

Appendix D

Cultural and Historic Resource Documentation



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PROGRAMMATIC AGREEMENT (PA)
BY AND AMONG
THE CITY AND COUNTY OF SAN FRANCISCO,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING HISTORIC PROPERTIES AFFECTED BY USE OF REVENUE FROM THE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PART 58 PROGRAMS

WHEREAS, the City and County of San Francisco ("City"), a "Responsible Entity" under 24 C.F.R. Part 58, proposes to administer and fund projects and programs (hereinafter referred to as "Undertakings," as defined in 36 C.F.R. 800.16y) in the City and County of San Francisco with monies from the U.S. Department of Housing and Urban Development ("HUD") programs ("Programs") delegated to the City pursuant to 24 C.F.R. Part 58 or any other pertinent HUD regulations; and

WHEREAS, pursuant to the Housing and Community Development Act of 1974, as amended, HUD has delegated to the City its responsibility to request the comments of the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. §470f); and

WHEREAS, the City has determined that the implementation of these Undertakings and Programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places ("Historic Properties") and has consulted with the California State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic Preservation ("ACHP") pursuant to Section 800.14(b) of the regulations, 36 C.F.R. Part 800, implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) ("Act"); and

WHEREAS, the City is a Certified Local Government ("CLG") pursuant to Section 101 of the Act and its implementing regulations found at 36 CFR Part 61; and as such has a qualified staff in the employ of the San Francisco Planning Department which possesses the professional expertise necessary to evaluate properties which may be significant in the fields of architecture, history and archeology; this staff meets the appropriate qualifications set forth in 36 CFR Part 61, Appendix A and is knowledgeable in work relevant to the locale; and

WHEREAS, in light of these qualifications, the San Francisco Planning Department will provide oversight for the implementation, monitoring and reporting activities contemplated by this Undertaking; and

WHEREAS the Planning Department has created a workplan for a Comprehensive Citywide Cultural and Historical Resource Survey (Survey Plan) which is designed to complete cultural resource surveys in all active area plans and update and verify all pre-existing survey information within the area plans, as well as initiate independent surveys throughout the city while also developing a citywide context statement for San Francisco; and

WHEREAS, the Mayor's Office of Community Development, the Mayor's Office of Housing and the Planning Department will execute a Memorandum of Understanding (MOU) that will set

forth any additional procedures that may be necessary to implement Section 106 Review of Undertakings covered by this Agreement; and

WHEREAS, pursuant to the ACHP's Section 106 regulations, "Protection of Historic and Cultural Properties" ("Regulations") (36 CFR §800.2(c), the City has requested the comments of the ACHP; and

WHEREAS, pursuant to the ACHP's Section 106 regulations, the City has conducted outreach and has actively sought and requested the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and these Tribes did not respond to our requests to engage in such consultation; and,

WHEREAS, the City will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

WHEREAS, pursuant to the ACHP's Section 106 Regulations, the City has considered the nature of the program and its likely effects on historic properties and has taken steps to involve individuals, organizations and entities likely to be effected by the Undertaking; and

WHEREAS, pursuant to the ACHP's Section 106 Regulations, the City has arranged for public participation appropriate to the subject matter and scope of the Programmatic Agreement by providing notice to the public and has held hearings before the Landmarks Preservation Board concerning the Undertaking for the purpose of informing the public and including them in the consultation process; and

WHEREAS, subrecipients receiving Part 58 funds, which are the subject matter of this agreement, by, from or through the City agree as a condition of receiving funding to comply fully with the requirements of the National Historic Preservation Act of 1966 (16 U.S.C. 470) and the procedures set forth in 36 C.F.R. Part 800 on the Historic Preservation Procedures for Protection of Historic Properties; and

WHEREAS, the goals and objectives of this Programmatic Agreement are to (1) provide a coordinated, clear and efficient process for implementation of Section 106, (2) identify and protect historic resources while facilitating the production of affordable housing and the construction of and rehabilitation of community and public facilities, (3) provide an orderly process for the resolution of conflicts, consideration of feasible alternatives and appropriate mitigation, (5) maintain the confidence of the public in the City as a Certified Local Government and (6) provide for public participation in the local implementation of Section 106; and

NOW, THEREFORE, the City, the SHPO, and the ACHP agree that the Undertakings shall be administered in accordance with the following stipulations to satisfy the City's Section 106 responsibilities for all individual Undertakings of the Programs.

STIPULATIONS

The City will ensure that the following measures are carried out:

I. TERMINATION OF EXISTING MEMORANDUM OF UNDERSTANDING.

- A. The Memorandum of Agreement (MOA) entered into on September 16, 1982 by the Advisory Council on Historic Preservation, the California State Historic Preservation Officer and the City and County of San Francisco is hereby terminated by mutual agreement and is no longer in effect as of the effective date of this Programmatic Agreement. The stipulations agreed to in the MOA are replaced in their entirety by the stipulations agreed to in this PA.

II. APPLICABILITY OF THE PROGRAMMATIC AGREEMENT

- A. The City shall comply with the stipulations set forth in this Programmatic Agreement ("PA") for all Undertakings that (1) are assisted in whole or in part by revenues from the HUD Programs subject to 24 CFR Part 58 and that (2) can result in changes in the character or use of any Historic Properties that are located in an Undertaking's Area of Potential Effect ("APE"), as defined in Stipulation VI, below.
- B. The review process established by this PA shall be completed before the City's final approval of any application for assistance under these Programs, before a property is altered by either the City or a property owner, and before the City or a property owner initiates construction or makes an irrevocable commitment to construction that may affect a property that is fifty (50) years of age or older, or that is otherwise eligible for listing in the National Register of Historic Places.
- C. Any Undertaking not qualifying for review under the terms of this PA but nevertheless subject to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) shall be reviewed in accordance with 36 CFR Part 800, even if such Undertaking involves a building, structure, site or object that is less than 50 years old.

III. COORDINATION WITH OTHER FEDERAL AGENCIES -36 CFR §800.2

- A. Other Federal agencies providing permits, licenses, or financial assistance for Program activities covered under the terms of this Agreement may, with the concurrence of the City and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this Agreement. In such situations, the City and the Federal Agency shall notify the SHPO and ACHP in writing of their intent to use this Agreement to achieve compliance with Section 106 requirements. If the SHPO and ACHP do not respond within 21 days of receipt of such a notice of intent, the City and other Federal agency will assume SHPO and

ACHP concurrence, as referenced above. Copies of all such notification letters shall be maintained in the files established by Certified Staff for each such undertaking.

IV. UNDERTAKINGS NOT REQUIRING REVIEW BY THE SHPO OR THE ACHP

The following Undertakings do not require review by SHPO or ACHP and no signatory is required by this PA to determine the National Register of Historic Places ("NRHP") eligibility of properties affected by these Undertakings.

- A. Undertakings only affecting properties that are less than fifty (50) years old.
- B. Undertakings limited exclusively to interior portions of single-family residential properties where the proposed work will not be visible from the property's exterior.
- C. Undertakings limited exclusively to the activities listed in Appendix "A" of this PA. Undertakings not so limited shall be reviewed pursuant to this PA. Undertakings involving Historic Properties but nevertheless exempt from review pursuant to Appendix "A" shall be designed to conform to the greatest extent feasible with the California State Historic Building Code, [State of California, Title 24, Building Standards, Part 8 ("SHBC")] as well as *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Building, 1995*.
- D. The City shall document actions taken pursuant to this Stipulation in the manner prescribed in Stipulation XIX.A.

V. CERTIFIED LOCAL GOVERNMENT COORDINATION; CITY STAFFING

- A. The responsibilities of the City under the terms of this PA shall be coordinated by assigned individual(s) employed by the San Francisco Planning Department who meet the Secretary of the Interior's Professional Qualification Standards in History and Architectural History found at 36 CFR Part 61, Appendix A.
- B. All such reviews, as required under this PA, shall be carried out by or under the direction of the City's CLG Coordinator. The City shall allocate appropriate staff as necessary to ensure that its responsibilities under this PA are carried out. Such staff shall monitor, in keeping with the City's standard environmental review, permit, and inspection processes, Undertakings included in Appendix A of this PA and shall certify that the manner in which they are implemented is consistent with the content of Appendix A. Such staff shall also certify that all other work subject to this PA is carried out in compliance with the PA's terms and shall include such certification in the documentation required pursuant to Stipulation XIX, "Documentation and Reporting of Activities", below.

VI. AREA OF POTENTIAL EFFECTS

- A. The Area of Potential Effects (“APE”) for Undertakings covered by this PA shall be limited to the legal lot lines of a property when the Undertaking consists exclusively of rehabilitating a property’s interior or exterior features.
- B. Improvements to Infrastructure. The Area of Potential Effects for general construction and installation of infrastructure shall be as follows:
 - 1. Water and sewer lines, the APE shall be the trunk of the sewer and water line;
 - 2. Curb Cuts for disability access; the actual curb area under construction shall be the APE;
 - 3. Pavements; the APE shall be the pavement structure and pavement base.
 - 4. In all other infrastructure improvements the APE shall be analogous in purpose, structure and location to the APE of those listed in subsections 1 through 3 above.
- C. In all other cases, the City shall determine and document the area of potential effects, in accordance with 36 CFR §800.16(d).
- D. If a member of the public objects to the manner or scope in which the APE for an Undertaking has been delineated, the City shall seek to resolve the dispute in accordance with the procedures set forth in Stipulation XIV.C

VII. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

- A. The City shall review all existing information on any property within an Undertaking’s APE, as required by 36 C.F.R. 800.4, to determine if such properties may be Historic Properties. At a minimum the City shall:
 - 1. Review the current listing of the NRHP.
 - 2. Review lists of Historic Properties maintained by the City and SHPO, and the Northwest Information Center of the California Historical Resources Information System, Sonoma State University, Rohnert Park, California, or its successors and any other information available in the City’s Planning Department records pertaining to any property within an Undertaking’s APE.
 - 3. Visit the site and evaluate in accordance with the Section 106 process.
 - 4. If the property is one to which Indian Tribes attach religious and cultural significance, those Indian tribes will be consulted by the City regarding the Undertaking.

5. The City shall consult with the San Francisco Landmarks Preservation Advisory Board (“LPAB”) when necessary to determine the significance of a resource.
- B. If a property is listed or has already been determined eligible for listing in the NRHP, the City shall proceed in accordance with Stipulation VIII, unless exempted by Stipulation IV.
- C. If the CITY, in consultation with the SHPO, has determined a property to be ineligible for listing in the NRHP within a period of five (5) years prior to the City’s approval of an Undertaking covered by this PA and if no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
- D. Unless exempt pursuant to Stipulation IV or to Sections B. and C. of this Stipulation, the City shall evaluate all properties that may be affected by an Undertaking using the National Register Criteria set forth in 36 CFR Section 60.4. All evaluations shall be documented by the City on a State of California Historic Resources Inventory Form – DPR 523.
 1. If the City determines that the property is eligible for inclusion in the NRHP, the determination shall be documented on a State of California Historic Resources Inventory Form – DPR 523 and submitted by the City to the SHPO for review.
 - a. If the SHPO concurs in the determination, the property shall be considered a Historic Property under this PA.
 - b. If the SHPO does not concur in the determination, the City and the SHPO shall immediately consult for a period of time not to exceed ten (10) calendar days to resolve this disagreement. If the disagreement cannot be resolved within this time frame, the City shall obtain a determination of NRHP eligibility from the Keeper of the National Register in accordance with 36 CFR Section 800.4(c)(2). The Keeper’s determination shall be final and binding on the parties of this PA.
 - c. If the SHPO does not respond to the City’s determination within fifteen (15) calendar days following receipt, the City may assume that the SHPO does not object to the determination and shall proceed in accordance with any other applicable requirements of this PA.

with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.

- c. If the Undertaking is not changed to conform to the Standards and the SHBC, the City and the SHPO shall consult for a period of time not to exceed thirty (30) calendar days to develop a Standard Mitigation Measures Agreement ("SMMA") in accordance with Stipulation IX unless the SHPO recommends that development of a SMMA is not appropriate. If a SMMA is developed and executed by the City and the SHPO, and if no other provision of the PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
- d. When the Undertaking does not meet the Standards and the SHBC and the SHPO recommends that development of a SMMA is not appropriate, the City shall immediately notify the ACHP and initiate the consultation process set forth in 36 CF R Section 800.6.

C. Rehabilitation – Option 2 – IRC

- 1. If the owner of a property subject to the terms of this PA applies for investment tax credits pursuant to the IRC, the City shall ensure that the following measures are implemented before authorizing the Undertaking to proceed:
 - a. If the property owner applies to the National Park Service ("NPS") for Part 1 Certification and is denied certification, no further review of the Undertaking is required as of effective the date of NPS denial, unless the Undertaking may affect other Historic Properties. If no other Historic Properties may be affected, the City may determine in writing that there are no Historic Properties within the Undertaking's APE. If no other provisions of the PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
 - b. If the property owner submits a Part 2 Historic Preservation Certification Application to NPS, the review required by the certification process shall supersede the Option 1 review specified above. If the Undertaking receives Part 2 Certification from NPS without conditions, it shall be deemed to conform to the Standards and will require no further review under this PA. If the

Undertaking is certified with conditions, the City shall require that the Undertaking be changed in accordance with the conditions before granting any discretionary approval. If the Undertaking is changed accordingly, no further review under this PA will be required. The City shall document the successful completion of the Part 2 Certification Process in the manner prescribed by Stipulation XIX.A. and may authorize the Undertaking to proceed.

- c. If Part 2 Certification is denied or if the Undertaking is not changed in accordance with conditions attached to the certification, review of the Undertaking shall proceed in accordance with Section B.1.c or Section B.1.d of this Stipulation.

D. Relocation of Historic Properties – Individual Properties and Historic District Contributors

1. If relocation of a Historic Property is an Undertaking or part of an Undertaking subject to this PA and the Historic Property contributes to a historic district, every reasonable effort shall be made by the City to relocate the Property within the same historic district. Before approving any relocation, the City shall forward to the SHPO documentation that explains the need for relocation, describes the relocation site, indicates why the proposed relocation site was selected, states whether the relocation site contains archeological properties, and summarizes the alternatives to relocation that were considered. If the SHPO does not respond to the City's submittal within thirty (30) calendar days following receipt, and if no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A. and may authorize the Undertaking to proceed without further review.
 - a. If the SHPO agrees to the relocation as proposed and if no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A. and may authorize the Undertaking to proceed without further review.
 - b. If the SHPO does not agree to the relocation as proposed, the City and the SHPO shall consult for a period of time not to exceed thirty (30) calendar days to identify a mutually acceptable relocation site. If the City and SHPO identify a mutually acceptable relocation site and if no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A. and may authorize the Undertaking to proceed without further review.

- c. Any relocation of Historic Properties pursuant to this PA shall be carried out in accordance with the recognized approaches in *Moving Historic Buildings* (John Obed Curtis, reprinted 1991 by W. Patram for the International Association of Structural Movers, IASM, P.O. Box 1213) by a professional mover who has the capability to move historic properties properly.
- d. If no mutually acceptable relocation site is identified, the City and the SHPO shall consult to develop a SMMA in accordance with Stipulation IX unless the SHPO recommends that a SMMA is not appropriate. If a SMMA is developed and no other provisions of this PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
- e. When no mutually acceptable relocation site is identified or the SHPO recommends that a SMMA is not appropriate, the City shall immediately notify the ACHP and initiate the consultation process set forth in 36 CFR Section 800.6.

E. Demolition

- 1. If demolition of an Historic Property is an Undertaking or part of an Undertaking subject to this PA, the City shall forward documentation to the SHPO that explains the need for demolition, includes an independent structural analysis of the Historic Property (if demolition of the property is required in whole or in part due to a lack of structural integrity), summarizes alternatives considered, discusses future plans for the site, sets forth a mitigation plan and includes comments received from the public. If the SHPO does not respond to the City's submittal within 30 (thirty) calendar days following receipt, the City shall initiate the consultation process set forth in 36 CFR Section 800.6.
- 2. If the SHPO agrees to the proposed demolition and determines that development and execution of a SMMA in accordance with Stipulation IX is appropriate, the City and the SHPO shall proceed with development and execution of a SMMA. If no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
- 3. When the SHPO does not agree to the proposed demolition or determines that development of a SMMA is not appropriate, the City shall

immediately notify the ACHP and initiate the consultation process set forth in 36 CFR Section 800.6.

F. New Construction and Relocation of Non-Historic Properties

1. The City shall ensure that the design of any new construction, in-fill construction or construction of additions to Historic Properties is compatible with the historic qualities of the Historic Property, of any historic district or of adjacent historic buildings in terms of size, scale, massing, color, features, and materials and that the design is responsive to the recommended approaches for new construction set forth in the Standards. In addition, the City shall ensure that any proposal to move a non-historic property next to a Historic Property or into a historic district as well as any subsequent work on the exterior of the non-historic property is responsive to the recommendations set forth in the "District/Neighborhood" section of the Standards.
 - a. The City shall review appropriate project documents to determine conformance of the Undertaking to the design requirements set forth in Section F.1 of this Stipulation VIII.
 - b. If the City determines that the Undertaking conforms and if no other provision of the PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
 - c. If the City determines that the Undertaking does not conform or would otherwise result in an adverse effect to Historic Properties, the City shall recommend changes to ensure that the Undertaking conforms or that adverse effects can be avoided. If the recommended changes are adopted, the City shall determine that the Undertaking conforms to the design requirements set forth in Section F.1 of this Stipulation VIII and will not otherwise adversely affect Historic Properties. If no other provisions of this PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
 - d. If the recommended changes are not adopted, the City and the SHPO shall consult for a period of time not to exceed thirty (30) calendar days to develop a SMMA in accordance with Stipulation IX. unless the SHPO recommends that the development of a SMMA is not appropriate. If a SMMA is developed and executed and no other provision of the PA requires the City to take further

steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.

- e. When an Undertaking does not conform to the design requirements set forth in Section F.1 of this Stipulation VIII., will otherwise adversely affect Historic Properties, or the SHPO recommends that development of a SMMA is not appropriate, the City shall immediately notify the ACHP and initiate the consultation process set forth in 36 CFR Section 800.6.

IX. RESOLUTION OF ADVERSE EFFECTS

- A. When required by the terms of this PA, the City and the SHPO shall consult for a period of time not to exceed thirty (30) calendar days to determine if Historic Properties affected by an Undertaking should be treated in accordance with the Standard Mitigation Measures set forth in Appendix B of this PA or if the consultation process set forth in 36 SFR Section 800.6 should be initiated.
 - 1. As part of this consultation, the City shall provide the SHPO with documentation that may include but may not necessarily be limited to an alternatives analysis, recent independent structural analyses or other assessments of a Historic Property's condition, cost estimates for rehabilitation, information about any economic, social or program-related considerations that should be taken into account, marketing studies and a draft SMMA prepared in accordance with Appendix B of this PA.
 - 2. If the City and the SHPO determine that the effects of the Undertaking may be resolved by executing and implementing a SMMA, the City and SHPO shall execute and the City shall implement a SMMA developed in compliance with Appendix B of this PA. The City shall promptly furnish the SHPO with a copy of the fully executed SMMA. If no other provision of this PA requires the City to take further steps; with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
 - 3. If the City and the SHPO cannot agree on the terms of a SMMA or if the SHPO does not respond to the City's request for consultation within the time frame applicable to this consultation, the City shall notify the ACHP and initiate the consultation process set forth in 36 CFR Section 800.6.
- B. The City and the SHPO shall not execute a SMMA under any of the following circumstances without first completing the consultation process set forth in 36 CFR Section 800.6:

1. When the SHPO determines that a SMMA is not appropriate for the Undertaking;
2. When the SHPO fails to respond within the time frame applicable to this consultation;
3. When the Undertaking will adversely affect a National Historic Landmark;
4. When human remains are present within the Undertakings APE.

X. EMERGENCY UNDERTAKINGS

- A. This Stipulation shall apply only to situations in which a duly authorized local official has determined in accordance with applicable law, that an imminent threat to the public health and safety exists and that such threat must be removed forthwith ("Emergency Conditions").
- B. When the City determines that Emergency Conditions require immediate demolition of a Historic Property in connection with an activity subject to this PA, the City shall in writing, concurrently notify the Council, the Landmarks Preservation Advisory Board, the State Historic Preservation Officer and any Indian Tribe that may attach religious and cultural significance of the proposed removal and afford these parties a maximum of seven (7) days to comment on the proposed demolition. Any notification by the City shall be accompanied by documentation that includes, but is not limited to, a description of the Emergency Conditions, the name location and significance of the affected Historic Property, an assessment of the historic Property's current condition supplemented by photographs, and the date by which the Emergency Conditions must be abated. If the City determines that circumstances do not permit seven days for comment, the City shall notify the Council, the SHPO, the LPAB and the Indian tribe and invite any comments within the time available
- C. The City shall require that any mitigation measures recommended by the Council, the LPAB, the SHPO and any affected Indian Tribe be implemented if the City deems such measures to be feasible.
- D. The City shall document the actions taken pursuant to this Stipulation in the manner prescribed by Stipulation XIX.A.
- E. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106. [36 CFR §800.12(d)].

XI. CONSIDERATION AND TREATMENT OF ARCHEOLOGICAL RESOURCES

- A. The following types of ground-disturbing activities have the potential to affect archeological resources:
1. Ground disturbing site preparation, such as grading or excavation, in connection with property relocation or new construction.
 2. Footing and foundation work occurring more than two feet from any existing footings or foundations, including soils improvement/densification techniques.
 3. Installation of underground utilities such as sewer and water lines, storm drains, electrical, gas or leach lines and septic tanks, except where installation is restricted to areas previously disturbed by installation of these utilities.
 4. Installation of underground irrigation or sprinkler systems, except where installation is restricted to areas previously disturbed by such systems.
- B. When an Undertaking may include the foregoing types of ground-disturbing activities and the Undertaking does not qualify as an exception under this provision, the City shall request that the Northwest Information Center of the California Historical Resources Information System at Sonoma State University, Rohnert Park, California ("IC") conduct a records search for the Undertaking's APE.
1. Exceptions
 - a. The City is NOT required to request the IC for a records search under the following circumstances:
 - i. When the ground-disturbing activities set forth in Sections A.2, A.3 and A.4 of this stipulation will occur exclusively within the legal lot lines of a parcel used as a single family residence, or
 - ii. When the ground-disturbing activities set forth in the Sections A.2, A.3 and A.4 of this stipulation will be outside the legal lot lines of a single family residence and will be confined to areas previously disturbed by such activities.
- C. Unless the IC informs the City that an archeological property is located within the Undertaking's APE or recommends that a qualified archeologist conduct a survey or an archival research of the APE, no further consideration of archeological resources by the City is required. If no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.

- D. If the IC informs the City that an archeological property is located within the Undertaking's APE or recommends that a survey be conducted, the City shall promptly furnish the SHPO with a copy of the IC's response and request the comments of the SHPO.
1. If the SHPO recommends that the APE should be surveyed or subject to archival research, the City shall engage a qualified archeologist to conduct the survey of the APE and prepare a written report.
 2. If the SHPO recommends that a survey is not necessary and the Undertaking's APE does not contain a known archeological resource, no further consideration of such resources by the City is required. If no other provisions of this PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
 3. If the Undertaking's APE contains known archeological resources or such resources are identified through a survey, the City shall cause the Undertaking to be redesigned if feasible to avoid said resources and shall notify the SHPO of these actions. If no other provisions of this PA require the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed without further review.
 4. If the Undertaking cannot be redesigned to avoid the resources, the City shall engage a qualified archeologist to evaluate the resources in accordance with the NRHP Criteria set forth in 36 CFR Section 60.4. This evaluation shall be documented by the archeologist in a written report submitted to the SHPO for review.
 - a. If the SHPO informs the City that the resources are Historic Properties, the City shall engage a qualified archeologist to develop a written data recovery and artifact disposition/curation plan that is consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (36 CFR Part 61, Appendix A) that takes into account the ACHP's publication, *Treatment of Archeological Properties* and subsequent revisions made by the ACHP as well as any applicable SHPO guidance, and whose disposition/curation provisions are consistent with applicable state law. Once approved by the SHPO, the City shall ensure that the plan is implemented by a qualified archeologist and that the results of the data recovery are documented in writing by the archaeologist in accordance with

applicable professional standards and guidelines. When data recovery has been completed and if no other provisions of this PA require the City to take further steps in respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A. and may authorize the Undertaking to proceed.

- b. If the SHPO informs the City that the resources are not Historic Properties, no further consideration of these resources by the City is required. If no other provision of the PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed.

- E. As used in this Stipulation, "qualified archeologist" means a person who at a minimum meets the *Secretary of the Interior's Professional Qualifications Standards* (36 CFR Part 61, Appendix A) for archeology.
- F. The SHPO shall respond to any request for comments submitted under this Stipulation within fifteen (15) calendar days following receipt. The City may assume that the SHPO does not object to any action deemed by the City to be appropriate under this Stipulation if the SHPO fails to respond within this time frame. If no other provisions of the PA require the City to take further steps in respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XIX.A and may authorize the Undertaking to proceed.

XII. REVIEW OF CHANGES TO APPROVED UNDERTAKINGS

- A. The City shall promptly notify the SHPO upon discovery if:
 - 1. Previously approved scopes of work, plans or specifications for an Undertaking are changed so that, (a) the Undertaking is no longer exempt from review pursuant to Stipulation IV.C and (b) the nature of the change is such that the terms of the PA require the City to consult the SHPO about the modified Undertaking; or
 - 2. Amendments to previously executed SMMA's are proposed.
- B. If such changes or amendments are proposed and if not otherwise precluded by other Stipulations in the PA, the City and the SHPO shall comply with the provisions of Stipulation VIII in making any such changes or amendments to the Undertaking or to any SMMA.

XIII. DISCOVERIES AND UNANTICIPATED EFFECTS

- A. The City shall notify the SHPO as soon as possible if it appears that an Undertaking may affect a previously unidentified property that may be eligible for inclusion in the NRHP or affect a known Historic Property in an unanticipated manner. The City may suspend construction of all or part of the Undertaking in the vicinity of the discovery and require that reasonable measures be taken to avoid or minimize harm to the property until the City concludes consultation with the SHPO.
- B. If the newly discovered property has not previously been included in or determined eligible for inclusion in the NRHP, the City may assume that the property is eligible for purposes of this PA. The City shall notify the SHPO at the earliest possible time and consult to develop actions that take the effects of the Undertaking on the property into account. The City shall notify the SHPO of any time constraints, and the City and the SHPO shall mutually agree on the time frames for this consultation. The City shall provide the SHPO with written recommendations that take the effect of the Undertaking into account. If the SHPO does not object to the City's recommendations within the agreed upon time frame, the City shall require the scope of work for the Undertaking to be modified as necessary to implement its recommendations.

XIV. PUBLIC INVOLVEMENT

- A. The City shall identify any public interest in the Undertakings subject to this PA; by informing the public about Historic Properties when complying with the public participation requirements set forth in 24 CFR Part 58 and in the regulations for any other Program delegated by HUD to the City as may be applicable.
- B. The City or the SHPO shall invite interested persons to participate in the development of SMMA's pursuant to Stipulation VIII and IX and to participate as interested parties whenever this PA mandates the consultation set forth in 36 CFR Section 800.6.
- C. The City shall, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making. The City may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of 36 CFR part 800, if they provide adequate opportunities for public involvement consistent with that subpart.

- D. At any time during implementation of the measures stipulated in this PA, should a member of the public raise an objection pertaining to delineation of an APE or to treatment of a Historic Property, the City shall notify the SHPO immediately of the objection and then proceed to consider the objection and consult, as needed, with the objecting party and the SHPO, for a period of time not to exceed fifteen (15) calendar days. If the City is unable to resolve the conflict, the City shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 C.F.R. Section 800.2(b)(2). The City, in reaching a final decision regarding the dispute, shall take any ACHP comment provided into account. The City shall also consult with its Certified Local Government (CLG) Coordinator. The City's responsibility to carry out all other actions under this PA that are not the subject of the dispute shall remain unchanged.
1. If the objection pertains to a decision by the City and the SHPO to implement a SMMA pursuant to Stipulations VIII Or IX, the City shall immediately suspend work on the Undertaking and shall initiate consultation with the SHPO and the ACHP pursuant to 36 CFR Section 800.6.

XV. TIME PERIODS FOR SHPO REVIEW

Unless otherwise stipulated, the SHPO shall respond within thirty (30) calendar days of receipt to any documentation submitted by the City pursuant to the requirements of this PA. If the SHPO does not respond within this time frame or within the time frames otherwise stipulated by this PA, the City shall proceed in accordance with the specific Stipulation(s) that apply to the SHPO review of the documentation submitted.

XVI. DISPUTE RESOLUTION

- A. Should any signatory object within the time frames specified in this PA to any plans, specifications, documents or actions provided for review pursuant to this PA, the City shall consult with the objecting party to resolve the objection. If the City determines within fifteen (15) calendar days of receipt of any such objection that such objection cannot be resolved, the City shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 C.F.R. 800.2(b)(2).
1. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP will either:
 - a. Provide the City with recommendations or comments that the City shall take into account in reaching a final decision regarding the dispute, or
 - b. Notify the City that it will comment in accordance with 36 CFR Section 800.7(c) and proceed to comment.

2. If the ACHP fails to provide recommendations or to comment within the specified time period, the City may implement that portion of the Undertaking subject to dispute under this Stipulation in accordance with any documentation as submitted and amended by the City.
3. Any ACHP comments provided to the City in response to such a request shall be taken into account by the City in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute. Any recommendation or comment provided by the ACHP will be interpreted to pertain only to the subject of the dispute. The responsibility of the City to carry out all actions under this PA that are not the subject of the dispute shall remain unchanged.

XVII. ANTICIPATORY DEMOLITION

The City agrees that it will not assist any party in avoiding the requirements of this PA or the National Historic Preservation Act, or, having legal power to prevent it, allow a significant adverse effect to an Historic Property to occur except when any such significant adverse effect is part of an approved SMMA. (National Historic Preservation Act of 1966, §110k) The City may, after consultation with the ACHP, determine that circumstances justify granting such assistance despite the adverse effects created or permitted by the party to be assisted.

XVIII. MONITORING

The SHPO and the ACHP may monitor or review activities carried out pursuant to this PA, and the ACHP shall review any activities if requested. The City shall cooperate with the SHPO and the ACHP in carrying out these monitoring and review activities by making all relevant non-privileged files available for inspection, upon reasonable notice from the SHPO and ACHP.

XIX. DOCUMENTATION, REPORTING AND REVIEW OF ACTIVITIES

- A. The City shall document in writing all actions taken pursuant to this PA, retain this documentation in its projects files, and include such documentation as necessary in the Programmatic Agreement Compliance Report(s) ("PACR") required pursuant to Section B of this Stipulation.
- B. The City shall provide the SHPO and the ACHP with a PACR on June 30 and December 31 of every year so long as this PA is in effect. The City shall also offer copies of PACR to the San Francisco area office of the U.S. Department of Housing and Urban Development (HUD) and shall provide HUD with copies, if HUD so requests.
 1. The PACR shall: summarize activities carried out under the terms of this PA; list by property address all Undertakings, excluding those set forth in Appendix A, that were reviewed pursuant to the PA; and document all

decisions made with respect to "Identification and Evaluation of Historic Properties", "Treatment of Historic Properties", "Resolutions of Adverse Effects", and "Considerations and Treatment of Archeological Resources", include copies of all SMMAs and present the views of the City regarding the usefulness of this PA in promoting the efficiency and effectiveness of both the Programs and the consideration of Historic Properties.

- C. The City shall make PACR's available for public inspection and comment and invite the public to submit any comments to the ACHP, the SHPO and the City.
- D. The signatories to this PA shall review PACR's and any comments submitted pursuant to Section C of this Stipulation. Based on that review, the signatories will determine whether this PA should be amended in accordance with Stipulations XX.

XX. AMENDMENTS

- A. Any party to this PA may request that it be amended whereupon the parties shall consult in accordance with 36 C.F.R. Sections 800.14 to consider such amendments.
- B. Any resulting amendments or addenda shall be developed and executed by the parties in the same manner as the original PA.

XXI. CITY STAFFING

- A. The Certified Local Government Coordinator, for purposes of this agreement, must meet the minimum professional qualifications for history or architectural history as defined in 36 C.F.R. Part 61.
- B. The City will assign staff to assure that work is carried out as planned, and will maintain records for each project that documents compliance with the terms of this PA, and will retain the services of an Archeological Consultant ("AC") as the need may arise in accordance with Section IV.C of this PA.

XXII. TERMINATION

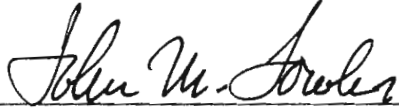
Any party to this PA may terminate the PA by providing one hundred eighty (180) calendar days notice to the other consulting parties, provided that the consulting parties shall consult during the period before termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the City will comply with 36 C.F.R. Section 800 with respect to individual Undertakings covered by this PA.

XXIII. FAILURE TO COMPLY WITH THE PROGRAMMATIC AGREEMENT

In the event the City cannot carry out the terms of this PA, the City shall not take or sanction any action or make any commitment that would result in an adverse effect to Historic Properties or that would foreclose the ACHP's consideration of modifications or alternatives to the Undertakings, and the City will comply with 36 C.F.R. Section 800 with regard to each individual Undertaking subject to this PA.

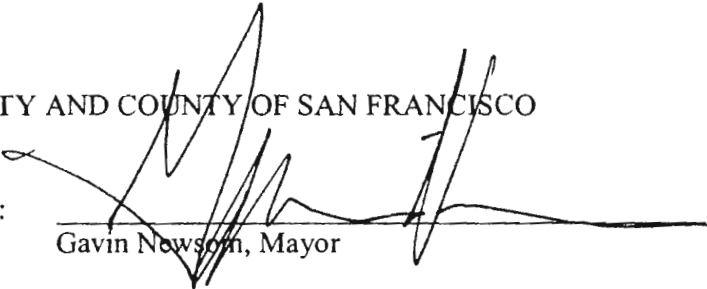
EXECUTION AND IMPLEMENTATION of this PA evidences that the City and County of San Francisco has afforded the ACHP a reasonable opportunity to comment on these Programs and that the City has satisfied its Section 106 responsibilities for all individual Undertakings of the Programs covered by this PA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 
John Fowler, Executive Director.

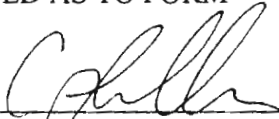
Date: 1/19/07

CITY AND COUNTY OF SAN FRANCISCO

By: 
Gavin Newsom, Mayor

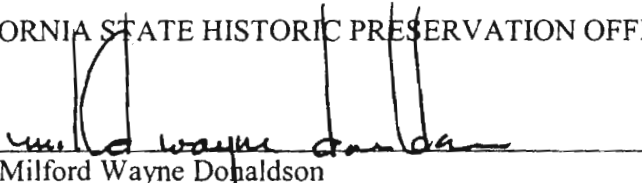
Date: 12-8-06

APPROVED AS TO FORM

By: 
DEPUTY CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO

Date: 11-21-06

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: 
Milford Wayne Donaldson

Date: 18 DEC 2006

APPENDIX A

The following Undertakings require only administrative review by the CITY and not the SHPO or the ACHP pursuant to Stipulation IV of this PA.

1. Demolition and rehabilitation of facilities that are not Historic Properties, except when a proposed addition of such facilities may affect a surrounding or adjacent historic district;
2. Repair, replacement and installation of the following systems provided that such work does not affect the exterior of a property or require new duct installation throughout the interior:
 - a. electrical work;
 - b. plumbing pipes and fixtures, including water heaters;
 - c. heating and air conditioning system improvements;
 - d. fire and smoke detector system installation;
 - e. sprinkler system installation;
 - f. ventilation system installation;
 - g. interior elevator or wheelchair conveying system; and
 - h. bathroom improvements where work is restricted to an existing bathroom.
3. Repair or partial replacement of porches, decks, cornices, exterior siding, doors, thresholds, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form;
4. Installation of new shelf space or improvement of such, and repair, replacement, and installation of cabinets, countertops, and appliances;
5. Repair or replacement of fencing, gates and freestanding exterior walls when work is done in-kind to match existing materials and form;
6. Repair, replacement or installation of windows and storm windows (exterior, interior, metal or wood) provided these match the shape, size and materials of the historic windows and provided that, for storm windows, the meeting rail coincides with that of the historic window. Color should match trim. If reproduction of damaged elements must be accomplished with new materials then any reproduction or replacement shall be in kind;
7. Installation of new window jambs, jamb liners, and screens;
8. Caulking, weather-stripping, reglazing and repainting of windows;
9. Roof repair or replacement of historic roofing with materials that closely match existing materials and forms. Cement asbestos shingles may be replaced with asphalt-based shingles;

10. Repair, replacement or installation of gutters and down spouts;
11. Repainting and refinishing of exterior or interior surfaces, including but not limited to walls, floors, and ceilings, provided that harmful surface preparation treatments including but not limited to water blasting, sandblasting, and chemical removal are not used and that work is done in-kind to match existing material and form;
12. Repair or replacement of awnings and signs when work is done in-kind to closely match the existing material and form;
13. Installation of insulation, with the exception of area formaldehyde form insulation or any other thermal insulation with a water content into wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item;
14. Installation or replacement of security devices, including dead bolts, door locks, window latches, security grilles, surveillance cameras and door peepholes, and electronic security systems;
15. Installation of grab bars, handrails, guardrails and minor interior and exterior modifications for disabled accessibility;
16. Modifications of and improvements to path of travel for persons with disabilities from, to and within a building, structure, playground, or park.
17. Repair or replacement of interior stairs when work is done in-kind to match existing material and form;
18. Replacement of non-significant flat stock trim
19. Repair or replacement of existing roads, driveways, sidewalks, curbs, curb ramps, speed bumps and gutters provided that work is done in-kin to closely match existing materials and forms and provided that there are only minimal changes in the dimensions and configurations of these features;
20. Repair, replacement and installation of the following, regardless of their location within or adjacent to an historic district:
 - a. Park furniture, including benches, picnic tables, chairs, planter boxes, barbecue pits and trellises.
 - b. Outdoor yard improvements, including play structure, matting, fencing, gates, play ground lighting, drinking fountain, play ground equipments, path of travel and ramps.
 - c. Landscaping, including tree planting, tree pruning, shrub removal, play court resurfacing or sodding, irrigation, murals and painting of game lines for school play yards and grounds.

21. Repair, replacement or installation of water, gas, storm, and sewer lines when the work qualifies as an exemption pursuant to Stipulation XI.B.
22. Acquisition of properties which is limited to the legal transfer of ownership with no physical improvements proposed;
23. Temporary bracing or shoring;
24. Anchoring of masonry walls to floor systems so long as anchors are embedded and concealed from exterior view such as in the HILTI systems;
25. Stabilization of foundations and addition of foundation bolts;
26. Rental and installation of scaffolding;
27. Installation of temporary, reversible barriers such as chain link fences and polyethylene sheeting or tarps;
28. Repair and replacement of any interior or exterior elements when the repair or replacement is done in-kind to closely match existing materials.

APPENDIX B
STANDARD MITIGATION MEASURES AND ADVERSE EFFECTS

When deemed appropriate by the City in consultation with the SHPO, the City and the SHPO may develop and execute without ACHP participation a written Standard Mitigation Measures Agreement (“SMMA”) that includes one or more of the following Standard Mitigation Measures (SMMs) for Undertakings not listed in Stipulation IX.B. The City must submit copies of all fully executed SMMA’s to the SHPO and retain copies of all such SMMA’s in accordance with Stipulations IX.A.2 and XIX.A of this PA.

- A. Prior to demolition, alteration or relocation of an Historic Property, the City shall:
 - 1. Contact the Historic American Buildings Survey (HABS)/Historic Area Engineering Record (HAER)/Historic American Landscape Survey (HALS) Coordinator, Oakland office of the Pacific Western Regional Office of the National Park Service, or its successor to determine what level and kind of recordation is required for the Property. Unless otherwise agreed to by HABS/HAER, the City shall ensure that all documentation is completed and accepted by HABS/HAER before it authorizes the activity that would adversely affect the Property to proceed, and that copies of this documentation are made available to the SHPO and to appropriate local archives designated by the SHPO; OR
 - 2. Record the Property in accordance with a Recordation Plan (“RP”) developed by the SHPO.
 - a. At a minimum, RPs shall establish recordation methods and standards.
 - b. The City shall consult with the SHPO to identify appropriate archives where the City will deposit copies of the recordation materials.
 - c. The City and the SHPO may mutually agree to waive the recordation requirement if the affected Historic Properties will be substantially repaired in accordance with the Standards.
- B. The City, in consultation with the SHPO, shall identify appropriate parties to receive salvaged architectural features. The City shall ensure that significant architectural features are salvaged before demolition or alteration and that they are properly stored and protected. When feasible and appropriate, salvaged architectural features shall be reused in other preservation projects.
- C. The City shall ensure that, where the SHPO has determined that the treatment of the Historic Properties or the design of the new buildings cannot feasibly meet the Standards or any SHPO-approved design guidelines, the work shall be carried out in

accordance with construction documents or work write-ups that have been reviewed and approved by the SHPO.

- D. The City shall ensure that a Marketing Plan (“MP”) proposed either by the City or the SHPO is implemented before demolition or relocation of Historic Properties is authorized. The MP shall include those elements specified in Items 1-4, pages 33-34 of the ACHP’s Publication, Preparing Agreement Documents (1989). The City shall review all purchase offers in consultation with the SHPO.

APPENDIX C
DEFINITIONS

"Act"	"Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §470.
"ACHP"	"ACHP" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.
"Agency Official"	"Agency Official" means the Federal agency head or a designee with authority over a specific Undertaking, including any State or local government official who has been delegated legal responsibility for compliance with §106 and §110(f) in accordance with law.
"Archaeological Site Records and Literature Search" (ARLS)	"Archaeological Site Records and Literature Search" means the document search for the Undertaking's APE completed by the Eastern Archaeological Information Center of the California Historical Resources Information System at the University of California, Riverside ("IC"), or its successors.
"Area of Potential Effects" (APE)	"Area of Potential Effects" means the geographic area or areas within which an Undertaking may cause changes in the character or use of historic properties, if any such properties exist.
"Certified Local Government"	"Certified Local Government" means a city or county that has been certified by the National Park Service pursuant to §101 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 61.
"City"	"City" means the City and County of San Francisco.
"Historic Property"	"Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes, for purposes of this PA, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register of Historic Places listing

	criteria.
“Local Government”	“Local Government” means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.
“National Register Criteria”	“National Register Criteria” means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).
“National Register of Historic Places” (NRHP)	“National Register of Historic Places” (NRHP) maintained by the Secretary of the Interior and administered by the National Parks Service, is the official list of the Nation’s cultural resources worthy of preservation.
“National Register”	“National Register” means the National Register of Historic Places maintained by the Secretary of the Interior.
“Programmatic Agreement Compliance Report” (PACR)	“Programmatic Agreement Compliance Report” (PACR) means the report provided twice a year to the SHPO, ACHP, and U.S. Department of Housing and Urban Development (“HUD”) which summarizes activities carried out under the terms of the Programmatic Agreement.
“Programmatic Agreement” (PA)	“Programmatic Agreement” means the agreement pursuant to 36 CFR §800.14(b), between the City, SHPO and Advisory Council on Historic Preservation to allow for expedited review of HUD funded projects affecting cultural resources.
“Secretary”	“Secretary” means the Secretary of the Interior
“Standard Mitigation Measures Agreement” (SMMA)	“Standard Mitigation Measures Agreement” means the mitigation agreement executed between the City and the SHPO without ACHP participation.
“Standards”	“Standards” meant the <i>Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, & Reconstructing Historic Buildings.</i>
“State Historic Preservation Officer” (SHPO)	“State Historic Preservation Officer” means the official appointed or designated pursuant to §101(b)(1) of the Act to administer the State Historic Preservation program or a representative designated to act for the State Historic Preservation Officer.

"Undertaking"	"Undertaking" means any project, activity, or Program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.
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