

PROGRAMMATIC AGREEMENT

By and Among

CITY OF WICHITA, KANSAS

and

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,

and

THE KANSAS STATE HISTORIC PRESERVATION OFFICER

Regarding the administration of Section 106 requirements and properties affected by the use of Housing and Urban Development funds

WHEREAS, the City of Wichita, Kansas (CITY), proposes to administer and fund projects and programs in the City of Wichita with grants and loan guarantees from the United States of America Community Development Block Grant program (CDBG) of the Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974; the HOME program; ESG program; and any other programs delegated to the CITY pursuant to 24 CFR Part 58; and

WHEREAS, the CITY sponsors several rehabilitation, demolition, new construction, and Capital Improvement Programs (CIP) with HUD funding; and

WHEREAS, the CITY has determined that the administration of these projects 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 Kansas State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act (16.U.S.C. 470F);

WHEREAS, all references within this Programmatic Agreement (Agreement) are to the ACHP's regulations at 36 CFR Part 800 that became effective on January 11, 2001;

NOW, THEREFORE, the CITY, SHPO, and ACHP agree that HUD funded programs shall be administered in accordance with the following stipulations to satisfy the CITY's Section 106 responsibilities for all HUD funded projects subject to Section 106 review including individual undertakings of the programs involving-rehabilitation, demolition, new construction and Capital Improvement Program (CIP) projects which affect properties on the National Register of Historic Places or meet the criteria for the National Register.

Stipulations

CITY shall comply with the stipulations set forth in this Agreement for all undertakings within CITY which involve the exterior or interior rehabilitation of residential and commercial structures and is assisted entirely or in part by monies from the programs of the U.S. Department of Housing and Urban Development. The review established by this Agreement shall be completed prior to CITY's final approval of any application for assistance under these programs,

and prior to CITY or the property owner altering the property, or initiating or making an irrevocable commitment for construction that may affect a property that is fifty (50) years of age or older. Any undertaking that does not qualify for review under the terms of this Agreement shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

The CITY shall ensure that the following measures are carried out:

I. APPLICABILITY OF AGREEMENT

The CITY shall comply with the stipulations set forth in this Agreement for all HUD funded projects subject to Section 106 review undertakings within the City of Wichita which involve the exterior or interior rehabilitation, demolition, new construction of residential and commercial structures, Capital Improvement Projects, and/or compliance with the Americans With Disabilities Act (ADA and is assisted entirely or in part by monies from the programs of the United States of America U.S. Department of Housing and Urban Development. The review established by this Agreement shall be completed prior to the CITY or the property owner altering the property, or initiating or making an irrevocable commitment for construction that may affect a property that is fifty (50) years of age or older. Any undertaking that does not qualify for review under the terms of this Agreement shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

II. UNDERTAKINGS REVIEWED BY CITY

- A. Undertakings reviewed by the City, itemized in Attachment "A," will not be forwarded to the SHPO for review. All other undertakings will be reviewed and forwarded to the SHPO pursuant to the terms of this agreement.
- B. Undertakings affecting properties that are less than fifty (50) years of age do not require review pursuant to the terms of this Agreement.
- C. Undertakings affecting potentially eligible properties located within the SHPO approved Area of Potential Effects (APE's) as defined in 36 CFR 800.16(d) generated by the CITY.

III. AREA OF POTENTIAL EFFECTS

It is agreed for purposes of this Agreement, with the exception of Stipulation II.C and V.B, that the APE will be limited to the individual building when a proposed project is limited to the rehabilitation of its existing interior or exterior features.

IV. IDENTIFICATION OF HISTORIC PROPERTIES

- A. The CITY shall review all existing information on any property within the APE that may be affected by the use of these funds, including the National Register of Historic Places and lists of historic properties maintained by the CITY.
 - 1. If the property proposed for rehabilitation, demolition, and new construction, (or Capital Improvement Projects affecting the property) is listed on the National

Register or has already been determined eligible for inclusion in the National Register, the CITY shall proceed with the review of the project pursuant to Stipulation V, unless exempted under Stipulation II.

2. If the property has been determined by the CITY, in written consultation with the SHPO, within the last five (5) years prior to the current undertaking to be ineligible for inclusion in the National Register, then the undertaking may proceed without further review under the terms of this Agreement.
- B. If the CITY identifies a previously unevaluated property within the APE, or if the property proposed for rehabilitation, demolition, or new construction (or Capital Improvement Projects affecting the property) is not listed in the National Register, has not been evaluated for National Register eligibility within the last five (5) years, and is at least 50 years of age, then the CITY shall ensure that it provides the SHPO with a Kansas Historical Resources Inventory Reconnaissance Form, as well as sufficient documentation pursuant to 36 CFR 800.4 to enable the SHPO to review the CITY's determination, and shall consult with the SHPO to establish documentation standards. The CITY shall apply the National Register criteria and notify SHPO of its determination in this submittal.
1. If the SHPO agrees with the CITY that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this Agreement, and shall hereinafter be referred to as an historic property. The CITY shall continue consultation in accordance with the terms of this Agreement for all such properties.
 2. If the SHPO agrees with the CITY that the criteria are not met, the property shall be considered ineligible for inclusion in the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this Agreement notifies the CITY, in writing, that it has determined that changing perceptions of significance warrants a property's reevaluation. Such properties require no further review under this Agreement.
 3. If SHPO disagrees with the CITY's determination regarding eligibility, the CITY shall consult further with the SHPO to reach agreement.

If agreement cannot be reached, the CITY shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations, 36 CFR Part 63.
 4. If the SHPO does not respond within 30 days from the SHPO's date of receipt to the CITY's correspondence concerning identification of a property, then Part 800 requirements will be considered fully satisfied.

V. ASSESSMENT OF EFFECTS

- A. Prior to undertaking any activities that are not exempt under Stipulation II, the CITY shall provide the SHPO with clear, unobstructed photographs of the historic property subject to Section 106 review and a general work description which adequately details the scope of work for each rehabilitation, demolition, new construction, and/or Capital Improvement Programs that is determined to affect a property that is listed on the National Register of Historic Places or meets the criteria for the National Register, including work write-ups, working drawings, and specifications, as appropriate, and any additional documentation necessary to understand the undertaking. The CITY shall apply the Criteria of Effect and the Criteria of Adverse Effect (36 CFR 800.5(a)(1)) to any historic property that may be affected by an undertaking, and will review the scope of work to determine if the undertaking conforms to the recommended approach contained in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (STANDARDS).
1. If the CITY determines that an undertaking will have no effect, the CITY shall notify the SHPO in writing of this finding. If the SHPO does not object to this written notice within fifteen (15) days, the undertaking may proceed without further review.
 2. If the CITY determines that an undertaking conforms to the STANDARDS, the CITY shall notify the SHPO in writing of this finding. If the SHPO does not object in writing to this determination within thirty (30) days after receipt, the undertaking shall be considered to not adversely affect historic properties, and may proceed as submitted without further review.
 3. If the CITY or the SHPO finds that an undertaking does not conform to the STANDARDS, the undertaking will be considered to adversely affect historic properties. The SHPO may recommend modifications to the scope of work or conditions under which the undertaking would be found to conform to the STANDARDS in its response to the CITY. The CITY shall consult further with the SHPO to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the CITY shall initiate consultation with the SHPO and the ACHP in accordance with 36 CFR 800.6.
 4. The CITY shall notify the SHPO of any changes to the scope of work, and shall provide the SHPO with the opportunity to review and approve such changes. If the changes do not conform to the STANDARDS, the parties shall consult further and the CITY will initiate consultation with the SHPO and the ACHP in accordance with 36 CFR 800.6 if an adverse effect cannot be avoided.
- B. Additionally, the CITY shall consult in writing with the SHPO to determine if an undertaking, which includes ground-disturbing activities, has the potential to affect archaeological properties that may be eligible for inclusion in the National Register. The CITY shall investigate historical records and pertinent information available at the Wichita State University City Archeologist office, and shall complete any further studies

recommended by the SHPO to determine if the undertaking has the potential to affect archeological properties that may be eligible for inclusion in the National Register. It is agreed that the following ground-disturbing activities have potential to affect historic properties: excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines, and septic tanks except where installation is restricted to areas previously disturbed by the installation of such systems.

1. If an undertaking has the potential to affect any archeological property that may be eligible for inclusion in the National Register, the CITY shall attempt to redesign the project to avoid the archeological property and shall provide the SHPO with documentation regarding the property and the steps it has taken to avoid such property.
2. If the undertaking cannot be redesigned to avoid the archeological property, the CITY shall develop a plan in consultation with the SHPO to complete the identification, evaluation, and, if necessary, mitigation of the property. If the CITY and the SHPO cannot agree that the potential to affect archeological properties exists or cannot agree on a plan for the consideration of such properties, the CITY will initiate consultation with the SHPO and the ACHP in accordance with 36 CFR 800.6.

VI. COMBINED REVIEWS OF ELIGIBILITY AND EFFECT

The CITY may elect to submit the documentation set out in Stipulations IV and V above in one package for the SHPO's review. The SHPO will provide comments on the CITY's determinations of eligibility and effect within thirty (30) days after receipt of such submission. Failure of the SHPO to respond within 30 days of the receipt of a submission shall mean project approval. The CITY will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations IV and V to determine if additional review by the SHPO or the ACHP is required to fulfill the terms of this Agreement.

VII. SHPO RESPONSIBILITIES

- A. The SHPO is permitted thirty (30) calendar days after the receipt of any submitted documentation to review and comment on such material, with the exception of Stipulation V.A.1. If the SHPO does not provide comments within this time period, the CITY may assume that the SHPO does not object to its determination.
- B. At written request by CITY staff, the SHPO will provide technical assistance and training on the application of the STANDARDS to the CITY to the extent possible.

VIII. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these programs, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or a known National Register historic property may be affected in an unanticipated manner, the CITY will assume its responsibilities pursuant to 36 CFR 800.13(b).

IX. REPORTING

On or around July 31st of each year that the Agreement is in effect, the CITY shall forward an annual report of all undertakings reviewed pursuant to the terms of the Agreement to the City Manager for presentation to the City Council, SHPO, and ACHP. This report will list the undertakings that were exempted under Stipulation II and those that were reviewed under the terms of this Agreement. The undertakings should be listed by property address.

X. MONITORING

The SHPO and the ACHP may monitor any activities carried out pursuant to this Agreement, and the ACHP will review such activity if requested. The CITY will cooperate with the SHPO and the ACHP in carrying out these monitoring and review responsibilities.

XI. DISPUTE RESOLUTION

Should the SHPO object in writing to the CITY regarding any proposed Undertaking under this PA or the manner in which the terms of this PA have been followed, the CITY shall consult with the SHPO to resolve the objection. If the CITY determines that the objection cannot be resolved, the CITY shall forward all documentation relevant to the dispute to ACHP, including the CITY's proposed response to the objection. If the SHPO disagrees with the CITY's determination regarding National Register eligibility, the CITY shall follow the procedures set out in Stipulation IV.B. above. Within 30 days after receipt of all pertinent document, the ACHP will:

1. Advise the CITY that it concurs with the CITY's proposed response whereupon the CITY shall respond to the objection accordingly; or
2. Provide the CITY with recommendations pursuant to 36 CFR §800.2(b)(2) which the CITY shall take into account in reaching a final decision regarding the dispute; or
3. Notify the CITY that it will comment pursuant to 36 CFR §800.7(c) and proceed to comment on the subject in dispute.
4. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the CITY may assume that the ACHP concurs in the proposed response to the objection.
5. The CITY shall take into account the ACHP's recommendation or comment provided in accordance with this stipulation with reference only to the subject objection. The CITY's responsibility to carry out all actions under this MOA that are not the subject of this dispute remain unchanged.

XII. CITY STAFFING

The CITY will assign staff to assure that any rehabilitation, demolition, new construction, and/or Capital Improvement work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by the CITY. Such staff will also monitor undertakings limited to work items enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed. The responsible CITY staff will certify that work was carried out as planned, and will maintain records for each project with document compliance with the terms of this Agreement. Staff shall meet the Secretary of the Interior's Historic Preservation Professional Qualification Standards as

KANSAS STATE HISTORIC PRESERVATION OFFICER

By: Terry Marnet
Terry Marnet, Interim State Historic Preservation Officer

Date: 5/14/04

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
John Fowler, Executive Director

Date: _____

ATTACHMENT A

TO

CITY OF WICHITA'S

PROGRAMMATIC AGREEMENT FOR REHABILITATION

The CITY will assign staff to assure that any covered rehabilitation, demolition, new construction, and/or Capital Improvement work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by the CITY. Such staff will also monitor undertakings limited to work items enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed. The responsible CITY staff will certify that work was carried out as planned, and will maintain records for each project with document compliance with the terms of this Agreement. Staff shall meet the Secretary of the Interior's Historic Preservation Professional Qualification Standards as printed in the *Federal Register* of June 20, 1997, pp. 33708-33723 and shall have the appropriate qualifications for each project, i.e. a qualified archaeologist will review ground disturbing projects and a historian, architectural historian, or architect will review projects affecting buildings.

Project Activities Not Requiring Review:

1. Cleaning masonry surfaces with low-pressure water (80-120 p.s.i.) and detergents using natural bristle brushes.
2. Removing damaged or deteriorated paint on wood surfaces by hand-scraping and hand-sanding to the next sound layer of paint.
3. Applying exterior paint.
4. 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 exactly match existing material and form.
5. Repairing wood siding by patching or piecing-in of in-kind materials.
6. Repairing or replacing historic roofing materials in-kind.
7. Replacing nonhistoric or non-character defining materials (such as roof, porch or siding) with a substitute material documented to be original and that is appropriate in texture and color to the style of the property.
8. Repairing existing windows and doors.

9. Replacement of windowpanes in-kind or with double or triple glazing so long as glazing is clear and not colored and replacement does not alter existing window material and form.
10. Correcting structural deficiencies in basements, crawl spaces, attics, and beneath porches.
11. Modifications to non-significant interior spaces (mechanical, electrical, or plumbing systems) which do not result in the loss of woodwork, fireplaces, historic light fixtures, pressed metal ceilings, or other decorative details, if such modifications do not affect the exterior appearance of the property.
12. Repairing or replacing site features, such as sidewalks, driveways, and fencing in-kind.
13. Insulating attics, basement walls, perimeter crawl spaces, under floors, and around pipes and ducts in such cases where the installation can be accomplished without permanent change to the appearance of any interior or exterior finish materials. This exclusion does not include the installation of any foam type materials that would be introduced into wall cavities in a liquid form, thereby introducing moisture into the wall cavities.
14. Installing wood or enameled low-profile aluminum storm windows and doors, or insulated glazing provided that these items match the size and configuration of the historic window or door, and do not detract from the appearance of the building.
15. Installing interior storm windows.
16. Installing caulking and weather-stripping, provided the color of the caulk is consistent with the appearance of the property.
17. Installing water heater tank wraps.
18. Trimming trees or other plantings, provided that such activity does not noticeably change the size or shape of the tree or planting.
19. Installing plywood on openings of vacant buildings in a manner that does not result in permanent damage to existing window or doorframes, or architectural features such as siding and cornices.
20. Repair or replacement of signs or awnings when work is done in-kind to exactly match existing material and form.