RESOLUTION NO. 26-2024

A RESOLUTION OF THE CITY COUNCIL OF CLINTON, MISSOURI APPROVING A MEMORANDUM OF AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE MISSOURI HISTORIC PRESERVATION OFFICE, THE OSAGE NATION, AND THE CITY OF CLINTON REGARDING THE TRANSFER OF FEDERAL FEE-TITLE LAND AT HARRY S. TRUMAN LAKE TO THE CITY OF CLINTON.

WHEREAS, the U.S. Army Corps of Engineers (USACE), Kansas City District, plans to convey excess fee-owned tracts, totaling 178 acres, out of federal ownership to the City of Clinton, as part of Congress's Water Resource Development Act of 2020; and

WHEREAS, USACE has consulted with the City of Clinton regarding the effects of this undertaking on historic properties and the City of Clinton agrees to be bound by this agreement as a signatory;

NOW THEREFORE BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF CLINTON, MISSOURI AS FOLLOWS:

Section 1. The Memorandum of Agreement with USACE, Missouri Historic Preservation Office and the Osage Nation is hereby approved.

Section 2. The City Administrator is hereby authorized to execute said Agreement on behalf of the City of Clinton.

Read and passed this 15th day of October, 2024.

Carla Moberly

Carla Moberly, Mayor

ATTEST

Wendee Seaton

Wendee Seaton, City Clerk

THE CITY OF CLINTON MISSOURI
GREAT PEOPLE, BY NATURE

MEMORANDUM OF AGREEMENT AMONG
THE U.S. ARMY CORPS OF ENGINEERS,
THE MISSOURI HISTORIC PRESERVATION OFFICE,
THE OSAGE NATION, AND
THE CITY OF CLINTON
REGARDING RESOLUTION OF ADVERSE EFFECTS TO ARCHEOLOGICAL SITES 23HE1965 AND 23HE1966 RESULTING FROM PLANNED CONVEYENCE OF FEE-TITLE LAND AT HARRY S. TRUMAN LAKE TO THE CITY OF CLINTON IN HENRY COUNTY, MISSOURI

WHEREAS, the U.S. Army Corps of Engineers (USACE), Kansas City District, plans to convey fee-owned tracts, totaling 177.69 acres, out of federal ownership to the City of Clinton (undertaking), as part of Congress's Water Resource Development Act of 2020; and

WHEREAS, the undertaking consists of the USACE's proposal to convey the tracts out of federal ownership to the City of Clinton (Attachment 1); and

WHEREAS, USACE defined the undertaking's area of potential effects (APE) as the entire 177.69 acres of the conveyance (Attachment 2); and

WHEREAS, USACE determined that the undertaking will have an adverse effect on sites 23HE1965 and 23HE1966 (Attachment 3), which have been determined eligible for listing in the National Register of Historic Places (NRHP); USACE consulted with the Missouri State Historic Preservation Office (SHPO) in a letter dated August 21, 2023, pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, USACE invited The Osage Nation, Kaw Nation, Omaha Tribe, Ponca Tribe of Nebraska, and Ponca Tribe of Oklahoma to participate as invited signatories to this MOA by letter dated August 23, 2013. The Osage Nation agreed to participate as an invited signatory in a letter dated November 8, 2023 and the other tribes declined to participate in this MOA; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), USACE notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and the ACHP declined to participate in a letter dated January 11, 2024; and

WHEREAS, USACE consulted with the City of Clinton regarding the effects of this undertaking on historic properties and the City of Clinton agrees to be bound by this agreement as a signatory; and

WHEREAS, USACE posted public notices of the undertaking on the USACE public notice website from August 27, 2024 to September 30, 2024. The City of Clinton posted the notice on the City of Clinton's Facebook page from September 10, 2024 to September 30, 2024 and in the local newspaper, the *Clinton Daily Democrat,* on September 12, 2024; and as of the date of signature, no additional parties wish to participate in this MOA.

NOW, THEREFORE, USACE, the SHPO, The Osage Nation, and the City of Clinton agree that the undertaking shall be implemented in accordance with the following stipulations to consider the adverse effect of the undertaking on the historic properties.

STIPULATIONS

USACE shall ensure that the following stipulations are completed prior to transfer of title:

I) Data Recovery of Archeological Sites 23HE1165 and 23HE1966

A. USACE, in consultation with the SHPO and The Osage Nation, drafted data recovery plans entitled "Data Recovery Plans for 23HE1965 (Deer Creek Site) and 23HE1966 (Hilltop Site)" (Attachment 4).

i. The City of Clinton shall fund the implementation of the final approved data recovery plan prior to adversely affecting the sites. The City shall submit a request for proposal, screen the proposals, hire the contractor, and fund the fieldwork, laboratory work, and creation of a management summary and final report of findings. The City will manage access to the sites for the contractors.

ii. USACE shall ensure that the data recovery plans include appropriate provisions for field work, analyses, reporting, curation of recovered materials and records, and ongoing consultation with signatories and invited signatories to this MOA.

B. Data recovery activities shall be consistent with the National Park Service's "Secretary of the Interior's Standards and Guidelines for Identification and Evaluation," as well as the Council's publication, "Treatment of Archaeological Properties." (ACHP 1980).

C. The data recovery plan will be performed by archaeologists that meet, at a minimum, the Secretary of Interior's Professional Qualifications Standards articulated at 48 FR 44738-39.

D. The time frame for accomplishing the tasks is included in the Scope of Work, Attachment 4.

E. At the end of the fieldwork phase of the data recovery plan the City of Clinton shall submit a management summary of the findings to USACE who will provide a copy to SHPO and The Osage Nation for review and comment to determine if the data recovery has been completed.

F. Upon concurrence and acceptance of the findings of the management summary report by USACE, SHPO, and The Osage Nation, the open excavations may be closed and the City may backfill the excavations.

G. Upon completion of the approved final field work, the City of Clinton will submit a draft data recovery report in digital format documenting the results of the work conducted under the data recovery plan to USACE, which will provide a copy to SHPO and The Osage Nation for a review and comment. Upon receipt of the comments, the contractor will address the comments and produce the final report.

H. The City of Clinton will provide the final report to USACE in a digital format. USACE will provide a digital copy to SHPO and The Osage Nation, and ensure that:

i. the report shall comport with the Department of the Interior's Format Standards for

Final Reports of Data Recovery (42 FR 5377-79).

ii. all comments received on the draft are addressed and corrections made prior to submission of the final report.

iii. The sites shall not be destroyed or altered until USACE has informed the City of Clinton in writing that field work required for the draft final report is sufficient and completed. Once notified by USACE that all data recovery commitments and the property conveyance is complete, construction activity may occur within the site boundaries of both 23HE1965 and 23HE1966.

I. Artifacts and records will be returned to USACE, Kansas City District, for curation. USACE will retain ownership of the artifacts.

II) DURATION

This MOA will expire if its terms are not completed as outlined in Section I within five (5) years from the date of its execution. Prior to such time, USACE may consult with the signatories and invited signatories to reconsider the terms of the MOA and amend in accordance with Stipulation VI below. Property conveyance will not occur until the terms of this or a future MOA, if required, has been completed.

III) POST-REVIEW DISCOVERIES

If human remains or items of religious and cultural importance are encountered during field investigations or laboratory work, the Plan of Action (Attachment 5) shall be followed.

IV) MONITORING AND REPORTING

Every six months following the execution of this MOA until it expires or is terminated, USACE shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in USACE's efforts to carry out the terms of this MOA.

V) DISPUTE RESOLUTION

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

A. Forward all documentation relevant to the dispute, including USACE's proposed resolution, to the ACHP. The ACHP shall provide USACE 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, USACE shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, signatories and invited signatories, and provide them with a copy of this written response. USACE 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, USACE may make a final decision on the dispute and proceed

accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that considers any timely comments regarding the dispute from the signatories and invited signatories to the MOA and provide them and the ACHP with a copy of such written response.

C. Triggering of Stipulate V shall have no effect on USACE or other signatory or invited signatory's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.

VI) AMENDMENTS

Any signatory or invited signatory to this agreement may propose to USACE that the agreement be amended, whereupon USACE shall consult with signatories or invited signatories to this agreement to consider such an amendment. This MOA will be amended when such an amendment is agreed to in writing by all signatories. The amendment will go into effect on the date of the last signature execution from signatories.

VII) ANTI-DEFICIENCY ACT.

USACE's obligations under this MOA are subject to the availability of appropriated funds, and the stipulations of this MOA are subject to the controlling provisions of the Anti-Deficiency Act. USACE shall make reasonable and good faith efforts to secure the necessary funds to implement this MOA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs USACE's ability to implement the stipulations of this agreement, USACE shall act in accordance with Stipulation IX of this agreement.

VIII) EMERGENCY SITUATIONS

Should an emergency occur which poses an imminent threat to public health or safety, or creates a hazardous condition, The City of Clinton will inform USACE, who shall notify the SHPO, and the Osage Nation, of the condition which has initiated the situation within seven (7) calendar days of the occurrence and the measures taken to respond to the emergency or hazardous condition. Should the SHPO or the Osage Nation wish to provide technical assistance to USACE, the parties shall submit comments within seven (7) calendar days from notification, if the nature of the emergency or hazardous condition allows for such coordination.

IX) TERMINATION

A. If any signatory or invited signatory to this MOA determines that its terms will not or cannot be performed, that party shall immediately consult with the other signatories and invited signatories to attempt to develop an amendment per Stipulation VI, above. If after thirty (30) days (or another time period agreed to in writing by all signatories and invited signatories) an amendment cannot be reached, any signatory or invited signatory may terminate the MOA upon written notification to the other signatories and invited signatories. Once Section IX is triggered, all work on the undertaking must be suspended pending resolution under the terms of this MOA.

Once the MOA is terminated, and prior to work recommencing on the undertaking, USACE must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, consider, and respond to the comments of the ACHP under 36 CFR § 800.7. USACE

shall notify the signatories and invited signatories the course of action it will pursue.

X) SEVERABILITY

Should any portion of this MOA be judicially determined to be illegal or unenforceable, the remainder of the MOA shall continue in full force and effect.

XI) MOA EXECUTION

Execution of this MOA by USACE, the SHPO, The Osage Nation, and the City of Clinton and implementation of its terms is evidence that USACE has considered the effects of this undertaking on historic properties and afforded the ACHP a reasonable opportunity to comment.

XII) ELECTRONIC SIGNATURE

Each party agrees a signatory may execute this document by electronic symbol or process attached to or logically associated with the document, with an intent to sign the document and by a method that must include a feature to verify the identity of the signer and the authenticity of the document, commonly referred to as verified electronic signature. Each party further agrees to accept in-person signature with ink for such party who agrees but either does not wish to or does not have access to adequate technology to sign electronically.

XIII) IMPLEMENTATION

A. This document may be signed in two or more parts upon signatory circulation, thereby separating the signature pages; each of which shall be deemed an original for all purposes, and all of which shall be considered one and the same agreement so long as Sections XI & XII are fulfilled.

B. This MOA shall become effective within the applicable state on the date of signature, whichever is latest, by the USACE, SHPO, and The Osage Nation.

C. USACE shall ensure each consulting party is provided with a complete copy of the final MOA.

D. USACE shall submit an executed copy of this MOA and supporting documentation, pursuant to 36 CFR 800.11(f), to the ACHP prior to approving the undertaking.

ACHP 1980. *Treatment of Archeological Properties: A Handbook.* Available online at https://www.achp.gov/digital-library-section-106-landing/treatment-archeological-properties-handbook-1980

NPS n.d. *Series: Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.* Available online at https://www.nps.gov/articles/series.htm?id=62144687-B082-538A-A0174FFF26496394

MEMORANDUM OF AGREEMENT AMONG
THE U.S. ARMY CORPS OF ENGINEERS,
THE MISSOURI HISTORIC PRESERVATION OFFICE,
THE OSAGE NATION, AND
THE CITY OF CLINTON
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SIGNATORY

U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT

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NIEWOHNER.ANDREW.THOMAS.
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Date: 2025.04.01 18:59:03 -05'00'

Date: 4/1/2025

Andrew Niewohner
Colonel, Corps of Engineers
District Commander

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SIGNATORY
MISSOURI STATE HISTORIC PRESERVATION OFFICER

Laura Hendrickson

Digitally signed by Laura Hendrickson
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Date: 4/3/25

Laura Hendrickson
Director Missouri State Parks

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**SIGNATORY
CITY OF CLINTON, MO**

Christina A. Maggi

Date: 04/09/2025

**Christina A. Maggi
City Administrator**

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INVITED SIGNATORY
THE OSAGE NATION

Date: 4/29/25

Geoffrey M. Standing Bear
Principal Chief

List of Attachments

Attachment 1. Boundary of USACE fee-owned property at Truman Lake, Missouri showing location of the project.

Attachment 2. Project area (yellow polygon) within the Harry S Truman fee-owned boundary (blue polygon).

Attachment 3. Tracts to be conveyed (pink polygon) and identified sites, with arrows at NRHP-eligible sites.

Attachment 4. Scope of Work, Data Recovery Plans for 23HE1965 (Deer Creek Site) and 23HE1966 (Hilltop Site).

Attachment 5. Cultural Context and Research Questions.

Attachment 6. Survey and Testing Report (Powell 2023).

Attachment 7. Treatment of Human Remains and Items of Religious and Cultural Importance.

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Attachment 3. Tracts to be conveyed (pink polygon) and identified sites, with arrows at NRHP-eligible sites. NOT FOR PUBLIC RELEASE.