

fully executed

ORDINANCE NO. 176-19

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PROGRAMMATIC AGREEMENT WITH THE OHIO HISTORIC PRESERVATION OFFICE FOR THE ADMINISTRATION OF PROGRAMS USING HUD ALLOCATED FUNDS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

SEC. 1: That the Mayor is hereby authorized and directed to Programmatic Agreement with the Ohio Historic Preservation Office for the administration of programs using HUD allocated funds.

SEC. 2: That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein.

SEC. 3: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

SEC. 4: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: November 12, 2019

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: November 13, 2019

SIGNED: Dennis Hanwell
Mayor

ORD. 176-19

City of Medina Programmatic Agreement (expires December 31, 2024)

**PROGRAMMATIC AGREEMENT
for Coordination
between
City of Medina
and the
Ohio State Historic Preservation Office
for the
Administration of Programs Using HUD Allocated Funds with Delegated Review
Responsibilities Authorized Under 24 CFR Part 58**

WHEREAS, the U.S. Department of Housing and Urban Development (“HUD”) has allocated Community Development Block Grant (CDBG) and other funds to the State of Ohio Development Services Agency (“State”); and

WHEREAS, the State has awarded CDBG and other funds to City of Medina (hereinafter referred to as “grantee”); and

WHEREAS, the funding sources covered by this Programmatic Agreement may include, but are not limited to CDBG, Home Investment Partnership (HOME), Economic Development Initiative (EDI), Emergency Shelter Grants, Supportive Housing, Housing Opportunities for Persons with AIDS (HOPWA), and Neighborhood Stabilization Program (NSP) Grants; and

WHEREAS, in accordance with 24 CFR Part 58, the grantee assumes responsibility for environmental review, decision-making, and actions that would otherwise apply to HUD under the National Environmental Policy Act (NEPA) and other provisions of law and this agreement coordinates the analysis and review of projects as provided under 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108), in order to meet the purposes and requirements of both statutes in a timely and efficient manner; and

WHEREAS, the grantee has determined that the undertakings it carries out using the above-listed HUD funding sources may affect properties that are listed in or eligible for listing in the National Register of Historic Places (“National Register”); and

WHEREAS, the grantee has consulted with the Ohio State Historic Preservation Officer (SHPO) regarding the development of this agreement pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (“NHPA”) (54 U.S.C. § 306108); and

WHEREAS, the grantee and the SHPO agree that by following the procedures outlined in this agreement, the grantee will be able to meet its obligations pursuant to 36 CFR Part 800 to take into account the effects of federally assisted projects on historic properties and provide the ACHP with an opportunity to comment.

NOW, THEREFORE, the grantee and the SHPO have agreed to carry out their respective responsibilities pursuant to Section 106 and Section 110(f) of the NHPA and the regulations at 36 CFR Part 800, in accordance with the following stipulations:

STIPULATIONS

I. New Construction & Archaeology

New construction is **not** exempt and must be submitted to the SHPO for review.

In the event the grantee plans any ground disturbance as part of a rehabilitation, new construction, site improvement, or other undertaking, the grantee will consult with the SHPO to determine whether the undertaking will affect an archaeological property eligible for or listed in the National Register. This stipulation shall not be interpreted to include a limited subset of ground-disturbing activities that are exempt from review, as described in Stipulation II.B.2.

II. Exempt Activities

A. If the grantee determines that an undertaking only involves buildings that are less than fifty years old, or if the undertaking includes only exempt activities (as defined by Stipulations II. B., II. C., and II. D), then the undertaking shall be deemed exempt from further review. Such undertakings will require no review under the terms of this agreement because these activities will generally not affect historic properties.

1. This stipulation may include the demolition of buildings less than fifty years old, so long as the building has not previously been determined to be eligible for listing or listed in the National Register of Historic Places.
2. The grantee will keep documentation of this decision to exempt specific undertakings in its files and compile a complete list of exempt undertakings annually, as required in Stipulation VIII.

B. If the proposed undertaking falls within one of the following categories, the activities shall be deemed exempt:

1. Non-Construction Work and Development, General Exclusions

- a. Public service program that does not physically impact buildings or sites.
- b. Architectural and engineering design fees and other non-construction fees and costs.

- c. Rental or purchase of equipment that does not physically impact buildings or sites.
- d. Temporary board-up, bracing, or shoring of a property, provided that it is installed without permanent damage to the building or site.
- e. Mortgage refinancing or purchasing of a property where no change in use, new construction, or rehabilitation will occur.
- f. Acquisition of vacant land when no subsequent redevelopment of the property is anticipated (including land banking).
- g. Acquisition of land with demolition or rehabilitation of buildings that are less than fifty years old (including land banking).
- h. Rehabilitation of mobile and manufactured homes.
- i. Loans used to fund rehabilitations of buildings less than fifty years old.

2. Site Work

- a. Repair, line painting, paving, resurfacing, and maintenance of existing streets, roads, alleys, parking lots, sidewalks, curbs, ramps, and driveways where no change in width, surfaces, or vertical alignment to drainage is to occur; the replacement in kind of concrete sidewalks where no change in width occurs.
- b. New curb cuts and simple accessibility improvements at roadway crossings to meet ADA requirements. Any improvements that require retaining walls or multiple levels shall be submitted for review.
- c. Maintenance and repair of existing landscape features, including planting, fences, retaining walls, and walkways.
- d. Installation of exterior lighting fixtures on poles outside of individual properties, including parking lots, sidewalks, and freestanding yard lights; installation of new or replacement lighting fixtures that are to be attached to a building less than fifty years old. This exemption is not meant to include street lighting that will serve multiple properties.
- e. Installation of emergency public warning sirens on existing poles and new poles; installation of emergency public warning sirens to a building less than than fifty years old.
- f. Within previously excavated trenches, the repair, maintenance, or replacement of existing residential water and sanitary sewer connections and lines. This exemption does not apply to the installation of water or sewer main lines, but only to connections between individual properties and existing public systems.
- g. Repair, in kind replacement, or reconstruction of existing catch basins.

- h. Replacement of utility meters on buildings in the same location as existing.
3. Exterior Rehabilitation
- a. Rebuilding of existing wheelchair ramps, or installation of new ramps on secondary building elevations where the building is not located on a corner lot.
 - b. Repair (not replacement) of porches, cornices, exterior siding, doors, windows, balustrades, stairs, or other trim as long as any new materials matches existing features in composition, design, color, texture, and other visual and physical qualities.
 - c. Foundation repair. Repointing of foundation masonry is exempt only on secondary elevations. If the building is on a corner lot, repointing of foundation masonry is not exempt on the elevations that face the streets.
 - d. Exterior scraping with non-destructive means and painting of wood siding, features, and trim; exterior painting of masonry, if existing surfaces are already painted. This does not apply to the use of lead encapsulate paint. No abrasive cleaning is permitted for the removal of any building materials.
 - e. Caulking, reglazing, and weather-stripping.
 - f. Installation of screens and storm windows, provided that they:
 - i. Completely fill the original window opening.
 - ii. Match the meeting rail or other major divisions.
 - iii. Interior storms must not cause damage to the original interior trim.
 - iv. Interior storms must be designed to seal completely so as to protect the primary window from condensation.
 - g. Installation of storm doors, if they are undecorated and have a painted finish to match existing trim or the existing door.
 - h. Repair or replacement of asphalt, fiberglass, and asbestos shingle roof covering with the same materials as long as the shape of the roof is not changed.
 - i. Replacement of a flat roof not visible from a public right-of-way as long as the shape of the roof is not changed.
 - j. Repair or replacement of metal gutters and downspouts; and relining, repainting, and repair of box gutters. This does not apply to the replacement of box gutters.
4. Interior Rehabilitation
- a. Repair (not replacement) of existing interior walls, floors, ceilings, decorative plaster, or woodwork, provided the work is limited to repainting, in-kind patching, refinishing, or repapering.
 - b. Installation of attic insulation.
 - c. Repair (not replacement) of existing interior walls, floors, ceilings, decorative plaster, or woodwork, provided the work is limited to repainting, in-kind patching, refinishing, or repapering.

- d. Kitchen and bathroom remodeling if no walls, windows, or doors are removed or relocated so as to alter the floor plan. Venting allowed through roof or secondary wall.
 - e. Installation of new furnace, boiler or water heater; furnace cleaning or repair.
 - f. Installation or repair of all electrical, plumbing, heating, ventilation, and air conditioning systems as long as no alteration is made to structural features or decorative features.
 - g. Installation of new ceiling openings for attic access or pull-down stairs; removal and sealing up of obsolete pull-down stairs.
 - h. Asbestos abatement activities that do not involve removal or alteration of structural or decorative features.
 - i. Lead paint hazard abatement such as HEPA cleaning and HUD approved paint removal or stabilization. Any decorative features shall be treated with care and retained for re-installation after treatment.
- C. Activities defined in 24 CFR Section 58.34 of the "Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities, as amended" are exempt from review under this agreement.
- D. Activities defined in 24 CFR Section 58.35(b) of the "Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities, as amended" are exempt from review under this agreement.

III. Project Review

- A. If the grantee determines that an undertaking will involve any activities that are not exempt under Stipulation II, the grantee will, in accordance with 36 CFR Part 800, consult with the SHPO before starting the undertaking by submitting the following documentation to the SHPO:
- 1. Project location, including a map;
 - 2. Project description, including work write-ups, plans, or specifications, as appropriate;
 - 3. Color photographs of all elevations of the building or site;
 - 4. Date any buildings in the project area were built;
 - 5. Statement of whether any properties in the project area are listed in or eligible for listing in the National Register;
 - 6. If there are listed or eligible properties, a statement of whether and how the undertaking will affect the historic properties.
- B. This submission should include, and the SHPO will consider, the following information if it explains the grantee's decisions regarding National Register eligibility and effect:
- 1. Condition assessments for various historic elements;
 - 2. An explanation of the goals of the undertaking;

3. Alternative treatments considered and cost estimates for each;
 4. Life cycle maintenance costs related to each alternative;
 5. Proposed measures to mitigate or minimize adverse effects;
 6. Available marketing studies; and
 7. Any other information that warrants consideration.
- C. At the discretion of the grantee, SHPO's Section 106 Project Summary Form can be used to satisfy Stipulation III A & B.
- D. The SHPO will respond, in accordance with 36 CFR Part 800, to the grantee within 30 days after receiving the project documentation by stating that:
1. The SHPO concurs with the grantee's decision about eligibility and effect;
 2. The SHPO disagrees with the grantee's decision about eligibility and effect; or
 3. The SHPO needs more information in order to concur or disagree with the grantee's decision about eligibility or effect.
- E. If the SHPO and the grantee agree that the undertaking will have no effect on properties that are listed in or eligible for listing in the National Register, the grantee will retain the SHPO's letter in its project file and the review process, in accordance with 36 CFR Part 800, will be complete.
- F. If the SHPO and the grantee agree that the undertaking will have an effect on properties that are listed in or eligible for listing in the National Register, the grantee will follow the standard process described in 36 CFR Part 800 to complete consultation.
- G. Any disagreements regarding the National Register eligibility of historic properties may be resolved through the grantee requesting a Determination of Eligibility from the Keeper of the National Register of Historic Places, as described in 36 CFR Part 63. Any disagreements regarding project effects shall be resolved as described in 36 CFR Part 800.6. The grantee or SHPO may elect to invite the ACHP to participate or provide its opinion, if they determine it to be appropriate.

IV. Technical Assistance and Educational Activities

Staff in the SHPO's Resource Protection and Reviews Department will provide technical assistance, consultation, and training of grantee staff as required by the grantee or as proposed by the SHPO in order to assist the grantee in carrying out the terms of this agreement. SHPO may also request that appropriate members of the grantee's staff should attend training specifically in the use and interpretation of this agreement, or the overall regulatory process described in 36 CFR Part 800.

V. Public Involvement and Participation

- A. In accordance with citizen participation requirements for State-administered HUD programs (24 CFR Section 570.486), the grantee will seek public input and notify the public of proposed actions.
 - 1. The grantee will, at a minimum, hold two public hearings to seek public comment regarding the planning and implementation of State-administered HUD programs. The first public hearing will address basic program parameters, and the second public hearing will provide specific information regarding proposed activities. Notice of both hearings will be published 10 days in advance in a newspaper of general circulation.
 - 2. The grantee will hold an additional public hearing if a State-administered HUD program is amended. The Amendment Public Hearing provides citizens with an opportunity to review and comment on a substantial change in the program. Notice of an Amendment Public Hearing will be published 10 days in advance in a newspaper of general circulation.
- B. The public notification procedures outlined in 24 CFR Part 58 for a Notice of Intent to Request Release of Funds (NOI/RROF) and Finding of No Significant Impact (FONSI) require the grantee to make information about individual projects available for public inspection, and to consider the views of the public and consulting parties in decision-making about individual projects
- C. For individual projects located in locally designated districts or those that may affect locally listed properties, the appropriate local review board will be presented with information regarding the proposed project for consideration as part of their regularly scheduled hearing, along with any project alternatives considered.

VI. Post Review Discovery

- A. In the event that historic properties are discovered or unanticipated effects on historic properties found after completion of the Section 106 process, the grantee will follow the process established at 36 CFR Part 800.13. In all cases of discovery or unanticipated effects, the grantee will contact SHPO as soon as practicable and provide sufficient information so that SHPO can make meaningful comments and recommendations.
- B. In the event that human remains are discovered during the development or construction of any project subject to this agreement, construction will cease in the area of the discovery. The grantee will contact SHPO and the County Sheriff and/or County Coroner within 48 hours. The grantee will also consult with SHPO, DSA and the County Sheriff and/or Coroner to develop and carry out a treatment plan for the care and disposition of human remains.
- C. When the human remains are determined to be of Native American Indian origin, the treatment plan will also be developed in consultation with appropriate federally recognized Native American Indian Tribes. The grantee may call upon

representatives of DSA and HUD for assistance in conducting meaningful and respectful discussions with tribal representatives.

VII. Dispute Resolution

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

- A. Forward all documentation relevant to the dispute, including the grantee's proposed resolution, to the ACHP. The ACHP shall provide the grantee with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the grantee shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The grantee will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the grantee may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the grantee shall prepare a written response that takes into account any timely comments regarding the dispute, and provide them and the ACHP with a copy of such written response.
- C. The grantee's responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.

VIII. Monitoring

- A. Within 30 days after the end of each calendar year that this agreement is in force, the grantee will submit to the SHPO a list of undertakings exempted from review under Stipulation II of this agreement.
 1. For each exempted undertaking the list will include the project location, the age of the building or its date of construction, a full description of each activity undertaken, PA Stipulation used to exempt project from review and name and title of grantee staff member who exempted project from review. The description shall include a list of the work done as well as how the work was done, such as: window sash repaired and repainting.
 2. The grantee should also include in their submission three (3) random samples of exempt projects, on buildings (50) years or older, with copies of the information that was available to support the project's consideration under the terms of this agreement.
- B. If the grantee did not exempt any undertakings from review under the terms of this agreement during the calendar year, it still must inform the SHPO of the lack of exemptions by letter notification.

IX. Definitions

The definitions provided in the National Historic Preservation Act and the regulations at 36 CFR Part 800 apply to terms used throughout this agreement, such as “historic property” and “effect.”

X. Amendment & Duration

This agreement will continue in full force until December 31, 2024 and may be reviewed for modifications, termination, or renewal before this date has passed. At the request of either party, this agreement may be reviewed for modifications at any time. This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

XI. Emergencies


A. In the event that the grantee determines that a project must be completed on an emergency basis due to an imminent threat to life or property or in response to a natural disaster or emergency, the grantee may set aside the timeline established in Stipulation III to facilitate expedited review by the SHPO.

1. The grantee shall notify the SHPO in advance by phone of its intention to submit a project for emergency review.
 - a. Cover letter describing the nature of the emergency and the proposed treatment. Emergency nature of review shall be noted in bold in reference line.
 - b. The address of the property and the nature of the emergency
 - c. Recent photographs of the property
 - d. A signed copy of any local order compelling immediate action
 - e. An Ohio Historic Inventory Form or other documentation regarding the National Register eligibility of the affected property

2. The SHPO shall promptly notify the grantee of its concurrence with the grantee's effect determination or may request additional information to complete the review. SHPO may recommend to grantee that resolution of adverse effects requiring the execution of a Memorandum of Agreement is necessary, but may agree to grantee's recommendation to defer completion of such an agreement until the necessary emergency actions have been taken.

Execution of this PA by the grantee and SHPO and implementation of its terms evidence that the grantee has taken into account the effects of its undertakings on historic properties and afforded the ACHP an opportunity to comment.

State Historic Preservation Office



Signature

11/21/2019

Date

Diana Welling

Deputy State Historic Preservation Officer for
Resource Protection and Review

Contact Information:

800 East 17th Avenue

Columbus, OH 43211

dwelling@ohiohistory.org

614-298-2000

SIGNATORIES:

Grantee Jurisdiction Name

Dennis Harwell

11-13-2019

Signature

Date

[name and title of the head of the jurisdiction - such as mayor or county commissioner - or authorized representative - such as city manager or planning director], [grantee]

Contact Information

Dennis Harwell, Mayor

