

MEMORANDUM OF AGREEMENT

**Between the Federal Emergency Management Agency,
The North Dakota State Historic Preservation Officer,
The North Dakota Department of Emergency Services
And the City of Minnewaukan**

**Submitted to the Advisory Council on Historic Preservation
Regarding Resolution of Adverse Effects to Historic Properties in the City of
Minnewaukan resulting from their Acquisition and Demolition or Relocation**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security proposes to administer Federal disaster assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, to the City of Minnewaukan (Applicant) through the North Dakota Department of Emergency Services (DES), under the Hazard Mitigation Grant Program (HMGP), for the acquisition and demolition or relocation of flood-damaged structures in Minnewaukan, ND (Undertaking), as a result of Disaster No. 1829 – ND, and;

WHEREAS, FEMA and the North Dakota State Historic Preservation Officer (SHPO), pursuant to the regulations found in 36 CFR Part 800 implementing Section 106 of the National Historic Preservation Act (NHPA) 16 U.S.C. § 470f, have concurred that the Minnewaukan properties listed in Attachment A to this Agreement are eligible for listing in the National Register of Historic Places and have determined this Undertaking will adversely affect those properties; and

WHEREAS, FEMA has consulted with the DES and the Applicant regarding the effects of the Undertaking on the historic properties listed in Attachment A; and

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

NOW, THEREFORE, FEMA, the SHPO, DES, and the Applicant agree that resolution of the Undertaking's adverse effects will be achieved through implementation of the following stipulations.

STIPULATIONS

To the extent of its authority and in coordination with the SHPO, DES, and the Applicant, FEMA will ensure that the following measures are implemented:

I. Relocation

The Applicant will place a public notice in the official newspaper of Benson County advertising the availability of the properties identified in Attachment A as Acquisition/Demolition (A/D) to the highest bidder. The public notice is to be run once per week for a 30-day period. The Applicant will provide FEMA copies of the appropriate Affidavits of Publication to document that this advertising requirement has been fulfilled. The cost of advertising these structures shall be an eligible HMGP project cost.

In the event that a historic property is purchased, the buyer shall be required to secure any required permits and fund moving the structure within 60 days after the close of the offering period. Actions integral to relocating a structure to a new site, such as utility connections, foundation preparations, or siting are the buyer's responsibility and expense. The applicant will make every reasonable effort to secure these properties from physical alteration, illegal entry, and damage during the above process.

II. Demolition

If a purchase agreement with an interested party is not entered into within the agreed upon time period mentioned above, the structure will be scheduled for demolition, to occur after the salvage requirements described below have been met. To ensure the protection of any prehistoric or historic archaeological resources that might be located in the project area, FEMA will require that the demolition of the structures be performed in a manner that minimizes ground disturbance. FEMA will require that any fill used for grading or ground restoration will be obtained from a previously approved off-site source, and that no on-site grading of previously undisturbed soil shall take place.

It is further understood that these measures shall be carried out in conformance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Archaeological Documentation (Federal Register, Vol. 48, No. 190.)

III. Salvage

If an historic property is scheduled for demolition, the Applicant shall notify the SHPO and other interested local historic organizations at least ten (10) calendar days prior to the proposed demolition. During this time, the SHPO or local organizations (or their designees) may inspect the acquired property, including interiors, if safe to enter, and may prepare a list of significant features they would like to salvage. The SHPO or other interested local historical organizations will be responsible for transportation off-site and the future management of the removed items.

IV. Web-site Creation

The Applicant shall create, or have created on its behalf, an easily updateable web-site within 12 months that will include at a minimum:

- A. Captioned or annotated photographic images that explore and reveal the impact that government, all common modes of transportation (waterways, railroads, roads and highways), agriculture, sports, tourism, and other leisure-time activities, etc., have had on the history and development of Minnewaukan, and comparing those impacts to those occurring in communities of similar size in North Dakota and elsewhere on the Great Plains;
- B. Annotated maps showing the development of the community and surrounding area from initial settlement to present;
- C. A summation of the Native American history of the land now occupied by the city, with particular reference to an analysis of the acquisition of tribal lands and the changes occurring thereby to the boundaries of the Spirit Lake Indian Reservation;
- D. A simple, easily accessed and downloadable presentation (e.g., PowerPoint or similar) on the overall City of Minnewaukan relocation project.
- E. FEMA and the SHPO will be given an opportunity to review and approve the product at the completion of each of steps A through D above. Written approval to

the Applicant from FEMA and the SHPO of the completed product (A. – D. above) before opening the web-site to public access and usage is required.

V. Duration

This agreement will be null and void if its terms are not carried out within one year from the date of its execution. Requests for reasonable extension will be considered. Prior to such time, FEMA may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation VIII below.

VI. Post-Review Discoveries

If previously unidentified historic properties or archaeological resources are discovered, or unanticipated effects on historic properties are found, during ground-disturbing work related to the Undertaking, the Applicant will stop that portion of the project immediately, contact FEMA, the DES, and the SHPO, and satisfy the requirements of 36 CFR § 800.13.

VII. Dispute Resolution

- A. If any objection or dispute should arise within the time frame provided by this MOA to any plans, specifications, or actions provided for review pursuant to this MOA, FEMA will consult further with the objecting party to seek resolution.
- B. If FEMA determines that the dispute cannot be resolved, FEMA shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR § 800.2(b)(2), including FEMA's proposed resolution of the dispute. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP will either:
 - i. Advise FEMA that it concurs with FEMA's resolution to the dispute.
 - ii. Provide FEMA with recommendations, which FEMA will take consider in reaching a final decision regarding the dispute; or

- iii. Notify FEMA that it will comment pursuant to 36 CFR § 800.7(c). Any comment provided will be taken into consideration by FEMA in accordance with 36 CFR § 800.7(c)(4) with reference to the subject of the dispute.
- C. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute, and FEMA's responsibility to fulfill all actions that are not subject of the dispute will remain unchanged.
- D. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, FEMA may render a decision regarding the dispute. In reaching its decision, FEMA will take into account all comments regarding the dispute from the parties to the MOA.
- E. Failure to fulfill the terms of this MOA requires that FEMA again request the ACHP's comments in accordance with 36 CFR § 800.6(c)(8). If FEMA cannot fulfill the terms of this MOA, it shall not take or sanction any action or make any irreversible commitment that would result in an adverse effect with respect to eligible or listed historic properties covered by this MOA or that would foreclose the ACHP's consideration of modifications or alternatives to the Undertaking that could avoid or mitigate the adverse effect until the comment process has been completed.

VIII. Amendments and Non-compliance

If any of the signatories to this MOA believe that the terms of the MOA cannot be adhered to, or that an amendment to the terms of this MOA must be made, that signatory shall immediately consult with the other signatories to develop amendments to this MOA. The process of amending this MOA shall be the same as that exercised in creating the original MOA. If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation VII will be followed.

IX. Anticipatory Actions

- A. FEMA shall not grant assistance to the Applicant should it, or those acting on its behalf, engage in anticipatory actions with the intent to avoid the requirements of this MOA or Section 106 of NHPA that significantly adversely effects an historic

property to which the assistance would relate or, having legal power to prevent it, allow such significant adverse effect to occur.

- B. After consultation with the SHPO and ACHP, however, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the Applicant and shall complete consultation for the Undertaking.

X. Termination of Agreement

- A. If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII above.
- B. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated, and prior to work continuing on the Undertaking, FEMA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the Council under 36 CFR § 800.7. FEMA shall notify the signatories as to the course of action it will pursue.

XI. Execution of the Memorandum of Agreement

Execution of this MOA by FEMA and implementation of its terms are evidence that FEMA has taken into account the effects of the Undertaking on historic properties, and that FEMA has satisfied its responsibilities under the NHPA and its implementing regulations.

This MOA may be executed in parts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a copy of the fully executed MOA. This MOA will become effective on the date that the signed MOA is received by the ACHP.

MEMORANDUM OF AGREEMENT

Regarding Mitigation of Adverse Effect to Historic Properties in the City of Minnewaukan
resulting from Acquisition and Demolition or Relocation

Attachment A – List of NRHP eligible properties within the APE.

***NIP = Not Included in Project; A/D = Acquisition/Demolition; A/R = Acquisition/Relocation**

**Location information taken from North Dakota Cultural Resources Site Files

SITS #	Status*	Site Name	Location**
32BE12	NIP	Benson County Courthouse	311 B Ave. South
32BE32	NIP	Grace Episcopal Church	210 C Ave. South
32BE33	NIP	St. Peter Lutheran Church	121 C Ave. North
32BE35	A/D	Cubbison House	240 Main Street
32BE152	NIP	American Legion	Main Street (Platted Block 55)
32BE165	A/D	Prairie Style House	451 B. Ave South
32BE168	NIP	Minnewaukan Motor Company	Main Street (Platted Block 44)
32BE169	NIP	Minnewaukan Post Office	Main Street (Platted Block 44)
32BE170	NIP	Benson County Farmers Press	B Ave. North (Platted Block 43)
32BE171	NIP	The Cottage	B Avenue North (Platted Block 43)
32BE173	A/R	Bungalow Style House	330 B Ave. South
32BE174	NIP	City Hall and Fire Hall	Main Street (Platted Block 55)
32BE175	NIP	Bank	NE corner, at Main St./East Ave.
32BE179	A/R	Gable T Farm House	221 B Street West
32BE180	NIP	White House	331 Main Street
32BE181	A/D	Gabled Front House	310 Main Street
32BE182	NIP	House	221 C Ave. South
32BE184	A/D	Water Tower	Main Street (Platted Block 5)
32BE185	A/D	Minnewaukan School	200 D Ave. South
32BE186	NIP	William Plummer Company Bld	Main Street (Platted Block 44)
32BE187	A/D	National Folk House	211 Main Street East
32BE188	A/R	Craftsman House	211 C Avenue South
32BE189	A/D	Mallard Inn	130 C Street East
32BE190	NIP	Helberg Lodge Spirit Water Inn	Main Street
32BE191	A/D	Prairie Style Bungalow	441 B Ave. South
32BE192	NIP	Hiassen Law Office	Main Street
32BE209	NIP	Pat Stensby	600 Block, West Avenue South
32BE210	NIP	Lavern Butts	100 Block, 4 th Street East
32BE211	NIP	Grain Elevator	West 2 nd Street, at East & West Ave. South
32BE213	NIP	School House	South Hwy 19, at West Ave. & B Ave. South

