

PROGRAMMATIC AGREEMENT
AMONG
THE CITY OF KANSAS CITY, MISSOURI
THE MISSOURI STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
FOR U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PROGRAMS
ADMINISTERED BY THE CITY OF KANSAS CITY, MISSOURI

WHEREAS, the City of Kansas City, State of Missouri (hereinafter "City"), administers grant programs from the U.S. Department of Housing and Urban Development (hereinafter "HUD"), which include, but are not limited to, the Community Development Block Grant (CDBG) program, the HOME program, and any other HUD program for which the City assumes HUD's environmental review responsibility pursuant to 24 C.F.R. Part 58; and

WHEREAS, the City or other recipient or participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance with the above-named HUD- programs for undertakings that may include, but are not limited to, repair, rehabilitation, construction, demolition, acquisition and disposition activities related to housing, commercial, industrial and public properties, structures or facilities; and

WHEREAS, the City has determined that the administration of the above-named HUD-funded programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Missouri State Historic Preservation Officer (hereinafter "SHPO") and the Advisory Council on Historic Preservation (hereinafter "ACHP") pursuant to 36 CFR § 800.14 of the regulations implementing Section 106 of the National Historic Preservation Act of 1966 (16 USC Sec. 470f), and Section 110(f) of the same Act (16 USC Sec. 470h-2(f));

WHEREAS, the principles set forth in the ACHP's Policy Statement on Affordable Housing and Historic Preservation, which is attached as Appendix A and incorporated herein, will be taken into consideration by all parties when carrying out the stipulations of this Programmatic Agreement; and

NOW, THEREFORE, the City, the SHPO, and ACHP agree that the City's HUD-funded programs shall be administered in accordance with the stipulations provided below to satisfy the City's Section 106 responsibilities for all individual undertakings.

STIPULATIONS

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

I. Qualifications of Personnel.

- A.** The City shall ensure that all activities and reviews carried out pursuant to this agreement are implemented by or under the supervision of a person(s) qualified in accordance with *The Secretary of the Interior's Professional Qualifications Standards* (hereinafter "Professional Qualifications") (36 CFR Part 61). The City will assign a staff person (hereinafter "Preservation Planner") possessing the Professional Qualifications, or retain a consultant who meets the qualifications in the area of expertise necessary for review of all undertakings covered by this agreement, to monitor the administration of this agreement, and to provide assistance to the Kansas City Landmarks Commission in carrying out its responsibilities under this agreement. When archaeological review and monitoring is necessary, the services of a person(s) meeting the Professional Qualifications for the discipline of archaeology will be retained.
- B.** The City will submit a report annually to the SHPO verifying the qualifications of the Preservation Planner. The City shall notify the SHPO of the personnel responsible for complying with this agreement and shall notify the SHPO when there is a change in personnel.
- C.** If the City does not employ or contract with a qualified Preservation Professional, the City shall consult with the SHPO to develop alternate administrative procedures.

II. Preservation Planning.

- A.** The City shall maintain a historic preservation plan that identifies priorities for survey, identification, research, and Kansas City Register (KCR) and National Register (NR) nominations for Kansas City. The historic preservation plan will be updated at least every five years. Review and input by the Kansas City Landmarks Commission, Historic Kansas City Foundation, and the public shall be an integral part of revisions and updates to the preservation plan.
- B.** Within thirty (30) days of the execution of this agreement, or within (30) days of adoption by the Kansas City Landmarks Commission of revisions or updates to the historic preservation plan, the City shall provide to the SHPO a printed copy of the preservation plan.

III. Activities Exempt from Further Review.

All undertakings that are not identified under Stipulation III, "Activities Exempt from Further Review," must be reviewed in accordance with 36 C.F.R. Part §§ 800.3 through 800.7.

A. General Exemptions

The following undertakings have no or limited potential to effect historic properties and do not require further review or consultation with the SHPO or ACHP. Further compliance with the ACHP's regulation (36 C.F.R. 800) is not required.

- 1) Undertakings, including rehabilitation, but not demolition or new construction, which involve buildings, structures or facilities less than fifty (50) years old at the time of the proposed undertaking, provided that:
 - a) The property has not been listed in the National Register of Historic Places (NR) or the Kansas City Register of Historic Places (KCR) at the time of the proposed undertaking, and
 - b) The property has not been determined to be eligible for listing in the NR or KCR as identified in the records of Kansas City, Missouri or the Missouri State Historic Preservation Office at the time of the proposed undertaking.
- 2) Refinancing, without demolition, repair, rehabilitation or construction.
- 3) Leasing, without demolition, repair, rehabilitation or construction.

B. Exempt Activities

The following undertakings have no or limited potential to effect historic properties and do not require further review or consultation with the SHPO or ACHP, provided the undertakings comply with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*. For purposes of this agreement, the terms "in-kind repair" or "in-kind replacement" are defined as installation of a new element that duplicates the material, dimensions, configuration and detailing of the original element.

Exempt activities apply to projects not otherwise made exempt under Section III A, "General Exemptions."

1) Site Work.

- a) Removal and installation of non-historic retaining walls driveways, curbs and gutters, and parking areas; and for the repair in-kind using like materials, techniques and design of historic retaining walls driveways, curbs and gutters, and parking areas.
- b) Installation or repair of concrete or asphalt sidewalks and alleys.
- c) Installation or repair of brick or stone sidewalks and alleys with like materials.

- d) Maintenance, repair or in-kind replacement of masonry steps not attached to any building.
- e) Installation of landscaping when no grading is required and when excavation of holes for individual plantings is no more than thirty (30) inches deep.
- f) Installation or repair of utilities such as water, gas, sewer, and electrical lines.
- g) Installation of temporary, reversible barriers such as fencing and construction pedestrian tunnels.

2) Exterior Rehabilitation.

- a) Purchase and acquisition of real property.
- b) Architectural and engineering fees.
- c) Securing and “mothballing” of structures, using methods defined in the National Park Service’s Preservation Brief 31, *Mothballing Historic Structures*.
- d) Installation of scaffolding.
- e) Temporary stabilization that causes no permanent damage to the building or site, including installation of temporary bracing, shoring, and tarps.
- f) Exterior maintenance and repair made with in-kind materials and that do not affect the external appearance and building fabric, including but not limited to the following:
 - (1) Repointing of mortar joints with mortar similar in composition, joint profile, color, and texture. The mortar used in the tuckpointing shall be no harder than the existing mortar and bricks.
 - (2) Repair and in-kind replacement of foundations, floor joists, and ceiling joists.
 - (3) Removal of exterior paint by non-destructive means, limited to hand scraping, low-pressure water wash of less than 400 psi, heat plates or hot air guns, chemical paint removal.
 - (4) Application of exterior paint, other than on previously unpainted masonry.
 - (5) All lead paint abatement that does not involve removal or alteration of exterior features and/or windows.
 - (6) Repair or partial in-kind replacement of wood siding and trim.
 - (7) Repair or in-kind replacement of existing porch elements such as columns, flooring, floor joists, ceilings, railing, balusters and balustrades, and lattice.
 - (8) Maintenance, repair, and in-kind replacement of roof cladding and sheeting, gutters, soffits, and downspouts with no change in roof pitch or configuration.

(9) Window repair, including caulking and weather stripping of existing window frames, installation of new clear glass in existing sashes, and replacement of glazing.

(10) Maintenance, repair, or in-kind replacement of handicapped accessible improvements such as wheelchair ramps, but not including exterior elevators.

g) Installation of storm windows provided the windows are anodized or painted to match the trim and with horizontal and vertical divisions that align with the existing window divisions.

h) Placement and installation of exterior heating, ventilating or air conditioning (HVAC) mechanical units and vents, provided any exterior HVAC mechanical units at the front of the building are screened from public view.

i) Installation, replacement, or repair of basement bulkhead doors.

3) Interior rehabilitation.

a) All plumbing work, including installation of water heaters. In no case shall ceilings be dropped to accommodate such work

b) All electrical work not involving demolition of walls, ceilings and/or floors.

c) All HVAC systems and their components. In no case shall ceilings be dropped to accommodate such work.

d) Installation of insulation in attics and crawl spaces. In no case shall ceilings be dropped to accommodate such work.

e) Repair and in-kind replacement of plaster walls and ceilings.

f) Installation of drywall where original plaster wall surfaces are missing and where the installation of drywall will not appreciably change the trim profile.

g) Repair and refinishing of interior floors.

h) All painting and carpeting, provided that carpet installation damages no underlying wood or masonry floor surfaces.

i) All kitchen and bathroom remodeling provided the location of walls, windows, or doors are not altered.

j) All lead paint abatement that does not involve removal or alteration of interior features.

k) All asbestos abatement that does not involve removal or alteration of interior features.

4) Demolition.

- a) Securing and “mothballing” of structures, using methods defined in the National Park Service’s Preservation Brief 31, *Mothballing Historic Structures*.
- b) Installation of temporary fencing and barriers for the purpose of site control or security.
- c) Demolition of structures or building additions less than fifty years old, following review of City records, other than those eligible for listing in the National Register of Historic Places as defined by National Register Bulletin 22, *Guidelines for Evaluating and Nominating Properties that Have Achieved Significance Within the Past Fifty Years*.
- d) Demolition of buildings, structures or facilities where a certified structural engineer has determined that the structural integrity has been lost and there is an imminent threat to public health and safety; provided:
 - (1) That the property has not been listed in the National Register of Historic Places (NR) or the Kansas City Register of Historic Places (KCR) at the time of the proposed undertaking, and
 - (2) That the historical significance of the site has been evaluated for archaeological or other capacity to yield information that may contribute to the understanding of Kansas City history, and
 - (3) In all such circumstances, photo-documentation shall take place prior to demolition and photography shall follow guidelines established in *The Secretary of the Interior’s Documentation Standards*, when and where safely feasible.
- e) Demolition of structures determined by the Missouri SHPO within the past four years to be ineligible for listing in the National Register of Historic Places, either individually or as part of a district, unless changes in condition or status of the property necessitate review. The four-year time period shall be applied from the date of request for demolition.
- f) Demolition of noncontributing accessory structures and those ineligible for listing on the National Register of Historic Places with a building footprint of less than 300 square feet, including, but not limited to, garages, sheds, and carports.
- g) Removal and disposal of collapsed building debris and rubble not attached to any structure, except where the building debris is determined to be a contributing element of a site, or district, or archaeological site.
- h) Removal of metal awnings, except where the awnings have been deemed to be a contributing element of the structure.
- i) Removal of dead trees and brush.

- j) Cleanup and removal of trash, refuse, and abandoned vehicles.
- k) Grading and seeding sites where demolition has already taken place.

IV. Technical Assistance. Nothing in this agreement shall be construed as meaning that the City cannot request advice, counsel, or assistance of the SHPO at any time.

V. Monitoring. ACHP and the SHPO may monitor activities carried out pursuant to this Programmatic Agreement. The City will cooperate with ACHP and the SHPO in carrying out their monitoring and review responsibilities. The City shall retain and make available to the ACHP, SHPO or the public records documenting the date of buildings, structures or facilities less than fifty (50) years that were demolished under Section III B (4) of this agreement. The City shall submit an annual report on projects reviewed locally under this Programmatic Agreement, at the time annual Certified Local Government reports are due. Such reporting shall be in digital and narrative form.

VI. Public Participation. Public participation shall occur in accordance with Implementation Principle II of Appendix A: *ACHP's Policy Statement on Affordable Housing* and according to the process outlined in Appendix B: *Public Participation Process*.

A. Consulting and Interested Parties.

1. Historic Kansas City Foundation serves as a concurring party to this agreement and shall participate in consultation efforts relating to all proposed undertakings, as well as other appropriate consulting parties as required pursuant to 36 CFR § 800.2 of the regulations implementing Section 106 of the National Historic Preservation Act of 1966 including but not limited to native American groups; governmental agencies; low income, minority groups; property owners; historical and cultural organizations; and interested parties invited to serve as consulting parties.
2. The City shall identify and invite interested parties to comment in accordance with the process outlined Appendix B.

B. Public Meetings: To facilitate public participation and the promotion of preservation activity in Kansas City, Missouri, and ensure that the proposed City-administered HUD-funded projects are carried out in accordance with standards set by the Secretary of the Interior, the City shall present for comment at a regularly scheduled meeting of the Kansas City Landmarks Commission as outlined in Appendix B, a list of all proposed City-administered HUD-funded projects exempt under this agreement and those that are not exempt from further review as defined in Section III of this agreement. Additionally, consulting and interested parties shall be notified when such information is to be reviewed by the Landmarks Commission. Records of these proceeding shall be kept in perpetuity in accordance with the City of Kansas City Records Control Guidebook.

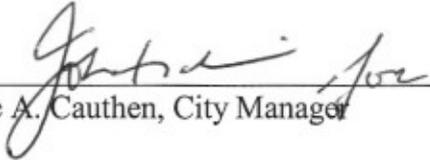
VII. Dispute Resolution. At any time during implementation of the measures stipulated in this agreement, should an objection to any measure or manner of implementation be raised by a member of the public, the City shall take the objection into account and consult with the objecting party, the SHPO, and/or the ACHP to resolve the objection.

- VIII. Effective Dates.** This Programmatic Agreement will continue in full force and effect until October 31, 2010. At any time during the six-months prior to this date, the City may request in writing that the ACHP and SHPO review the City's program and consider an extension or modification of this Programmatic Agreement. No extension or modification will be effective unless all parties to the Programmatic Agreement have agreed to such extension in writing.
- IX. Amendments.** Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.14 to consider such amendment. Twelve months after the execution of this agreement, the consulting and concurring parties shall review the process and procedures of this agreement; and if agreed to, make recommendations for amendments to this agreement in writing to the consulting parties.
- X. Termination.** Any party to this Programmatic 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 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 §§ 800.3 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

Execution and implementation of this Programmatic Agreement evidences that the City has afforded ACHP a reasonable opportunity to comment on the program and that the City has taken into account the effects of the program on historic properties.

CONSULTING PARTIES:

City of Kansas City, State of Missouri

By: 
Wayne A. Cauthen, City Manager

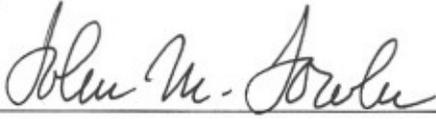
Date: 10-25-05

Missouri State Historic Preservation Officer

By: 
Mark Miles, Deputy State Historic Preservation Officer

Date: 11/02/05

Advisory Council on Historic Preservation

By: 
John M. Fowler, Executive Director

Date: 11/15/05

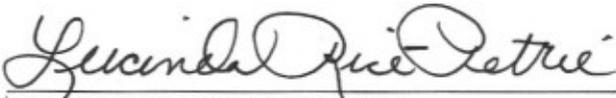
CONCURRING PARTIES:

Kansas City Landmark Commission

By: 
Stan Masters, Chairman

Date: 10/24/05

Historic Kansas City Foundation

By: 
Lucinda Rice-Petrie, President

Date: October 25, 2005

APPENDIX A

ACHP'S POLICY STATEMENT ON AFFORDABLE HOUSING and HISTORIC PRESERAVATION (Adopted June 26, 1995)

The National Historic Preservation Act of 1966 (NHPA) mandates preservation of the historical and cultural foundations of the Nation as a living part of community life and development in order to provide the American people with a sense of orientation.

It further states that increased knowledge about historic resources, establishment of a better means to identify and administer them, and encouragement of their preservation will not only improve planning and execution of Federal and federally assisted projects and but also assist economic growth and development.

Toward that end, NHPA directs the Federal Government to foster conditions under which modern society and prehistoric and historic resources can exist in productive harmony and "fulfill the social, economic, and other requirements of present and future generations."

Federal agencies that assist in the construction and rehabilitation of housing, most notably the Department of Housing and Urban Development (HUD) and the Department of Agriculture, are tasked with meeting Americans basic needs for safe, decent and affordable housing. Historic properties have played a vital role in fulfilling this objective; this must continue.

It is, however, important that Federal and State agencies, local governments, housing providers, and the preservation community in general actively seek ways to reconcile national historic preservation goals with the special economic and social needs associated with affordable housing, given that this is now one of the Nation's most pressing challenges.

In issuing this policy statement, ACHP seeks to promote a new, flexible approach toward affordable housing and historic preservation, which is embodied in the following Implementation Principles. State Historic Preservation Officers (SHPOs), Federal and State agencies, and local governments involved in the administration of the Section 106 review process for affordable housing projects funded or assisted by Federal agencies are encouraged to use these principles as a framework for Section 106 consultation and local historic preservation planning.

ACHP also encourages HUD, in consultation with the national preservation community, including the National Conference of State Historic Preservation Officers, the National Park Service, and the National Trust for Historic Preservation, to develop comprehensive historic preservation training programs for HUD staff, State, county, and local officials, and housing providers who implement affordable housing projects.

Such training should advance the Implementation Principles and the initiatives outlined in the Secretary of HUD's May 5, 1995, Historic Preservation Directive, focusing on:

- 1) improving coordination of Section 106 reviews;
- 2) evaluating the National Register eligibility of historic properties;
- 3) applying the Secretary's Standards;
- 4) providing technical assistance for routine maintenance and repairs to historic buildings;
- 5) developing financial packages for affordable housing projects; and
- 6) integrating historic preservation into Consolidated Plan Documents and local comprehensive plans.

Implementation Principles

- I. Section 106 reviews for affordable housing projects should place principal emphasis on broad-based consensus reflecting the interests, desires, and values of affected communities, neighborhoods, and residents. Consensus-building should be facilitated through training, education, and consultation focused on historic preservation values, collaborative planning, and dispute resolution.
- II. Identification of historic properties and evaluation of their eligibility for the National Register for Historic Places should include discussions with the local community and neighborhood residents to ensure that their views concerning architectural and historic significance and traditional and cultural values receive full consideration by the Federal agency, State, county, or local government, and the SHPO.
- III. When assessing the effects of affordable housing projects on historic properties, consultation should focus not just on individual buildings which may contribute to a historic district but on the overall historic preservation potentials of the broader community, neighborhood, or "target area." This practice will ensure proper consideration is given to the cumulative impacts of projects within a designated area. Historic preservation issues should be related to social and economic development, housing, safety, and programmatic issues integral to community viability.
- IV. Plans and specifications for rehabilitation, new construction, and abatement of hazardous conditions associated with affordable housing projects should adhere to the recommended approaches in *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, when feasible. When economic or design constraints preclude application of the Standards, consulting parties may develop alternative design guidelines tailored to the district or neighborhood to preserve historic materials and spaces to the maximum extent feasible. Alternative guidelines shall be incorporated into executed Memoranda of Agreement or Programmatic Agreements.
- V. Proposals for non-emergency demolitions of historic properties should include adequate background documentation to demonstrate to the SHPO and/or ACHP that rehabilitation is not economically or structurally feasible, or that retention of such properties would jeopardize the implementation of an affordable housing project.
- VI. The Section 106 review process for affordable housing rehabilitation projects and abatement of hazardous conditions should emphasize treatment of exteriors and be

limited to significant interior features and spaces that contribute to the property's eligibility for the National Register, unless otherwise agreed to by all consulting parties.

- VII. Where appropriate, Section 106 reviews for affordable housing projects should be conducted in conjunction with the Historic Rehabilitation Tax Credits and other State and local administrative reviews to ensure consistency of reviews and to minimize delays. When Section 106 reviews for affordable housing projects precede other related reviews, applicants who are seeking Historic Tax Credits are encouraged to seek the advice of the SHPO and to obtain early review by the National Park Service to assure final eligibility for the Historic Rehabilitation Tax Credit.
- VIII. Archeological investigations should not be required for affordable housing projects which are limited to rehabilitation and require minimal ground disturbance activities.
- IX. State, county, and local governments are encouraged to develop Programmatic Agreements that promote creative solutions to implement affordable housing projects and to streamline Section 106 reviews through the exemption of categories of routine activities; the adoption of "treatment and design protocols" for rehabilitation and infill new construction; and the delegation of Section 106 reviews to qualified preservation professionals employed by the local community.
- X. Certified local governments and/or communities that employ qualified preservation professionals, as set forth in The Secretary of the Interior's Professional Qualification Standards should be allowed to conduct Section 106 reviews on behalf of ACHP and/or the SHPO for affordable housing projects when the local government and/or community has executed a Programmatic Agreement with ACHP and the SHPO.

APPENDIX B
PUBLIC PARTICIPATION PROCESS

The following is an outline for the public participation process for projects covered under this programmatic agreement. This process will serve as fulfillment of the requirement for public participation unless a party to this agreement determines that a project requires an alternative public participation process.

A. Application Submittal for 106 Review

1. Request for environmental review is submitted to Housing Environmental Review Coordinator (HERC).
2. The HERC forwards the request for a 106 Review to the Landmarks Commission office.
3. Landmarks Commission office schedules the completed application for next available meeting.
4. Historic Kansas City Foundation is notified of application by email.
5. Landmarks Staff reviews project and determines if it is an exempt activity under Section III of the Programmatic Agreement. If exempt, the project is added to exempt agenda and a memo is filed with the HERC.

B. Nonexempt activities

1. Landmarks Staff reviews project and identifies and invites the participation of interested parties.
2. Landmarks Staff prepares report with one of the following determinations:
 - a. No historic properties affected.
 - b. No historic properties adversely affected.
 - c. Historic properties are adversely affected and recommends mitigation measures and further consultation.
3. Report and agenda are mailed to consulting and interested parties.

C. Landmarks Commission Public Meeting

1. Staff presents list of exempt projects.
2. Staff presents reports for nonexempt projects including an overview of the undertaking; identification and evaluation resources effected by the undertaking; a determination of the effect of the undertaking on historic resources; and recommendations on alternatives or mitigation measures.
3. The meeting shall be open to public comment and discussion after each presentation.
4. The Landmarks Commission, consulting and interested parties may choose to one of the following actions.

- a. Concur with staff findings and recommendations and become a consulting party in further consultations.
- b. Concur with staff findings and recommendations and choose not to participate in any further consultations.
- c. Disagree with staff findings and recommendations and request further consultation and information.
- d. Choose not to participate in further consultation
- e. Take no action

D. After Landmarks Commission Public Meeting

1. Landmarks staff submits nonexempt activities to State Historic Preservation Office for 106 Review along with public comments and any plans for additional consultation.

E. Submittal to the State Historic Preservation Office

1. SHPO agrees with determination of no historic properties affected or no historic properties adversely affected and agrees public participation requirements are fulfilled. Process is completed and letter from the SHPO is filed with HERC.
2. SHPO disagrees with determination no historic properties affected or no historic properties adversely effected. SHPO requests further information and if appropriate, additional public participation. Staff either submits additional information to SHPO or follows procedure for adversely affected properties.
3. SHPO concurs that the project will have an adverse affect on a historic property and staff prepares a plan for further consultation and drafts a Memorandum of Agreement to mitigate adverse effects based on consultation.