

PROGRAMMATIC AGREEMENT
BY AND AMONG THE CITY OF OKLAHOMA CITY,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER
REGARDING HISTORIC PROPERTIES AFFECTED BY USE
OF COMMUNITY DEVELOPMENT BLOCK GRANT
EMERGENCY SUPPLEMENTAL FUNDS

WHEREAS, the City of Oklahoma City (City) proposes to utilize a special allocation of Community Development Block Grant (CDBG) funds from the Department of Housing and Urban Development (HUD) known as the Community Development Block Grant Emergency Supplemental Fund (Project #B-95-MO-40-0003) for projects designed to assist with recovery from the bombing of the Alfred P. Murrah Federal Building, and

WHEREAS, the City has determined that the administration of this program may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR §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 the program shall be administered in accordance with the following stipulations to satisfy the City's Section 106 responsibilities for all individual undertakings of the program.

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 projects which involve the rehabilitation of historic properties assisted entirely or in part by funds from this special CDBG program of the Department of Housing and Urban Development known as the Community Development Block Grant Emergency Supplemental Fund (Project #B-95-MO-40-0003). The review process established by this Agreement shall be completed prior to the City's final approval of any application for assistance under the CDBG program and prior to the City or property owner altering the property or initiating or making an irrevocable commitment for construction that may effect a property that is fifty (50) years of age or older. Notwithstanding the above, the City may grant assistance for planning, engineering, or design services in connection with potential rehabilitation projects prior to completion of the review process. Any CDBG funded or assisted project 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. PROJECTS NOT REQUIRING REVIEW BY THE SHPO OR THE COUNCIL

All projects consisting exclusively of one or more of the activities enumerated below will be exempt from review by the SHPO or the Council:

- A. Projects which consist only of nonconstruction activities.
- B. Projects involving only properties which are less than fifty (50) years old.
- C. Projects which involve only the securing of buildings on a temporary basis to prevent further deterioration. Materials such as sheets of plexiglass are recommended for use to insure security and to provide the best possible appearance. The materials will be installed so that the least possible damage is done to the building.
- D. Projects that consist only of the removal of debris.
- E. Rehabilitation of Historic Properties
 1. Exterior Work
 - a. Repair exterior features whenever possible or replace damaged materials with sound material of like species, grade, dimension, composition, and finish in a manner which duplicates the existing design of the damaged feature.
 - b. Painting of previously painted surfaces.
 - c. Cleaning masonry surfaces with natural bristle brushes and mild detergent using low pressure water at such a time when the outside temperature is not expected to be below freezing. The use of wire brushes for such cleaning is not permissible. If chemical cleaning methods are necessary, test patches shall be done to determine the appropriate product.
 - d. Repair or replace existing roofing materials with like materials and maintain the existing form of the roof.
 - e. Repair existing windows whenever possible or replace damaged windows with units that exactly match the existing in material, profile, color, and operability.

- f. Replace damaged 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.
- g. Caulk and weatherstrip windows with compatibly colored materials.
- h. Repair or replace driveways or sidewalks when work is done in-kind to exactly match existing materials and form.

2. Interior Work

- a. Repair of existing interior architectural elements. Architectural elements include but are not limited to wood doors, trim, wainscotting, baseboards, and floors. If architectural elements are deteriorated to be beyond repair, replacement shall match existing in design, detail, dimension, material, and finish.
- b. Repair of existing plaster walls and ceilings. If these walls or ceilings are found to be beyond repair, replacement shall be done with materials matching the existing or with gypsum board.
- c. Repair existing floors if possible or replace with materials that match the existing.
- d. Repair interior stairs if possible or replace them when work is done in-kind to exactly match existing materials and form;

3. Mechanical and Electrical Work

- a. Repair, replacement, or modification of existing mechanical or electrical systems for which no alteration of character defining features is required.
- b. Plumbing work which does not result in modification of character defining features.

III. AREA OF POTENTIAL EFFECT (APE)

It is agreed for purposes of this Agreement that the Area of Potential Effect (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. If a property is listed on the National Register of Historic Places or has been determined eligible for inclusion in the National Register (either a formal Determination of Eligibility by the Keeper of the Register or by consensus with the SHPO), the City shall proceed with the review of the project pursuant to Stipulation VI, unless exempted under Stipulation II.
- B. If the property was determined ineligible for the National Register during consultation between the City and the SHPO and written documentation exists to support this consultation and if this determination was reached within the last five (5) years, then the project may proceed without further review under the terms of this Agreement.
- C. If the property is not listed on the National Register, has not been evaluated for National Register eligibility within the last five (5) years, and is at least fifty (50) years of age, then the City shall submit to the SHPO for review an "Historic Preservation Resource Identification Form" and photographs in accordance with guidelines to be provided by the SHPO. Other information may be requested by the SHPO if necessary. The City shall apply the National Register Criteria, and notify the SHPO of its determination in this submittal.
 1. If the City determines that a property is eligible for the National Register, no further SHPO review will be required, and the property shall be considered eligible for the National Register for purposes of this Agreement and shall hereinafter be referred to as a Historic Property. The City and the SHPO 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 the National Register.
 3. If the 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 Keeper of the Register pursuant to the applicable National Park Service regulations, 36 CFR Part 63.

4. If the Council requests that a determination of eligibility opinion be reviewed, the City shall obtain a final determination from the Keeper of the Register pursuant to applicable National Park Service regulations, 36 CFR Part 63.

V. SHPO RESPONSIBILITIES

The SHPO shall have fifteen (15) calendar days after the receipt of adequate documentation to review and comment on the City's opinions on National Register eligibility or on the City's findings regarding the effects of a project on a Historic Property. If the SHPO does not provide comments within this time period, the City may assume that the SHPO concurs with its determination.

VI. ASSESSMENT OF EFFECTS

- A. Prior to undertaking any activities that are not exempt under Stipulation II., the City shall provide the SHPO with adequate documentation detailing the scope of work for each rehabilitation or other project, as appropriate, to enable the SHPO or the Council to understand the project work and formulate an opinion of the proposed work's effect on a Historic Property. The City shall apply the Criteria of Effect, 36 CFR §800.9, and will review the scope of work to determine if the project conforms to the recommended approaches contained in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.
- B. 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 in writing to this notice within 15 days, the undertaking may proceed as submitted without further review.
- C. If the City determines that a project 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 fifteen (15) days, the undertaking will be considered to have no adverse effect on the Historic Property and may proceed as submitted without further review.
- D. If the City or the SHPO finds that a project does not conform to the Standards, the project will be considered to have an adverse affect on Historic Properties. 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 obtain the comments of the Council in accordance with 36 CFR §800.5(e).

- E. 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 City and the SHPO shall consult further, and the City will obtain the comments of the Council in accordance with 36 CFR §800.5(e) if an adverse effect cannot be avoided.

VII. COMBINED REVIEWS OF ELIGIBILITY AND EFFECT

The City may elect to submit the documentation set out in Stipulations IV. and VI. above in one package for the SHPO's review. The SHPO will provide comments on the City's determinations of eligibility and effect within 15 (fifteen) days after the receipt of such a submission. The City will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations IV. and VI. to determine if additional review by the SHPO or the Council is required to fulfill the terms of this Agreement and Section 106.

VIII. MONITORING

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

IX. DISPUTE RESOLUTION

Should the SHPO or the Council object in a timely manner to any plans provided for review of any actions proposed by the City pursuant to this Agreement, the City shall consult with the objecting party 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 the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either: 1) provide 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 §800.6(b) and proceed to comment. Any recommendation or comment provided by the Council will be understood 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 subjects of the dispute will remain unchanged.

X. REPORTING

The City shall provide the SHPO and the Council with a report summarizing the actions taken to implement the terms of this Agreement by September 30th of each year that it is in effect. This report shall include information on each project that was determined to be categorically exempt from review under Stipulation II. and state the reasons therefore.

XI. DURATION

This Agreement will continue in full force and effect for so long as the special Community Development Block Grant (CDBG) program under Title I of the Housing and Community Development Act of 1974 is funded by HUD or until this Agreement is terminated by any party pursuant to Stipulation XIII. below.

XII. AMENDMENTS

Any party to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR §800.13 to consider such amendment.

XIII. TERMINATION

Any party to this Agreement may terminate it by providing thirty (30) days written 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 §§800.4-800.6 with respect to individual undertakings covered by this Agreement.

XIV. 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 on Historic Properties or would foreclose the Council's consideration of modifications or alternatives to the undertaking, and the City will comply with 36 CFR §§800.4-800.6 with regard to each individual undertaking covered by this Agreement.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that the City of Oklahoma City, Oklahoma has afforded the Council a reasonable opportunity to comment on the program and that the City has taken into account the effects of the program on Historic Properties.

CITY OF OKLAHOMA CITY, OKLAHOMA

By: *Steve S. Nash* Date: *January 30, 1996*
Title:

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER

By: *A. State Wade* Date: *5 Feb 1996*
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
Executive Director

Approved as to Form
Janice L. Brunner
ASST. MUNICIPAL COUNSELOR