

PROGRAMMATIC AGREEMENT
Between
The CITY of MADISON,
HOUSING and URBAN DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
And
The WISCONSIN HISTORICAL SOCIETY,
STATE HISTORIC PRESERVATION OFFICER

WHEREAS, the CITY of MADISON (hereinafter CITY), now and may in the future administer or serve as the responsible entity for a project or program that is funded by the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant program (CDBG), which may include:

**Community Development Block Grant Program – Entitlement,
HOME Program,
Emergency Solutions Grant Program,
Continuum of Care Program,
Energy Efficiency Conservation Block Grant (Department of Energy), and
Public Housing and Voucher Programs,**

hereinafter referred to as “Programs,” under statutes that authorize HUD to provide for assumption of environmental responsibilities by recipients of the HUD assistance and other responsible entities, including the CITY, in accordance with HUD’s Environmental Review Procedures, as set forth in 24 CFR Part 58; and,

WHEREAS, the CITY has determined that the implementation of these programs may have an effect on properties on or eligible for inclusion on, the National Register of Historic Places (NRHP), pursuant to Section 106 of the National Historic Preservation Act of 1966 (16 USC 470f) and 36 CFR Part 800; and

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

WHEREAS, the Wisconsin State Historic Preservation Officer (SHPO) and the CITY 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 Part 101 (d)(2) of the National Historic Preservation Act of 1966 and further described at 36 CFR Part 800.2 (c), retains jurisdiction; and

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

WHEREAS, the Appendices attached hereto are part of and applicable throughout this PA.

NOW THEREFORE, the CITY and the SHPO agree that the CITY’s Programs shall be implemented in accordance with the following stipulations.

Stipulations

A. Personnel

- I. The CITY shall designate a single staff-person point of contact (hereinafter Staff) to facilitate all review activities pursuant to the terms of this PA, and for communication between the CITY and the SHPO regarding all review activities covered by the terms of this PA.
- II. The CITY shall notify the SHPO of any proposed Staff changes. If, at any time through the duration of this PA, the CITY does not have Staff in place to facilitate reviews pursuant to the terms of this PA, then the CITY and the SHPO shall consult to develop alternative administrative procedures for implementing the PA.

B. City Preparation of Project Submittals

- I. Upon starting an Environmental Review per 24 CFR 58, the City shall initiate internal procedures to determine the potential of a project to affect one or more historic resources.
- II. Projects that do not have the potential to affect listed or eligible properties per Part D. below will not be subject to a Section 106 review unless specifically requested by the SHPO, City, or other interested stakeholder.
- III. The City shall prepare and submit to the SHPO materials for a Section 106 review pursuant to 36 CFR Part 800 and Section IV below for all projects with the potential to impact historic properties per Section E of this PA.
- IV. Review materials shall include a Request for SHPO Comment Form, written project description, evidence of historic resource identification, and other materials as necessary, including but not limited to project plans, site photos, and project specifications. The SHPO may request additional materials as necessary.
- V. The City shall use the Wisconsin Historic Preservation Database (WHPD) to identify historic resources, such as those included or eligible for inclusion on the National Register. The use of WHPD may be supplemented with surveys of the project area with the purpose of identifying any potentially historic properties not included on WHPD.

C. SHPO Review of Project Submittals

The SHPO shall review all projects submitted to it by the CITY pursuant to the terms outlined in this PA and 36 CFR Part 800.

D. Projects that do not have the Potential to Affect Listed or Eligible Historic Properties

I. Non-Ground-Disturbing Undertakings

a. Projects affecting properties that are less than 50 years old, as these properties are considered not eligible for listing on the National Register of Historic Places, unless either the SHPO, Staff, or other interested party expresses to the Staff, either verbally or in writing, that National Register Criteria Consideration G may be applicable.

b. Projects affecting properties that are 50 years old or older when such properties previously have been determined not eligible for listing on the NRHP, unless the "not eligible" determination was based on the age of the building being less than 50 years.

c. Undertakings listed in Appendix A involving any property that is listed on the NRHP or is eligible for listing on the NRHP.

d. With respect to Part B. I. Sections a. and b. above, if either the CITY or the SHPO believes that a property may be eligible for listing on the NRHP, then that property-specific undertaking shall not be exempt and shall be reviewed pursuant to other applicable provisions of this PA.

e. The CITY shall retain comprehensive project files for the aforementioned projects so that it may provide adequate documentation to the Council should the CITY receive such a request. Also, this documentation shall be made available to the SHPO upon request per Part I. below.

II. Ground-Disturbing Undertakings

a. An undertaking that may disturb ground that has been disturbed previously to a degree greater than currently proposed.

b. With respect to II. a. above, if the CITY or the SHPO 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 other applicable provisions of this PA.

c. The CITY shall retain comprehensive project files for II. a. and b. above so that it may provide adequate documentation to the ACHP should such a request be made. Also, this documentation shall be made available to the SHPO upon request per Part I. below.

d. If a known historic property is located within the project's area of potential effect, then the undertaking is not excluded from review and the CITY shall initiate a review pursuant to 36 CFR Part 800.

E. Undertakings with the Potential to Affect Listed or Eligible Historic Properties

I. 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, the CITY shall comply with the following provisions and procedures and shall complete and submit to the SHPO the Request for SHPO Comment and Consultation on a Federal Undertaking form (hereinafter Submittal Form) in accordance with standard project submittal procedures.

b. If the property within the project APE is recorded in the WHPD and has not been formally evaluated by the SHPO, then the CITY shall apply the NRHP criteria to determine whether the property is eligible for listing on the NRHP, and shall carryout the provisions of Attachment A.

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 the CITY's evaluation, then the CITY shall continue with the project review pursuant to 36 CFR Part 800.

II. Ground-Disturbing Undertakings

For undertakings that may cause ground disturbance and are not considered to be undertakings that do not have the potential to affect historic properties pursuant to the terms of this PA, the CITY shall initiate a review pursuant to 36 CFR Part 800.

F. Emergencies

The CITY from time to time may conduct undertakings in response to natural and human-induced disasters, including, but not limited to, floods, tornadoes, wind storms and fires. Such undertakings may be exempt from federal environmental review requirements. If the CITY requires an undertaking in response to an emergency, then 36 CFR Part 800.12 (b) through (d) shall apply.

G. Special Situations

Accidental discoveries sometimes occur during the course of ground-disturbing activities. In the event that archaeological deposits are discovered during ground-disturbing activities, all such activities within the vicinity of the discovery shall cease until a qualified archaeologist has made an on-site assessment of the discovery. The CITY shall consult with SHPO, and request comment at the soonest possible time to assist the CITY in determining what action should be taken.

H. Documentation

I. Documentation required by the SHPO for consultation per the provisions of this PA shall include, but may not be limited to the "Request for SHPO Comment and Consultation on a Federal Undertaking" form, written descriptions of the project and affected historic properties (if any), reports demonstrating that

properties are eligible (or not) for listing in the NRHP, and maps showing specific project locations and APEs.

II. All documentation generated for review purposes under the terms of this PA shall meet the provisions of 36 CFR Part 800.11.

I. Monitoring

I. The CITY shall retain documentation concerning all undertakings carried out pursuant to this PA for a period of three years.

II. The CITY, when requested, shall provide the SHPO a report summarizing the undertakings carried out pursuant to this PA.

III. The CITY shall make available to the SHPO upon request all historic-review-related documentation for projects undertaken 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 the CITY compliance with the terms of this PA.

J. Technical Assistance

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

K. Other Laws, Rules, Regulations

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

II. The CITY 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 Section 106 review process, consistent with and pursuant to provisions of the NHPA Section 106 and the ACHP's regulations at 36 CFR Part 800 not otherwise referenced herein.

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

IV. All human burial sites in the State of Wisconsin are protected under Wis. Stats. Section 157.70, and any undertaking that may affect a human burial site shall be reviewed under the provisions of Wis. Stats. Section 157.70, the terms of this PA notwithstanding.

L. Amendments

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

M. Termination

I. Either the CITY 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. The CITY or the SHPO shall consult 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.

II. In the event that this PA is terminated, then the CITY shall comply with the NHPA, 36 CFR Part 800 and the Wisconsin Section 106 Submittal Process for any undertakings that may affect historic properties.

N. Sunset Provision

I. This PA shall remain in force for ten years from the date of the final signature unless the PA is terminated or superseded by another PA.

II. Within six months prior to the expiration of this PA, the CITY 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 and 36 CFR Part 800.

III. If neither party objects to the other in writing, the existing PA (all of its terms in their entirety, except for provision M. Sunset Provision section I) shall renew and shall remain in force for a period of two years from the date of expiration of the existing agreement. At the expiration of the 2-year extension period, this PA shall terminate in its entirety.

O. Civil Rights

The program or activities conducted under this agreement shall be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes; namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments Act of 1972, the Age Discrimination Act of 1975, and Americans with Disabilities Act of 1990). They shall also be in accordance with regulations of the Secretary of the HUD, which provide that no person in the United States shall be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the HUD or any agency thereof, on the grounds of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status.

The City of MADISON:

By: _____ Date: _____
Satya Rhodes-Conway
Mayor

By: _____ Date: _____
Linette S. Rhodes
Community Development Grants Supervisor

The Wisconsin Historical Society, State Historic Preservation Officer:

By: _____ Date: _____
Daina Penkiunas
State Historic Preservation Officer, Division of Historic Preservation

APPENDIX A

UNDERTAKINGS THAT DO NOT HAVE THE POTENTIAL TO AFFECT PROPERTIES THAT ARE LISTED ON OR ARE ELIGIBLE FOR LISTING ON THE NATIONAL REGISTER OF HISTORIC PLACES

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 a property's historic character and must be reviewed by WHS.

Non-Construction Work

- 1) Acquisition of properties when there is assurance by the CITY that historic structures and buildings will 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 will 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, matching material and the stylistic 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, all repair or replacement to match material and the stylistic appearance of existing material.
- 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 will 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, all repair or replacement to match material and the stylistic appearance of existing material.
- 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) Storm window-related installation, repair and replacement projects carried out pursuant to Appendix B of this PA.
- 20) Primary window-related repair and replacement projects shall be carried out pursuant to Appendix B of this PA.
- 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 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) Limited 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; and,
 - C) all work subject to 25 above.
- 28) In-kind repair and refinishing of interior floors.
- 29) Painting of interior wall or ceiling surfaces.
- 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 unless these floor coverings date from the property's period of significance.
- 33) Repair or installation of new basement floors.
- 34) Kitchen and bathroom remodeling, if no walls, windows, or doors are relocated or altered (except per other provisions of this document).

Mechanical, Electrical and Plumbing Systems

- 35) Installation of new furnaces and water heaters, if the work:
 - A) utilizes the existing heat distribution system; and,
 - B) does not result in installation or relocation of chimneys or condenser units; and,
 - C) does not result in removal or replacement of original radiator or radiant heat appliances.
- 36) Upgrading, repair and replacement of electrical systems and plumbing systems and fixtures (Note that removal of original electrical fixtures 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.

APPENDIX B

WINDOW TREATMENT GUIDELINES

SHPO does not consider the following to constitute adverse effects. NOTE: All such projects shall be submitted to the SHPO for review pursuant to the terms of this PA.

Primary Window Repair and Storm Window Installation

- 1) 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.
- 2) 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; and
 - 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; and
 - ii) do not cause damage to the original interior trim; and
 - 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.

Primary Window Replacement

1. Replacement of the windows may be approved—after justification for need (damage, irreparable originals, originals are no longer present, etc.; a justification narrative is required for SHPO review)—only if the following conditions are met:
 - A) The muntin patterns must match those of the original windows, as documented in historic photographs or drawings;
 - B) The widths of the new muntins must accurately replicate the widths of the documented muntins;

- C) The new windows must provide a depth of reveal of at least ½ inch between the face of the sash and the glass;
 - D) the windows must either incorporate true divided lights or use applied muntins permanently attached to the interior and exterior frames, and incorporating a sandwiched muntin as well in the case of thermopane glass, in a way that accurately replicates the look of the originals;
 - E) Replacements completely fill the original window opening with glazing—replicate the originals; and,
 - F) Replacements do not cause damage to the original interior trim.
2. With respect to item 1, if no documentation exists of the original windows, the owner may submit for approval drawings or photographs of similar properties.
 3. The use of aluminum or aluminum-clad windows is acceptable; however, the installer must ensure that the aluminum is physically isolated from other, dissimilar metals in order to prevent galvanic corrosion.
 4. Vinyl replacement windows are rarely acceptable. In general, they are poorly made and deteriorate rapidly. Profiles rarely match original wood window elements. Typically, these units are inserted into existing window openings, “downsizing” the window, and reducing the amount of glazing.