

**PROGRAMMATIC AGREEMENT
BETWEEN THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER AND THE CITY OF
TULSA, OKLAHOMA FOR HOUSING ACQUISITION AND ACQUISITION/REHABILITATION
PROGRAMS FUNDED BY THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

WHEREAS, the U. S. Department of Housing and Urban Development (HUD) provides formula grant funding to the City of Tulsa (City); and

WHEREAS, due to the City's acceptance of federal environmental review responsibility, in accordance with section 104(g) of the Housing and Community Development Act of 1974 [42 U.S.C. 5104(g)], the City assumes federal agency responsibility for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470 *et seq*] (Section 106); and

WHEREAS, the City, by and through its Department of Grants Administration, proposes to administer its property acquisition and acquisition/rehabilitation programs, funded from a portion of its grant awards from the HUD Community Development Block Grant (CDBG) Program, its HOME program, and its Neighborhood Stabilization Program (collectively, Program); and

WHEREAS, Pursuant to this agreement, only single-family and multi-family properties will either be acquired or be acquired and rehabilitated within three (3) years of the date of the acquisition; and

WHEREAS, due to the program's timing constraints, the City's HUD Grant property acquisition and acquisition/rehabilitation programs can operate more efficiently and effectively through execution of this Programmatic Agreement, under statutes that authorize HUD to provide for the assumption of environmental review responsibilities by recipients in accordance with HUD's Environmental Review Procedures as set forth in 24 CFR 5 58; and

WHEREAS, the City has determined that the administration of its Program may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (National Register) and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR Part 800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and Section 110(f) of the same Act [16 U.S.C. 47011-2(f)]; and

WHEREAS, pursuant to § 800.14(b)(3) and § 800.6(a)(1)(i)(C), the City has notified the ACHP of its intention to prepare a programmatic agreement under § 800.14(b)(3) by providing the documentation specified in § 800.11(e), and on October 3, 2008 the ACHP has declined the invitation to participate; and

WHEREAS, the City has consulted in accordance with § 800.6(b)(1), "Resolution without the ACHP", with the SHPO; and

WHEREAS, The City's Departments of Grants Administration, Working In Neighborhoods, Planning, and the Tulsa Preservation Commission (TPC) staff have participated in consultation for development of this Programmatic Agreement (Agreement); and

WHEREAS, HUD has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions, and that consultation with an Indian tribe must, therefore, recognize the government-to-government relationship between the federal government and Indian tribes; and

WHEREAS, the execution of this Programmatic Agreement does not change the ACHP's position that HUD may not delegate its government-to-government responsibilities and nothing in this Programmatic Agreement may be interpreted to preclude a tribe from exercising its government-to-government rights; and

WHEREAS, the City has determined that implementation of its program has limited potential to affect historic properties that have religious and cultural significance to federally or non-federally recognized tribes (Tribes), but the City shall consult Tribes as appropriate to comply with its responsibilities under the National Historic Preservation Act and ACHP's regulations and shall solicit guidance from HUD as necessary to meet these responsibilities; and

WHEREAS, this Programmatic Agreement does not apply to undertakings on Indian Tribal lands or to undertakings that affect historic properties on Tribal lands as defined in 36 CFR 800.16; and

WHEREAS, the definitions given in Appendix "A" are applicable throughout this Agreement; and

WHEREAS, in accordance with § 800.6(b)(1)(iv), this Agreement will become final upon submitting a copy of the executed Agreement, along with the documentation specified in § 800.11(f), to the ACHP prior to approving any undertaking in order to meet the requirements of Section 106 and § 800.6(b)(1);

NOW, THEREFORE, the City and the SHPO 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

This Agreement shall be limited to property acquisitions and acquisition/rehabilitation projects funded through the following HUD programs:

- A. Community Development Block Grant (CDBG) Program
- B. HOME Program
- C. Neighborhood Stabilization Program

II. QUALIFIED PERSONNEL

A. The City shall employ staff person(s) or contract with Consultants having professional qualifications in anthropology, archaeology, architectural history, history, historic architecture, historic preservation, planning or related fields, as appropriate and as specified in the *Secretary of the Interior's Historic Preservation Professional Qualification Standards*, (48 FR 44738-39, September 29, 1983) ("Qualified Staff Person"). Such qualified staff of the City of Tulsa's Planning Department will be responsible for administering those terms of this Agreement that require their particular expertise and for coordinating with appropriate City departments, authorities and agencies regarding Programs assisted for property acquisition or acquisition/rehabilitation.

1. If there is a change in the City's Qualified Staff Person, the City shall notify the SHPO within 15 days of the change and shall provide the SHPO with documentation of the new staff person's qualifications in anthropology, archaeology, architectural history, history, historic architecture, historic preservation, planning or related fields, as specified in the *Secretary of the Interior's Historic Preservation Professional Qualification Standards*, (48 FR 447 16, September 29, 1983).

2. If the City determines that it cannot employ qualified staff to administer the terms of this Agreement, it must follow regular Section 106 procedures, which include forwarding documentation to the SHPO for review on a case-by-case basis.

B. The TPC staff will assist the City's Qualified Staff Person in the identification and evaluation of historic properties covered under the terms of the Agreement.

III. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. Through the TPC staff, the City shall identify districts and individual properties that meet the criteria for listing in the National Register of Historic Places (hereinafter "historic properties") within the Areas of Potential Effects (APES) of program-assisted property acquisitions or acquisition/rehabilitation.

B. When a house or residential property proposed for acquisition or acquisition/rehabilitation is less than forty-five (45) years old, not individually listed in nor determined eligible for listing in the National Register, nor is a contributing resource to a district that is listed in or eligible for the National Register, the City's Qualified Staff Person shall document this fact in the individual project file and proceed with the property acquisition or acquisition/rehabilitation, provided the rehabilitation work is completed within three (3) years of the date of acquisition, without consultation with the TPC staff person nor the SHPO.

C. Properties forty-five (45) years of age or older that may be affected by projects covered under this Agreement will be evaluated by the City's Qualified Staff Person, in consultation with the TPC staff, to determine if the property proposed for acquisition or acquisition/rehabilitation is a historic property. The TPC staff shall provide their opinion within five (5) working days of receipt of an adequately documented request and shall provide it on forms developed by the City for this purpose.

1. If the City's Qualified Staff Person and the TPC staff agree that the property proposed for acquisition or acquisition/rehabilitation is not eligible for the National Register, the City shall proceed with the acquisition or acquisition/rehabilitation, provided the rehabilitation work is completed within three (3) years of the date of the acquisition, as provided for properties less than forty-five (45) years old (III.B.).

2. If the City's Qualified Staff Person and the TPC staff agree that the property proposed for acquisition or acquisition/rehabilitation is a historic property, the City shall proceed pursuant to Section IV.

D. If the City's Qualified Staff Person and the TPC staff do not reach agreement regarding the National Register eligibility of a property, the City's Qualified Staff Person shall submit documentation to the SHPO regarding the eligibility of the property proposed for acquisition or acquisition/rehabilitation. The SHPO shall provide written comments within 30 days following the receipt of adequate documentation.

1. Documentation of individual properties submitted to the SHPO for review will include a completed SHPO "Historic Preservation Resource Identification Form", photographs of the

property as well as streetscape views, and a map indicating the property's exact location in accordance with requirements and instructions in the SHPO's *Review and Compliance Manual*.

2. Documentation for National Register eligible districts will include maps, photographs, a statement of significance, a physical description, a listing of all the addresses of the properties within the district, and whether or not they are contributing or non-contributing.

E. If the City and the SHPO disagree about the National Register eligibility of a property, the City shall request a formal determination of eligibility in accordance with 36 CFR, 800.4(c)(2).

IV. TREATMENT OF HISTORIC PROPERTIES

The City shall treat all historic properties acquired under its program as follows:

A. Upon the acquisition or acquisition/rehabilitation of a historic property using Program funds, the City will secure, stabilize and preserve that historic property pending its transfer. The methods used to secure and stabilize properties shall adhere to the Secretary of Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards)* and *Preservation Brief 31, Mothballing Historic Buildings* (U.S. Department of the Interior, National Park Service, September 1993).

B. Prior to the transfer or lease of historic properties acquired with Program funds, the City shall consult with the SHPO to determine the appropriate mechanism for protecting the historic property, including, but not limited to, a preservation easement or restrictive covenant. If it is determined that a preservation easement or restrictive covenant is necessary, the City shall submit the proposed preservation easement or restrictive covenant in the case of sale of property, or lease agreement, to the SHPO for review and approval. If the City and the SHPO cannot agree on an appropriate preservation mechanism, the City shall request the ACHP's comments in accordance with 36 CFR Part 800.5.

C. If funding for rehabilitation of a historic property is provided through the City's program, the City shall provide documentation to the SHPO for comment on the effect of the proposed work in accordance with the *Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic buildings* and the standard case-by-case review process outlined in 36 CFR Part 800.

V. PUBLIC PARTICIPATION

A. The City will include information about its property acquisition and acquisition/rehabilitation programs each year when it notifies the public of the City's current HUD grant Program activities and make available for public inspection documentation about the City's Programs. Available in this documentation will be general information on the type(s) of activities undertaken with HUD funds; information on identified historic properties in communities which might be affected by these activities; the amount of funds available in the current program year; how interested persons can advise the City of any comments or concerns they may have about the federal grant program, and its effect on historic properties. A copy of said notice shall be provided to at least TPC, Tulsa Foundation for Architecture, Tulsa Historical Society, Tulsa Art Deco Society, SHPO, and OAS.

B. At any time during the implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the City shall take the objection into account and consult as needed with the objecting party, the SHPO, or the ACHP to resolve the objection.

VI. TECHNICAL ASSISTANCE AND TRAINING

The SHPO shall provide training opportunities for the City's staff responsible for implementation of the terms of this PA, and these training opportunities shall be scheduled at mutually convenient times. The SHPO shall consult with the City as may be necessary to facilitate the effective implementation of the PA, and the SHPO encourages the City's staff to attend at least one of the SHPO's regularly scheduled workshops on the Section 106 review process each year.

VII. PROJECT COORDINATION

Within ninety (90) days following execution of this Programmatic Agreement, the City shall develop internal review procedures to ensure that the Program activities carried out by other departments, authorities, and agencies are implemented in accordance with the terms of the Programmatic Agreement. The procedures shall outline how historic preservation reviews are to be coordinated and the documentation the departments are to retain in individual project files. A copy of the procedures will be submitted to SHPO within ninety (90) days following execution of this programmatic agreement.

VIII. MONITORING

A. The City shall prepare annual reports summarizing Program activities carried out pursuant to the terms of the Agreement. The City shall forward copies of this report to the SHPO, the ACHP and other parties who may so request. The first report will be submitted by October 31, 2010, with subsequent reports to be submitted by each October 31st thereafter.

B. The City shall retain individual project files containing determinations of eligibility, the comments of the SHPO, written authorization from the City's Qualified Staff Person, specifications and work write-ups, before and after photographs and other pertinent documentation, for at least three years following the completion of the Program activity.

C. The City shall schedule a meeting with the SHPO in December 2010, after the first year of execution of the Agreement to determine how the City is complying with the terms of the Agreement and what, if any, modifications are required to improve compliance with the Agreement.

D. A meeting among the parties to the Agreement shall be scheduled in December 2013, **(four years after execution of the agreement to determine whether the Agreement should be extended beyond 2014, if not extended)** The public shall be notified of this meeting and shall be invited to submit comments to the SHPO and ACHP regarding the effectiveness of the Agreement prior to the scheduled meeting.

IX. DISPUTE RESOLUTION

A. Should the SHPO object within thirty (30) days to any plans for action proposed pursuant to this Agreement, the City shall consult with the SHPO to resolve the objection. If the City determines that the objection cannot be resolved pursuant to 36 CFR Part 800.7(b), the City shall forward all documentation relevant to the dispute to the ACHP. Within forty-five (45) days following receipt of adequate documentation, the ACHP will either:

1. Provide the City with recommendations, which the City will take into account in reaching a final decision regarding the dispute [36 CFR Part 800.7(b)]; or

2. Notify the City that it will comment pursuant to 36 CFR Part 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by the City in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.

B. The ACHP's responses to such request will be taken into account by the City in accordance with 36 CFR Part 800.7(c) with reference only to the subject of dispute; the City's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

X. TERM OF AGREEMENT

This Agreement shall take effect on the date it is signed by all parties and shall continue in full force and effect until five years after the effective date, unless otherwise terminated or extended. At any time in the six-month period prior to this date the City may request the SHPO in writing to review the City's Program and consider an extension or modification to this Agreement. No extension or modification shall be effective unless all parties to the Agreement have agreed to it in writing.

XI. AMENDMENT

Any party to this Agreement may request that it be amended, whereupon the parties will consult to consider such an amendment. The amendment shall be effective on the date a copy signed by all of the signatories is filed with the ACHP.

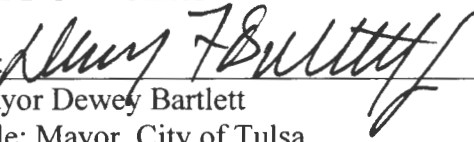
XII. TERMINATION

Any party to this 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 Part 800.3 through 800.6 with regard to individual undertakings covered by this Agreement.

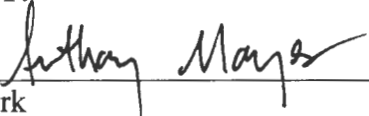
EXECUTION AND IMPLEMENTATION of this Agreement evidences that the City has satisfied its responsibilities under Section 106 of the National Historic Preservation Act, as amended, for undertakings as described in this Agreement and funded by the HUD Programs.

SIGNATORIES:

CITY OF TULSA

By:  Date: 1/24/10
Mayor Dewey Bartlett
Title: Mayor, City of Tulsa

ATTEST:

By: 
City Clerk
DEPUT



APPROVED AS TO FORM:

By: Stephanie Solberg
Assistant City Attorney

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER

By: Bob Blackburn Date: 2-8-10
Bob L. Blackburn
State Historic Preservation Officer

APPENDIX "A" - DEFINITIONS AND ABBREVIATIONS

ACHP means the Advisory Council on Historic Preservation, an independent Federal agency that advises the President and Congress on historic preservation matters.

Acquisition and Acquisition/Rehabilitation means single-family and multi-family property acquisitions and single-family and multi-family property acquisitions for the purpose of rehabilitation within three (3) years from the date of acquisition

CDBG means Community Development Block Grant

City's Qualified Staff Person means the City of Tulsa Planning Department staff member(s) who meets the professional qualifications as specified in the Secretary of the Interior's *Historic Preservation Professional Qualification Standards*, (48 FR 44738-39, September 29, 1983).

Historic property means any property that is included in or eligible for inclusion in the National Register of Historic Places as set forth in 36 CFR Part 800.

HOME means HOME Investment Partnerships Program.

HUD means the United States Department of Housing and Urban Development.

National Register refers to the basic inventory of historic resources in the United States maintained by the Secretary of the Interior.

OAS means the Oklahoma Archeological Survey, the agency responsible for identification of Oklahoma's archeological resources, maintenance of inventory files of such sites, and provision of advice to other agencies and organizations about the significance of these resources and how to protect them.

Program refers to all activities funded by HUD specifically covered by this Programmatic Agreement and administered by the City of Tulsa Department of Grants Administration

Section 106 refers to the section of the National Historic Preservation Act of 1966 and its resulting review process designed to ensure that impacts on historic properties are taken into account during Federal project planning and execution.

SHPO means the Oklahoma State Historic Preservation Officer

Standards means the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings published at 36 CFR § 67.

TPC Staff means staff assigned to the City of Tulsa's Tulsa Preservation Commission, the entity charged with the designation of local historic districts and review of requests for Certificates of Appropriateness under the City's historic preservation ordinance.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency.