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Date JAN 24 2005

Agenda Item 64

Roll Call # 05.221

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**PROGRAMMATIC AGREEMENT
 AMONG
 THE CITY OF DES MOINES
 THE
 IOWA STATE HISTORIC PRESERVATION OFFICE
 AND THE
 ADVISORY COUNCIL ON HISTORIC PRESERVATION
 REGARDING THE CONSTRUCTION OF THE
 RIVERPOINT WEST DETENTION BASINS
 SOUTHWEST 14TH STREET NORTH OF THE RACCOON RIVER
 DES MOINES, IOWA**

WHEREAS, the Riverpoint West Detention Basins (hereafter, Project) will receive loan and grant money from the United States Department of Housing and Urban Development (hereafter, HUD); and, whereas, the City of Des Moines (hereafter, City), pursuant to 24 CFR 58.1, has assumed the roles and responsibilities for environmental review, decision making, and actions that would otherwise apply to HUD under the National Environmental Policy Act (hereafter, NEPA) and other provisions of the law that further the purpose of NEPA, including Sections 101, 106 and 110 of the National Historic Preservation Act (NHPA), as specified in 24 CFR 58.5; and,

WHEREAS, the City has consulted with the State Historic Preservation Officer of Iowa (hereafter, SHPO) pursuant to 36 CFR 800.2(c)(1) and have come to an agreement on the project Area of Potential Effects, which is attached as Appendix A pursuant to 36 CFR 800.4(a)(1); and,

WHEREAS, the project is not located within an historic district or located adjacent to or within several blocks of any National Register listed or eligible extant structures but there is some potential for buried archaeological deposits; and

WHEREAS, the site poses significant logistical challenges for traditional archaeological and geomorphological testing owing to the presence of concrete rubble and slab that covers virtually the entire area where the detention basins will be constructed thus necessitating a phased approach to the identification and evaluation of historic properties as allowed by 36 CFR part 800.4(b)(2); and,

WHEREAS, the City has notified the Advisory Council on Historic Preservation (hereafter Council) of its intention to devise and implement program alternatives to meet its compliance obligations for this Project and has invited the Council to participate in consultation pursuant to 36 CFR 800.6 (a)(1) but the Council has decided to participate in the consultation; and,

WHEREAS, the City has sought to notify parties that may have an interest in or specialized knowledge of historic properties that will be adversely affected by the implementation of this undertaking and,

WHEREAS, the City respects the sovereignty of all federally recognized American Indian Tribes in the Section 106 consultation process and recognizes their expertise in identifying and assessing the religious and cultural significance of American Indian historic properties on and off of Tribal lands and has invited the following American Indian tribes to participate and to concur in this Programmatic Agreement (PA) (Appendix B); and,

WHEREAS, the City, in consultation with the SHPO, proposes to involve the Public by disseminating information about the undertaking and its effects on historic properties in a proper and timely fashion and will seek public participation as mandated by federal law by utilizing HUD procedures for soliciting public involvement found at 24 CFR Part 58.43; 58.45-46; 58.59 and other applicable sections of that part.

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

STIPULATIONS:

I. ARCHAEOLOGY

A. Qualified Archaeologist

The City shall ensure that archaeological investigations are conducted under the direct supervision of an archaeologist, who meets or exceeds the Secretary of Interior's professional qualifications for Historical and Prehistoric Archaeology (48 FR 44738-9). The Principal Investigator must demonstrate an ability to comprehend the theoretical approaches, develop research designs, and apply research and field methods that are particular to this discipline and appropriate for this site.

B. Land-Use History

1. Prior to field investigations, historic maps and records (e.g. General Land Office (GLO) survey maps and notes, Sanborn Insurance maps, City of Des Moines engineering records, property abstracts, and other historical sources) shall be consulted to determine where, within the APE, previous urban development has reduced the potential for encountering *in situ* archaeological deposits beneath the mantle of urban fill. The results of land-use history studies serve as a guide for the implementation of geoarchaeological field methods and analyses and archaeological survey efforts. The assessment shall consider the possibility of potential historic period sites and prehistoric surfaces and sites

C. Geoarchaeological Investigations

1. Geoarchaeological sampling and site monitoring of the APE will take place concurrently with project excavation.

2. Geoarchaeological investigations shall be consistent with the *Guidelines for Archaeological Investigations in Iowa* (1999) and will be performed by a qualified geomorphologist in cooperation with the project's archaeological principal investigator. Mechanized equipment (i.e., back-hoe fitted with a 4', untoothed lawnscape bucket, and Geo-probe or Giddings-type auger) will be employed to address the following data sets: (1) areas of high, moderate, and low potential for encountering undisturbed archaeological deposits; (2) depth of fill mantle across the project area and elevations of buried soils (palesols) beneath the fill mantle; (3) delineation of areas that need not be further investigated owing to profound disturbance from former urban development, whose extant structures, structural remnants, or archaeological deposits and features in and of themselves do not qualify for listing on the National Register; and (4) integration of subsurface data with landform characterizations and buried topography with those produced by investigations within the downtown area .
3. Once the geoarchaeological testing has concluded, the project archaeologist, SHPO and City will meet to review the findings of the investigation and to determine the appropriate course of action as recommended below:
 - a. In the event that the geoarchaeological testing establishes that the undertaking will result in no historic properties or no adverse effects on historic properties, the City shall submit a letter of determination to SHPO along with a letter report prepared by the Principal Investigator summarizing his/her findings. Upon SHPO's conditional concurrence the Principal Investigator will have 45 days to prepare and submit a final report documenting his/her findings. Review and acceptance of this report by the Iowa SHPO will serve to document compliance with this Programmatic Agreement.
 - b. In the event that the results of geoarchaeological testing are inconclusive or otherwise insufficient to support determinations of no historic properties affected or no adverse effects, the City, the SHPO, and the Principal Investigator shall meet to determine what additional information is needed and the manner in which it is to be collected. The strategy shall be implemented upon consensus of the City and SHPO.

In the event that significant archaeological deposits are encountered within the APE, then the City shall mitigate adverse project effects through data recovery as outlined in Articles I.D-E of this agreement.

D. Data Recovery

1. If necessary, a refined data recovery plan (DRP) with research design will be developed utilizing information produced during the Land-Use History and Geoarchaeological studies. A draft of the DRP will be submitted to the SHPO for review and approval prior to the commencement of data recovery.

SHPO will have a maximum of thirty (30) calendar days to review the DRP and provide comments. Data recovery efforts will be conducted in accordance with the finalized DRP.

2. Given the urban setting of the project area and the known fill depths, data recovery will be operationalized by mechanized removal of the fill mantle to the interface with the underlying buried A soil horizon. Through consultation with SHPO, a strategy will be developed to ensure adequate treatment, characterization and interpretation of site contexts. The approach taken will be dependent on the nature and extent of *in situ* deposits and will be closely coordinated with the SHPO.
3. All intact features, midden deposits and structural remains associated with any prehistoric components that may be present within the project APE will be fully mitigated through data recovery and recordation procedures when in-place preservation of the entire feature or deposit is not practicable. Intact artifact deposits and features associated with the post-1870 development of Des Moines will be subject to an archaeological sampling strategy that will be developed in consultation with the SHPO. The methods and procedures set forth in the data recovery plan will be consistent, but not necessarily the same, as those pursued during previous data recovery exercises at other archaeological sites in the downtown locality.
4. The signatories concur that the accomplishment of Tasks B (Land Use History) and C (Geoarchaeological Investigations), of necessity, may precede the formal execution of this agreement; and, that the implementation of Task D (archaeological data recovery) must await the fully executed PA.
5. The principal investigator shall compile a report documenting the data recovery and analytical activities. The report format will be consistent with standards outlined in the *Guidelines for Archaeological Investigations in Iowa* (1999). Among other things, the report will detail field and laboratory procedures, describe the features and artifacts recovered, discuss the current, past, and synthesize the data recovered to further an understanding of those historic contexts. The report will include itemized catalogs of the artifacts recovered and features observed in the field. Review and acceptance of the data recovery report by the Iowa SHPO will serve to document compliance with this Programmatic Agreement.
6. The City will ensure that the artifacts, field notes, and associated documentation resulting from this data recovery effort will be permanently stored at the curation facility located at the Office of the State Archaeologist in Iowa City or at an accredited facility that applies similar curation standards.

E. Preservation

- 1 In consultation with SHPO, the City shall devise and implement a security plan that will allow for the protection of archaeological resources against vandalism, looting, and other unauthorized activities during data recovery.
2. In consultation with SHPO, the City will prepare and execute a plan to take into account the long-term preservation of all significant archaeological deposits and features should they be avoided by construction.

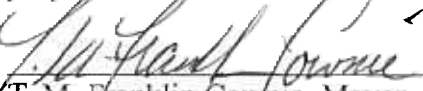
II. ADMINISTRATIVE CONDITIONS

- A. Unanticipated Discoveries. No human remains have been recovered from this area in the past and none are expected to be found during the execution of this undertaking. This notwithstanding it is understood that any human remains and/or grave-associated funerary objects encountered during the data recovery are protected by provisions of the Iowa Codes 144.34 and 263B.7 through 263B.9, and the Iowa Administrative Code Section 685, Chapter 11. The City shall ensure that, if human remains and/or grave associated objects are encountered, all construction and excavation activities will cease immediately within the area. The area will be secured, the material will be left in place with no further disturbance. A tarp, plastic sheeting, or other appropriate covering will be placed over the exposed remains and weighted with loose soil along the edges and the top. The SHPO and the Director of the Burials Program at the Office of the State Archaeologist of Iowa (319) 384-0740 will be contacted immediately. In the event that other discoveries of historical, architectural, or archaeological significance are encountered all construction and excavation activities will cease immediately within the area. The area will be secured, the material will be left in place with no further disturbance and the SHPO will be contacted immediately. The SHPO will respond within 48 hours of the discovery.
- B. Termination. This agreement shall be null and void if its terms are not carried out within four (4) years from the date of its execution unless the signatories agree in writing to an extension for carrying out its terms. This agreement may be terminated prior to this time by either the City of Des Moines or the SHPO upon written notice to the other party with copies furnished to the Council and the other consulting parties. Upon termination of consultation, the City will coordinate with the Council in order to fulfill its compliance obligation under NHPA.
- C. Objections and Dispute Resolution. At any time during implementation of the measures set out under the Stipulations in this PA, should a written objection to any such measure or its manner of implementation be raised by a signatory to this agreement, the City shall take the objection into account and consult as needed with the objecting party, the Iowa SHPO, or the Advisory Council on Historic Preservation to resolve the objection. The responsibility of the signatories to carry out all actions under this agreement that are not the subject of the objection shall remain unchanged.

- D. Monitoring. The City will forward a status report summarizing actions taken to implement the provisions of this agreement to the SHPO semi-annually. The reports will be due in June and December of each calendar year until completion of the proposed project.

- E. Amendment. The signatories to this PA may propose to amend its terms by providing a written request for such amendment to the other signatories whereupon all parties shall consult as appropriate within thirty (30) calendar days of receipt of the written request. Any resulting amendments shall be developed in writing and shall be executed immediately upon consensus.

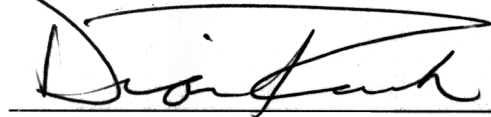
Execution of this Programmatic Agreement by the City of Des Moines, the State Historic Preservation Officer of Iowa, and the Advisory Council on Historic Preservation, and implementation of its terms evidence that the City has afforded the Council an opportunity to comment on the River Point West Detention Basin project and its effect on historic properties, and that the City has taken into account the effect of this undertaking on historic properties.



T. M. Franklin Cownie, Mayor
City of Des Moines


JAN 24 2005
Date

ATTEST:




Diane Rauh, City Clerk

JAN 24 2005
Date



Lowell J. Soike, Deputy State Historic Preservation Officer
Community Programs Bureau
State Historical Society of Iowa

February 7, 2005
Date



John Fowler, Executive Director
Advisory Council on Historic Preservation

3/14/05
Date

Appendix A

Area of Potential Effect (APE)

The signatories to the PA understand and accept the following definition as the project APE:

Generally located in an area between SW 14th Street and the Iowa Interstate Railroad and north of the Raccoon River and the Norfolk and Southern Railway Company property. See map for specific location.

- The depths of the detention basins are noted on the attached plans. The basins are being constructed for the improved operation of the City's existing pump station in this area.
- The APE may be altered if the project changes from a dry basin to a wet basin design. In that case, the specific basin location and depth will be revised to conform to pending development.

The City shall appropriately document and immediately notify the SHPO and other parties of subsequent changes to the project APE and shall allow them a reasonable opportunity for review and comment. If necessary, revisions to the data recovery plan shall be made by the project archaeologist and shall be submitted concurrently to the SHPO for review. The SHPO will respond to the City's notice of changes to the APE within five (5) calendar days of receipt of the notice.

Appendix B

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