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FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C.

PROGRAMMATIC MEMORANDUM OF AGREEMENT

AMONG THE

UNITED STATES DEPARTMENT OF ENERGY,

THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

AND THE

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Approved ^

WHEREAS, the United States Department of Energy provides financial assistance to public and non-profit schools and hospitals for energy conservation measures through the Institutional Conservation Program in the Office of State and Local Programs (42 U.S.C. 6371); and

WHEREAS, the Department of Energy has determined that the Institutional Conservation Program has the potential to affect several thousand structures annually, many of which may be included in or eligible for inclusion in the National Register of Historic Places (National Register) and has requested the comments of the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800);

NOW, THEREFORE, the Department of Energy, the National Conference of State Historic Preservation Officers, and the Council agree that the Institutional Conservation Program will be implemented in accordance with the following stipulations:

STIPULATIONS

1. Personnel

The Department of Energy will identify one staff member in its Headquarters Office to be responsible for compliance with Section 106 of the National Historic Preservation Act, the Council's regulations, and this Memorandum of Agreement in the administration of the Institutional Conservation Program. The Department of Energy, with the assistance of the Council, will provide specific historic preservation training for this individual and for others in the Department of Energy who work with historic properties.

2. Grant Selection

This Memorandum will not alter the process by which the Department of Energy selects grant recipients and distributes financial assistance under the Institutional Conservation Program. In no case will the historic significance of a structure constitute the reason for denial of an application for financial assistance. Only after grants are awarded will the projects receiving grants be reviewed in accordance with this Memorandum of Agreement. The Department of Energy recognizes the value of historic buildings, their responsibilities under Section 110(d) of the National Historic Preservation Act, and the energy efficiency of those older properties which were designed to take advantage of passive solar and other natural energy conservation systems.

3. Applicability and Exclusions

All projects to be supported by the Department of Energy under the Institutional Conservation Program will be reviewed in the manner described below. The review process will be completed prior to the installation of any energy conservation measure. However, the Department of Energy may exclude from review any undertaking provided that the Department of Energy determines that the installation is:

1. in a building less than 50 years old, or
2. included in List A or B below.

A. List of Excluded Energy Conservation Projects

Ballast modification
 Central Control/Automated Energy Management
 Chiller Conversion/Efficiency Improvement
 Cogeneration Application
 Conversion to Another NonRenewable Fuel
 Conversion to Biomass
 Conversion to Coal
 Conversion to Electricity
 Conversion to Natural Gas
 Conversion to Oil
 Conversion to Other Renewable
 Conversion to Refuse
 Conversion to Wood
 Convert to Flourescent Lights
 Convert to Other High Efficiency Lights
 Damper Modification(s)

Decentralized Hot Water
 Downsize System
 Electrical System Control Devices
 Enthalpy Controls (Energy content of air)
 Infiltration Controls*
 Install Automatic Flue Damper
 Install Automatic Ignition Device
 Install Economizer (Waste heat savings device)
 Install Energy Recovery Devices
 Install Flow Restrictors
 Install Humidification Device
 Install Stack Economizer
 Install Turbulators
 Install Variable Air Volume
 Insulate Pipes or Ductwork
 Insulate Tanks
 Modify Fixtures (e.g., reflectors, lower height)
 Package Unit Application
 Passive Solar Space Conditioning
 Photovoltaic Application
 Preheat Combustion Air/Make-Up Water
 Prevent Air Stratification
 Reduce Air Volume
 Reduce Numbers of Fixtures/Task Lighting
 Replace Boiler
 Replace Burner
 Shutdown/Shut-Off Devices
 Solar Hot Water
 Temperature Reset Devices
 Utilization of Water Power
 Utilization of Wind Energy
 Zoning Modifications

B. Conditional Exclusions

1. Insulation in roofs, perimeter crawl space, ceilings, attics, walls, floors, and around pipes and ducts in such cases where the installation is done in accordance with accepted standard practices and does not cause visual change or damage to interior or exterior materials. This exclusion does not include urea formaldehyde or other materials that induce or introduce moisture into a building;
2. Storm doors and windows, or insulated double or triple glazing, which match the size and color of the historic window or door, and do not detract from the significant visual and architectural features of the building;

3. Insulating window treatments, such as installation of insulated shades and blinds if the installation does not detract from the significant visual qualities of the building. This does not include door or window replacement.
4. Repair, replacement or modification of mechanical, electrical or plumbing systems, if this action does not require removal of historically significant systems, or historically or architecturally significant building fabric;
5. Exterior or interior shading devices including awnings, etc., provided that they are installed without damage to the building and are in keeping with the architectural and visually significant qualities of the building; and
6. Interior modifications when the significance of the building does not include the interior and when the alterations do not detract from the exterior significance of the building.

4. Procedures for Evaluation/Categorization of Properties

- a. After each round of grant awards, the Department of Energy will send a list of its grant recipients whose conservation treatment is not included under the exclusions in Stipulation 3 above to the State Historic Preservation Officer of the State where the property is located. The list will include name and address of the building and its age if available. Each State Historic Preservation Officer will group the properties into the following categories:
 1. Properties which are potentially of historic significance for which insufficient information is available to permit an assessment of significance;
 2. Properties listed in or determined eligible for the National Register;
 3. Properties not listed in, eligible for, or potentially eligible for the National Register, including those less than 50 years old which have no known significance.

The State Historic Preservation Officer will send the evaluation to the Department of Energy within 30 days after the Officer's receipt of the list. The Department of Energy will promptly notify the grant recipient of the results of the evaluation, the consequences of the evaluation, and the right to appeal.

- b. Grant recipients may appeal the evaluation from the State Historic Preservation Officer to the Department of Energy within 60 days after receipt of the results of the evaluation. The Department of Energy shall seek a final Determination of Eligibility from the Keeper of the National Register in cases of appeal.

5. Excluded Projects and Unlisted Properties

Grantees which have excluded projects and properties listed in Section 4.a.3 above may proceed with their conservation projects.

6. Properties Determined Potentially Significant or for which Insufficient Information is Available to Determine Significance

For those buildings that have been identified by the State Historic Preservation Officer as being potentially significant or requiring additional information to assess significance, the grant recipient will request the State Historic Preservation Officer to make an assessment of the eligibility of the property for the National Register. The grant recipient will prepare adequate documentation to assist the State Historic Preservation Officer in making this assessment. Alternatively, the grant recipient may elect to treat the property as if it were eligible for the National Register, notify the Department of Energy and proceed to Stipulation 7 of this Memorandum.

7. Installing Energy Conservation Measures in Historically Significant Buildings

- a. If the State Historic Preservation Officer within 15 days of receiving adequate documentation finds that the property is listed in or eligible for listing in the National Register, or the grant recipient elects to treat the property as if it were eligible, the grant recipient will so notify the Department of Energy.

- b. The grant recipient will consult with the State Historic Preservation Officer to develop a plan for mitigation of any adverse effects the energy conservation measure or its installation may have on the property. The grant recipient will provide evidence of this consultation to the Department of Energy.
- c. Whenever possible, the grant recipient will use the recommended approaches in the "Secretary of the Interior's Standards for Rehabilitation of and Guidelines for Rehabilitating Historic Buildings" (amended 1983) (Standards). The grant recipient should seek advice and guidance on how to follow and apply the Standards from the State Historic Preservation Officer.
- d. If the State Historic Preservation Officer and the grant recipient agree on a treatment, the grant recipient will document this agreement and send it together with the plan to the Department of Energy and the Executive Director of the Council. If the Executive Director does not object within fifteen (15) days of receiving the notification and plan, he/she will be deemed to have concurred. The grant recipient will notify the Department of Energy of the Council's concurrence and proceed with the undertaking according to the plan. If the Executive Director objects to the plan, the Department of Energy will obtain the Council's comments and proceed as set out in 36 CFR Part 800.
- e. If the grant recipient and the State Historic Preservation Officer are unable to agree on a plan within a reasonable time after a good faith effort, the grant recipient will so inform the Department of Energy. The Department of Energy will then obtain the Council's comments and proceed as set out in 36 CFR Part 800.

8. Reporting

The Department of Energy will ensure that the grant recipient includes evidence of compliance with the plan in his/her final report required under 10 CFR Section 455.63 and will provide such evidence to the State Historic Preservation Officer on request.

9. Public Education

The Department of Energy and the Council will work together to develop materials for distribution to grant recipients to help them understand the importance of historic properties and the process set out in this Memorandum. Such information may take the form of brochures, instructions attached to the grant award, audiovisual materials or other appropriate formats.

10. Monitoring

As part of its ongoing monitoring of grant recipients, the Department of Energy will ensure that grant recipients implement the Institutional Conservation Program in accordance with this Memorandum.

11. Annual Summary Report

The Department of Energy will provide to the National Conference of State Historic Preservation Officers and the Council an annual summary report of activities related to the implementation of this Memorandum. These reports will be the basis for determining whether this Memorandum will remain in effect or whether an amendment is necessary.

12. Amendment to this Memorandum

If a signatory to this Memorandum determines that its terms cannot be or are not being met and believes a change is necessary, the signatory will request the consulting parties to consider an amendment to the Memorandum. Amendments will be executed in the same manner as the original Memorandum.

13. Failure to Comply

Failure to carry out the terms of this Memorandum requires that the Department of Energy request the Council's comment on a project by project basis in accordance with 36 CFR Part 800. If the Department cannot carry out the terms of this Memorandum, it will not take or sanction any irreversible action or commitment that would result in an adverse effect on properties included in or meeting the criteria for inclusion in the National Register until the Council has been afforded an opportunity to comment. If the Council cannot carry out its commitments under this Memorandum in a timely manner, the Department of Energy will proceed to meet those commitments implied or directed under 42 U.S.C.6371 and will advise the Council of a need to modify this Memorandum.

14. Termination

This Memorandum of Agreement may be terminated by mutual agreement of the Department of Energy, the National Conference of State Historic Preservation Officers, and the Council or by any party upon 30 day written notice to the other.

15. Coordination

The Department of Energy will work closely with and may seek advice of the Council in implementing this Memorandum.

Execution of this Memorandum evidences that the Department of Energy has afforded the Council a reasonable opportunity to comment on the Institutional Conservation Program and its effects on historic properties. This Memorandum is effective when signed by all parties.

J. Mitchell Date 5-31-84
 President
 National Conference of State Historic Preservation Officers

R. Collins Date 5/1/84
 Under Secretary
 United States Department of Energy

Robert Dawsey Date 5/24/84
 Executive Director
 Advisory Council on Historic Preservation

Wanda Caldwell Date 6/4/84
 Chairman
 Advisory Council on Historic Preservation