

**PROGRAMMATIC AGREEMENT
BY AND AMONG THE CITY OF ONTARIO
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING HISTORIC PROPERTIES AFFECTED BY THE USE OF FEDERALLY-FUNDED HUD
LOANS**

WHEREAS, the City of Ontario ("City") proposes to administer and fund projects and programs ("Undertakings") in the City of Ontario with monies from the U.S. Department of Housing and Urban Development ("HUD") programs ("Programs") including: the Community Development Block Grant Program under Title I of the Housing and Community Development Act of 1974; the Emergency Shelter Grant Program under Title IV of the Stewart B. McKinney Homeless Assistance Act; the Home Investment Partnership Program under the Cranston - Gonzalez National Affordable Housing Act; and other federally funded programs delegated to the City of Ontario pursuant to 24 CFR Part 58 or any other pertinent HUD regulations; and

WHEREAS, the City has notified the Advisory Council on Historic Preservation (Council) of the development of this Programmatic Agreement ("PA") and the Council has elected not to participate in the consultation; and

WHEREAS, the City has determined that the implementation of these Undertakings and Programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places ("Historic Properties") and has consulted with the California State Historic Preservation Officer ("SHPO") pursuant to Section 800.14(b) of the regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act (16 U. S. C. 470f) (Act); and

WHEREAS, the City is a Certified Local Government ("CLG") pursuant to Section 101 of the Act and its implementing regulations found at 36 CFR Part 61;

NOW, THEREFORE, the City, the SHPO, and the Council agree that the Undertakings shall be administered in accordance with the following stipulations to satisfy the City's Section 106 responsibilities for all individual Undertakings of the Programs.

STIPULATIONS

The City will ensure that the following measures are carried out:

I. APPLICABILITY OF THE PROGRAMMATIC AGREEMENT

- A. The City shall comply with the stipulations set forth in this PA for all Undertakings that (1) are assisted in whole or in part by revenues from the HUD Programs and that (2) can result in changes in the character or use of any Historic Properties that are located in an Undertaking's Area of Potential Effect ("APE"), as defined in Stipulation V., below.
- B. The review process established by this PA shall be completed before the City's final approval of any application for assistance under these Programs, before a property is altered by either the City or a property owner, and before either the City or a property owner initiates construction or makes an irrevocable commitment to construction that may affect a property that is fifty (50) years of age or older.

- C. Any Undertaking not qualifying for review under the terms of this PA shall be reviewed in accordance with 36 CFR Part 800.

II. COORDINATION WITH OTHER FEDERAL AGENCIES

If the City determines that an Undertaking subject to this PA will also receive funding or assistance from any federal agency, the City shall determine if it is feasible to coordinate the review required by this PA with the Section 106 review conducted by the federal agency, notify the SHPO and the Council, and share documentation as appropriate to facilitate this review. If the City determines that such coordination is not feasible, it shall provide the SHPO and the Council with an explanation and may proceed to conclude the consultation process.

III. UNDERTAKINGS NOT REQUIRING REVIEW BY THE SHPO OR THE COUNCIL

The following Undertakings do not require review by SHPO or Council and no signatory is required by this PA to determine the National Register of Historic Places ("NRHP") eligibility of properties affected by these Undertakings:

- A. Undertakings only affecting properties that are less than fifty (50) years old.
- B. Undertakings limited exclusively to interior portions of single-family residential properties where the proposed work will not be visible from the property's exterior.
- C. Undertakings limited exclusively to the activities listed in Appendix "A" of this PA. Undertakings not so limited shall be reviewed pursuant this PA. Undertakings exempt from review pursuant to Appendix "A" shall be designed to conform to the greatest extent feasible with the California State Historic Building Code, [State of California, Title 24, Building Standards, Part 8 ("SHBC")].
- D. The City shall document actions taken pursuant to this Stipulation in the manner prescribed in Stipulation XVIII.A.

IV. CERTIFIED LOCAL GOVERNMENT COORDINATION; CITY STAFFING

- A. The responsibilities of the City under the terms of this PA shall be coordinated by assigned individual(s) who meet the Secretary of the Interior's Professional Qualification Standards found in the Code of Federal Regulations (48 CFR 44738-39) in History and Architectural History.
- B. The City shall allocate staff as necessary to ensure that its responsibilities under this PA are carried out. Such staff shall monitor Undertakings included in Appendix A of this PA and shall certify that the manner in which they were implemented was consistent with the content of Appendix A. Such staff shall also certify that all other work subject to this PA was carried out in compliance with its terms and shall include such certification in the documentation required pursuant to Stipulation XVIII., "Documentation and Reporting of

1. If the City determines that the property is eligible for inclusion in the NRHP, the determination shall be documented on a State of California Historic Resources Inventory Form – DPR 523 and submitted by the City to the SHPO for review.
 - a. If the SHPO concurs in the determination, the property shall be considered a Historic Property under this PA.
 - b. If the SHPO does not concur in the determination, the City and the SHPO shall immediately consult for a period of time not to exceed ten (10) calendar days to resolve the disagreement. If the disagreement cannot be resolved with this time frame, the City shall obtain a determination of NRHP eligibility from the Keeper of the National Register in accordance with 36 CFR Section 800.4(c)(2). The Keeper's determination shall be final and binding on the parties of this PA.
 - c. If the SHPO does not respond to the City's determination within fifteen (15) calendar days following receipt, the City may assume that the SHPO does not object to the determination and shall proceed in accordance with any other applicable requirements of this PA.
2. If the City determines that the property is not eligible for inclusion in the NRHP, the City may proceed in accordance with any other applicable requirements of this PA. The City is not required to submit such determinations individually to the SHPO for review but shall submit them semi-annually as part of the documentation required pursuant to Stipulation XVIII. Such properties shall not be considered Historic Properties under this PA for a period of five (5) years following the date of the determination and need not be reevaluated during this time frame, unless any signatory to this PA notifies the other signatories in writing that changing perceptions of significance justify a reevaluation.

VII. TREATMENT OF HISTORIC PROPERTIES

- A. Section B (Rehabilitation - Option 1) of this Stipulation shall be followed when an Undertaking does **NOT** involve investment tax credits pursuant to Section 47 of the Internal Revenue Code of 1986, as amended ("IRC"), when Part 2 certification under the IRC is denied, or when an Undertaking is not changed in accordance with any conditions attached to Part 2 certification under the IRC. Otherwise, Section C (Rehabilitation - Option 2 - IRC) of this Stipulation shall be followed.
- B. Rehabilitation - Option 1

The City shall ensure that scopes of work, plans and specifications for Undertakings that may affect Historic Properties and that are not exempt from review under this PA conform to the recommended approaches in *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, 1995 (Standards) and to the greatest feasible extent, to the SHBC.

1. The City shall review appropriate project documents to determined conformance of the Undertaking with the Standards and SHBC.
 - a. If the City determines that the Undertaking conforms to the Standards and the SHBC and if no other provisions of this PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
 - b. If the City determines that the Undertaking does not conform to the Standards and the SHBC, the City shall recommend changes to ensure that the Undertaking conforms to the Standards and the SHBC. If the recommended changes are adopted, the City shall determine that the Undertaking conforms to the Standards and the SHBC. If no other provisions of this PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
 - c. If the Undertaking is not changed to conform to the Standards and the SHBC, the City and the SHPO shall consult for a period of time not to exceed thirty (30) calendar days to develop a Standard Mitigation Measures Agreement ("SMMA") in accordance with Stipulation VIII. unless the SHPO determines that development of a SMMA is not appropriate. If an SMMA is developed and executed by the City and the SHPO, and if no other provision of the PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
 - d. When the Undertaking does not meet the Standards and the SHBC and the SHPO determine that development of a SMMA is not appropriate, the City shall immediately notify the Council and initiate the consultation process set forth in 36 CFR Section 800.6.

C. Rehabilitation - Option 2 - IRC

1. If the owner of a property subject to the terms of this PA applies for investment tax credits pursuant to the IRC, the City shall ensure that the following measures are implemented before authorizing the Undertaking to proceed:
 - a. If the property owner applies to the National Park Service ("NPS") for Part 1 Certification and is denied certification, no further review of the Undertaking is required effective the date of NPS denial, unless the Undertaking may affect other Historic Properties. If no other Historic Properties may be affected, the City may determine in writing that there are no Historic Properties within the Undertaking's APE. If no other provisions of the PA require the City to take further steps with respect to the Undertaking, the

City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.

- b. If the property owner submits a Part 2 Historic Preservation Certification Application to NPS, the review required by the certification process shall supersede the Option 1 review specified above. If the Undertaking receives Part 2 certification from NPS without conditions, it shall be deemed to conform to the Standards and will require no further review under this PA. If the Undertaking is certified with conditions, the City shall ensure that the Undertaking is changed in accordance with the conditions. If the Undertaking is changed accordingly, no further review under this PA will be required. The City shall document the successful completion of the Part 2 certification process in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed.
- c. If Part 2 certification is denied or if the Undertaking is not changed in accordance with conditions attached to the certification, review of the Undertaking shall proceed in accordance with Section B.1.c or B.1.d of this stipulation.

D. Relocation of Historic Properties - Individual Properties and Historic District Contributors

1. If relocation of a Historic Property is an Undertaking or part of an Undertaking subject to this PA and the Historic Property contributes to a historic district, every reasonable effort shall be made by the City to relocate the Property within the same historic district. Before approving any relocation, the City shall forward to the SHPO, documentation that explains the need for relocation, describes the relocation site, indicates why the proposed relocation site was selected, states whether the relocation site contains archeological properties, and summarizes the alternatives to relocation that were considered. If the SHPO does not respond to the City's submittal within fifteen (15) calendar days following receipt, and if no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
 - a. If the SHPO agrees to the relocation as proposed and if no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
 - b. If the SHPO does not agree to the relocation as proposed, the City and the SHPO shall consult for a period of time not to exceed thirty (30) calendar days to identify a mutually acceptable relocation site. If the City and SHPO identify a mutually acceptable relocation site and if no other provision of this

PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.

- c. Any relocation of Historic Properties pursuant to this PA shall be carried out in accordance with the recommended approaches in *Moving Historic Buildings* (John Obed Curtis, reprinted 1991 by W. Patram for the International Association of Structural Movers, IASM, P.O. Box 1213) by a professional mover who has the capability to move historic properties properly.
- d. If no mutually acceptable relocation site is identified, the City and the SHPO shall consult to develop a SMMA in accordance with Stipulation VIII. unless the SHPO determines that a SMMA is not appropriate. If a SMMA is developed and no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
- e. When no mutually acceptable relocation site is identified or the SHPO determines that a SMMA is not appropriate, the City shall immediately notify the Council and initiate the consultation process set forth in 36 CFR Section 800.6.

E. Demolition

1. If demolition of an Historic Property is an Undertaking or part of an Undertaking subject to this PA, the City shall forward documentation to the SHPO that explains the need for demolition, includes an independent structural analysis of the Historic Property (if demolition of the property is required in whole or in part due to a lack of structural integrity), summarizes alternatives considered, discusses future plans for the site, sets forth a mitigation plan and includes the views of the public. If the SHPO does not respond to the City's submittal within fifteen (15) calendar days following receipt, the City shall initiate the consultation process set forth in 36 CFR Section 800.6.
2. If the SHPO agrees to the proposed demolition and determines that development and execution of a SMMA in accordance with Stipulation VIII. is appropriate, the City and the SHPO shall proceed with development and execution of a SMMA. If no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
3. When the SHPO does not agree to the proposed demolition or determines that development of a SMMA is not appropriate, the City shall immediately notify the Council and initiate the consultation process set forth in 36 CFR Section 800.6.

F. New Construction and Relocation of Non-Historic Properties

1. The City shall ensure that the design of any new construction, in-fill construction or construction of additions to Historic Properties is compatible with the historic qualities of the Historic Property, of any historic district or of adjacent historic buildings in terms of size, scale, massing, color, features, and materials and that the design is responsive to the recommended approaches for new construction set forth in the Standards. In addition, the City shall ensure that any proposal to move a non-historic property next to a Historic Property or into a historic district as well as any subsequent work on the exterior of the non-historic property, is responsive to the recommendations set forth in the "District/Neighborhood" section of the Standards.
 - a. The City shall review appropriate project documents to determine conformance of the Undertaking to the design requirements set forth in Section F. 1. of this Stipulation VII.
 - b. If the City determines that the Undertaking conforms and if no other provision of the PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
 - c. If the City determines that the Undertaking does not conform or would otherwise result in an adverse effect to Historic Properties, the City shall recommend changes to ensure that the Undertaking conforms or that adverse effects can be avoided. If the recommended changes are adopted, the City shall determine that the Undertaking conforms to the design requirements set forth in Section F.1. of this Stipulation VII. will otherwise not adversely affect Historic Properties. If no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
 - d. If the recommended changes are not adopted, the City and the SHPO shall consult for a period of time not to exceed thirty (30) calendar days to develop a SMMA in accordance with Stipulation VIII. unless the SHPO determines that development of a SMMA is not appropriate. If a SMMA is developed and executed and no other provision of the PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
 - e. When an Undertaking does not conform to the design requirements set forth in Section F.1. of this Stipulation VII., will otherwise adversely affect Historic Properties, or the SHPO determines that development of a SMMA is not

appropriate, the City shall immediately notify the Council and initiate the consultation process set forth in 36 CFR Section 800.6.

VIII. RESOLUTION OF ADVERSE EFFECTS

- A. When required by the terms of this PA, the City and the SHPO shall consult for a period of time not to exceed thirty (30) calendar days to determine if Historic Properties affected by an Undertaking should be treated in accordance with the Standard Mitigation Measures set forth in Appendix B of this PA or if the consultation process set forth in 36 CFR Section 800.6 should be initiated.
1. As part of this consultation, the City shall provide the SHPO with documentation that may include but may not necessarily be limited to an alternatives analysis, recent independent structural analyses or other assessments of a Historic Property's condition, cost estimates for rehabilitation, information about any economic, social or program-related considerations that should be taken into account, marketing studies and a draft SMMA prepared in accordance with Appendix B of this PA.
 2. If the City and the SHPO determine that the effects of the Undertaking may be resolved by executing and implementing a SMMA, the City and the SHPO shall execute and the City shall implement a SMMA developed in compliance with Appendix B of this PA. The City shall promptly furnish the SHPO with a copy of the fully executed SMMA. If no other provision of this PA requires the City to take further steps; with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
 3. If the City and the SHPO cannot agree on the terms of a SMMA or if the SHPO does not respond to the City's request for consultation within the time frame applicable to this consultation, the City shall notify the Council and initiate the consultation process set forth in 39 CFR Section 800.6.
- B. The City and the SHPO shall not execute a SMMA under any of the following circumstances:
1. When the SHPO determines that a SMMA is not appropriate for the Undertaking;
 2. When the SHPO fails to respond with the time frame applicable to this consultation;
 3. When the Undertaking will adversely affect a National Historic Landmark;
 4. When the public objects to an Undertaking on an environmental or historical basis, to the manner of its implementation or to the manner in which the effects of the Undertaking on Historic Properties will be taken into account;
 5. When human remains are present within the Undertaking's APE.

IX. EMERGENCY UNDERTAKINGS

- A. This Stipulation shall apply only to situations in which a duly authorized local official has determined in accordance with applicable law, that an imminent threat to the public health and safety exists and that such threat must be removed forthwith ("Emergency Conditions").
- B. When the City determines that Emergency Conditions require immediate demolition of a Historic Property in connection with an activity subject to this PA, the City may in writing, concurrently notify both the City Cultural Heritage Board ("CHB") and the SHPO of the proposed removal and afford these parties a maximum of five (5) business days to comment on the proposed demolition. Any notification by the City shall be accompanied by documentation that includes, but is not limited to, a description of the Emergency Conditions, the name, location and significance of the affected Historic Property, an assessment of the Historic Property's current condition supplemented by photographs, and the date by which the Emergency Condition must be abated.
- C. The City shall ensure that any mitigation measures recommended by the CHB and the SHPO are implemented if the City deems such measures to be feasible.
- D. The City shall document the actions taken pursuant to this Stipulation in the manner prescribed by Stipulation XVIII.A.

X. CONSIDERATION AND TREATMENT OF ARCHEOLOGICAL RESOURCES

- A. The following types of ground-disturbing activities have the potential to affect archeological resources:
 - 1. Site preparation in connection with property relocation or new construction.
 - 2. Footing and foundation work occurring more than two feet from any existing footings or foundations.
 - 3. Installation of utilities such as sewer and water lines, storm drains, electrical, gas or leach lines and septic tanks, except where installation is restricted to areas previously disturbed by installation of these utilities.
 - 4. Installation of irrigation or sprinkler systems, except where installation is restricted to areas previously disturbed by such systems.
- B. When an Undertaking may include the foregoing types of ground-disturbing activities and the Undertaking does not qualify as an exception under this provision, the City shall request that the Eastern Archeological Information Center of the California Historical Resources File System at the University of California, Riverside ("IC") conduct an archeological site records and literature search ("ARLS") for the Undertaking's APE.

1. Exceptions

- a. The City is **NOT** required to request the IC for an ARLS under the following Circumstances:
 - i. When the ground-disturbing activities set forth in Sections A.2, A.3 and A.4 of this stipulation will occur exclusively within the legal lot lines of a parcel used as a single family residence.
 - ii. When the ground-disturbing activities set forth in the Sections A.2, A.3 and A.4 of this stipulations will occur anywhere outside the legal lot lines of a parcel used as a single family residence **AND** will be confined to areas previously disturbed by such activities.

C. Unless the IC informs the City that an archeological property is located within the Undertaking's APE or recommends that a qualified archeologist conduct a survey of the APE, no further consideration of archeological resources by the City is required. If no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.

D. If the IC informs the City that an archeological resource is located within the Undertaking's APE or recommends that a survey be conducted, the City shall promptly furnish the SHPO with a copy of the IC's response and request the comments of the SHPO.

- 1. If the SHPO determines that the APE should be surveyed, the City shall engage a qualified archeologist to conduct the survey of the APE and prepare a written report.
- 2. If the SHPO determines that a survey is not necessary and the Undertaking's APE does not contain a known archeological resource, no further consideration of such resources by the City is required. If no other provisions of this PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
- 3. If the Undertaking's APE contains known archeological resources or such resources are identified through a survey, the City shall cause the Undertaking to be redesigned to avoid said resources and shall notify the SHPO of these actions. If no other provision of the PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.
- 4. If the Undertaking cannot be redesigned to avoid the resources, the City shall engage a qualified archeologist to evaluate the resources in accordance with the NRHP Criteria set forth in 36 CFR Section 60.4. This evaluation shall be documented by the archeologist in a written report submitted to the SHPO for review.

- a. If the SHPO informs the City that the resources are Historic Properties, the City shall engage a qualified archeologist to develop a written data recovery and artifact disposition/curation plan that is consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 CFR. 44734-37)*, that takes into account the Council's publication, *Treatment of Archeological Properties* and subsequent revisions made by the Council as well as any applicable SHPO guidance, and whose disposition/curation provisions are consistent with applicable state law. Once approved by the SHPO, the City shall ensure that the plan is implemented by a qualified archeologist and that the results of the data recovery are documented in writing by the archeologist in accordance with applicable professional standards and guidelines. When data recovery has been completed and if no other provisions of this PA require the City to take further steps in respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed.
- b. If the SHPO informs the City that the resources are not Historic Properties, no further consideration of these resources by the City is required. If no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.

E. As used in this Stipulation, "qualified archeologist" means a person who at a minimum meets the *Secretary of the Interior's Professional Qualifications Standard (36 CFR Part 61)* for archeology.

F. The SHPO shall respond to any request for comments submitted under this Stipulation within fifteen (15) calendar days following the receipt. Failure of the SHPO to respond within this time frame shall not preclude the City from assuming that the SHPO does not object to any action deemed by the City to be appropriate under this Stipulation. If no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVIII.A. and may authorize the Undertaking to proceed without further review.

XI. REVIEW OF CHANGES TO APPROVED UNDERTAKINGS

A. The City shall promptly notify the SHPO if:

1. Previously approved scopes of work, plans or specifications for an Undertaking are changed so that, (a) the Undertaking is no longer exempt from review pursuant to Stipulation III. C. and, (b) the nature of the change is such that the terms of the PA require the City to consult the SHPO about the modified Undertaking; or
2. Amendments to previously executed SMMA's are proposed.

- B. Under these circumstances and unless it is precluded by other Stipulations in the PA, the City and the SHPO shall satisfy the requirements of this Stipulation by complying with the provisions of Stipulation VII.

XII. DISCOVERIES AND UNANTICIPATED EFFECTS

- A. The City shall notify the SHPO as soon as possible if it appears that an Undertaking may affect a previously unidentified property that may be eligible for inclusion in the NRHP or affect a known Historic Property in an unanticipated manner. The City may suspend construction in the vicinity of the discovery and require that reasonable measures be taken to avoid or minimize harm to the property until the City concludes consultation with the SHPO.
- B. If the newly discovered property has not previously been included in or determined eligible for inclusion in the NRHP, the City may assume that the property is eligible for purposes of this PA. The City shall notify the SHPO at the earliest possible time and consult to develop actions that take the effects of the Undertaking on the property into account. The City shall notify the SHPO of any time constraints, and the City and the SHPO shall mutually agree on the time frames for this consultation. The City shall provide the SHPO with written recommendations that take the effect of the Undertaking into account. If the SHPO does not object to the City's recommendations within the agreed upon time frame, the City shall require the scope of work for the Undertaking to be modified as necessary to implement its recommendations.

XIII. PUBLIC INVOLVEMENT

- A. The City shall identify any public interest in the Undertakings subject to this PA; by informing the public about Historic Properties when complying with the public participation requirements set forth in 24 CFR Part 58 and in the regulations for any other Program delegated by HUD to the City as may be applicable.
- B. The City or the SHPO may invite interested persons to participate in the development of SMMA's pursuant to Stipulations VII. And VIII. and to participate as interested parties whenever this PA mandates the consultation set forth in 36 CFR Section 800.6.
- C. At any time during implementation of the measures stipulated in this PA, should a member of the public raise an objection pertaining to delineation of an APE or to treatment of a Historic Property, the City shall promptly notify and consult with the SHPO, and take the objection into account for a period of time not to exceed 15 calendar days. Further, when requested by the objecting party, the City shall notify and consult with the Council, for a period of time not to exceed fifteen (15) calendar days, to address the objection. At its discretion, the City may suspend work on an Undertaking while the objection is under consideration.
 - 1. If the objection pertains to a decision by the City and the SHPO to implement a SMMA pursuant to Stipulations VII. or VIII., the City shall immediately suspend work on the Undertaking and shall initiate consultation with the SHPO and the Council pursuant to 36 CFR Section 800.6.

XIV. TIME PERIODS FOR SHPO REVIEW

Unless otherwise stipulated, the SHPO shall respond within thirty (30) calendar days of receipt to any documentation submitted by the City pursuant to the requirements of this PA. If the SHPO does not respond within this time frame or within the time frames otherwise stipulated by this PA, the City shall proceed in accordance with the specific Stipulation(s) that apply to the SHPO review of the documentation submitted.

XV. DISPUTE RESOLUTION

A. Should the SHPO or the Council object within the time frames specified in this PA to any plans, specifications, documents or actions provided for review pursuant to this PA, the City shall consult further with the objecting party for a period of time not to exceed fifteen (15) calendar days to resolve the objection. If the objection is not resolved within this time frame, the City shall forward all documentation relevant to the dispute to the Council.

1. Within thirty (30) calendar days after receipt of all pertinent documentation, the Council will either:
 - a. Provide the City with recommendations or comments which the City shall take into account in reaching a final decision regarding the dispute; or
 - b. Notify the City that it will comment in accordance with 36 CFR Section 800.7 (c) and proceed to comment.
 - c. If the Council fails to provide recommendations or to comment within the specified time period, the City may implement that portion of the Undertaking subject to dispute under this Stipulation in accordance with any documentation as submitted and amended by any comments from the City and SHPO.
2. Any Council comments provided to the City in response to such a request shall be taken into account by the City in accordance with 36 CFR Section 800.7(c)(4) with references to the subject of the dispute. Any recommendation or comment provided by the Council will be interpreted to pertain only to the subject of the dispute. The responsibility of the City to carry out all actions under this PA that are not the subject of the dispute shall remain unchanged.

XVI. ANTICIPATORY DEMOLITION

The City agrees that it will not assist any party who, with intent to avoid the requirements of this PA or the National Historic Preservation Act, has intentionally significantly adversely affected a Historic Property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. The City may, after consultation with the Council, determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the party to be assisted.

XVII. MONITORING

The SHPO and the Council may monitor or review activities carried out pursuant to this PA, and the Council shall review any activities if requested. The City shall cooperate with the SHPO and the Council in carrying out these monitoring and review activities by making all relevant files available for inspection, upon reasonable notice from the SHPO and Council.

XVIII. DOCUMENTATION, REPORTING AND REVIEW OF ACTIVITIES

- A. The City shall document in writing all actions taken pursuant to this PA, retain this documentation in its project files, and include such documentation as necessary in the Programmatic Agreement Compliance Report(s) ("PACR") required pursuant to Section B. of this Stipulation.
- B. The City shall provide the SHPO and the Council with a PACR on June 30 and December 31 of every year so long as this PA is in effect. The City shall also offer copies of PACR to the Los Angeles area office of the U.S. Department of Housing and Urban Development (HUD) and shall provide HUD with copies, if HUD so requests.
 1. The PACR shall: summarize activities carried out under the terms of this PA; list by property address all Undertakings, including those set forth in Appendix A, that were reviewed pursuant to the PA; and document all decisions made with respect to "Identification and Evaluation of Historic Properties", "Treatment of Historic Properties", "Resolutions of Adverse Effects", and "Considerations and Treatment of Archeological Resources"; include copies of all SMMA's; and present the views of the City regarding the usefulness of this PA in promoting the efficiency and effectiveness of both the Programs and the consideration of Historic Properties.
- C. The City shall make PACR's available for public inspection and comment, ensure that the public is made aware of their availability for inspection and comments, and invite the public to submit any comments to the Council, the SHPO and the City.
- D. The signatories to this PA shall review PACRs and any comments submitted pursuant to Section C. of this Stipulation. Based on that review, the signatories will determine whether this PA should be amended in accordance with Stipulation XIX.

XIX. AMENDMENTS

- A. Any party to this PA may request that it be amended whereupon the parties shall consult in accordance with 36 CFR Sections 800.13 and 800.14(b) to consider such amendments.
- B. Any resulting amendments or addenda shall be developed and executed by the parties in the same manner as the original PA.

XX. CITY STAFFING

- A. The Certified Local Government Coordinator, for purposes of this agreement, must meet the minimum professional qualifications for history or architectural history as defined in 36 CFR Part 61.
- B. The City will assign staff to assure that work was carried out as planned, and will maintain records for each project which document compliance with the terms of this PA, and will retain the services of an Archaeological Consultant ("AC") as the need may arise and in accordance with Section IV.C of this PA.

XXI. TERMINATION

Any consulting party to this PA may terminate the PA by providing thirty (30) calendar days notice to the other consulting parties, provided that the consulting parties shall consult during the period before termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the City will comply with 36 CFR Section 800 with respect to individual Undertaking covered by this PA.

XXII. FAILURE TO COMPLY WITH THE PROGRAMMATIC AGREEMENT

In the event the City cannot carry out the terms of this PA, the City shall not take or sanction any action or make any commitment that would result in an adverse effect to Historic Properties or which would foreclose the Council's consideration of modifications or alternatives to the Undertakings, and the City will comply with 36 CFR Section 800 with regard to each individual Undertaking subject to this PA.

EXECUTION AND IMPLEMENTATION of this PA evidences that the City of Ontario has afforded the Council a reasonable opportunity to comment on these Programs and that the City has satisfied its Section 106 responsibilities for all individual Undertakings of the Programs covered by this PA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
John Fowler, Executive Director

Date: _____

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ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
John Fowler, Executive Director

Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
John Fowler, Executive Director

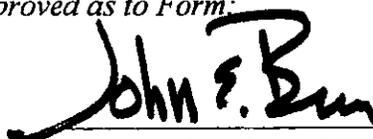
Date: _____

CITY OF ONTARIO

By: 
City Manager

Date: 7/1/03

Approved as to Form:

By: 
Best Best & Krieger LLP
City Attorney

ATTEST:


City Clerk

STATE HISTORIC PRESERVATION OFFICER

By: 
Dr. Knox Mellon
State Historic Preservation Officer

Date: 7/28/03

APPENDIX A

The following Undertakings require only administrative review by the CLG and not the SHPO or the Council pursuant to Stipulation III of this PA.

1. Demolition and rehabilitation of facilities that are not Historic Properties, except when a proposed addition of such facilities may affect a surrounding or adjacent historic district.
2. Repair, replacement and installation of the following systems provided that such work does not affect the exterior of a property or require new duct installation throughout the interior:
 - a) electrical work;
 - b) plumbing pipes and fixtures, including water heaters;
 - c) heating and air conditioning system improvements;
 - d) fire and smoke detector system installation;
 - e) sprinkler systems installation;
 - f) ventilation system installation; and
 - g) bathroom improvements where work is restricted to an existing bathroom.
3. Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form.
4. Repair or replacement of fencing and freestanding exterior walls when work is done in-kind to match existing material and form.
5. Repair, replacement or installation of windows and storm windows (exterior, interior, metal or wood) provided these match the shape and size of the historic windows and provided that, for storm windows, the meeting rail coincides with that of the historic window. Color should match trim.
6. Installation of new window jams, jamb liners, and screens.
7. Caulking, weather-stripping, reglazing and repainting of windows.
8. Roof repair or replacement of historic roofing with materials that closely match existing materials and forms. Cement asbestos shingles may be replaced with asphalt-based shingles.
9. Repair, replacement or installation of gutters and down spouts.
10. Repainting and refinishing of exterior or interior surfaces, including but not limited to walls, floors, and ceilings, provided that harmful surface preparation treatments including but not limited to water blasting, sandblasting, and chemical removal are not used and that work is done in-kind to match existing material and form.

11. Repair or replacement of awnings and signs when work is done in-kind to closely match the existing material and form.
12. Installation of insulation, with the exception of area formaldehyde foam insulation or any other thermal insulation with a water content into wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item.
13. Installation or replacement of security devices, including dead bolts, door locks, window latches, and door peepholes, and electronic security systems.
14. Installation of grab bars and minor interior and exterior modifications for disabled accessibility.
15. Repair or replacement of interior stairs when work is done in-kind to match existing material and form.
16. Replacement of non-significant flat stock trim.
17. Repair or replacement of existing roads, driveways, sidewalks, curbs and gutters provided that works is done in-kind to closely match existing materials and forms and provided that there are only minimal changes in the dimensions and configuration of these features.
18. Repair or replacement of water, gas, storm and sewer lines when the work qualifies as an exemption pursuant to Stipulation X.B.
19. Acquisition of properties which is limited to the legal transfer of ownership with no physical improvements proposed.
20. Temporary bracing or shoring.
21. Anchoring of masonry walls to floor systems so long as anchors are embedded and concealed from exterior view such as in the Hilti systems.
22. Stabilization of foundations and addition of foundation bolts.
23. Rental and installation of scaffolding.
24. Installation of temporary, reversible barriers such as chain link fences and polyethylene sheeting or tarps.
25. Repair and replacement of any interior or exterior elements when the repair or replacement is done in-kind to closely match existing materials.
26. Installation of landscaping materials.

APPENDIX B

STANDARD MITIGATION MEASURES AND ADVERSE EFFECTS

When deemed appropriate by the City in consultation with the SHPO, the City and the SHPO may develop and execute without Council participation a written Standard Mitigation Measures Agreement ("SMMA") that includes one or more of the following Standards Mitigation Measures ("SMMs") for Undertaking not listed in Stipulation VIII.B. The City must submit copies of all fully executed SMMA's to the SHPO and retain copies of all such SMMA's in accordance with Stipulations VIII.A.2. and XVIII.A. of this PA.

- A. Prior to demolition, alteration or relocation of a Historic Property, the City shall:
1. Contact the HABS/HAER Coordinator, Western Regional Office of the National Park Service, San Francisco, California to determine what level and kind of recordation is required for the Property. Unless otherwise agreed to by HABS/HAER, the City shall ensure that all documentation is completed and accepted by HABS/HAER before it authorizes the activity that would adversely affect the Property to proceed, and that copies of this documentation are made available to the SHPO and to appropriate local archives designated by the SHPO;
OR
 2. Record the Property in accordance with a Recordation Plan ("RP") developed by the SHPO.
 - a. At a minimum, RPs shall establish recordation methods and standards.
 - b. The City shall consult with the SHPO to identify appropriate archives where the City will deposit copies of the recordation materials.
 - c. The City and the SHPO may mutually agree to waive the recordation requirement if the affected Historic Properties will be substantially repaired in accordance with the Standards.
- B. The City, in consultation with the SHPO, shall identify appropriate parties to receive salvaged architectural features. The City shall ensure that significant architectural features are salvaged before demolition or alteration and that they are properly stored and protected. When feasible and appropriate, salvaged architectural features shall be reused in other preservation projects.
- C. The City shall ensure that, where the SHPO has determined that the treatment of the Historic Properties or the design of new buildings cannot feasibly meet the Standards or any SHPO-approved design guidelines, the work shall be carried out in accordance with construction documents or work write-ups that have been reviewed and approved by the SHPO.

- D. The City shall ensure that a Marketing Plan ("MP") proposed either by the City or the SHPO is implemented before demolition or relocation of Historic Properties is authorized. The MP shall include those elements specified in Items 1-4, pages 33-34 of the Council's publication, Preparing Agreement Documents (1989). The City shall review all purchase offers in consultation with the SHPO.

APPENDIX C

Definitions:

"Act"

"Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C Section 470.

"Agency Official"

"Agency Official" means the Federal agency head or a designee with authority over a specific Undertaking, including any State or local government official who has been delegated legal responsibility for compliance with Section 106 and Section 110(f) in accordance with law.

"Archaeological Site Records and Literature Search" (ARLS)

"Archaeological Site Records and Literature Search" means the document search for the Undertaking's APE completed by the Eastern Archaeological Information Center of the California Historical Resources File System at the University of California, Ontario ("IC"), or its successors.

"Area of potential effects" (APE)

"Area of potential effects" means the geographic area or areas within which an Undertaking may cause changes in the character or use of historic properties, if any such properties exist.

"Council"

"Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

"Certified Local Government" (CLG)

"Certified Local Government" means a city or county that has been Certified by the National Park Service pursuant to Section 101 of the National Historic Preservation Act and is implementing regulations found at 36 CFR Part 61.

"City"

"City" means the City of Ontario.

"Historic Property"

"Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes, for purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The

term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register of Historic Places listing criteria.

"Local Government"

"Local government" means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

"National Register"

"National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.

"National Register Criteria"

"National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

"National Register of Historic Places" (NRHP)

"National Register of Historic Places," maintained by the Secretary of the Interior and administered by the National Park Service, is the official list of the Nation's cultural resources worthy of preservation.

"Programmatic Agreement" (PA)

"Programmatic Agreement" means the agreement, pursuant to 36 CFR 800.14(b), between the City, SHPO and Advisory Council on Historic Preservation to allow for expedited review of HUD funded projects affecting cultural resources.

"Programmatic Agreement Compliance Report" (PACR)

"Programmatic Agreement Compliance Report" means the report provided twice a year to the SHPO, Council, and U.S. Department of Housing and Urban Development ("HUD") which summarizes activities carried out under the terms of the Programmatic Agreement.

"Secretary"

"Secretary" means the Secretary of the Interior.

"SHPO"

"State Historic Preservation Officer" means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

"Standards"

"Standards" means *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for*

*Preserving, Rehabilitating, Restoring & Reconstructing
Historic Buildings, 1995.*

*"Standard Mitigation Measures Agreement"
(SMMMA)*

"Standard Mitigation Measures Agreement" means the mitigation agreement executed between the City and the SHPO without Council participation.

"Undertaking"

"Undertaking" means any project, activity, or Program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.