop the proposal in consultation with SHPO and other consulting parties with a demonstrated interest in the undertaking's effects, including federally recognized Indian tribes, following the consultation procedures for resolution of adverse effects described under 36 CFR Part 800 and this PA.

D. For unanticipated discoveries involving human burials, TxDOT shall follow the post-review discovery procedures of 36 CFR Part 800.13 and the applicable requirements of the Health and Safety Code, Title 1, Section 711.

1. Work may resume in areas outside the boundaries of the cemetery.
2. Work may resume in a cemetery area if that cemetery has been removed in compliance with 36 CFR 800 and the applicable requirements of the Health and Safety Code, Title 1, Section 711.

E. Upon determination of unanticipated effects on non-archeological historic properties, TxDOT will resume consultation regarding project effects, following the procedures of Appendix 6. Construction may resume following completion of consultation in accordance with Appendix 6.

XIV. Amendment

Any signatory to this PA may at any time propose amendments, whereupon all signatories shall consult to consider such amendment. Such amendment requires the written concurrence of all signatory parties, with the exception of the FHWA as provided for in the NEPA Assignment MOU.

XV. Review and Reporting

Pursuant to the terms of the NEPA Assignment MOU, TxDOT is responsible for providing FHWA any information FHWA considers necessary to ensure that TxDOT is adequately carrying out its assigned responsibilities. Consequently, TxDOT agrees to provide file access for the purposes of monitoring the effectiveness of this agreement by the signatories.

A. Upon request from any signatory to this agreement, TxDOT shall furnish project information in the format and on the schedule requested.

B. The SHPO shall meet quarterly with TxDOT to assess the effectiveness of the programs, projects, and activities developed to facilitate this agreement and to assist with the development or implementation of such programs, projects, and activities.

C. TxDOT will make summary information of its activities under this PA available to the general public

1. The summary information will be provided on an annual basis.
2. TxDOT will make summary information available by December 1st of each calendar year.
3. The summary information will cover the activities during the previous fiscal year (September through August).
4. The summaries may separately address archeological and non-archeological historic properties
5. The summaries will include both measures that quantify the scale and effectiveness of the program and highlights from noteworthy projects or program-initiatives.

XVI. Alternative consultation options

In the event that the terms of this PA cannot be met for specific individual undertakings, consultation shall comply with standard procedures outlined in 36 CFR 800.3 through 800.6.

XVII. Termination

A. Any signatory party to this PA may terminate it by submitting a thirty (30) calendar day notice in writing to all signatory parties, provided the parties continue to consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination.

B. In the event of termination of this PA, consultation for undertakings shall comply with the standard procedures outlined in 36 CFR 800.3 through 36 CFR 800.6 through TxDOT as assigned by FHWA under the NEPA Assignment MOU, or under FHWA's authority where their responsibilities have not been assigned to and assumed by TxDOT.

XVIII. Term of this Agreement

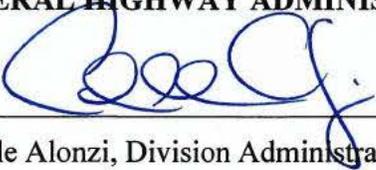
This PA remains in force for a period of five (5) years from the date of its execution by the ACHP. For extensions of this agreement, the following process will be used.

- A. Sixty (60) calendar days prior to the conclusion of the five (5) year period, TxDOT will notify all signatories in writing that it seeks to extend this PA.
- B. If there are no objections from signatories, the term of this PA will automatically be extended for an additional five (5) years.
- C. If any signatory objects to extending this PA or proposes amendments, TxDOT will consult with the signatory to consider amendments or other actions to avoid termination.

EXECUTION AND IMPLEMENTATION of this PA evidences that the FHWA and TxDOT, when it is deemed to be a federal agency, have afforded the ACHP a reasonable opportunity to comment on FHWA undertakings in Texas, and that the FHWA and TxDOT have taken into account the effects of their subject undertakings on historic properties.

SIGNATORIES include the Federal Highway Administration, Advisory Council on Historic Preservation, Texas State Historic Preservation Officer (Texas Historical Commission) and the Texas Department of Transportation. Separate signature pages for each agency follow.

FEDERAL HIGHWAY ADMINISTRATION

By:  _____
Achille Alonzi, Division Administrator

Date: 5/29/2015

EXECUTION AND IMPLEMENTATION

SIGNATORIES include the Federal Highway Administration, Advisory Council on Historic Preservation, Texas State Historic Preservation Officer (Texas Historical Commission) and the Texas Department of Transportation, with separate pages for each agency provided.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 5/15/15

John M. Fowler, Executive Director

EXECUTION AND IMPLEMENTATION

SIGNATORIES include the Federal Highway Administration, Advisory Council on Historic Preservation, Texas State Historic Preservation Officer (Texas Historical Commission) and the Texas Department of Transportation, with separate pages for each agency provided.

TEXAS STATE HISTORIC PRESERVATION OFFICER

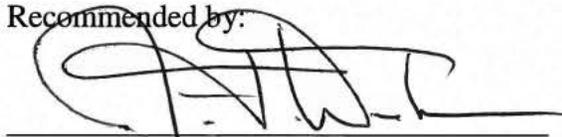
By: Mark Wolfe Date: 5/27/15
Mark Wolfe, Executive Director

EXECUTION AND IMPLEMENTATION

SIGNATORIES include the Federal Highway Administration, Advisory Council on Historic Preservation, Texas State Historic Preservation Officer (Texas Historical Commission) and the Texas Department of Transportation, with separate pages for each agency provided.

TEXAS DEPARTMENT OF TRANSPORTATION

Recommended by:



A handwritten signature in black ink, appearing to read 'J.F. Weber', written over a horizontal line.

Dated: 12/7/15

LtGen J.F. Weber, USMC (Ret)
Executive Director
Texas Department of Transportation

APPENDIX 1

FEDERALLY RECOGNIZED INDIAN TRIBES, FEDERAL AGENCIES, AND ORGANIZATIONS PROVIDED AN OPPORTUNITY TO REVIEW AND COMMENT ON THIS PROGRAMMATIC AGREEMENT

Tribes

Absentee-Shawnee Tribe of Oklahoma
Alabama-Coushatta Tribe of Texas
Alabama-Quassarte Tribal Town
Apache Tribe of Oklahoma
Caddo Nation of Oklahoma
Cherokee Nation of Oklahoma
Choctaw Nation of Oklahoma
Comanche Nation of Oklahoma
Coushatta Tribe of Louisiana
Jicarilla Apache Nation
Kialegee Tribal Town
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Mescalero Apache Tribe
Muscogee (Creek) Nation of Oklahoma
Poarch Band of Creek Indians
Seminole Nation of Oklahoma
The Delaware Nation
Thlopthlocco Tribal Town
Tonkawa Tribe of Indians of Oklahoma
Tunica-Biloxi Tribe of Louisiana
United Keetoowah Band of Cherokee Indians
Wichita and Affiliated Tribes
Ysleta del Sur Pueblo

Federal and State Agencies

Bureau of Indian Affairs, Southern Plains Regional Office

International Boundary and Water Commission

Office of the Adjutant General

US Army Corps of Engineers, Albuquerque District

US Army Corps of Engineers, Fort Worth District

US Army Corps of Engineers, Galveston District

US Army Corps of Engineers, Tulsa District

US Army, Fort Bliss

US Army, Fort Hood

US Department of Homeland Security (Coast Guard)

US Environmental Protection Agency

US Fish and Wildlife Service

Local Governments and Non-Profit Organizations

Certified Local Governments

County Historical Commissions

Historic Bridge Foundation

National Trust for Historic Preservation

Preservation Texas

Texas Archeological Society

APPENDIX 2

TxDOT RISK ASSESSMENT AND SCOPING PROCESS

The following procedures summarize the conditions that trigger different levels of TxDOT review. TxDOT follows separate procedures regarding potential effects on archeological and non-archeological historic properties, since proposed projects do not necessarily affect such resources in the same manner. All evaluations thus begin with a consideration of the project and whether that project is of a type that has potential to cause effects to historic properties.

Risk Assessment for Potential Effects on Archeological Historic Properties

- TxDOT staff review project descriptions and other project information to evaluate whether the project conforms to a type listed in Appendix 3 as a type that has no potential to cause effects to archeological historic properties or to a type listed in Appendix 4 as a type that has minimal potential to cause effects to archeological historic properties.
- Review, consultation, and further documentation are not needed if the project is listed in Appendix 3 as a type that has no potential to cause effects to archeological historic properties.
- If the project is listed in Appendix 4 as a type that has minimal potential to cause effects to archeological historic properties, TxDOT will evaluate the project to determine whether any known cemeteries occur within or adjacent to the project's APE.
 - On projects where cemeteries occur within or adjacent to the project's APE, TxDOT will undertake further evaluation per the documentation standards in Appendix 5 and will undertake consultation per Stipulation XI.
 - No further review or consultation will be done on projects where no cemeteries occur within or adjacent to the project's APE.
- If the project is listed neither on Appendix 3 nor on Appendix 4, TxDOT will proceed with review of potential project effects, using the review and consultation procedures in Appendix 6 and the documentation standards in Appendix 5.

Risk Assessment for Potential Effects on Non-Archeological Historic Properties

- TxDOT staff review project descriptions and other project information to evaluate whether the project conforms to a type listed in Appendix 3 as a type that has no potential to cause effects to non-archeological historic properties or to a type listed in Appendix 4 as a type that has minimal potential to cause effects to non-archeological historic properties.
- Review, consultation, and further documentation are not needed if the project is listed in Appendix 3 as a type that has no potential to cause effects to non-archeological historic properties.
- If the project is listed in Appendix 4 as a type that has minimal potential to cause effects to non-archeological historic properties, TxDOT will evaluate the project to determine if the APE contains of sensitive property types, including courthouse squares, historic

downtown commercial areas, historic residential neighborhoods, farmsteads, historic road corridors and bridges.

- On projects where such sensitive property types occur within the project's APE, TxDOT will undertake further evaluation per the documentation standards in Appendix 5 and will undertake consultation per Stipulation XI.
- No further review or consultation will be done on projects where such sensitive property types do not occur within the project's APE, but documentation will be provided to SHPO based on the guidelines outlined in Appendix 5.

If the project is listed neither on Appendix 3 nor on Appendix 4, TxDOT will proceed with review of potential project effects, using the review and consultation procedures in Appendix 6 and the documentation standards in Appendix 5.

APPENDIX 3
UNDERTAKINGS WITH NO POTENTIAL TO CAUSE EFFECTS
ON HISTORIC PROPERTIES

TxDOT staff will review project descriptions and other project information as necessary to evaluate whether a project is a type with no potential to cause effects on historic properties. The department delegate has authority to approve a finding that the project is a type with no potential to cause effects on historic properties. The department delegate shall retain documentation that establishes the basis of any such findings. Undertaking types listed in this Appendix shall not be further reviewed under Section 106 of the NHPA.

This Appendix contains separate lists of undertakings that have no potential to cause effects on archeological versus non-archeological historic properties. These two lists generally contain different types of projects. Consequently, inclusion of a project type on one list does not indicate that the project has no potential to cause effects to both archeological and non-archeological historic properties.

Archeological Historic Properties:

Routine roadway maintenance projects and projects with minor levels of ground disturbance, by their nature and definition, do not have the potential to affect archeological historic properties, and do not require review or consultation regarding their potential project impacts on archeological historic properties. Such projects include vegetation control, traffic control, and routine painting and striping. The following activities also do not require review or consultation regarding their potential effects on archeological historic properties:

1. installation, repair, or replacement of fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment;
2. projects involving purchase or acquisition of land without associated ground-disturbing activities;
3. routine structural maintenance and repair of bridges, highways, railroad crossings, picnic areas and rest areas;
4. in-kind repair, replacement of lighting, signals, curbs and gutters, and sidewalks;
5. crack seal, overlay, milling, grooving, resurfacing, and restriping;
6. replacement, upgrade, and repair of safety barriers, ditches, storm drains, and culverts;
7. intersection improvements, including repair or replacement of overpasses, within existing right-of-way;
8. placement of riprap to prevent erosion of waterway banks and bridge piers provided no ground disturbance is required;
9. all maintenance work between a highway and an adjacent frontage road;
10. installation of noise barriers or alterations to existing publicly owned buildings, to provide for noise reduction;
11. driveway and street connections;
12. all work within interchanges and within medians of divided highways;
13. all work between the flowlines of the ditches and channels and above the original line and grade;
14. ditch and channel maintenance, provided removal of fill is above the original line and grade;

15. the installation and modification of sidewalks (including the addition of Americans with Disabilities Act (ADA) ramps) except:
 1. sidewalk installations where the depth of impacts exceeds one foot;
 2. sidewalk and ADA ramp projects within the historic districts in the following cities or towns: Goliad, Rio Grande City, Roma, San Antonio, San Elizario, and San Ygnacio; and
 3. sidewalk or ADA ramp projects within the limits of the following cities or towns: Anahuac, Nacogdoches, San Patricio, and Socorro; and/or
16. bridge replacements where construction activities will be entirely confined within existing right-of-way and the bridge alignment and dimensions will not be altered.

Non-Archeological Historic Properties:

The following activities do not require review or consultation regarding project effects on non-archeological historic properties. TxDOT's risk analysis, internal policies and Section 110 of the NHPA inventories shall reinforce any necessary exceptions for specific historic properties. Per Stipulation XV.A, SHPO may review project files.

1. installation, repair, or replacement of fencing, signage, traffic signals, railroad warning devices, safety end treatments, cameras and intelligent highway system equipment;
2. in-kind repair, replacement of lighting, signals, curbs and gutters, and sidewalks;
3. maintenance, repair, or replacement of non-brick roadway surfacing, including crack seal, overlay, milling, grooving, resurfacing, and restriping; and/or
4. design changes for projects that have completed all applicable review and consultation where the new project elements comprise only one or more of the activities listed in this subsection.

APPENDIX 4

UNDERTAKINGS WITH MINIMAL POTENTIAL TO CAUSE EFFECTS ON HISTORIC PROPERTIES

Consistent with 36 CFR 800.4, some project types require minimal identification efforts to evaluate the undertaking's potential to cause effects on historic properties. TxDOT staff will review project descriptions and other project information as necessary to evaluate whether a project is a type with minimal potential to cause effects on historic properties. The department delegate has authority to approve a finding that the project has minimal potential to cause effects on historic properties. The department delegate shall retain documentation that establishes the basis of any such findings. Project types listed in this Appendix will be reviewed following the procedures in Appendix 2. Undertakings that require no further review under Appendix 2 will be found to have no effect on historic properties.

This Appendix contains separate lists of undertakings that have minimal potential to cause effects on archeological versus non-archeological historic properties. These two lists generally contain different types of projects. Consequently, inclusion of a project type on one list does not indicate that the project has minimal potential to cause effects to both archeological and non-archeological historic properties.

Further consultation may be required for compliance with other applicable state laws, including the Antiquities Code of Texas (Texas Natural Resources Code, Chapter 191) and the courthouse protection provision of Texas Government Code Section 442.008.

Archeological Historic Properties

The following activities do not require additional review or consultation regarding their potential effects on archeological historic properties, if they meet the criteria specified in Appendix 2.

1. activities with less than 100 cubic yards of ground disturbance below the original grade;
2. intersection improvements – including repair or replacement of overpasses – that require less than 0.5 acres of additional right-of-way at each intersection; and/or
3. design changes for projects that have completed all applicable review and consultation where the new project elements comprise only one or more of the activities listed in this section or in the Archeological Historic Properties section of Appendix 3.

Non-Archeological Historic Properties

1. routine structural maintenance and repair of bridges , highways, railroad crossings, picnic areas and rest areas;
2. replacement, upgrade, and repair of safety barriers, ditches, storm drains, and culverts;
3. maintenance, repair, reconfiguration, or correction of roadway geometrics, including intersection improvements and driveway and street connections ;
4. maintenance, repair, installation or modification of pedestrian and cycling-related features, including Americans with Disabilities Act (ADA) ramps, trails, sidewalks, and bicycle and pedestrian lanes;
5. maintenance, repair, relocation, addition, or minor widening of roadway, highway, or freeway features, including turn bays, center turn lanes, shoulders, U-turn bays, right turn lanes, travel lanes, interchanges, medians, and ramps ; and/or
6. maintenance, repair, replacement, or relocation of features at crossings of irrigation canals, including bridges, new vehicle crossings, bank reshaping, pipeline and standpipe components, canal conversion to below-grade siphons, and utilities.

APPENDIX 5

REPORTING AND DOCUMENTATION STANDARDS FOR TxDOT REVIEW

The following standards govern TxDOT's conduct of investigations and reporting for the identification and evaluation of historic properties. Different standards apply to the documentation and reporting of archeological historic properties and non-archeological historic properties. The next two sections present these standards.

Archeological Historic Properties

1. Background Studies for Archeological Resources and Cemeteries.
 - a. For projects subject to review for archeological resources and cemeteries under this PA, based on the results of background research, TxDOT will identify projects or portions of projects' APEs that require archeological field investigation.
 - b. Eligibility determinations that TxDOT performs under this PA will not require field investigations if sufficient background information exists to demonstrate that the portion of the site to be affected does not have potential research value.
 - c. Determinations that TxDOT makes under this PA regarding the presence of cemeteries in project APEs may be made through the use of maps, project-area photographs, or other background research.
2. Surveys for Archeological Resources and Cemeteries.
 - a. Surveys may be limited to an evaluation of existing impacts or stratigraphic integrity when these activities are sufficient to determine that any sites present are unlikely to be eligible.
 - b. Eligibility determinations that TxDOT performs under this PA do not require subsurface investigation if it can be demonstrated that the portion of the site to be affected is not likely to have sufficient integrity to be eligible.
 - c. For portions of the APE where deposits may retain sufficient integrity for sites to be eligible, TxDOT survey methods will conform with the Texas Historical Commission's Archeological Survey Standards or with other appropriate methods, except as provided in subsection (i) of this section:
 - i. TxDOT reserves the right to depart from published survey standards in cases where it deems appropriate.
 - ii. SHPO reserves the right to review non-standard procedures for their adequacy.
 - d. Survey methods will be considered adequate for the identification of burials and cemetery boundaries when the portions of the APE within 25 feet of a known cemetery have been investigated and the survey included scraping to a depth adequate to determine whether grave shafts or burials occur in the APE.
 - e. A survey to identify burials does not comprise an activity with the potential to cause an adverse effect to a historic property.

3. Archeological Eligibility Testing Phase.
 - a. The following methods will be employed for test excavations:
 - i. Mechanical trenches will be excavated and profiles documented in order to characterize the area's potential for archeological deposits with sufficient integrity to be eligible to occur at the site.
 - ii. The extent of the site within the APE will be sampled through some combination of shovel-testing, column sampling, augering, surface collection, and geophysical prospection in order to characterize the distribution of archeological materials across the site.
 - iii. Additional units will be excavated and screened to evaluate site areas that appear to have the best potential for yielding important data with good integrity, based on the results of previous work.
 - iv. The materials analyzed will comprise those materials most likely to contribute important information about prehistory or history.
 - b. TxDOT reserves the right to depart from these methods in cases where it deems appropriate and shall justify deviations in the report.
4. Documentation for Archeological Resources and Cemeteries.
 - a. Projects subject to review for archeological resources and cemeteries under this PA will be documented by TxDOT in the manner described in this section. Documentation for each such project will include, at a minimum:
 - i. a description of the project, defining the APE or the investigated portion of the APE in three dimensions;
 - ii. a project location map, plotting the project location on 7.5' Series USGS quadrangle maps;
 - iii. information regarding the setting that is relevant for the assessment of the integrity of any archeological sites within the APE;
 - iv. information on previously recorded archeological sites in the project location;
 - v. description and justification of the level of effort undertaken for the investigation; and
 - vi. results and recommendations.
 - b. All TxDOT survey and testing reports will also include:
 - i. description and justification of field methods, including the sampling strategy;
 - ii. description and quantification of any archeological materials identified;
 - iii. accurate plotting of any sites found on 7.5' Series USGS quadrangle maps;
 - iv. submission of electronic TexSite archeological site survey forms to the Texas Archeological Research laboratory; and
 - v. recommendations regarding whether any site(s) merit further investigation.

Non-Archeological Historic Properties

1. For review-exempt projects under Appendices 3 and 4, documentation shall be limited to that maintained in TxDOT's official project files. THC may audit TxDOT files for specific projects upon request.

2. For internally reviewed projects, documentation for each such project will include, at a minimum:
 - a. project description and scope;
 - b. project location map with delineation of the APE and location of historic properties;
 - c. methodology used to identify historic properties;
 - d. photographic and descriptive information for each identified property;
 - e. description of public involvement activities;
 - f. justification for findings of historic properties, including setting, integrity, and contextual information; and
 - g. justification of effects on historic properties, including evaluations, reports, and other information relevant to the findings by TxDOT.
3. For individually coordinated projects, documentation submitted to THC will include items a-g of this subsection, and a description of efforts to avoid or minimize harm, proposed mitigation, and commitments.

APPENDIX 6

PROCESSES FOR REVIEW AND CONSULTATION REGARDING PROJECTS WITH POTENTIAL TO CAUSE EFFECTS TO HISTORIC PROPERTIES

Per Stipulation XI of this agreement, the following procedures specify the process to be followed by TxDOT for all undertakings not otherwise found to have no or minimal potential to cause effects on archeological and/or non-archeological historic properties.

1. Consulting parties

- a. Unless otherwise directed per the terms of tribe-specific programmatic agreements for consultation under Section 106 of the NHPA, TxDOT will contact federally recognized tribal consulting parties to seek their assistance in the identification of any property or properties within the APE that may be of religious and cultural significance and to consult with them about proposed findings.
- b. TxDOT may also identify and invite other consulting parties with a demonstrable interest in the project's effects on historic properties to participate in consultation. Potential consulting parties include but are not limited to County Historical Commissions, Certified Local Governments, Preservation Texas, Historic Bridge Foundation, and tribal groups that lack formal federal recognition.
- c. TxDOT may invite separate sets of consulting parties regarding potential project effects to archeological and potential effects to non-archeological historic properties.
- d. TxDOT may separately conduct and conclude consultation regarding potential effects to archeological properties and potential effects to non-archeological historic properties.
- e. If identification efforts resulted in a determination that no historic properties occur within the APE, TxDOT does not need to conduct individual, project-specific consultation with SHPO. Such undertakings will be determined to have no effect on historic properties as a result of this finding.

2. Early Consultation

When feasible, TxDOT will undertake early consultation to determine that project's potential to cause effects on historic properties.

- a. This consultation may be initiated prior to the development and/or availability of detailed plans about the undertaking and prior to the identification of historic properties in an appropriate APE. Documentation provided as part of early consultation will describe the general type of undertaking (highway improvement or bridge replacement, for example) and define the APE.
- b. TxDOT will disclose the APE and the level of investigative effort per the procedures in Appendix 2. Consultation may include multiple steps under 36 CFR 800.3 through 800.6.
- c. If TxDOT review determines that no historic properties are likely to be affected by the undertaking and no consulting party provides substantive comment on the undertaking, TxDOT will conclude its review and consultation.
- d. If TxDOT review determines that historic properties may be affected by the undertaking, or a consulting party provides substantive comment on the undertaking, TxDOT will continue consultation, per Stipulation 3 in this Appendix.

- e. TxDOT will resume its review and consultation for any design change that alters the APE beyond the boundaries previously considered, except for those minor design changes permitted under Appendices 3 and 4.
3. Standard Consultation
- In cases where early consultation is not undertaken, TxDOT will adhere to the following procedures for determining an undertaking's potential effects on historic properties
- a. TxDOT will determine the appropriate level of effort for review.
 - b. TxDOT will follow the standards in Appendix 5.
 - c. TxDOT will present the results of its review and propose findings in consultation with consulting parties. This consultation may include multiple steps under 36 CFR 800.3 through 800.6.
 - d. If TxDOT review determines that no historic properties will be affected and TxDOT receives no substantive comments from consulting parties, TxDOT will conclude its review and consultation.
 - e. If TxDOT review determines that historic properties may be affected by the undertaking or a consulting party provides substantive comment on the undertaking, TxDOT will continue consultation, per Stipulation 4 in this Appendix.
 - f. TxDOT will resume its review and consultation for any design change that alters the APE beyond the boundaries previously considered, except for those minor design changes permitted under Appendices 3 and 4.
4. Continuing Consultation
- TxDOT will continue consultation with consulting parties when a project may affect historic properties or TxDOT receives substantive comments from a consulting party on a project's potential effects.
- a. TxDOT may identify and invite additional consulting parties with a demonstrable interest in the project's effects on historic properties to participate in consultation.
 - b. TxDOT will provide all consulting parties with the documentation following the reporting and documentation standards of Appendix 5.
 - i. TxDOT will invite consulting parties to comment on project alternatives insofar as the alternatives under consideration may have different effects on historic properties.
 - ii. TxDOT will invite consulting parties to propose mitigation measures to resolve any potential adverse effects on historic properties.
 - iii. TxDOT will make reasonable efforts to accommodate requests for additional information during the consultation process.
 - c. TxDOT will use its documentation and consulting party comments to propose explicit findings about project effects and to propose resolutions to adverse effects, if any adverse effects may occur.
 - d. If TxDOT receives no substantive comments or no further substantive comments from consulting parties, TxDOT will conclude its review and consultation.
 - e. TxDOT will respond to substantive comments from consulting parties and document the response.
 - f. If TxDOT staff cannot resolve disputes about proposed findings or plans for the resolution of adverse effects with any consulting party, the issue will be escalated to the Director of the Environmental Affairs Division.

- i. The Division Director will work with representatives of the consulting party and continue consultation to attempt to resolve the dispute.
- ii. If the Division Director cannot resolve the dispute, the dispute will be resolved following the dispute resolution procedures in 36 CFR 800.
 - 1) If the SHPO disagrees whether a property is eligible for the National Register of Historic Places for Section 106 purposes or the if the Secretary of the Interior (Secretary) or the ACHP request it, TxDOT shall obtain a determination of eligibility from the Keeper pursuant to 36 CFR 63.
 - 2) If the SHPO disagrees with a finding of no historic properties affected, SHPO may request ACHP comment pursuant to 36 CFR 800.4(d)(1)(ii).
 - 3) If the SHPO or another consulting party disagrees with a finding of no historic properties adversely affected, TxDOT will request ACHP comment pursuant to 36 CFR 800.5(c)(2).
 - 4) If the SHPO disagrees on how adverse effects should be resolved, TxDOT will request ACHP comment pursuant to 36 CFR 800.6(b)(1)(v).
 - 5) For any other dispute circumstances, TxDOT will consider consulting party comments and provide a recommendation for approval by the Division Director.
5. If the SHPO or the ACHP requests an opportunity to comment on a specified undertaking, or if a consulting party requests SHPO participation in review, TxDOT shall follow the consultation procedures of 36 CFR Part 800 and this PA.
6. TxDOT may initiate consultation with the SHPO on an individual basis for undertakings that otherwise do not require SHPO consultation.
7. If disclosure of location information could result in disturbance of a historic property, all parties to this PA shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance, are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the NHPA, as amended, Section 9 of the Archaeological Resource Protection Act (ARPA) of 1979, and Executive Order on Sacred Sites 13007 FR 61-104 dated May 24, 1996.

DRAFT211
212**DRAFT**213
214
215
216
217**Attachment D****Application of Texas Historical Commission Rules for the
Texas Preservation Trust Fund to the Earmarked Funds for the Amarillo Helium
Plant**

218 The Texas Historical Commission (THC) administers the Texas Preservation Trust Fund
219 (TPTF), which distributes grants for the preservation of historic properties and
220 archeological sites throughout the state of Texas. As part of the Loop 335 project,
221 TxDOT will provide \$500,000 to the TPTF for grant-making specifically dedicated to the
222 Amarillo Helium Plant property.

223 TPTF program guidance:

224 **For current or future owners or others engaged in projects at the site:** THC staff
225 will provide a grant manual with specific guidance and forms, and will establish a point-
226 of-contact for grant administration and any grant-related questions.

227 Administration of these funds will follow THC rules for the TPTF program, as found at 13
228 Texas Administrative Code 17.1, with information that will be updated regularly found on
229 our website: www.thc.texas.gov.

230 General TPTF Guidance:

231 TPTF projects are typically awarded as competitive grants requiring a two-step
232 application process, consisting of an initial grant request followed by a more detailed
233 project proposal.

234 TPTF rules require that grant recipients provide a minimum of one dollar in cash match
235 to each state dollar for approved project costs, unless this requirement is waived by the
236 Commission. THC staff will recommend that the Commission waive the matching
237 requirement for any planning work accomplished with these earmarked funds.

238 TPTF grant categories include architectural planning, development (construction), and
239 education. The focus of TPTF funds set aside for the Helium Plant property will be in
240 planning and development.

241 Parameters for TPTF monies set aside for Amarillo Helium Plant:

242 Pursuant to Section 17.1 (d), the funds received under this agreement will be
243 earmarked to be used exclusively for the Amarillo Helium Plant for a period of 10 years,

244 after which time any unused funds will remain dedicated to projects in the Amarillo area,
245 with priorities outlined in a subsequent section.

246 The THC will waive the initial application for Helium Plant projects within the 10-year
247 period. The owner or a party working on behalf of the owner may apply for the
248 earmarked funds by submitting a project proposal for the particular scope of work for
249 which grant funds are sought. The applicant could be local non-profit, such as the
250 Amarillo Preservation Foundation, working in conjunction with the owner.

251 To ensure the scope of work to meets the *Secretary of the Interior's Standards for the*
252 *Treatment of Historic Properties*, THC staff may request revisions to the project
253 proposal before making a funding recommendation to the Commission.

254 As stated in Section 17.1 (l), the Commission must approve or deny grant awards.
255 Following Commission approval, the owner or applicant must enter into a funding
256 agreement prior to initiation of any work to receive grant funds.

257 **THC goals for Amarillo Helium Plant:**

258 The THC's priorities are preservation planning for the site as a whole, potentially
259 including a Preservation Master Plan and/or feasibility study, and stabilization and
260 rehabilitation of a building or buildings based on the recommendations of the planning
261 study.

262 Planning for the site should engage the owner and capture his or her vision for the
263 property without undermining the ability for the property to convey its historical
264 significance.

265 Planning should identify priorities in terms of urgency and reuse potential. This will likely
266 begin with stabilization and rehabilitation of the main administration building. This work
267 will prepare the building for future use and may include roof and structural stabilization;
268 fire safety, mechanical, and electrical systems; reconstruction of interior floors; and ADA
269 improvements, such as addition of elevator or appropriate installation of ADA entrance
270 on non-primary entry.

271 By requiring submission of a project proposal for each phase of work rather than making
272 an award recommendation at this time, we will ensure flexibility to address any other
273 pressing needs at the site as they may arise.

274 **Priority Projects**

275 Prioritization will be given to the Amarillo Helium Plant for a period of 10 years after
276 execution of the MOA. Should the funds not be utilized for that site, the THC will give
277 priority to the following project types:

- 278 1) Industrial sites related to Amarillo's science and/or military history;
- 279 2) Industrial sites related to science and/or military history in Potter or Randall
- 280 counties;
- 281 3) Industrial sites related to science and/or military history in the counties of the
- 282 Amarillo TxDOT District;
- 283 4) Route 66 resources in the counties in the counties of the Amarillo TxDOT District;
- 284 5) General sites of historical or architectural importance in Potter or Randall
- 285 counties.

286

287

288

###

289

DRAFT 2/10/17

290

291
292

Attachment E

293

Consulting parties

294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323

Charles Lynch, President
Amarillo Historical Preservation Foundation
1000 S Polk, Amarillo, TX 79101
clynch@crlarchitects.com

Evan Thompson
Executive Director
Preservation Texas
P.O. Box 12832 Austin, TX 78711
thompson@preservationtexas.org

Amanda Gronhovd
Society for Industrial Archeology
Michigan Technological University
1400 Townsend Drive
Houghton, MI 49931
gronhovd@10000lakesarchaeology.com

Betsy Merritt
National Trust for Historic Preservation
2600 Virginia Ave. NW, Suite 1100,
Washington, DC 20037
Betsy_Merritt@nthp.org

DRAFT 2/10/17

2/10/2017

Amarillo Helium Plant Memorandum of Agreement
DRAFT

324 Texas Department of Transportation

325
326
327
328
329
330
331
332
333

By: _____ DATE _____
James Bass
Executive Director

DRAFT 2/10/17

2/10/2017

Amarillo Helium Plant Memorandum of Agreement
DRAFT

334 Texas State Historic Preservation Officer

335
336
337
338
339
340
341
342
343
344

BY: _____ DATE _____
Mark Wolfe
Texas Historical Commission

DRAFT 2/10/17

2/10/2017

Amarillo Helium Plant Memorandum of Agreement
DRAFT

345 **Advisory Council on Historic Preservation**

346

347

348

349

BY:

DATE

350

John Fowler

351

Executive Director

352

DRAFT 2/10/17

353
354
355
356
357
358
359
360
361
362
363
364

Concurring Parties

Preservation Texas

BY: _____ DATE _____
Evan Thompson
Executive Director

DRAFT 2/10/17

2/10/2017

Amarillo Helium Plant Memorandum of Agreement
DRAFT

365 Amarillo Historical Preservation Foundation

366

367

368

369

370

371

372

373

BY:

Charles Lynch
President

DATE _____

DRAFT 2/10/17

2/10/2017

Amarillo Helium Plant Memorandum of Agreement
DRAFT

374 Society for Industrial Archeology

375

376

377

378

379

380

381

BY: _____ DATE _____
[Name]
[Title]

DRAFT 2/10/17

382 National Trust for Historic Preservation

383

384

385

386

387

388

389

BY:

Stephanie K. Meeks
Executive Director

DATE

DRAFT 2/10/17