

MEMORANDUM OF AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS,
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER, AND
THE CITY OF DICKINSON
REGARDING RESOLUTION OF THE ADVERSE EFFECTS OF THE
DICKINSON EAST BROADWAY DAM (SHPO SITE NUMBER: 32SK898)
REMOVAL PROJECT, STARK COUNTY, NORTH DAKOTA
(CORPS REFERENCE NUMBER NWO-2025-01133-BIS)

WHEREAS, The City of Dickinson is proposing to remove the East Broadway Dam (hereafter referred to as “the Dam”) (32SK898) and install rock weirs in order to allow upstream fish passage, improve river connectivity, and improve river navigation safety. Sediment removal upstream of the dam and riverbank stabilization of a section of riverbank to protect against future erosion are also proposed; (Corps file number NWO-2025-01133-BIS); and

WHEREAS, U.S. Army Corps of Engineers (Corps) has been asked to verify that the Project is authorized, under Section 404 of the Clean Water Act, by Nationwide Permits #13, 27, 33 and 53 (Department of the Army Permit, hereafter referred to as DA Permit), thereby making the Project an Undertaking subject to review under Section 106 of the National Historic Preservation Act (54 U.S.C.306108) and implementing regulations (33 CFR 325 Appendix C and 36 CFR Part 800); and

WHEREAS, The Project is located on the Heart River in Section 3, Township 139 N, Range 96 W, in the City of Dickinson, Stark County, North Dakota; and

WHEREAS, the Corps has defined the area of potential effects (APE) as the direct impacts to the Heart River which includes all areas of permitted in-water activity, including upland areas where work is directly associated, integrally related, and would not occur but for the in-water authorized activity associated with the DA permit (see Appendix A); and

WHEREAS, the Corps has determined, and the North Dakota State Historic Preservation Officer (SHPO) has concurred that the East Broadway Dam (32SK898) is eligible for the National Register of Historic Places (NRHP) and the proposed removal of the Dam will be an “Adverse Effect to Historic Properties”; and

WHEREAS, in accordance with Section 106 of the National Historic Preservation Act, the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation and the ACHP has chosen not

to participate in the consultation; and

NOW, THEREFORE, the Corps, SHPO, and City of Dickinson agree that should the Undertaking move forward to construction, that the following Corps-enforced stipulations resolve adverse effects to historic properties associated with the Undertaking, and that these stipulations shall govern the Undertaking and all of its parts unless this MOA expires or is terminated.

Stipulations

The Corps will ensure that the City of Dickinson carries out the following stipulations, which are intended to mitigate the adverse effect of the removal of the Dam (32SK898):

1. Interpretive Panel.

a. The City of Dickinson shall

i. Provide and install an approved interpretive panel to be placed along the walking path near the East Broadway Dam within one year of the completion of the construction project.

a. The panel narrative shall discuss the East Broadway Dam site and provide a Quick Response (QR) code to a City maintained website with additional historic content regarding the dam.

b. The interpretive panel size, graphics, style, and reading comprehension level should conform, as close as practicable, to setting of the existing interpretive panels and environment at the historic site.

c. Public access to the panel shall be reasonably maintained.

d. In the event the interpretive panel is damaged beyond minor repair, up to a cumulative cost of \$500, or when the panel graphics and narratives are no longer legible due to weathering, the City of Dickinson will be responsible for removal and disposal of the panel and reclamation of the panel footprint. The City of Dickinson will not be responsible for installing a new panel if the panel becomes no longer useable.

e. Provide a draft of the narrative outline and narrative draft, as well as a draft of the panel for SHPO, and Corps review and approval. Provide one (1) digital copy and one (1) hardcopy of the final approved panel, with legible narratives, to the SHPO, and Corps.

f. Submit the prepared information to the Living New Deal Website <https://livingnewdeal.org/>, one (1) digital copy and one (1) hardcopy of the final approved panel, with legible narratives, to both the following entities in Stark County, ND: Stark County Historical Society and the

City of Dickinson (ND) Public Library. These entities are free to accept the data in their preferred digital and/or hardcopy format(s) and are also free to reject the offer.

b. SHPO will provide input on the Interpretive Panel theme(s) and materials as well as review, comment, and approval of the outline, drafts and final product.

c. The Corps will provide input on the Interpretive Panel theme(s) and materials as well as review, comment, and approval of the outline, drafts and final product.

2. Annual Reporting. The City of Dickinson will email a yearly status update to the Signatories detailing the current status of any incomplete Stipulation, which will include any scheduling changes proposed, any problems encountered, and any disputes and objections. The annual report will be due by December 31st of each year until all stipulations are fulfilled.

3. Administrative Stipulations

a. Dispute Resolution.

Should any Signatory to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Corps shall consult with the objecting Signatory(ies) to resolve the objection. If the Corps determines, within a reasonable time, as agreed to by the Signatories, that such objection(s) cannot be resolved, the Corps will:

- i. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise the Corps on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to the MOA, will be taken into account by the Corps in reaching a final decision regarding the dispute.
- ii. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the Corps may render a decision regarding the dispute. In reaching its decision, the Corps will take into account all comments regarding the dispute from the parties to the MOA. The Corps will notify all Signatories of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The Corps decision will be final.
- iii. The Corps' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged

b. Amendments and Noncompliance.

If any signatory to this MOA determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall

immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §§800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original Signatories is filed with the Council. If the Signatories cannot agree to appropriate terms to amend the MOA, any Signatory may terminate the agreement in accordance with Stipulation 4e, below.

c. Primary Contact Information.

The contact information for each signatory to this MOA may be updated which shall not be considered an amendment to this MOA. An electronic message (email) exchanged among the contacts, indicating the updated information, shall be sufficient provided the signature authority for each Signatory is included in such communication.

d. Duration.

If the terms of this agreement have not been implemented within five (5) years of execution of the MOA, this agreement shall be considered null and void, unless the Signatories agree in writing to an extension for carrying out its terms. If this agreement is considered null and void, the Corps shall so notify the Signatories to this agreement, and if the City of Dickinson chooses to continue with the Undertaking, shall re-initiate review of the Undertaking.

e. Termination.

If this MOA is not amended following the consultation set out in Stipulation 3.b., it may be terminated by any signatory or invited signatory. Within 30 days following termination, the Corps shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the ACHP under 36 CFR §800.7(a) and proceed accordingly.

EXECUTION of this MOA by the Corps, SHPO, and City of Dickinson and implementation of its terms, is evidence that the Corps has taken into account the effects of the Undertaking on historic properties and has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties.

ALL obligations of the Corps under this agreement are subject to the availability of funds.

SUBJECT: Memorandum of Agreement for the Resolution of Adverse Effects to the East Broadway Dam, Stark County, North Dakota, Corps Reference Number NWO-2025-01133-BIS.

SIGNATORY PARTY

U.S. ARMY CORPS OF ENGINEERS, OMAHA DISTRICT

By: _____ **Date:** ___Month XX, 2026___
North Dakota State Program Manager, Regulatory Branch, Omaha District

Contact Info:

Benjamin Soiseth
North Dakota Regulatory Section Chief
U.S. Army Corps of Engineers, Omaha District
3319 University Drive
Bismarck, North Dakota 58504
(701) 255-0015
Benjamin.N.Soiseth@usace.army.mil

Note: Signatures continued on next page.

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SIGNATORY PARTY

NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICE

By: _____ **Date:** _____
State Historic Preservation Officer

Contact Info:

William Peterson, Ph.D.
State Historic Preservation Officer
State Historical Society of North Dakota
612 East Boulevard Avenue
Bismarck, North Dakota 58505-0830
(701)328-2666
BillPeterson@nd.gov

Note: Signatures continued on next page.

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SIGNATORY PARTY

CITY OF DICKINSON

By: _____ **Date:** _____
Applicant

Contact Info:

Kristopher Keller
City of Dickinson
38 1st Street West
Dickinson, ND 58601

Note: End of signature pages.