

PROGRAMMATIC AGREEMENT
among the
CITY OF PHOENIX
ARIZONA STATE HISTORIC PRESERVATION OFFICE
and the **ADVISORY COUNCIL ON HISTORIC PRESERVATION**
regarding
HUD-FUNDED PROGRAM ACTIVITIES

WHEREAS, in response to the numerous programs undertaken by the City of Phoenix (City) with U.S. Department of Housing and Urban Development (HUD) funding sources; and

WHEREAS, the City will in turn provide HUD monies and other assistance to programs, subrecipients and eligible applicants to alleviate the effects of housing deterioration, infrastructure improvements, demolition, new construction, renovation, reconstruction and acquisition activities; and

WHEREAS, the City has determined that implementation of these HUD-funded programs will result in Undertakings, as defined in 36 CFR §800.16(y), that may affect properties included in or eligible for inclusion in the National Register of Historic Places (historic properties) including archaeological sites and other properties of religious or cultural significance to Federally recognized Indian tribes (Tribes), and the City has consulted with the Arizona State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR Part 800, the regulations implementing Sections 106 and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470; and

WHEREAS, the SHPO and the Secretary of the Interior have authorized the City to assume Certified Local Government status as authorized by Title I Section 101(c) of the NHPA (as amended through 2000); and

WHEREAS, the City, the SHPO and the ACHP acknowledge that implementation of these HUD-funded programs can be carried out through a Programmatic Agreement (PA) pursuant to 36 CFR §800.14(b), due to the similar and repetitive nature of these Undertakings; and

WHEREAS, the City has determined that these Undertakings may have an effect on historic properties, including archaeological sites and other properties of religious or cultural significance to the Tribes, and

WHEREAS, the City consulted with seven Tribes expressing affinal claims within the Phoenix region: the Ak-Chin Indian Community; the Salt River Pima-Maricopa Indian Community; the Hopi Tribe; the Tohono O'odham Nation; the Gila River Indian Community; the Yavapai-Prescott Indian Tribe; and, the Fort McDowell Yavapai Nation; the Salt River Pima-Maricopa Indian Community (SRPMIC) expressed support for the draft PA in writing; and the City will continue to consult with the Tribes, providing them with information about projects with the potential to adversely affect cultural resources of religious or cultural significance to them, and affording them the opportunity to consult with the parties to this agreement regarding these projects.

NOW, THEREFORE, the City, the SHPO and the ACHP agree that these HUD-funded programs will be administered in accordance with the following Stipulations:

STIPULATIONS

To the extent of its legal authority, and in coordination with the SHPO, and the ACHP, the City shall ensure that the following measures are implemented:

I. LEAD AGENCY COORDINATION

When the City is determined to be the Lead Agency in any HUD-funded activities, the City will coordinate the Section 106 review activities of all Federal agencies and Tribes that participate in Undertakings funded in part or in whole by HUD programs.

II. APPLICABILITY

A. This PA applies only to City program activities implemented and funded in part or in whole using HUD funds.

- B. The following types of activities will not undergo Section 106 Review:
 1. Implementation of activities that are categorized as Exempt activities as defined by 24 CFR Part 58 or listed in 24 CFR §50.19 'Categorical exclusions not subject to the Federal laws and authorities cited in Sec. 50.4.'
 2. Funding of administrative actions related to activities having no physical site components (projects involving property, building, or structure acquisition are not included in this exclusion).
 3. Any funding implementation as a result of a declared Federal Disaster subject only to the review elements under Stipulation V. of this PA.
- C. For all other activities, the City will conduct its Section 106 review in accordance with stipulations III., IV., V., VI. and VII. of this PA.

III. GENERAL PROVISIONS

- A. The City will ensure that all work included in this PA is carried out by professionals who meet the appropriate professional qualification standards delineated in "The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716); and
- B. The City acknowledges that the Tribes possess special expertise in assessing the eligibility of properties with tribal religious and cultural significance, and the City may utilize this expertise in determining if any such properties are eligible for listing in the National Register of Historic Places. The City will also notify the Tribes of any projects with the potential to adversely affect cultural resources with tribal religious and cultural significance. After reviewing any project, the Tribes can request to further consult on these projects by notifying the ACHP, the SHPO or the City in writing.
- C. All time designations will be in calendar days and are specific to Undertakings. If any party does not comment on a determination related to a proposed action within thirty (30) calendar days, the City may assume the party's concurrence with the City's determination.

IV. STANDARD PROJECT REVIEW

- A. Except as detailed elsewhere in this PA, the City's responsibilities are as follows:
 1. The City will establish the Area of Potential Effects (APE) for all Undertakings based on the definition provided in 36 CFR §800.16(d); and
 2. The City will determine if the APE contains historic properties that are included on or eligible for inclusion on the National Register of Historic Places in accordance with "The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716), and will consult with interested individuals and organizations in conducting this effort as appropriate; and
 3. The City will assess each proposed Undertaking to determine its effect on historic properties as defined in 36 CFR §800.16(i) and will develop and carry out a treatment plan to avoid, minimize or mitigate any adverse effects on these properties to the extent possible; and
 4. As delineated under Stipulation III.B. of this PA, the City will consult with the Tribes on proposed projects during identification, effect determination and treatment plan development phases where the proposed Undertaking has the potential to adversely affect properties that possess tribal religious and cultural significance; and
 5. For any specific Undertaking, the City can decide to follow the regular Section 106 process delineated in 36 CFR §§800.3 through 800.6 instead of the alternate measures provided in this PA. In this event, the City shall both provide the SHPO with documentation of its reasons for requesting to follow the regular Section 106 process and request that the regular Section 106 process be initiated.
- B. Except as detailed elsewhere in this PA, the SHPO's responsibilities are as follows:
 1. The SHPO will provide professional input and advice regarding any of the steps delineated in the Standard Project Review process delineated in paragraph A. of this section; and
 2. For any specific undertaking, the SHPO can decide to follow the regular Section 106 process delineated in 36 CFR §§ 800.3 through 800.6 instead of the alternate measures provided in this PA. In this event, the SHPO shall both provide the City with documentation of its reasons for requesting to follow the regular Section 106 process and request that the regular Section 106 process be initiated.

V. EMERGENCY SITUATIONS

- A. The City will follow the procedures delineated in 36 CFR §800.12(a) for disasters and emergencies as applicable; and
- B. In the event of a disaster or emergency that is subject to 36 CFR §800.12(b), the process outlined below shall be followed for emergency Undertakings:
 - 1. The City will provide the SHPO with documentation regarding the emergency Undertaking and actions to avoid or minimize harm to historic properties.
 - 2. The City will afford the SHPO an opportunity to comment within seven (7) days of receipt of this documentation.
 - 3. If the SHPO does not object within seven (7) days, the emergency Undertaking and proposed actions to avoid or minimize harm to historic properties and archaeological sites will be considered approved and, once such proposed actions have been carried out, the City's Section 106 responsibilities will be deemed complete.
 - 4. If the SHPO objects to the proposed Undertaking and efforts to minimize harm within seven (7) days, then the City will provide the ACHP with the same documentation provided to the SHPO and afford the ACHP an opportunity to comment.
 - (a) If the ACHP does not object within seven (7) days of receipt of this documentation, the emergency Undertaking and proposed actions to avoid or minimize harm to historic properties will be considered approved and, once such proposed actions have been carried out, the City's Section 106 responsibilities will be deemed complete.
 - (b) If the ACHP objects to the documentation within seven (7) days, then the regular Section 106 process delineated in 36 CFR §§800.3 through 800.6 will apply.

VI. DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found within a project's APE after an Undertaking has been initiated, the City will use the following procedures:

- A. The City will immediately cease all operations for the portion of the Undertaking with the potential to affect an historic property; and
- B. The City will evaluate the Undertaking's potential to impact the historic property following the process delineated in Stipulation IV. A. above; and
- C. The City will only re-activate the halted portions of the Undertaking when it documents that all of the steps delineated in Stipulation IV. A. have been satisfactorily completed; and
- D. The City will notify the Tribes of any discoveries that have the potential to have an adverse effect on cultural resources of tribal religious or cultural significance, and after reviewing any such discoveries, the Tribes can request to further consult on these projects by notifying the ACHP, the SHPO or the City in writing.

VII. PUBLIC PARTICIPATION

Each year the City will inform the public, through the publication of a notice in a general circulation newspaper, about the availability for public inspection documentation on the City's HUD-funded program activities. Included in this documentation will be general information on the type(s) of activities undertaken with program funds provided by HUD; information on identified historic properties that might be affected by these activities; the amount of program funds available in the current program year; and how interested persons can receive further information on the HUD-funded program activities.

VIII. RESOLVING OBJECTIONS

Should either the SHPO, the Tribes, the public, or the City object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the objecting party shall immediately consult with one or more of the parties to this PA in an attempt to resolve the disagreement. If the dispute cannot be resolved between the parties to this PA, then the following provisions apply:

- A. If the City determines that such objection(s) cannot be resolved, the City will forward all documentation relevant to the dispute to the ACHP.

- B. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall either concur with the City's objection or response to the objection, or provide additional recommendations that the City will take into account in reaching a final decision regarding its objection or response to the objection.
- C. Should the ACHP not exercise one of the options delineated in paragraph VIII. B. of this section within thirty (30) days after receipt of all pertinent documentation, the City may proceed with its proposed response to the objection.
- D. The City's responsibility to carry out all other measures stipulated in this PA that are not the subject of the objection shall remain unchanged.
- E. Once the City determines its decision regarding the objection, the City shall notify all other parties to this PA of its decision in advance of taking any action. If the City and the other signatories to this PA concur that the stipulations in this PA require an amendment, then the amendment procedures delineated in Stipulation X. of this PA will be followed.
- F. If at any time during implementation of the measures stipulated in the PA an objection pertaining to any provision in this PA is raised by a member of the public, the City shall notify the parties to this PA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this PA to resolve the objection.

IX. ANNUAL REPORT

The City will provide the SHPO, the ACHP and the Tribes with an annual report for the previous calendar year by March 31st of each year that this PA is in effect. The report will summarize projects reviewed in the previous year, and will provide the following information: the names and locations of each Undertaking considered; National Register eligibility determinations of properties determined to be within the APE; the effect determinations of projects; and any efforts to avoid, minimize or mitigate adverse effects on specific projects. Within thirty (30) days of receipt of the annual report, the SHPO agrees to review the submitted annual report information to provide input and to determine if any amendments to the PA are necessary.

X. AMENDMENTS

Any party to this PA may propose that the PA be amended, whereupon the City shall consult with the other parties to this PA to consider such an amendment. Any such amendment will become effective on the date a copy signed by all of the original signatories is filed with the ACHP.

XI. TERMINATION

If any signatory to this PA determines that the terms will not or cannot be carried out, or if the SHPO or ACHP determines that the PA is not being properly implemented pursuant to 36 CFR §800.14(b), then that party shall consult with the other parties to the PA to seek amendment to the PA. If the signatories cannot agree to appropriate terms to amend the PA, any signatory may terminate the PA in accordance with the following procedures:

- A. The party proposing to terminate the PA shall so notify all parties to this PA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination.
- B. Should such consultation fail, any party to the PA may terminate the PA.
- C. Should the PA be terminated, the City shall follow the regular Section 106 process as delineated in 36 CFR §§ 800.3 through 800.6.

XII. EQUAL OPPORTUNITY/NON-DISCRIMINATION

To the extent it is applicable, the parties to this PA agree to abide by federal and state statutes on equal opportunity and non-discrimination.

XIII. CONFLICT OF INTEREST

The SHPO may terminate its participation in this PA if it finds that a State employee that was significantly involved in the creation of this PA is, during the time of this PA or any extension of this PA, an employee or consultant to any other party to this PA.

XIV. NON-AVAILABILITY OF FUNDS

This PA shall be subject to available funding, and nothing in this PA shall bind the State to expenditures in excess of funds authorized and appropriated for the purposes outlined in this PA.

XV. ARBITRATION

The parties agree to use any arbitration that is required under applicable court rules.

Execution and implementation of this PA by the City, the SHPO and the ACHP, and the filing of the executed PA with the ACHP evidence that the City has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

PROGRAMMATIC AGREEMENT SIGNATORIES

CITY OF PHOENIX, a municipal corporation

By: 
Ruth Osuna, Deputy City Manager

Date: March 13, 2007

ATTEST:

City Clerk

APPROVED AS TO FORM:

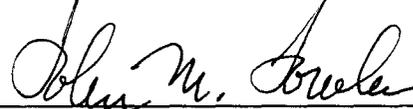

ACTING City Attorney *mw*

ARIZONA STATE HISTORIC PRESERVATION OFFICE

By: 
James Garrison, State Historic Preservation Officer

Date: 29 MARCH 2007

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 
John Fowler, Executive Director

Date: 4/30/07