



CITY OF NEW ORLEANS
OFFICE OF HOUSING & URBAN AFFAIRS

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FY '93
(#4)

SIDNEY J. BARTHELEMY
MAYOR

August 9, 1993

JANICE L. BARTLEY
EXECUTIVE DIRECTOR

*Ms. Gerri Hobdy, Assistant Secretary
State of Louisiana
Office of Cultural Development
Division of Historic Preservation
P.O. Box 44247 (1051 N. Third Street)
Baton Rouge, Louisiana 70804*

AUG 12 03

Attention: Pauline Barrow

SUBJECT: Signed Programmatic Agreement

Dear Ms. Hobdy:

Enclosed is a copy of the signed Programmatic Agreement regarding the City's federally funded rehabilitation program. The Office of Housing and Urban Affairs is beginning to execute this agreement with its current rehabilitation projects. I have been informed that Mr. Foundas and Mrs. Barrow will work on the final details so that the SHPO has confidence in OHUA in representing SHPO interests with the rehabilitation process.

If you have any questions concerning this agreement, please contact Mr. Craig Foundas, of my staff at 826-2957.

Sincerely,


Janice L. Bartley
*Executive Assistant to the Mayor
for Housing and Urban Affairs*

JLB/caf

**cc: Rene N. Steinkamp
Craig Foundas**

(7-93)

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CITY OF NEW ORLEANS
OHUA

PROGRAMMATIC AGREEMENT
AMONG THE CITY OF NEW ORLEANS, LOUISIANA
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING ITS REHABILITATION PROGRAM

WHEREAS, the City of New Orleans, Louisiana (City) proposes to administer and fund projects and programs in the City of New Orleans with monies from the Community Development Block Grant program (CDBG) of the U.S. Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974; the National Affordable Housing Act including projects funded under the HOME Investment Partnership Act; the Emergency Shelter Grants Program funded by the Stewart B. McKinney Homeless Assistance Act of 1988; and other programs and projects that City is required to assume environmental review and decisionmaking responsibilities under HUD's implementing regulations at 24 CFR Part 58;

WHEREAS, the City has determined that the administration and funding of these projects, programs, and grants may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Louisiana State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Section 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f);

NOW, THEREFORE, the City, the SHPO, and the Council agree that these programs 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 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 programs and projects which are assisted entirely or in part by monies from HUD. The review established by this Agreement shall be completed prior to the City's final approval of any application for assistance under the above programs, and prior to the City or property owner altering the property, or initiating or making an irrevocable commitment for construction, renovation, or demolition that may affect a property that is 50 years of age or older.

II. PROJECTS NOT REQUIRING REVIEW BY THE SHPO OR THE COUNCIL

A. Projects consisting exclusively of activities listed in Attachment "A" do not require review by the SHPO or the Council.

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B. Undertakings affecting only properties that are documented by the City to be less than fifty years of age do not require review by the SHPO or the Council. This exception does not apply to undertakings which may result in the demolition of a standing structure:

C. The rehabilitation of buildings or structures located outside the boundaries of the following historic districts which have been listed on or determined eligible for inclusion in the National Register: Uptown; Central City; Garden; Lower Garden; Irish Channel; Esplanade Ridge; Vieux Carre; Faubourg-Marigny; Bywater; Algiers Point; Holy Cross; Carrollton; Upper Central Business District; Lower Central Business District; Upper Canal Street; Inner Marigny; and Lower Algiers Addendum do not require review by the SHPO or Council.

III. AREA OF POTENTIAL EFFECTS

It is agreed for purposes of this Agreement, with the exception of the activities described in Stipulation V that the Area of Potential Effects (APE) will be the individual building when a proposed undertaking is limited to the rehabilitation of its interior or exterior features. The City shall consult with the SHPO to establish the APE for projects which involve new construction, including additions, or the demolition of structures provided that such actions are not exempted from review pursuant to Stipulation II.(B) above.

IV. PROJECT REVIEW

A. The City shall submit a copy of any application for assistance under the above-referenced programs that may affect a property which is not excluded from review pursuant to Stipulation II. above to the SHPO for review. The City shall initiate Section 106 review with the SHPO through a letter which describes the undertaking and scope of review requested. It is anticipated that the City will request the SHPO's review of the property's eligibility and the undertaking's effect in its submittal, however the City may choose to separate these issues in its submittals to the SHPO. Requests regarding National Register eligibility shall include at least one unobstructed photograph of each property which may be affected by the undertaking; the address of the property; the name of the historic district where the property is located; a map of the project area; and a description of the undertaking. Requests regarding project effects shall include the documentation required to determine eligibility unless it has been previously provided to the SHPO, a work write-up and any available drawings, specifications, or construction documents. The City will review projects prior to their submittal to the SHPO to determine if the project appears to conform to the recommended approaches of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, (Standards). The City will take all feasible steps to modify project elements that

do not appear to conform to the Standards prior to its submittal to the SHPO. The City shall provide any additional, available information on the subject property or project area to the SHPO, and will cooperate with the SHPO to develop documentation that may be required for the SHPO's review. If the property is located within one of the historic districts listed in Stipulation II.C. above, the City may assume that the property is eligible for inclusion in National Register and may proceed with the review of the project effects pursuant to Stipulation VI.C. The City may, however, choose to request the SHPO's assistance in determining if a property located within a historic district contributes to the significance of the district and is eligible for inclusion in the National Register.

B. Utilizing the information set out in Stipulation IV.A. above, the SHPO shall assist the City to apply the National Register Criteria, 36 CFR Section 60.4, to the properties which may be affected the proposed assistance. The SHPO shall provide its recommendations regarding National Register eligibility to the City in writing within the timeframes established in Stipulation VI.D. below:

1. If the SHPO notifies the City that the property appears to be eligible under the criteria and the City determines to accept such recommendation, the property shall be treated as eligible for the National Register for purposes of this Agreement.

2. If the SHPO notifies the City that the property does not appear to meet the criteria and the City determines to accept such recommendation, the property shall be considered not eligible for the National Register for purposes of this Agreement. Such properties require no further review under the terms of this Agreement, and the proposed undertaking may proceed.

3. If the City rejects any recommendation regarding National Register eligibility forwarded by the SHPO, it shall consult further with the SHPO to reach agreement. If agreement cannot be reached, the City shall obtain a final determination of eligibility from the Secretary of Interior pursuant to the applicable National Park Service regulations, 36 CFR Part 63.

4. The Council may request information on any determination of eligibility made pursuant to this Agreement and may request, at its discretion, that the City obtain a determination of eligibility from the Secretary of the Interior.

5. The City's landmark designation process pursuant to the City of New Orleans Ordinance No. 5992 M.C.S., No. 6699 M.C.S. and C.C.S., Ord. No. 14,538,1. is unrelated to the process outlined by 36 CFR Section 800.4 or this Agreement for determining the eligibility of a property for inclusion in the

National Register of Historic Places. A determination by the SHPO or the Keeper that a property is not eligible for inclusion in the National Register shall not affect the property's designation as a City of New Orleans landmark.

C. Utilizing the information set out in Stipulation IV.A. above, the SHPO shall assist the City to apply the Criteria of Effect and Adverse Effect, 36 CFR Section 800.9, to any eligible property that may be affected by the proposed assistance. The SHPO shall provide its recommendations regarding effect to the City in writing within the timeframes established in Stipulation VI.D. below:

1. If the SHPO concludes that the project conforms to the Standards, it shall notify the City and recommend that the project will not adversely effect historic properties, and the City may approve the project or make a commitment to provide assistance and no further review is required under the terms of this Agreement.

2. If the SHPO concludes that the project does not conform to the recommended approaches of the Standards, the SHPO may recommend modifications or conditions which would bring the project into conformance with the Standards thereby resulting in a project that will not adversely effect historic properties. If the City agrees to modify the project documents to incorporate the SHPO's recommended modifications or conditions, the City may approve the modified project or make a commitment to provide assistance and no further review is required under the terms of this Agreement.

3. If the SHPO concludes that the project does not conform to the recommended approaches of the Standards or if the City does not accept the SHPO's recommended modifications or conditions, the project shall be determined to have an adverse effect on historic properties, and the City shall initiate adverse effect consultations with the SHPO and the Council in accordance with 36 CFR Section 800.5(e) to conclude the Section 106 review for such undertakings.

D. The SHPO will be permitted 30 calendar days following the receipt of adequate documentation to review combined submittals requesting the SHPO's review of eligibility and effect. The SHPO will provide comments within 30 calendar days after receipt of adequate documentation on separate requests regarding eligibility or effect. If the SHPO cannot provide comments within these timeframes, the SHPO will notify the City and establish an appropriate comment period.

E. The City shall document its review of SHPO recommendations and its determinations for each undertaking in its project or environmental files. This information including the general project documentation shall be available for review by the SHPO or Council following reasonable notice.

V. ARCHEOLOGICAL SURVEYS AND TREATMENT

The City shall notify the SHPO if the project will involve ground disturbing activities and request their opinion on the potential that archeological properties may be present and may be effected by such activities. It is agreed that the following ground disturbing activities have the 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 these activities are restricted solely to areas previously disturbed by the installation, replacement, or maintenance of such systems. If the City and the SHPO determine that there is a potential that archeological properties may be affected by the undertaking, the City will conduct an archeological survey of the affected area in consultation with the SHPO. If archeological properties are identified through this survey, they will be evaluated by the City in consultation with the SHPO to determine if they may meet one or more of the National Register criteria. The City shall take any feasible steps to avoid any National Register eligible archeological property, but may consult with the SHPO to develop a plan for the recovery of archeological data from the property. this plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37) and take into account the Council's publication, Treatment of Archeological Properties. This plan will be submitted concurrently to the SHPO and Council for review. If neither the SHPO nor Council objects within 30 days to the submitted plan, the City shall implement it.

VI. DISPUTE RESOLUTION

Should the SHPO or Council object within thirty (30) days to any plans, specifications, or actions provided for review pursuant to this agreement, the City will consult further with the objecting party to seek resolution. If the City determines that the objection cannot be resolved, the City shall forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either: 1) provided the City with recommendations, which the City will take into account in reaching a final decision regarding the dispute; or 2) notify the City that it will comment pursuant to 36 CFR Section 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the City in accordance with 36 CFR Section 800.6(c)(2) with reference 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, and the City's responsibility to carry out all actions under this agreement that are not the subject of the dispute will remain unchanged.

VII. MONITORING

The SHPO and the Council may monitor any activities carried out pursuant to this Agreement, and the Council will review any activities if requested. The City will cooperate with the SHPO and Council in carrying out these monitoring and review responsibilities and will maintain records that document compliance with the terms of the Agreement for all projects reviewed pursuant to this Agreement.

VIII. REPORTING

By October 31st of each year the City's Environmental Review Officer shall forward an annual report regarding the implementation of this agreement to the SHPO and Council. This report will list the undertakings that were exempted under Stipulation II. and those that were reviewed under the terms of this Agreement. These undertakings should be listed by the property address and indicate the general nature of the project. The City may include recommendations regarding the implementation of this agreement and suggest modifications that may increase its effectiveness. This report will be reviewed by the SHPO and Council to determine if the terms of the agreement have been fulfilled and if modifications or amendments may be necessary.

X. SHPO RESPONSIBILITIES

The SHPO will provide technical assistance and training on the application of the application of the Standards to the City to the extent possible.

XI. CITY STAFFING

The City will designate staff to assure that the terms of the Agreement are met. The City's Environmental Review Officer will be the primary point of contact with the SHPO and Council for purposes of this Agreement and will have experience implementing the Section 106 review process required by the National Historic Preservation Act and will attend the Council's training programs and keep informed on new developments to the National Historic Preservation Act, the Council's regulations, the Standards, and other historic preservation issues.

XII. 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 historic property may be affected in an unanticipated manner, the City will assume its responsibilities pursuant to 36 CFR Section 800.11(b)(2)(ii).

XIII. PUBLIC INVOLVEMENT AND OBJECTIONS

At any time during implementation of the measures stipulated in

this Agreement should an objection to any measure or its manner of implementation be raised by a member of the public, the City shall take the objection into account and consult as need with the objecting party, the SHPO or the Council to resolve the objection.

XIV. AMENDMENTS

Any party to this Agreement may request in writing that it be amended, whereupon the parties will consult in accordance with 36 CFR Section 800.13 to consider such amendment. No amendment will be effective until it is executed by all the parties.

XV. TERMINATION

Any party to this Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to the 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 Sections 800.4 - 800.6 with respect to individual undertakings covered by this Agreement.

XVI. FAILURE TO COMPLY WITH TERMS OF AGREEMENT

In the event the City cannot carry out the terms of this Agreement, it shall not take or sanction any action or make any irreversible commitment that would result in an adverse effect to historic properties or would foreclose the Council's consideration of modifications or alternatives to the undertaking, and the City will comply with 36 CFR Sections 800.4 through 800.6 with respect to each individual undertaking covered by this Agreement.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that the City has afforded the Council a reasonable opportunity to comment of the projects and programs and that the City has satisfied its Section 106 responsibilities for all individual undertakings of the program.

CITY OF NEW ORLEANS, LOUISIANA

By: *Jedburgh Barthelemy* Date: 7/2/93
title: Mayor

LOUISIANA STATE HISTORIC PRESERVATION OFFICER

By: *Gene Healy* Date: 7/15/93
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *Robert D. Bush* Date: 7/23/93
Executive Director

ATTACHMENT "A"
Programmatic Agreement for Rehabilitation
City of New Orleans, LA

PROJECT ACTIVITIES NOT REQUIRING REVIEW BY SHPO OR COUNCIL:

1. Electrical work, limited to upgrading or in-kind replacement;
2. Plumbing work, limited to upgrading or in-kind replacement, with the exception of historic fixtures which shall be repaired when possible;
3. Installation or repair of mechanical equipment which does not affect the exterior of the building or require installation of new ducts throughout the interior;
4. Repainting of existing painted surfaces provided that destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting, and chemical cleaning are not used;
5. 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 match existing material and form;
6. Replacement of deteriorated windows when the replacement is done in-kind to match the existing material and form;
7. Replacement of window panes in-kind or with double or triple glazing so long as glazing is clear and untinted and replacement does not alter the existing window material and form;
8. Caulking and weatherstripping with compatibly colored materials;
9. Roof repair or replacement of historic roofing with material which closely match the existing material and form. Cement asbestos shingles may be replaced with asphalt based shingles;
10. Installation of insulation, with the exception of urea formaldehyde foam insulation or any other thermal insulation which contains water in its chemical composition and is installed within wall cavities, provided that decorative interior plaster, woodwork, or exterior siding is not altered by this work item;
11. Installation of fire or smoke detectors;
12. Installation of security devices, including dead bolts, door locks, window latches, door peepholes, and the installation of electronic security systems;
13. Repair or replacement of driveways and walkways when work is done in-kind to closely match existing materials and form;

14. Repair or replacement of fencing when work is done in-kind to closely match existing material and form;

15. Floor refinishing;

16. Repair or replacement of floors when work is done in-kind to closely match existing materials and form;

17. Installation of grab bars and minor interior modifications for handicapped accessibility;

18. Repair or replacement of signs or awnings when work is done in-kind to closely match existing materials and form;

19. Repair or replacement of interior stairs when work is done in-kind to closely match existing material and form;

20. Repair or replacement of interior walls to closely match prior or existing walls; and

21. Economic development activities that provide loans for minor repairs and funds for working capital.