

MEMORANDUM OF AGREEMENT
AMONG
THE UNITED STATES ARMY, CORPS OF ENGINEERS, FORT WORTH DISTRICT,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER,
AND THE CITY OF WYLIE, TEXAS,
REGARDING THE MCMILLEN ROAD PROJECT
LOCATED IN WYLIE, COLLIN COUNTY, TEXAS

Permit Number: SWF-2024-00078

WHEREAS, the United States Army Corps of Engineers, Fort Worth District (USACE), the lead Federal agency, is reviewing a permit application under Section 404 of the Clean Water Act to authorize dredge and fill activities for the McMillen Road Project (Project) by The City of Wylie, Texas; and

WHEREAS, The City of Wylie proposes to construct the Project in a single phase located in Wylie, Collin County, Texas; and

WHEREAS, the Project requires a USACE permit in compliance with Section 404 of the Clean Water Act; and

WHEREAS, the activity requiring a USACE permit pursuant to Section 404 of the Clean Water Act constitutes an undertaking (Undertaking) under Section 106 of the National Historic Preservation Act (NHPA) of 1966 (as amended); and

WHEREAS, the USACE, in consultation with the Texas Historical Commission (THC), acting as the State Historic Preservation Officer (SHPO), considered the potential effects of the Project as provided in 33 CFR 325, Appendix C and 36 CFR 800 and established an Area of Potential Effects (APE) for direct effects to include a 17.1 acre area that includes the Project right-of-way and all associated temporary and permanent workspace, and impacts to waters of the U.S.; and

WHEREAS, the USACE determined construction occurred prior to obtaining Section 404 of the Clean Water Act permit authorization and prior to initiating archeological surveys required for Section 106 consultation and issued a Cease-and-Desist order on March 20, 2024, and

WHEREAS, The City of Wylie has completed a cultural resource survey report titled *Archaeological Survey of the Proposed City of Wylie McMillen Road Improvements, Collin County, Texas*, dated November 14, 2024, which surveyed the APE and reported that the archeological site 41COL395, a precontact campsite in sealed stratigraphic deposits, which was unevaluated for National Register of Historic Places eligibility, was damaged by unauthorized construction activities; and,

WHEREAS, the USACE determined that site 41COL395 must be treated as eligible for the NRHP and that the unauthorized Project effects to 95.9 m³ of site deposits constitute adverse effects to a historic property, and,

WHEREAS, the USACE has obtained concurrence from the SHPO have also concurred the result of the Undertaking is an adverse effect to site 41COL395, and the USACE consulted with the Advisory Council on Historic Preservation (ACHP) regarding this adverse effect; and,

WHEREAS, the USACE and the SHPO invited The City of Wylie to participate in the consultation and to join this Memorandum of Agreements (MOA) as an Invited Signatory; and

WHEREAS, the USACE has consulted with the Apache Tribe of Oklahoma, the Comanche Nation of Oklahoma, the Coushatta Tribe of Louisiana, the Muscogee (Creek) Nation, the Tonkawa Tribe of Oklahoma, and the Wichita and Affiliated Tribes of Oklahoma and invited them to sign this MOA; and

WHEREAS, the USACE, in accordance with 33 CFR 325, Appendix C(2) and 36 CFR 800.2(c), has identified consulting parties, sought their views on the proposed Project, and provided them documentation of the adverse effects to site 41COL395 and the proposed mitigation measures; and

WHEREAS, USACE, in accordance with 33 CFR 325, Appendix C(7)(d) and 36 CFR 800.6(a)(1), notified the ACHP of its adverse effect determination with specified documentation, and the ACHP chose not to participate in the consultation pursuant to 36 CFR 800.6(1)(iii); and,

WHEREAS, the USACE, the SHPO, and The City of Wylie agreed to accomplish compliance with Section 106 through the development and execution of this MOA, and to ensure that The City of Wylie provides mitigation for the adverse effects to site 41COL395, and to ensure that The City of Wylie adheres to the Mitigation Plan appended to this MOA (Appendix A), and this MOA will be a permit condition for any after-the-fact USACE permit issued for the Project; and

NOW, THEREFORE; the USACE, the SHPO, and The City of Wylie agree that the Project shall be implemented in accordance with the following stipulations to take into account the adverse effect of the Project on site 41COL395 to satisfy the USACE's Section 106 responsibilities for this Project.

STIPULATIONS

The USACE will ensure that the following stipulations are carried out by The City of Wylie to minimize and mitigate adverse effects to site 41COL395 resultant from the Undertaking.

I. RESOLUTION OF THE ADVERSE EFFECT

- **Task 1:** Center for Archeological Studies, Texas State University Museum-in-a-Box program. Approximately 35% (\$68,292) of the funds will be spent on this task to aid CAS in production of a Museum in a Box for a relevant site in North Texas that can be loaned out for public education.
- **Task 2:** Regulatory Training for City of Wylie staff. Approximately 21% (\$41,580) of the funds will be spent on the development and execution of a training event to educate City staff on Section 404 permitting, Section 106 of the National Historic Preservation Act (NHPA), and the Antiquities Code of Texas (ACT). This training must be held within the first year following the execution of the MOA.
- **Task 3:** Missing Archeological Site Forms in the Archeological Sites Atlas. The final 27% (\$52,920) of funds will be dedicated to archival work to research and submit up to 200 site forms and spatial data to the TARL.
- **Task 4:** Donation to the Texas Archeological Society's (TAS) Reports and Curation Committee. Approximately 17% (\$33,502) of the funds will be spent on this donation to

fund analysis, reporting, and curation of field school collections that are pending for the Society.

II. CURATION AND DISPOSITION OF MATERIALS, RECORDS AND REPORTS

- A. *Curation.* The City of Wylie shall ensure that materials and associated records as required for minimization and mitigation in this MOA, are accessioned into a curatorial facility that has been certified, or granted provisional status, by the SHPO in accordance with Chapter 29.6 of the Texas Historical Commission rules (Rules of Management and Care of Artifacts and Collections).
- B. *Reports.* The City of Wylie shall provide copies of final documentation demonstrating the mitigation measures were completed to the Signatories and consulting parties. The Signatories and consulting parties shall withhold from the public all site location information and other data that may be of a confidential or sensitive nature pursuant to 33 CFR 325, Appendix C(4)(c) and 36 CFR 800.11(c).

III. PROFESSIONAL QUALIFICATIONS

All historic preservation-related investigations and mitigation requirements specified in this Agreement shall be supervised by personnel meeting professional qualifications of the Secretary of the Interior's *Professional Qualification Standards* (36 CFR Part 61) in the related discipline.

IV. DISPUTE RESOLUTION

Should any Signatory to this MOA object within thirty (30) calendar days upon receipt of any plans or other documents, pursuant to this MOA, provided by USACE, the SHPO, The City of Wylie, or others for review, or object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the objector is encouraged to consult the other Signatories in resolving the objection. If the USACE determines that such objection cannot be resolved, USACE shall perform the following tasks.

- A. **CONSULT ACHP.** Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP. The ACHP shall provide the USACE with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USACE 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 shall provide them with a copy of this written response. The USACE will then proceed according to its final decision.
- B. **FINAL DECISION.** If the ACHP does not provide its advice regarding the dispute within the 30-day time period, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and concurring parties to the MOA, and shall provide the Signatories, concurring parties, and the ACHP with a copy of such written response.

- C. The parties shall carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.
- D. At any time during the implementation of the measures stipulated in this MOA is raised by interested persons, then USACE shall consider the objection and consult, as appropriate, with the objecting party and the consulting parties to attempt to resolve the objection.

V. DURATION, AMENDMENT, AND TERMINATION:

- A. **DURATION.** Unless terminated or amended as outlined below, this Agreement shall remain in effect for a period of five (5) years from the date the MOA goes into effect and may be extended for an additional 5-year term with the written consent of all the Signatories. Should The City of Wylie request an additional 5-year term, The City of Wylie must demonstrate that continual progress has been made to fulfill the terms of the MOA in order to justify that delays were unavoidable. Should USACE determine that progress was not being made in good faith, additional mitigation measures will be negotiated by signatories when amending the MOA term.
- B. **AMENDMENT.** This Agreement 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.
- C. **TERMINATION.** Any Signatory to this agreement may terminate this MOA by providing thirty (30) calendar days written notice to the other Signatories, pursuant to 36 CFR 800.6(c)(8). During the period after notification and prior to termination, the Signatories shall consult to seek agreement on amendments or other actions that would avoid termination. Termination of this MOA will require compliance with 36 CFR 800. This MOA may be terminated by the execution of a subsequent MOA that explicitly terminates or supersedes its terms.

VI. REPORTING AND MONITORING:

Each year following the execution of the MOA until it expires, or it is terminated, The City of Wylie shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Annual reports shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in The City of Wylie's efforts to carry out the terms of the MOA.

VII. EXECUTION:

Signature of this Programmatic Agreement by the USACE, the SHPO, The City of Wylie, and implementation of its terms evidence that the USACE has considered the effects of this Project on historic properties and afforded the ACHP an opportunity to comment. Pursuant to 36 CFR 800.6(b)(1)(iv) this Agreement will go into effect when a fully executed version is received by the ACHP.

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SIGNATORY:

United States Army, Corps of Engineers, Fort Worth District

Brandon W. Mobley, Chief, Regulatory Division

Date _____

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SIGNATORY:

Texas State Historic Preservation Officer

Joseph Bell, State Historic Preservation Officer

Date _____

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INVITED SIGNATORY:

The City of Wylie

Brent Parker, City Manager

Date _____