

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF TONKAWA, OKLAHOMA, AND
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE
TONKAWA SWIMMING POOL RENOVATION PROJECT**

WHEREAS, the City of Tonkawa, Oklahoma (City) is the recipient of financial assistance from the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) program for the renovation of the historic Tonkawa Swimming Pool, a property that is individually eligible for listing in the National Register of Historic Places;

WHEREAS, the City has consulted with the Oklahoma State Historic Preservation Officer ("SHPO") pursuant to 36 CFR Part 800, the Advisory Council on Historic Preservation regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f)("the Act") and has determined that the Undertaking will have an adverse effect on the above mentioned historic property;

WHEREAS, the City and the SHPO agree that there is a lack of prudent and feasible alternatives to the modifications needed to upgrade the historic swimming pool for the safe use of the public and the Undertaking cannot be completed without adverse effects and that the City has incorporated as many of the SHPO's suggestions into the project plans as possible to reduce adverse effects; and

WHEREAS, in accordance with 36 CFR §800.6(a)(1), the City has notified the Advisory Council on Historic Preservation (the " Council") of its adverse effect determination and the Council has chosen not to participate in the consultation process pursuant to 36 CFR §800.6 (a)(1)(iii); and

NOW, THEREFORE, the City and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties.

STIPULATIONS

The City and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on the historic property. The City shall insure that the following stipulations are carried out:

- A. The City shall complete the undertaking in accordance with the revised project plans and specifications accepted by the SHPO as evidenced by its letter of January 29, 2008.

B. As the City had contracted with a professionally qualified consultant to prepare a National Register of Historic Places Registration Form and all supplemental materials as stipulated in the SHPO's National Register of Historic Places Nomination and Request for Determination of Eligibility Manual (the manual) for the Tonkawa Swimming Pool, the final products of this effort shall constitute mitigation of the adverse effects to the historic property. The City shall submit the draft National Register nomination for the SHPO's thirty (30) day review and comment period. Photographic documentation as required in the manual shall accompany the draft nomination, and these photos shall include clear views of the historic features of the pool that will be adversely affected. Upon the SHPO's approval of the draft National Register nomination, the City may begin project work. The final National Register nomination package as specified in the manual shall be delivered to the SHPO no later than September 30, 2008.

C. DURATION

If the Undertaking has not been started within five (5) years from the date of the execution of the MOA, this MOA shall be reconsidered and continued for a specified period or terminated in accordance with 36 CFR §800.6 (c)(5).

D. DISPUTE RESOLUTION

Should either party to this MOA object at any time to any proposed actions covered by the MOA, the City shall consult with the objecting party to attempt to resolve the objection(s). If the City cannot resolve the objection(s) within thirty (30) days, then the City will forward adequate documentation relevant to the dispute to the Council in accordance with 36 CFR §800.2 (b)(2), and to the party.

Pursuant to 36 CFR §800.7 (c)(2), the Council shall comment and advise the City on the resolution of the objection(s) within forty-five (45) days of the receipt of the request.

If the Council or the party do not provide comments regarding the dispute within forty-five (45) days of referral, the City may proceed to render a decision regarding the dispute. The City will consider comments from the Council and the other party to this MOA in reaching a final decision regarding the dispute.

The City will notify all parties of its decision in writing. The decision of the City will be final.

E. AMENDMENTS AND NONCOMPLIANCE

The parties to this MOA may amend it. The party proposing an amendment shall forward a copy of the proposed amendment to the other party. Upon concurrence of the parties to the proposed amendment, the City will file the executed amended MOA with the Council. The amended MOA becomes effective when both original signatories have executed the amendment and the amended MOA is filed with the Council.

If either party to this MOA determines that its terms cannot be or are not being carried out, that party shall immediately consult with the other party to develop an amendment to remedy the noncompliance pursuant to 36 CFR §800.6 (c)(7) and §800.6 (c)(8).

If the parties cannot agree to appropriate terms to amend the MOA, either party may terminate the MOA in accordance with Stipulation F.

F. TERMINATION

If the MOA is not amended within thirty (30) days following the conclusion of the consultation described in Stipulation G, either signatory may terminate it with written notification to the other party.

Within thirty (30) days following termination, the City shall notify the SHPO if it will initiate consultation to execute a new memorandum of agreement under 36 CFR §800.6 (c)(1) or request the comments of the Council under 36 CFR §800.7 (a) and proceed accordingly.

- G.** In the event the City is unable to carry out the terms of this MOA, no action shall be taken or irreversible commitment be sanctioned by the City that would result in any adverse effects with respect to the National Register-eligible Property covered by this agreement. Moreover, the City agrees not to take or sanction any action that would foreclose the Council's considerations of modifications or alternatives that could avoid or mitigate the adverse effects until the completion of the commenting process.

Execution of this MOA by the City and the SHPO and the submission of documentation and filing of this MOA with the Council pursuant to 36 CFR §800.6 (b)(1)(iv) evidence that the City has taken into account the effects of this Undertaking on the historic property and afforded the Council an opportunity to comment.

City of Tonkawa

By:  Date: 3/4/08
Mayor

Oklahoma State Historic Preservation Officer

By:  Date: 3-18-08
Bob L. Blackburn, State Historic Preservation Officer