

MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF COUNCIL BLUFFS, IOWA
AND THE
IOWA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE 28TH STREET & AVENUE A REDEVELOPMENT PROJECT
LOCATED AT 2800 AVENUE A, COUNCIL BLUFFS, IOWA

WHEREAS the City of Council Bluffs, Iowa (City) plans to carry out the 28th Street and Avenue A Redevelopment Project (undertaking) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and its implementing regulations (36 C.F.R. Part 800); and

WHEREAS the undertaking consists of the demolition of the building and remediation of the property located at 2800 Avenue A; and

WHEREAS, the City has defined the undertaking's area of potential effect (APE) as 2800 Avenue A, Council Bluffs, Iowa; and

WHEREAS, the City has determined that the undertaking has an adverse effect on 2800 Avenue A - the Omaha-Council Bluffs Railway and Bridge Co. Trolley Barn and Office (R&C#: 030578044), which is considered eligible for listing on the National Register of Historic Places; and

WHEREAS, the City has investigated alternatives to the demolition of 2800 Avenue A, including possible redevelopment, and found none to be prudent or feasible; and

WHEREAS, the City has consulted with the Iowa State Historic Preservation Office (SHPO) pursuant to 36 C.F.R. Part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the City has consulted with the local Historic Preservation Commission and the Council Bluffs Preservation Alliance regarding the effects of the undertaking on 2800 Avenue A - the Omaha-Council Bluffs Railway and Bridge Co. Trolley Barn and Office (R&C#: 030578044). The comments received are attached as Appendix A; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the City 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 in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii). A copy of the ACHP's letter notifying the City that they chose not to participate is attached as Appendix B; and

NOW, THEREFORE, the City and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

In order to mitigate the adverse effect of the proposed undertaking in accordance with 36 CFR Part 800.6, the City shall ensure that the following measures are carried out:

I. RESOLUTION OF ADVERSE EFFECTS

- a. The City shall submit all field photography work for the property at 2800 Avenue A as described in Appendix C to SHPO for acceptance prior to dismantlement or demolition of the structure.
- b. Within two (2) years of execution of this agreement the City will document the story of 2800 Avenue, 2822 Avenue A and 2802 Avenue B transportation buildings in architectural and historical perspective, explaining how its story played out against the background of transportation use and design at related local, state or national trends. The documentation will be formulated into approximately a 20 page narrative report to increase public awareness and appreciation of the history of the building. The narrative report will be prepared as described in Appendix C.
- c. The City shall ensure that the historic recordation cited in stipulation "b" shall be performed by an individual meeting the *Secretary of the Interior's Professional Qualification Standards (48FR44738-9)* for historian or architectural historian.
- d. A historic marker will be installed on the property located at 2800 Avenue A by the City within two (2) years following the redevelopment of the property. The historic marker will be approved by the Historic Preservation Commission and SHPO prior to installation.

II. DURATION

This MOA will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the City may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Section VI below.

III. POST-REVIEW DISCOVERIES

- a. Unanticipated Discovery (Exclusive of Human Remains and Human Burials)

If during the implementation of any undertaking, project activities uncover an item(s) that might be of archeological, historical or architectural interest, or if important new archeological, historical or architectural data should be encountered within or immediately adjacent to the project APE, the Recipient should make reasonable efforts to avoid further impacts to the resources until an assessment can be made by an individual

meeting the Secretary of the Interior's Professional Qualifications found in 36 CFR Part 61 Appendix A. The Recipient will immediately contact the SHPO.

b. **Unanticipated Discovery of Human Remains and Grave Associated Objects**

All human burials in the State of Iowa are protected by law regardless of sex, historical age, cultural/ethnic affiliation, or manner of interment. In the event that human remains or burials are encountered during archaeological investigations or construction activities, work in the area will cease and appropriate steps will be taken to secure the site and notify officials at the Burials Program at the University of Iowa—Office of the State Archaeologist (319) 384-0740 or the Iowa Department of Health, as appropriate:

- i. If the remains appear to be ancient (i.e. older than 150 years), the burial is legally protected under Chapters 263B and 716.5 of the Iowa Code. The University of Iowa—Office of the State Archaeologist shall have jurisdiction to insure that the appropriate procedures are observed in accordance with the law. Timetables and treatment options will fall within the purview of the State Archaeologist or his/her designee in consultation with the project proponents, and the legally recognized descendant or descendant group(s).
- ii. If the remains appear to be less than 150 years old, the burial would be legally protected under Chapters 144.34, 523I.316 and 716.5 of the Iowa Code and would fall under the jurisdiction of the Iowa Department of Public Health.

IV. MONITORING AND REPORTING

Every six (6) months following the execution of this MOA until it expires or is terminated, the City 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 the City's efforts to carry out the terms of this MOA.

V. DISPUTE RESOLUTION

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

- a. Forward all documentation relevant to the dispute, including the City's proposed resolution, to the ACHP. The ACHP shall provide the City 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 City 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 City 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 City may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the City 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 provide them and the ACHP with a copy of such written response.
- c. The City's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This MOA 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.

VII. TERMINATION

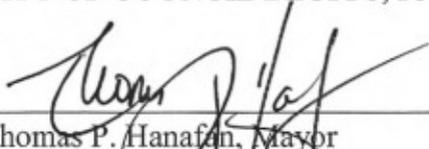
If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories), an amendment 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, the City 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 ACHP under 36 CFR § 800.7. The City shall notify the signatories as to the course of action it will pursue.

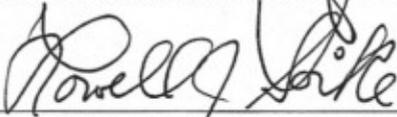
This MOA may be executed in multiple original counterparts, each of which will be deemed to be an original, and which together will constitute one and the same Agreement.

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

CITY OF COUNCIL BLUFFS, IOWA

 _____ Date September 27, 2005
Thomas P. Hanafan, Mayor

IOWA STATE HISTORIC PRESERVATION OFFICE

 _____ Date October 19, 2005
Dr. Lowell Soike, Deputy State Historic Preservation Officer

Appendix A

MINUTES
HISTORIC PRESERVATION COMMISSION
JULY 7, 2005

1. **CALL TO ORDER-** R. Johnson called the meeting to order at 4:00 p.m.

2. **ROLL CALL**

Members Present: Graeme, M. Johnson, R. Johnson, Madsen and Murphy
Absent: Otto
Vacancy: One
Staff: Malmquist, Schroder and Wade

3. **ADOPTION OF AGENDA**

Motion by Madsen, second by M. Johnson to adopt the agenda as written. Motion carried by unanimous voice vote.

4. **APPROVAL-MINUTES OF THE MAY 4, 2005 MEETING**

Motion by Graeme, second by Murphy to approve the minutes as written. Motion carried by unanimous voice vote.

5. **PUBLIC HEARING**

A. CASE #HP-05-003: Public hearing on the request of Ron Weis for design review of proposed exterior modification of property at 213 South Main Street located in the Historic Haymarket Commercial District.

Weis said that he has owned the property for 20 years and has painted in three times. He said that some portions of the building have mortar patches. He said that similar material treatments have been approved on other buildings in the historic district.

Murphy said she does not approve of the stucco system. Weis said that paint will not stick to the soft brick. Murphy said that she has the same soft brick on her house at home. She suggested that Weis try a different type of paint. She does not consider painting three times in twenty years to be excessive.

Graeme stated that if a true renovation was ever to be made that the system would be difficult to remove. He asked how the system would be applied to the building. Weis explained that a metal frame is attached to the building, followed by, foam insulation and then the surface treatment. Graeme suggested that the cost of installing the stucco treatment would likely be more than making repairs and repainting the building.

Deborah Petersen, 215 South Main Street, Council Bluffs, IA said that the cost to maintain the building can be extreme. She said that Weis keeps his building looking very nice. She noted that he does not intend to alter the front of the building. She said that other buildings such as the Peters Law Firm and the Keil Hotel have had similar treatment on the façade of the building. She said that such repairs are needed to ensure the long term use of the buildings.

Madsen asked if the surface treatment will be visibly show section lines. Petersen said it would not; it would look similar to the Rutledge building in the triangle. Madsen asked what the corner would look like where the north wall met the street façade. Weis said that the corner north side would be tapered to the front corner.

Murphy said that she was concerned approval would set a precedent for other historic buildings. Madsen said that she understood the concern, but that also owners need to be able to use the buildings or they will sit vacant and not be maintained at all.

Murphy said she is not concerned about the rear of the building only the north side because it is the first building in the district and is highly visible from the street.

Peterson said that the maintenance is very costly. M. Johnson concurred that maintenance to the buildings is very expensive and that the brick is very fragile. He suggested that properly tuck-pointing the building could damage the façade while removing the mortar.

The Commission moved the meeting to the location of the requested modification. Murphy asked if there was a building adjacent to 213 South Main Street. Weis said there was. Murphy said she did not have a problem with the stucco if the wall was originally an interior wall.

HISTORIC PRESERVATION COMMISSION ACTION

Motion by Murphy, second by Graeme to approved the requested exterior modification to 213 South Main Street and issue a Certificate of Appropriateness.

VOTE: AYE- Graeme, M. Johnson, R. Johnson, Madsen and Murphy. NAY- None. ABSTAIN- None. ABSENT - Otto. VACANCY – One. Motion carried.

- B. Consultation in compliance with 36 CFR Part 800.6 of the National Historic Preservation Act of 1966 to mitigate adverse effects of a proposed undertaking at property located at 2800 Avenue 'A' as related to Review and Compliance Number 030578044.

Tina Hochwender explained the proposed project. She expanded on the timeline that was included in staff report. The timeline explained the review process with the State Historic Preservation Office as well as the Iowa Department of Natural Resources and the City's attempts to find a feasible reuse for the property.

Murphy said that the Historic Preservation Commission role should be to preserve the building. The environmental contamination is not their concern. She questioned the need to clean the contamination if it had been present since the building was still being utilized. Hochwender explained that the monitoring well readings continue to indicate high levels of contamination and the property is labeled as a High Risk site according to the State of Iowa Department of Natural Resources. Additionally, the majority of the contamination primarily exists directly underneath the building.

HISTORIC PRESERVATION COMMISSION ACTION

Motion by Murphy, second by Graeme to recommend preservation of the building.

R. Johnson called for additional discussion.

Madsen said that she does not believe it is a question of some entity, including the City, wanting to tear the building down, but that they have made attempts to secure a developer who will take the risk to clean the site with the building standing and have not had success. She said that in light of the magnitude of the contamination level she does not see that there is a choice to clean the site. If that cannot be

accomplished with the structure in place then it should be razed and care taken to preserve the history of the structure.

Graeme said he believed that the decision to tear the building down had been made and that nothing they say will change that. He added that he did believe a research conducted on the building was done in a quality manner.

M. Johnson questions what would be preserved for future generation. That the property, if left alone, would remain contaminated and could not be reused or enjoyed by anyone.

Madsen said that she believed all reasonable options to preserve the building had been explored and very well documented. She asked the Commissioners how they thought the building's history should be preserved. She asked if there was an architectural feature that could be preserved and put on display in a local museum. Hochwender said that salvage is an option that was recommended by SHPO. She added that if a local place could not be secured that the state museum may accept an item for display.

R. Johnson reminded the Commissioners that there was a motion and a second on the floor.

VOTE: AYE- Graeme, R. Johnson, and Murphy. NAY- Madsen. ABSTAIN- M. Johnson. ABSENT - Otto. VACANCY – One. Motion carried.

HISTORIC PRESERVATION COMMISSION ACTION

Motion by Murphy, second by Madsen to recommend that if the building is not able to be preserved that a copy of the completed intensive level survey at the Council Bluffs Public Library. Motion carried by unanimous voice vote.

6. OTHER BUSINESS

A. Other items of interest. None.

R. Johnson adjourned the meeting at 5:05 pm.

PRESERVATION ALLIANCE

No comments received.

Appendix B



Preserving America's Heritage

June 2, 2005

Ms. Tina Hochwender
Community Development Project Coordinator
City of Council Bluffs
209 Pearl Street
Council Bluffs, IA 51503-2470

REF: Proposed Demolition of 2800 Avenue A
Council Bluffs, Iowa

Dear Ms. Hochwender:

On May 17, 2005, the ACHP received your notification and supporting documentation regarding the adverse effects of the referenced project on properties listed on and eligible for listing on the National Register of Historic Places. Based upon the information you provided, we do not believe that our participation in consultation to resolve adverse effects is needed. However, should circumstances change and you determine that our participation is required, please notify us. Pursuant to 36 CFR 800.6(b)(iv), you will need to file the final Memorandum of Agreement and related documentation at the conclusion of the consultation process. The filing of the Agreement with us is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions or require further assistance, feel free to contact Jeff Durbin, our HUD Liaison at 202-606-8503.

Sincerely,

Raymond V. Wallace

Raymond V. Wallace
Historic Preservation Technician
Office of Federal Agency Programs

COUNCIL BLUFFS
COMMUNITY DEVELOPMENT DEPT.

JUN - 9 2005

RECEIVED

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 809 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

Appendix C

Iowa Historic Property Study: Transportation Building (2800 Avenue A, Council Bluffs, Iowa - the Omaha-Council Bluffs Railway & Bridge Company Trolley Barn and Office)

The documentation identified below is for a transportation building of state and/or local significance. This includes buildings related to rail, auto, air, or water transport. It is to be written for a broad public audience—simple, direct, and free of technical and academic jargon—with the information presented (i.e., edited, cataloged and packaged) in accordance with State Historical Society of Iowa guidelines. The character of the documentation produced—its content, quality, materials, and presentation—will meet the Secretary of Interior's four standards for architectural and historical documentation (48 FR 44731).

The purpose of the report will be to place the transportation building in architectural and historical perspective, explaining how its story played out against the background of transportation use and design at related local, state or national trends. The research emphasis will be placed on recovering information about the evolution of the building and its uses in relation to the context of the area's transportation history based on primary sources to the greatest extent possible. Thus, the weight of total effort is to be given not to elaborate architectural description or photography, but on amplifying what is known about the building and its past uses and occupants as grasped through research in local archives, courthouse records, and with persons knowledgeable about the building's past. The test of responsiveness to documentation projects under this historic property study series will be more on the depth of local historical sources consulted than on the numbers of site photographs produced.

The documentation prepared for the purpose of inclusion in the State Historical Society of Iowa's records must meet the requirements below. The Society retains the right to refuse to accept documentation for inclusion in its collections when that documentation (edited, cataloged, and packaged) does not meet requirements as specified below.

Kinds of Documentation to be Gathered:

1. *Iowa Site Inventory Number, Historical Architectural Data Base Number, and Photograph (black and white film roll number and color slide sheet) Numbers:* Three kinds of project reference numbers are to be obtained from the statewide inventory coordinator at the State Historical Society's historic preservation office. The first is the Iowa Site Inventory Number, which can be assigned upon providing a specific street address in a town or city or, for rural areas, its quarter section, township and range. This number would be cited in the report, appear on reference maps and site plans, and be identified on photographic prints, slides, etc. The second number refers to the number assigned for entering this report into the state's Historic Architectural Data Base (HADB) through completing the HADB form for inclusion in the appendix. The third class of numbers are film roll numbers and color slide 20-slot sheet number to be obtained from the State Historical Society's Inventory Coordinator so that images can be cataloged into the agency's file system and cross-referenced to Iowa Site Inventory Forms.
2. *Photographs:* Unless stipulated elsewhere, the coverage will be field photography, with each view taken in both 35mm black and white film and Kodachrome-64 color slides. The black and white photographs shall be on fiber-based papers or on resin-coated papers of double or medium-weight paper that have been processed in trays in order to meet guidelines outlined in National Register Bulletin 16A. The documentation is to meet requirements for ready inclusion in the records of the State Historical Society of Iowa. The purpose of the number and kind of views taken will be to sufficiently illustrate what is significant or valuable about the building and any

associated structure(s) as if one were intending the views to be used in a brief visual presentation on the character of the site. For each transportation element, the following views will be minimally taken:

- a. Overall site. At least two contextual views showing the placement of the building on the landscape.
 - b. Transportation Building. Approximately seven to ten photographs. This embraces exterior perspective views, including a general view from the distance showing its environment, landscaping, and relationship to adjacent properties, and views of significant interior or exterior details. For the interior, include views that reveal the method of framing (if accessible), unusual methods of fastening or joining frame members, and other details or equipment that help impart its construction history.
 - c. Other outbuildings and structures, if any. Views showing each exterior facade plus, if noteworthy, significant interior or exterior details.
3. *Available historic photographs or illustrations* that reveal the property or associated individual buildings under construction, improvement, in later use, or as shown in an advertisement or architectural plan will be selected and appropriately reproduced.
 4. *Drawings:* Unless stipulated elsewhere, the standard coverage will comprise straightforward, one-line drawings no larger than 11 x 17 inches in size showing elements in correct relation and proportion to one another, with label, north arrow, overall dimensions, and the date sketched.

The drawings include:

- a. A site map, which can be adapted from a city plat or Sanborn insurance map, that shows the location and footprint of the building on the parcel in relation to driveways and the public road (including north arrow).
 - b. Building floor plan showing the organization and arrangement of spaces, including exterior dimensions.
5. *Narrative Report:* The publication will be authored by a professional historian with demonstrated writing ability and a familiarity with historical research, professionally edited by a professional graphic artist consultant, and produced by a printing firm capable of producing high quality materials. The booklet will be equivalent in readability, graphic design, quality of cover and paper, to William C. Page and Leah D. Rogers, *Walking to Work: Victorian Life in Des Moines (1997)*. The publication will include the following:

Part I: The Transportation Building Today takes the reader to the property, describing where it is situated, its general appearance and arrangement, and important physical characteristics of its setting, buildings, and landscape features that have influenced the way things developed.

Part II: Historical Background steps back to explain how the transportation building fits into the development of its surrounding neighborhood and section of the town. This would identify when and why the building was erected with respect to the platted area's development, by whom, and its part in the shifting transportation patterns of the vicinity. Included here might be attention to

if it is located in proximity of an earlier, outdated, mode of transportation or if it represented increasing use or innovative changes to the method of transportation that it represents.

Part III: Construction history documents the specific physical evolution of this transportation property and its leading periods of construction activity, major changes in the property and associated structures, or when new elements were introduced. The discussion would also note specific features that the building or its associated facilities share with other known properties (e.g., similarities in plan, materials, construction techniques, and subsequent alterations).

Part IV: Significance of the property explains ways that the transportation property has interpretive value to understanding local or state development, or of how the frequency, arrangement, construction dates, and type of building illustrates something important about the evolving transportation architecture of the area. Included here might be mention of past publicity given the property or of how its building(s) illustrate new, innovative, or typical design practices and uses of material. Photographs, illustrations, or site plan may be integrated into the narrative as needed to help convey the property's interpretive value. In evaluating the life of the transportation property, attention might be paid to:

- Changes in ownership, management, or internal organization of the business;
- The introduction of new modes of transportation at the site and their effects on the building and surrounding area;
- The introduction of new technologies and innovations that affect the form of transportation and their effects on the building and transportation throughout the community or vicinity;
- Site constraints and opportunities (e.g., obstacles that affected design or limited expansion, convenience to other methods transportation and commercial, industrial, business, and/or residential areas);
- Community incentives offered to promote transportation development of this site;
- Sequence of construction, alterations, additions, replacement, demolition, or losses due to fire or other man-made or natural disasters at the site;
- Individuals who designed, engineered, or built the transportation building, including whether it was a company stock plan or a unique or local design;
- Materials and methods used in construction, including whether there were any unique construction methods;
- Form that the building took in relation to its function and similarities in plan to others then in use;
- The relative importance of individual buildings at the site to the transportation building's activities, with the least important meriting minimal study and documentation;

Part V: Reference Sources

A paragraph or two about the quality and quantity of information consulted, its location, noting any conflicts in source materials, their accuracy, biases or noteworthy historical perspectives. This would be followed by a bibliography of the reference source materials.

The following items should be submitted to the SHPO along with the publication for inclusion in the Iowa Site Files:

- A drawing of the site plan showing the transportation property's relation to its immediate landscape configuration.
- Map(s) showing location in county/town, changes in property size, etc.
- A 5" x 7" enlargement of each black and white view taken to satisfy specifications above, arranged sequentially, from the most general view to the most detailed view. Each is to be labeled on the back as to building/structure name, view taken, and roll/frame number with a No. 1 (soft) pencil, and placed in Print-File (57-4P), or equivalent, sleeve.
- A "Photograph Catalog Field Sheet" completed for each sleeve of black and white negatives and color slides.
- Negatives of 35mm (ASA 125 or less) black and white film in Print-File (35-7B), or equivalent, sleeves.
- A contact print sheet for each roll of black and white film placed in a Print-File (810-1B), or equivalent, sleeve.
- Kodachrome-64 slides properly labeled (property name, Iowa Site Inventory number, and Slide sleeve number/slot number) and placed in Print-File (2x2-20B), or equivalent, 20-slot sheet sleeves.
- Completed Iowa Historical Architectural Data Base (HADB) form.
- Other relevant information (e.g., photocopy of biographical information about a noteworthy owner, architect or builder associated with the building, other sketch plans and drawings that were not integrated into the report).

Production of Narrative Report

The City will provide the SHPO with a draft manuscript of the publication for review for professional and technical compliance with the recordation plan included in stipulation "a" of the Memorandum of Agreement and with the Secretary of Interior's guidelines. SHPO will review the mock up of the publication as well as the photos and illustrations. If the SHPO does not comment within thirty (30) days from receipt, the City may proceed with preparation of the final draft.

Using the final draft manuscript, the City will produce a mock up of the narrative report for the SHPO review and approval. If the SHPO does not comment within thirty (30) days from receipt, the City may proceed with preparation of the final for publication of the narrative report.

Distribution of Copies of the Narrative Report

A quantity of 240 copies of the narrative report will be printed for public distribution at City Hall, Council Bluffs Public Library, Omaha Public Libraries, Council Bluffs Public Schools, Omaha Public Schools, local colleges and universities and with the Council Bluffs Historic Preservation Commission, with 1 hard copy and one copy on disc provided to the SHPO for use and distribution. Additionally, the City of Council Bluffs will post an electronic copy, a PDF, of the document on the City's web site for public access.