

**Programmatic Agreement  
Between the City of Milwaukee,  
A Community Development Block Grant Entitlement Community,  
And The Division of Historic Preservation,  
Wisconsin Historical Society**

WHEREAS, The City of Milwaukee (hereinafter MILWAUKEE) which is the recipient of a Community Development Block Grant (hereinafter CDBG), disbursed by the United States Department of Housing and Urban Development (hereinafter HUD), now and may in the future administer programs or serve as the responsible entity for a grant recipient under one or more programs which are funded, permitted, assisted or otherwise authorized through the CDBG program statutes that authorize the CDBG Community to assume HUD's environmental responsibilities in accordance with the procedures set forth in 24 CFR Part 58.

WHEREAS, MILWAUKEE has determined that the implementation of individual undertakings (hereinafter Undertakings) of the CDBG programs may have an effect on properties included in, or eligible for inclusion in, the National Register of Historic Places (hereinafter NRHP), pursuant to Section 106 of the National Historic Preservation Act of 1966 at 16 USC 470f and the implementing regulations of the Advisory Council on Historic Preservation (hereinafter ACHP) at 36 CFR Part 800; and

WHEREAS, the definitions given in 36 CFR § 800.16 are applicable throughout this Programmatic Agreement (hereinafter PA); and

WHEREAS, the SHPO and MILWAUKEE agree that this PA does not pertain to any Undertaking pursuant to the NHPA and the ACHP's regulations at 36 CFR Part 800 over which a Tribal Historic Preservation Officer (THPO), established pursuant to § 101 (d)(2) of the National Historic Preservation Act of 1966 and further described at 36 CFR § 800.2 (c), retains jurisdiction; and

WHEREAS, this PA does not constitute a Program Alternative pursuant to 36 CFR § 800.14, but clarifies an expedited process, per 36 CFR § 800.3(g), between MILWAUKEE and the SHPO to carry out the provisions of 36 CFR §§ 800.3 through 800.5; and

WHEREAS, "The Wisconsin NHPA § 106 Submittal Process" web site (located on the Internet at: [http://www.wisconsinhistory.org/hp/protecting/106\\_intro.asp](http://www.wisconsinhistory.org/hp/protecting/106_intro.asp)) (hereinafter Wisconsin Process) is referenced in and applicable throughout this PA;

WHEREAS, Appendix A, titled "Undertakings Exempt from Further Review," is part of and applicable throughout this PA; and

NOW THEREFORE, MILWAUKEE and the Wisconsin State Historic Preservation Officer (SHPO) agree that MILWAUKEE Undertakings shall be implemented in accordance with the following stipulations in order to take into account the effect(s) of the Undertakings on historic properties.

## Stipulations

### A. Personnel

1. MILWAUKEE shall designate a single staff person or consultant (hereinafter Staff) to ensure that all provisions of this PA are carried out, to sign all Undertaking submittal forms, per the Wisconsin Process, and to be the contact point with the SHPO for all matters concerning this PA.
2. MILWAUKEE shall notify the SHPO annually with the name and contact information of the Staff.
3. MILWAUKEE shall notify the SHPO of any proposed Staff changes. If, at any time through the duration of this PA, MILWAUKEE does not have Staff in place to carry out the review, then MILWAUKEE and the SHPO shall consult to develop alternative administrative procedures for implementing the PA.
4. MILWAUKEE understands that it may be required to enlist the services of qualified professionals, as defined by the National Park Service at 36 CFR Part 61, in order to carryout its responsibilities under the terms of this PA.

### B. Categorical Exclusions

#### 1. Non-Ground-Disturbing Undertakings

- a. Properties that are less than 50 years old are considered not eligible for listing on the National Register of Historic Places and are exempt from review under this PA.
- b. Undertakings where there is a property within the Area of Potential Effect (hereinafter APE) that is 50 years old or older but that previously has been determined not eligible for listing on the NRHP are exempt from review under this PA.
- c. Undertakings listed in Appendix A involving any property that is listed on the NRHP or is eligible for listing on the NRHP shall be considered to have no effect and are exempt from review under this PA.
- d. With respect to exempt Undertakings, Part B. I. Sections a. and b. above, if MILWAUKEE believes that its Undertaking may affect a property that may be eligible for listing on the NRHP, then that specific Undertaking shall not be exempt and shall be reviewed pursuant to Part C. below.

#### 2. Ground-Disturbing Undertakings

- a. For Undertakings that may disturb ½ acre of ground or less, MILWAUKEE shall consult the Wisconsin Inventory of Historic Places (Wisconsin Archeological and Historic Resources Database—hereinafter WisAHRD) to determine whether there is a known historic or prehistoric archeological site within the APE. If there is no known archeological site within the APE, then the Undertaking may proceed without further review, unless the provisions of Part B. 1. above apply.
- b. An Undertaking that may disturb ground that has been disturbed previously to a degree greater than currently proposed is exempt.
- c. If a known archeological site is located within the APE, then the Undertaking is not excluded from review and MILWAUKEE shall carryout the provisions prescribed in C below and in the Wisconsin Process.
- d. With respect to 2. a. above, if MILWAUKEE believes that an archeological site that may be eligible for listing on the NRHP or that is listed on the NRHP may be affected by an Undertaking, then that site-specific Undertaking shall be reviewed pursuant to Part C. below.

C. Non-Excluded Undertakings

1. Non-Ground-Disturbing Undertakings

- a. Prior to commencing any Undertaking that may affect a property either listed on the NRHP or eligible for listing on the NRHP MILWAUKEE shall comply with the following provisions and procedures and shall satisfy the provisions of the Wisconsin Process by completing and submitting to the SHPO the Request for SHPO Comment and Consultation on a Federal Undertaking form (hereinafter Submittal Form) in accordance with the Guidelines.
- b. If the property within the APE is recorded in the WisAHRD and no formal determination of eligibility has been made or recorded, then MILWAUKEE shall carryout the provisions of the Wisconsin Process.
- c. If a property is listed on the NRHP, or previously was determined eligible for listing on the NRHP, or is determined eligible for listing on the NRHP through MILWAUKEE's evaluation, then MILWAUKEE shall continue with review of the Undertaking pursuant to the provisions of the Wisconsin Process.

2. Ground-Disturbing Undertakings:

For Undertakings that may affect more than ½ acre of ground, or that are not otherwise excluded from review pursuant to the terms of this PA, MILWAUKEE shall carryout the provisions of the Wisconsin Process.

**D. SHPO Review of Undertaking Submittals**

1. The SHPO shall review all Undertaking submittals pursuant to the terms outlined in this PA and the provisions of the Wisconsin Process.
2. If the SHPO believes that a specific Undertaking, as defined in Part B. 1 a. through c., or Part B. 2. a. and b. above, may affect a property that is eligible for listing on the NRHP, then it shall notify MILWAUKEE requesting that it review the specific Undertaking pursuant the terms of this PA and as described in the Wisconsin Process. Upon receipt of such request from the SHPO, MILWAUKEE shall review the specific Undertaking pursuant to part C. above.

**E. Emergencies**

MILWAUKEE from time to time may conduct Undertakings in response to natural and man-made disasters, including, but not limited to, floods, tornadoes, fire, explosion, contaminated wells, mold contamination, and lead-based paint hazards in homes where children under 6 years of age are present. Such Undertakings may be exempt from federal environmental review requirements, per 24 CFR 58.34(a)(10). If MILWAUKEE requires an Undertaking in response to such an emergency, then 36 CFR § 800.12 (b) through (d) shall apply.

**F. Documentation**

1. Documentation required by the SHPO for consultation per the provisions of this PA may include written descriptions of the Undertaking and affected historic properties, reports demonstrating that properties are eligible for listing in the NRHP, and maps showing APES.
2. All documentation generated for review purposes under the terms of this PA shall meet the provisions of the Wisconsin Process, and the provisions of 36 CFR § 800.11.

**G. Technical Assistance**

The SHPO shall notify MILWAUKEE of training opportunities and technical assistance to MILWAUKEE and help develop training for its grantees in areas of mutual concern and need.

**H. Monitoring**

1. MILWAUKEE shall retain documentation concerning all Undertakings (including those excluded or exempted pursuant to provisions of this PA) carried out pursuant to this PA for a period of three years from the date of completion of the Undertaking.

2. MILWAUKEE, when requested, shall provide the SHPO a report summarizing the Undertakings carried out pursuant to this PA.

3. MILWAUKEE shall make available to the SHPO upon request all review-related documentation for Undertakings pursuant to the provisions of this PA. This periodic review may be carried out to evaluate the adequacy of the provisions of this PA and to assess MILWAUKEE compliance with the terms of this PA.

4. MILWAUKEE understands and agrees that all documentation referenced in Part H. 1. through 3. above shall be made available to the ACHP upon request.

I. Other Laws, Rules, Regulations

1. No provision of this PA, whether express or implied, is intended or designed to exempt either MILWAUKEE or the SHPO from their respective obligations, duties and responsibilities pursuant to any provisions of the NHPA § 106 and/or the ACHP's implementing regulations at 36 CFR Part 800 not specifically referenced herein, or the provisions of any other federal, state, or local law, regulation, rule or ordinance not specifically referenced herein.

2. MILWAUKEE understands that it may be required to contact and/or consult with individuals, groups and/or units of government including Native American Nations or Tribes throughout the NHPA § 106 review process, consistent with and pursuant to provisions of the NHPA § 106 and the ACHP's regulations at 36 CFR Part 800 not otherwise referenced herein.

3. It is the responsibility of MILWAUKEE and the SHPO independently to recognize, understand and carryout each of their respective obligations, duties and responsibilities under the NHPA § 106 and the ACHP's regulations at 36 CFR Part 800 not otherwise referenced herein.

J. Amendments

This PA may be amended if MILWAUKEE and the SHPO decide in consultation that the terms need to be revised, updated or changed for any reason.

K. Termination

1. Either MILWAUKEE or the SHPO may terminate this PA by providing written notice describing the reason(s) for termination to the other party. This PA shall remain in effect for 30 days from receipt of notice to terminate. MILWAUKEE or the SHPO shall consult during the 30-day notice period and prior to actual termination to resolve the written reasons for termination and if possible, to amend the PA accordingly or seek other actions that would prevent termination.

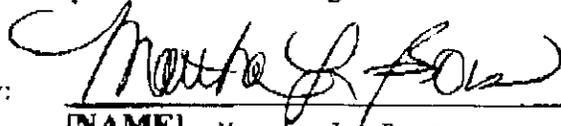
2. In the event that this PA is terminated, then MILWAUKEE shall comply with the NHPA, 36 CFR Part 800 and the Wisconsin Process for any Undertakings that may affect historic properties.

L. Sunset Provision

1. This PA shall remain in force for five years from the date of the final signature unless the PA is terminated or earlier superceded by another PA.

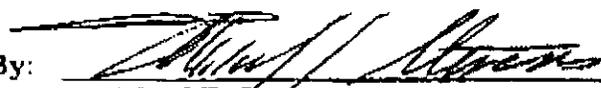
2. Within six months prior to the expiration of this PA, MILWAUKEE and the SHPO agree to meet to negotiate terms for a new PA, extension of the terms of the existing PA, or reversion to the specific provisions of the NHPA, 36 CFR Part 800, and the Wisconsin Process.

U.S. Department of Housing and Urban Development, MILWAUKEE Representative

By:   
Date: 9-14-04  
[NAME] Martha L. Brown

Title: [TITLE] Acting Commissioner  
Department of City Development

The Wisconsin State Historic Preservation Officer

By:   
Date: 9/23/04  
Michael E. Stevens

Title: Administrator, Division of Historic Preservation  
Wisconsin Historical Society

**Appendix A:  
Undertakings Exempt from Further Review**

## UNDERTAKINGS EXEMPT FROM FURTHER REVIEW

*General Guidance: Any activity that repairs or replaces existing installations is generally permitted without review by the State Historical Society. Any activity that modifies, enlarges or diminishes an installation may have an effect on its historic character and must be reviewed by SHS.*

### Non-Construction Work

- 1) Acquisition of properties when there is assurance by the MILWAUKEE that historic structures and buildings shall be secured and protected from vandalism, arson, and the elements, pending their rehabilitation, disposal, or reuse.
- 2) Architectural and engineering fees and other non-construction fees and costs.
- 3) Rental or purchase of vehicles or other motorized equipment.
- 4) Rental and installation of scaffolding.
- 5) Temporary bracing or shoring as part of stabilization, provided that it is installed without permanent damage to the building site.

### Site Work

- 6) Installation of temporary, reversible barriers such as chain link fences and polyethylene sheeting and tarps.
- 7) Repair; line painting, resurfacing, and maintenance of existing street, alleys, sidewalks, and curbs, provided that no change in width, surface, vertical alignment, or drainage shall result.
- 8) Maintenance, repair, and in-kind replacement of existing landscape features, including plantings, fences, walkways, and statuary.
- 9) Upgrading, replacement, and repair of existing utility service lines and sewer systems, as long as work is confined to existing, disturbed (due to initial installation of the utility corridors or rights-of-way).
- 10) Maintenance, repair, and in-kind replacement of street lights, traffic signals, and traffic signs.

**Building Exterior**

- 11) Repair or partial replacement of porches, cornices, exterior siding, doors balustrades, stairs, or other trim when the repair or replacement is done in-kind and matches the appearance of the material being replaced.
- 12) Repair of existing wheelchair ramps, and the installation of temporary ramps.
- 13) Foundation repair and replacement of cast-in-place concrete.
- 14) Removal of exterior paint by non-destructive means, limited to:
  - A) hand scraping;
  - B) low-pressure water less than 600 p.s.i.;
  - C) heat plates or hot air guns;
  - D) chemical paint removers, if the cleaning contract requires that the chemicals be tested on the surfaces to ensure that no damage shall result.
- 15) Exterior painting of wood siding, features and trim.
- 16) Exterior painting of brickwork, if existing surfaces are already painted.
- 17) Repair or in-kind installation of roofing, gutters, and down spouts.
- 18) Window repair, including caulking and weather-stripping of existing window frames, installation of new, clear glass in existing sashes, and replacement glazing compound in existing sashes.
- 19) Installation of storm windows as follows:
  - A) Glass and screen replacement in existing storm window units.
  - B) New wood or baked-enamel-finished metal storm windows, installed on the exterior, provided that they:
    - i) completely fill the original window openings with glazed window units;
    - ii) match the meeting rail (or other major division) pattern of the primary window; and,
    - iii) do not protrude beyond the face of the building.
  - C) New interior storm windows, provided that they:
    - i) completely fill the original interior window opening with glazing;
    - ii) do not cause damage to the original interior trim;
    - iii) match the meeting rail (or other major division) pattern of the primary window; and,
    - iv) are designed to seal completely so as to protect the primary window from condensation damage.

- 20) Replacement of primary (non-storm) windows, provided that they:
  - A) completely fill the original window opening with glazing;
  - B) do not cause damage to the original interior trim; and,
  - C) match the meeting rail (or other major division) pattern of the existing windows.
- 21) Installation of storm doors on elevations not facing streets, if the storm doors are undecorated and have a painted finish. (Decorated storm doors include those with false metal hinges, scalloped windows, applied window muntins, and stamped metal to imitate framing members).
- 22) Caulking and weather-stripping with compatibly colored materials.
- 23) Repair or in-kind replacement of signs and awnings.

#### **Building Interior**

- 24) Finishing of unfinished basement or attics.
- 25) Repair of existing interior walls. (Note: this exemption applies to limited repair of wall surfaces only. removal and replacement of entire wall surfaces, and reconstruction of walls is subject to SHS review).
- 26) Installation of smoke detectors and carbon monoxide detector devices.
- 27) Application of new drywall over plaster surfaces if:
  - A) interior trim and features are removed and re-applied in original locations over the new drywall; and,
  - B) no decorative plasterwork exists on the wall surfaces.
- 28) Repair and refinishing of interior floors.
- 29) Replacement of floors in-kind when original floors have been damaged beyond repair.
- 30) Installation of wallpaper.
- 31) Installation of carpeting, provided that installation does not damage any underlying, wood, stone, or terrazzo floor surfaces.
- 32) Replacement of vinyl or similar floor coverings.
- 33) Repair or installation of new basement floors.
- 34) Kitchen and bathroom remodeling, if no walls, windows, or doors are altered.

#### **Mechanical, Electrical and Plumbing Systems**

- 35) Installation of new furnaces and water heaters, if:
  - A) the work utilizes the existing heat distribution system; and,
  - B) does not result in installation or relocation of chimneys or condenser units.
- 36) Upgrading, repair and replacement of electrical systems and plumbing systems and fixtures (Note that removal of original electrical features, and the installation of new electrical fixtures, is subject to SHS review).
- 37) Asbestos abatement activities that do not involve removal or alteration of interior decorative features.