

**PROGRAMMATIC AGREEMENT  
AMONG THE JOHN COCHRAN DIVISION OF THE U.S. DEPARTMENT OF VETERANS  
AFFAIRS ST. LOUIS HEALTH CARE SYSTEM,  
THE MISSOURI STATE HISTORIC PRESERVATION OFFICER,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING RECONFIGURATION OF THE JOHN COCHRAN DIVISION OF THE U.S.  
DEPARTMENT OF VETERANS AFFAIRS ST. LOUIS HEALTH CARE SYSTEM**

WHEREAS, the John Cochran Division of the U.S. Department of Veterans Affairs St. Louis Health Care System (JCSLVA) has determined it necessary to correct current space and functional deficiencies at the JCSLVA through reconfiguration of the campus (Undertaking); and

WHEREAS, the proposed reconfiguration may relocate in-patient care away from the existing main hospital into a new bed tower meeting current seismic resistant requirements that may be as many as 13-stories in height; may expand the campus through acquisition of adjacent parcels; may result in the demolition of multiple buildings; may include the construction of parking garages, dedicated clinic buildings, a utility plant, a utility substation, a water storage system, security measures, and associated infrastructure; and may result in the closure or alteration of the path of streets through or adjacent to the existing campus footprint; and

WHEREAS, JCSLVA has determined that this Undertaking has the potential to cause effects on historic properties and is therefore subject to 54 USC § 306108 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 CFR Part 800, as amended (collectively referred to here as "Section 106"); and

WHEREAS, the U.S. Army Corps of Engineers (USACE) shall be responsible for construction management of this Undertaking; and

WHEREAS, the USACE, as a federal agency, is required to comply with Section 106 and has designated VA as lead federal agency for purposes of Section 106 compliance pursuant to 36 CFR § 800.2(a)(2) for this Undertaking; and

WHEREAS, JCSLVA has consulted with the Missouri State Historic Preservation Officer (MO SHPO), pursuant to 36 CFR § 800.2(c)(1); and

WHEREAS, JCSLVA invited the Apache Tribe of Oklahoma, the Miami Tribe of Oklahoma, the Osage Nation, the Peoria Tribe of Indians of Oklahoma, the Quapaw Tribe of Indians, the Seneca-Cayuga Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma to participate in consultation as federally recognized Indian tribes that might attach religious and cultural significance to historic properties in St. Louis County, pursuant to 36 CFR § 800.2(c)(2), and the Miami Tribe of Oklahoma and the Osage Nation have responded with interest in participating in this consultation and are Consulting Parties; and

WHEREAS, JCSLVA invited the City of St. Louis Planning & Urban Design Agency Cultural Resources Office (CSLCRO), the Landmarks Association of St. Louis, and Grand Center, Inc. (also known as the Grand Center Arts District) to participate in this consultation, pursuant to 36 CFR § 800.2(c)(3) and (5), and they have accepted JCSLVA's invitation and have participated in this consultation as Consulting Parties; and

WHEREAS, JCSLVA invited the National Trust for Historic Preservation and Missouri Preservation Alliance, to participate in this consultation, pursuant to 36 CFR § 800.2(c)(5), but they either did not respond or declined to participate; and

WHEREAS, JCSLVA provided the public with information about the Undertaking and its effects on historic properties and sought public comment and input, pursuant to 36 CFR § 800.2(d), through National Environmental Policy Act (NEPA) compliance efforts in 2014 and 2019, and hosted a consultation meeting with the Consulting Parties on November 1, 2019; and

WHEREAS, JCSLVA, in consultation with the MO SHPO, has determined the Area of Potential Effects (APE) to include the whole of the JCSLVA campus plus surrounding areas as depicted on the map in Attachment A, pursuant to 36 CFR § 800.4(a)(1); and

WHEREAS, JCSLVA, in consultation with the MO SHPO, identified the following historic properties within the APE, pursuant to 36 CFR § 800.4:

- Midtown Historic District – National Register of Historic Places (NRHP) No. 78003392,
- St. Louis Theater (Powell Theater) – NRHP No. 01000545,
- Welfare Finance Building – NRHP No. 16000103,
- Palladium – determined NRHP eligible in 2013 under Criterion A: *Ethnic Heritage*,
- 3514 Delmar Boulevard – determined NRHP eligible in 2013 under Criterion C: *Architecture*,
- 1023 North Grand Boulevard – determined NRHP eligible in 2013 under Criterion C: *Architecture*; and

WHEREAS, JCSLVA, in consultation with the MO SHPO, determined in 2013 that the JCSLVA campus lacked the integrity necessary to be NRHP eligible; and

WHEREAS, on March 14, 2018, the City of St. Louis found the Palladium to be unsafe and issued a notice of condemnation via letter to the property owner; and

WHEREAS, subsurface archaeological sites meeting the criteria for NRHP listing as described in 36 CFR § 60.4 could be present within the APE; and

WHEREAS, JCSLVA has produced a reconfiguration site lay-out but has not finalized a design and therefore the full range of effects on historic properties cannot be fully determined at this time; and

WHEREAS, JCSLVA shall use a phased approach to assess the Undertaking's effects on historic properties, pursuant to 36 CFR § 800.5(a)(3); and

WHEREAS, JCSLVA has determined it appropriate to develop a programmatic agreement (PA) in accordance with 36 CFR § 800.14(b), including § 800.14(b)(1)(ii), which recognizes that a PA may be used when effects on historic properties cannot be fully determined prior to approval of an undertaking; and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1)(i)(C), JCSLVA invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation and the ACHP has chosen to participate pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, JCSLVA, the MO SHPO and the ACHP agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

#### STIPULATIONS

JCSLVA shall ensure the following measures are carried out:

101  
102 I. GENERAL

- 103 a. The Anti-Deficiency Act, 31 USC § 1341, prohibits federal agencies from incurring an  
104 obligation of funds in advance of or in excess of available appropriations. Accordingly, any  
105 requirement for the obligation of funds arising from the terms of this PA shall be subject to the  
106 availability of appropriated funds for that purpose, and this agreement shall not be interpreted  
107 to require the obligation of funds in violation of the Anti-Deficiency Act.
- 108 b. All parties shall send and accept official notices, comments, requests for additional information  
109 and/or documentation, and all other communications required by this PA via email.
- 110 c. Time designations shall be in calendar days. Failure to comment within specified time  
111 designations shall not prevent JCSLVA from proceeding in the process as outlined in this PA.
- 112 d. For the purposes of this PA, the definitions provided in 36 CFR § 800.16(a) through (z)  
113 inclusive shall apply.
- 114 e. JCSLVA shall ensure that federal or contractor staff who meet the applicable Secretary of the  
115 Interior's *Professional Qualification Standards* for architectural history, history, archeology,  
116 architecture, and historic architecture (36 CFR Part 61) participate as required by this PA.
- 117 f. Annually, within two weeks of the anniversary of the execution of this PA, until it is closed  
118 out, expires, or is terminated, JCSLVA shall provide all parties to this PA a summary report  
119 detailing work undertaken pursuant to its terms. The report shall include any scheduling  
120 changes proposed, any problems encountered, and any disputes or objections received in  
121 JCSLVA's efforts to carry out the terms of this PA.

122  
123 II. PRE-DESIGN REVIEW

- 124 a. Following execution of this PA, JCSLVA shall solicit recommendations from Consulting  
125 Parties on measures to avoid and/or minimize adverse effects of reconfiguration concepts on  
126 historic properties for at least 30 days. These suggestions may concern setbacks, massing, and  
127 lay-out; materials; landscaping, and other design details.
- 128 i. JCSLVA shall take into account suggestions made by Consulting Parties on  
129 reconfiguration concepts in the advancement of design plans.
- 130 b. JCSLVA shall host a charrette to solicit comments from Consulting Parties on the concept  
131 alternatives prior to choosing an alternative.
- 132 i. JCSLVA shall notify Consulting Parties at least 14 days in advance of the proposed  
133 presentation.
- 134 ii. JCSLVA shall host the charrette within the City of St. Louis.
- 135 iii. The Consulting Parties shall have an opportunity to comment on the proposed concept  
136 alternatives at the design charrette. These comments may be provided verbally or in  
137 writing at the design charrette meeting, and/or within 7 days after the meeting.
- 138 iv. VA shall take the comments into consideration to refine the design and proceed with  
139 assessment of adverse effects.

140  
141 III. ARCHITECTURAL REVIEW PROCEDURES

- 142 a. In the Schematic Design 1 ("SD-1") stage, JCSLVA, assisted by a person or persons meeting  
143 the *Professional Qualification Standards* in architectural history as described in Stipulation  
144 I(e), shall assess adverse effects of the proposed design on historic properties in accordance  
145 with 36 CFR § 800.5. The design may be for the overall reconfiguration undertaking, a single  
146 component or multiple components. Pursuant to 800.5(a)(3), JCSLVA shall use a phased  
147 process in applying the criteria of adverse effect should designs be submitted as separate  
148 components.

- 149 b. JCSLVA shall submit a documentation package to all Consulting Parties including its finding  
150 of effect.  
151 i. This package shall include maps, design drawings, photographs, and/or projections  
152 sufficient to support JCSLVA's finding of effect.  
153 ii. Consulting Parties shall have 30 days to notify JCSLVA of their concurrence or  
154 disagreement with the finding of effect.  
155 1. JCSLVA shall respond to all timely comments in a letter to Consulting Parties  
156 before proceeding.  
157 c. If JCSLVA, assisted by a person or persons meeting the *Professional Qualification Standards*  
158 in architectural history as described in Stipulation I(e), determines the Undertaking will not  
159 adversely affect historic properties in accordance with 36 CFR § 800.5(b) and the MO SHPO  
160 concurs, JCSLVA shall have no further obligations under this PA regarding the built  
161 environment.  
162 d. If JCSLVA determines the Undertaking will adversely affect historic properties in accordance  
163 with 36 CFR § 800.5(d)(2), JCSLVA shall consult with Consulting Parties regarding adverse  
164 effects to historic properties and measures to avoid, minimize, or mitigate effects in accordance  
165 with 36 CFR § 800.6.  
166 i. Consultation may proceed via exchange of emails, letters, discussions over  
167 webinar/conference call, and/or in-person at the discretion of JCSLVA.  
168 ii. The measures to resolve adverse effects shall include specific timelines to ensure  
169 JCSLVA's construction schedule can proceed effectively.  
170 iii. JCSLVA shall notify all Consulting Parties of the measures developed through  
171 consultation to resolve adverse effects.  
172 iv. Information about the implementation of measures to resolve adverse effects shall be  
173 included in the annual summary report as described in Stipulation I(f).

174  
175 IV. ARCHAEOLOGICAL REVIEW PROCEDURES

- 176 a. Prior to starting construction, JCSLVA shall create a map of areas likely or unlikely to retain  
177 intact subsurface archaeological deposits (deposits) within the proposed design footprint.  
178 i. This map shall be based on Sanborn Fire Insurance Company maps, previous ground  
179 disturbance, and information provided by the MO SHPO, CSLCRO and Indian tribes at  
180 their discretion.  
181 ii. JCSLVA shall forward the draft map and site concepts, as developed, to the MO SHPO,  
182 CSLCRO, Miami Tribe of Oklahoma and Osage Nation for review.  
183 1. The MO SHPO, CSLCRO, Miami Tribe of Oklahoma and Osage Nation shall  
184 have 30 days to provide comments on the map.  
185 iii. JCSLVA shall take all timely comments into consideration and finalize the map.  
186 1. JCSLVA shall provide copies of the final map to the MO SHPO, CSLCRO,  
187 Miami Tribe of Oklahoma and Osage Nation.  
188 a. With the exception of these parties, and VA's contractors as needed,  
189 JCSLVA shall keep the map confidential to protect potential deposits.  
190 2. JCSLVA shall provide responses to commenting parties concurrent with  
191 submittal of the final map.  
192 b. JCSLVA shall ensure all ground disturbance in excess of 9 inches in areas likely to retain  
193 deposits is monitored during ground disturbing activities by or under the direct supervision of  
194 a person or persons meeting the *Professional Qualification Standards* for archeology as  
195 described in Stipulation I(e).

- i. The supervising archeologist is authorized to halt construction in a specific location if deposits are encountered. Should any cultural and/or archaeological resources be discovered (such as structural features, unusual amounts of bone or shell, artifacts, or architectural remains) during construction activities, all work will stop within 15 feet of the deposit to provide for the security, protection, and integrity of the deposit. Construction may continue in other locations while the monitor assesses the deposit, so long as the areas determined likely to retain intact deposits remain monitored.
- ii. The monitor shall photograph, sketch, and otherwise document the deposit in accordance with the MO SHPO's Archaeological Site Form (Site Form) (Attachment B).
- iii. The monitor shall evaluate identified sites in accordance with the criteria for NRHP listing as defined by 36 CFR § 60.4.
  1. If a site is determined not eligible, work may proceed once the qualified archaeologist has completed the Site Form and its required documentation.
  2. If a site is determined eligible and does not contain human remains or funerary objects, the qualified archaeologist shall submit documentation of the determination to JCSLVA within 48 hours of such determination.
    - a. JCSLVA shall review design plans to determine if the eligible site can be avoided.
      - i. If JCSLVA determines the site can be avoided or preserved in place, JCSLVA shall forward documentation of the site to the MO SHPO, CSLCRO, Miami Tribe of Oklahoma and Osage Nation and inform them of JCSLVA's decision to avoid the site or preserve in place.
        1. Documentation shall include the Site Form, a map of the site within the APE, 3-5 photographs, and additional materials as required to demonstrate the significance of the site and a description of how avoidance or preservation in place will be achieved.
        2. The MO SHPO, CSLCRO, Miami Tribe of Oklahoma and Osage Nation shall have seven (7) days to comment on the significance of the site and the measures to avoid adverse effects.
      - ii. If JCSLVA determines the site cannot be avoided or preserved in place and will be disturbed, JCSLVA shall:
        1. Consult with the MO SHPO, CSLCRO, Miami Tribe of Oklahoma and Osage Nation, as appropriate, to determine mitigation commensurate with the adverse effect and implement that mitigation. Mitigation would be required to be determined, but not necessarily completed, prior to continuing construction; or
        2. Notify the MO SHPO, CSLCRO, Miami Tribe of Oklahoma and Osage Nation, as appropriate, and authorize a qualified archaeologist to excavate the site.
          - a. JCSLVA shall notify the MO SHPO, CSLCRO, Miami Tribe of Oklahoma and the Osage Nation via email that excavation is complete. Once excavation is complete, JCSLVA can resume

- 243 construction activities in the area of the site.  
244 Construction may continue in other locations  
245 while the excavation is ongoing, so long as the  
246 areas determined likely to retain intact deposits  
247 remain monitored.
- 248 b. Following excavation, the qualified archaeologist  
249 shall clean, analyze, document, and prepare for  
250 curation all diagnostic material. Some categories  
251 of artifacts may be discarded after they have been  
252 identified and recorded. This includes modern  
253 objects and bulk items which have no diagnostic  
254 value beyond their presence (e.g., coal and coal  
255 waste; and construction materials such as mortar,  
256 brick fragments, and cut stone fragments).  
257 Representative specimens of these latter items  
258 should be retained. Artifacts of all categories  
259 should be recorded quantitatively.
- 260 c. The qualified archaeologist shall prepare a  
261 comprehensive report meeting the standards of  
262 the National Park Service and the MO SHPO  
263 detailing the physical characteristics of the site  
264 and its significance. JCSLVA shall submit a copy  
265 of the report to the MO SHPO for review and  
266 comment. JCSLVA shall curate a copy of the  
267 final report and diagnostic material with a facility  
268 meeting the requirements of 36 CFR Part 79.
- 269 d. JCSLVA shall submit a copy of the final report to  
270 the MO SHPO, CSLCRO, Miami Tribe of  
271 Oklahoma and Osage Nation.
- 272 c. JCSLVA shall submit a summary report detailing all identified deposits with accompanying  
273 Site Forms to the MO SHPO, CSLCRO, Miami Tribe of Oklahoma, and Osage Nation at the  
274 end of each calendar year for a 30-day review.
- 275 i. JCSLVA shall finalize the report upon consideration of timely comments and submit final  
276 reports to the MO SHPO, CSLCRO, Miami Tribe of Oklahoma and Osage Nation.

## 277 V. IDENTIFICATION OF HUMAN REMAINS AND/OR FUNERARY ITEMS

- 278 a. If potential human remains and/or potential funerary objects are identified, JCSLVA shall stop  
279 construction work within 50 feet of the discovery and:
- 280 i. Contact local law enforcement to determine whether the human remains may be involved  
281 in a legal investigation or not, consistent with Missouri Revised Statutes Section  
282 194.406.2.(1).
- 283 ii. Treat non-Native American remains and objects in a manner consistent with Missouri  
284 Revised Statutes Section 194.400-410.
- 285 iii. Treat discoveries related to Native Americans and Native American lifeways in  
286 accordance with the Native American Graves Protection and Repatriation Act  
287 (NAGPRA) (Public Law 101-601, 25 USC 3001 et seq., 104 Stat. 3048).
- 288
- 289

290 VI. POST-REVIEW DISCOVERIES

- 291 a. If deposits are discovered where no on-site monitor is present, JCSLVA shall follow the  
292 procedures at Stipulation IV.b.i. through IV.c. and ensure that these procedures are carried out  
293 by or under the direct supervision of a person or persons meeting the *Professional Qualification*  
294 *Standards* for archeology as described in Stipulation I(e).  
295 b. If unanticipated effects on historic properties occur during execution of the Undertaking,  
296 JCSLVA shall notify the MO SHPO and make efforts to avoid, minimize or mitigate adverse  
297 effects to such properties. JCSLVA and the MO SHPO shall be guided by the steps established  
298 in 36 CFR § 800.13(b).

299  
300 VII. DISPUTE RESOLUTION

- 301 a. Should any Signatory to this PA object in writing to the manner in which any stipulation of this  
302 PA is implemented, JCSLVA shall consult with that party or parties to resolve the objection.  
303 If JCSLVA determines that such objection cannot be resolved, JCSLVA shall:  
304 i. Forward all documentation relevant to the dispute, including JCSLVA's proposed  
305 resolution, to the ACHP. The ACHP shall provide JCSLVA with its advice on the  
306 resolution of the objection within 30 days of receiving adequate documentation.  
307 ii. Adequate documentation shall include reference to this PA, the written objection of the  
308 Signatory, JCSLVA's response to the objection, and any supporting documentation.  
309 iii. JCSLVA shall forward the documentation relevant to the dispute to all Signatories for  
310 their review and comment. These parties shall provide JCSLVA with written comments  
311 within 30 days of receiving adequate documentation.  
312 iv. JCSLVA shall take into account any timely advice or comments received from the ACHP  
313 and other Signatories in determining a final decision on the dispute.  
314 v. If the ACHP does not respond within 30 days, JCSLVA shall prepare a written response  
315 that takes into account timely comments from other Signatories regarding the dispute.  
316 vi. JCSLVA shall prepare a written decision and distribute the decision and the  
317 documentation relevant to the dispute to all Signatories. JCSLVA shall then proceed in  
318 accordance with its final decision.  
319 vii. JCSLVA's responsibility to carry out all other actions subject to the terms of this PA that  
320 are not the subject of the dispute remain unchanged.  
321

322 VIII. AMENDMENT AND TERMINATION

- 323 a. This PA may be closed out upon successful completion of Stipulations II-VI. Upon completion,  
324 JCSLVA shall distribute a notice of completion to all Signatories and Consulting Parties.  
325 b. This PA may be amended if any Signatory requests an amendment and it is agreed to in writing  
326 by all Signatories. The amendment shall go into effect on the date of the signature by the ACHP.  
327 c. If any Signatory to this PA determines that its terms shall not or cannot be carried out, that  
328 party shall immediately consult with the other Signatories to attempt to develop an amendment.  
329 d. If within 60 days an amendment cannot be reached, any Signatory may terminate the PA upon  
330 written notification to the other Signatories. JCSLVA shall notify the Consulting Parties of a  
331 termination.  
332 e. Upon termination of this PA, JCSLVA shall either consult to execute another agreement  
333 document or request ACHP comments, pursuant to 36 CFR §800.6(c)(8). This PA may be  
334 terminated without further consultation by the execution of a subsequent agreement that  
335 explicitly terminates or supersedes this PA.  
336

337 IX. ADMINISTRATION AND DURATION

- 338 a. This PA shall be effective immediately upon signature by the ACHP.
- 339 b. This PA shall be executed in counterparts, with a separate page for each Signatory and
- 340 concurring party. JCSLVA shall provide a complete copy of the executed PA, including all
- 341 signatory pages and Attachments, to all Consulting Parties and shall file a copy with the ACHP.
- 342 c. This PA shall remain in effect for a period of 15 years from the date of execution, unless it is
- 343 closed out, amended or terminated in accordance with Stipulation VII prior to that date. No
- 344 later than 6 months prior to expiration of the PA, JCSLVA may initiate consultation to
- 345 determine if the PA should be allowed to expire or whether it should be extended for an
- 346 additional term, with or without amendments. Unless the Signatories unanimously agree on an
- 347 extension, this PA shall automatically expire and have no further force or effect in accordance
- 348 with the stipulated timetable.

349

350 **EXECUTION AND IMPLEMENTATION of this PA evidences that JCSLVA has taken into account**

351 **the effects of the Undertaking on historic properties and afforded the ACHP a reasonable**

352 **opportunity to comment.**

353

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355

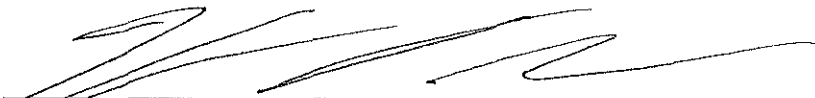
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AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING RECONFIGURATION OF THE JOHN COCHRAN DIVISION OF THE U.S.  
DEPARTMENT OF VETERANS AFFAIRS ST. LOUIS HEALTH CARE SYSTEM**

SIGNATORY:

U.S. Department of Veterans Affairs St. Louis Health Care System



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Keith D. Repko  
Director

4/22/2020

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Date

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DEPARTMENT OF VETERANS AFFAIRS ST. LOUIS HEALTH CARE SYSTEM**

SIGNATORY:

Missouri State Historic Preservation Officer

*Toni M. Prawl*

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Toni M. Prawl, Ph.D.

Director and Deputy State Historic Preservation Officer

Division of State Parks, Missouri Department of Natural Resources

*01/24/20*

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Date

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DEPARTMENT OF VETERANS AFFAIRS ST. LOUIS HEALTH CARE SYSTEM**

SIGNATORY:

Advisory Council on Historic Preservation



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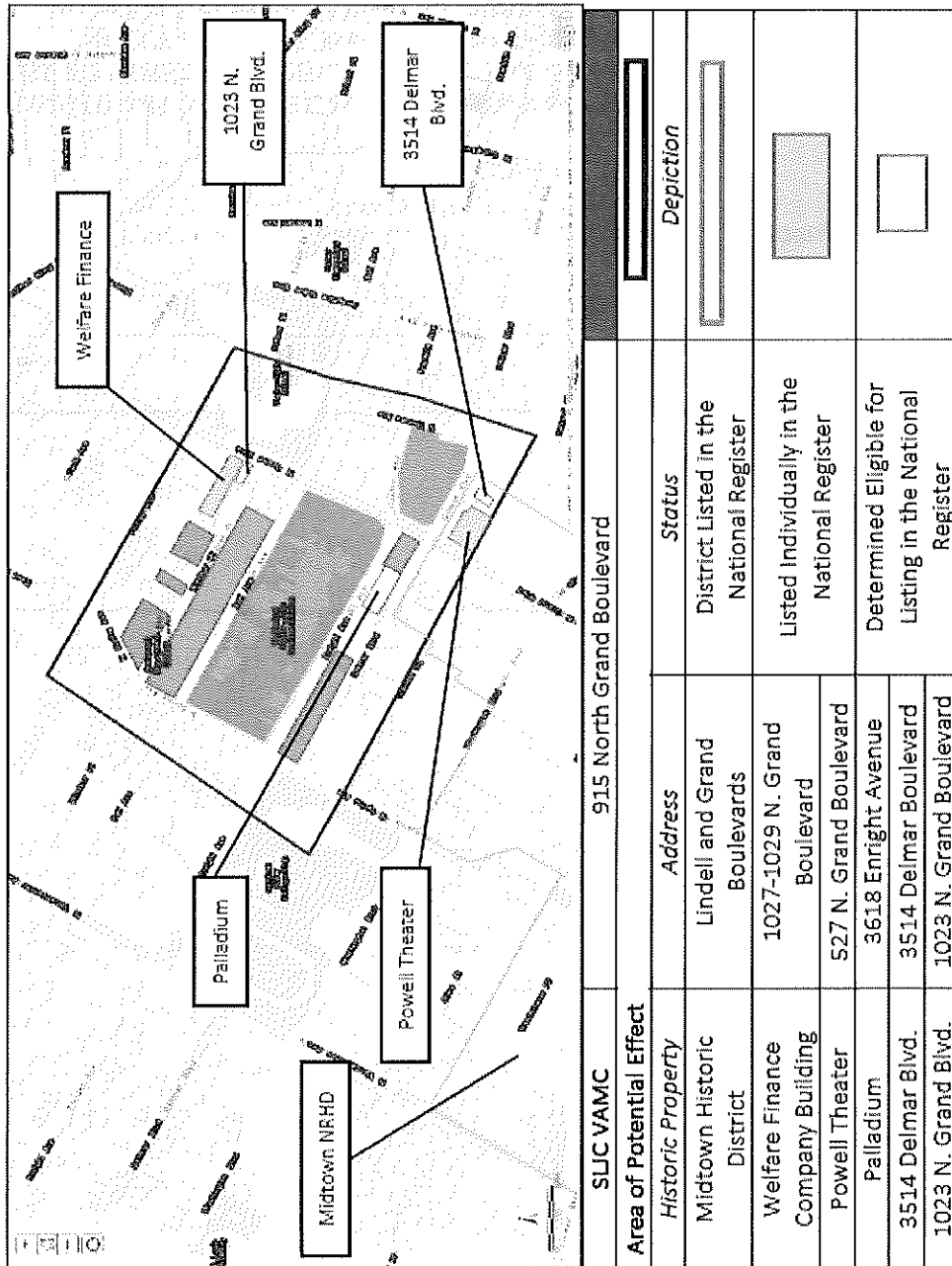
John M. Fowler  
Executive Director

1/27/2020

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Date

# Attachment A – Map of Area of Potential Effects



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**Attachment B – MO SHPO Archaeological Site Form**