

FEB 28 1996

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PROGRAMMATIC AGREEMENT
BY AND AMONG
THE CITY OF SAN JOSE, THE ADVISORY COUNCIL ON
HISTORIC PRESERVATION, AND THE CALIFORNIA STATE
HISTORIC PRESERVATION OFFICER REGARDING
REHABILITATION OF HISTORIC PROPERTIES

WHEREAS, the City of San Jose (City) proposes to administer and fund projects and programs in the City of San Jose, California with funds from the Community Development Block Grant program (CDBG) of the Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974; the Rental Rehabilitation Block Grant Program of HUD under Section 17 of the U. S. Housing Act of 1937; the McKinney Homeless Programs including the Emergency Shelter Grants Program, Transitional Housing, Permanent Housing for the Homeless Handicapped, and Supplemental Assistance for Facilities to Assist the Homeless; the HOME program; Housing Opportunities for People with AIDS (HOPWA), and any other program delegated to the City by HUD pursuant to 24 CFR Part 58;

WHEREAS, the City has determined that the administration of these projects 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 (Council) pursuant to 36 CFR FPO.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 U. S. C. 470f);

NOW, THEREFORE, the City, the SHPO, and the Council agree that the programs shall be administered in accordance with the following stipulations to satisfy the City of San Jose's Section 106 responsibilities for all individual undertakings of the programs involving rehabilitation.

Stipulations

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

I. APPLICABILITY OF AGREEMENT

The City shall comply with the stipulations set forth in this Agreement for all undertakings within the City, which involve the exterior or interior rehabilitation of buildings that are assisted entirely or in part by funds from the HUD programs listed above. The review established by this Agreement shall be completed prior to the City's final approval of any application for assistance under these programs, and prior to the City or the property owner altering the property or initiating or making an irrevocable commitment for construction that

may affect a property which is fifty (50) years of age or older. Any undertaking that does not qualify for review under the terms of this Agreement shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

II. UNDERTAKINGS NOT REQUIRING REVIEW BY THE SHPO OR THE COUNCIL

- A. Undertakings not requiring review by the SHPO or the Council are enumerated in Attachment "A". An undertaking consisting of activities enumerated in Attachment "A", as well as activities not listed in Attachment "A", shall be reviewed pursuant to the terms of this Agreement. An undertaking, which is exempted from review under Attachment "A", unless also exempt from review under the provisions of Stipulation II.B., below, nevertheless will be in conformity with the California State Historic Building Code, [State of California, Title 24, Building Standards, Part 8 (SHBC)].
- B. Undertakings affecting only properties that are less than fifty (50) years old do not require review pursuant to the terms of this Agreement.
- C. Undertakings which are limited to the rehabilitation of interior spaces within single family and duplex residential structures, where such work will not be visible from the exterior of the structure, do not require review pursuant to this Agreement.

III. AREA OF POTENTIAL EFFECTS

It is agreed for purposes of this Agreement, with the exception of Stipulation V.B., that the Area of Potential Effects (APE) will be limited to the individual building when a proposed undertaking is limited to the rehabilitation of the building's existing interior or exterior features.

IV. IDENTIFICATION OF HISTORIC PROPERTIES

- A. The City shall review all existing information on any property within the APE that may be affected by the use of these funds, including the National Register of Historic Places and lists of historic properties maintained by the City.
 - 1. If the property proposed for rehabilitation is listed on the National Register, or has already been determined eligible for inclusion in the National Register, the City shall proceed with the review of the undertaking pursuant to Stipulation V., unless exempted under Stipulation II.
 - 2. If the property has been determined by the City, in written consultation with the SHPO, within the last five (5) years prior to the current undertaking, to be ineligible for inclusion in the National Register, then the undertaking may proceed without further review under the terms of this Agreement.

- B. If the property proposed for rehabilitation is not listed in the National Register, has not been evaluated for National Register eligibility within the last five (5) years, and is at least 50 years old, then the City shall submit the documentation required pursuant to 36 CFR 800.4 including a completed California Historic Resources Inventory form (DPR523) to the SHPO for review, included in Attachment "B" to this Agreement. SHPO may request other information, if necessary. The City shall apply the National Register criteria and notify the SHPO of its determination in this submittal.
1. If the SHPO agrees with the City that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this Agreement, and shall hereinafter be referred to as a historic property. The City shall continue consultation in accordance with the terms of this Agreement for all such properties.
 2. If the SHPO agrees with the City that the criteria are not met, the property shall be considered ineligible for inclusion in the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this Agreement notifies the City in writing that it has determined that changing perceptions of significance warrants a property's reevaluation. Such properties require no further review under this Agreement.
 3. If the SHPO disagrees with the City's determination regarding eligibility, the City shall consult further with the SHPO to reach agreement. If agreement cannot be reached, the City shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations, 36 CFR Part 63.

V. ASSESSMENT OF EFFECTS

- A. Prior to undertaking any activities that are not exempt under Stipulation II, the City shall provide the SHPO with clear, unobstructed photographs of the historic property and a general work description which adequately details the scope of work for each rehabilitation project that may affect a historic property, including work write-ups, working drawings, and specifications, as appropriate, and any additional documentation necessary to understand the undertaking. The City shall ensure that the SHBC will be employed in all rehabilitation projects. The City shall apply the Criteria of Effect and Adverse Effect (36 CFR 800.9) to any historic property that may be affected by an undertaking, and will review the scope of work to determine if the undertaking conforms to the SHBC as well as the recommended approach contained in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards).
1. If an undertaking has the potential to affect any archaeological property that may be eligible for inclusion in the National Register, the City shall redesign the project to

avoid the archaeological property and shall provide the SHPO with documentation regarding the property and the steps it has taken to avoid such property.

2. If the City determines that an undertaking conforms to the Standards and complies with the SHBC, the City shall notify the SHPO in writing of this finding. If the SHPO does not object in writing to this determination within thirty (30) days after receipt, the undertaking shall be considered to not adversely effect historic properties, and may proceed as submitted without further review.
 3. If the City or the SHPO finds that an undertaking does not conform to the Standards or comply with the SHBC, the undertaking will be considered to adversely affect historic properties. The SHPO may recommend modifications to the scope of work or conditions under which the undertaking would be found to conform to the Standards and the SHBC in its response to the City. The City shall consult further with the SHPO to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the City shall initiate consultation with the SHPO and Council in accordance with 36 CFR 800.5.
 4. The City shall notify the SHPO of any substantial changes to the scope of work that would be detrimental to the historic integrity of the building, and shall provide the SHPO with the opportunity to review and approve such changes. If the changes do not conform to the Standards or comply with the SHBC, the parties shall consult further and the City of San Jose will initiate consultation with the SHPO and Council in accordance with 36 CFR 800.5(e) if an adverse effect cannot be avoided.
 5. The City shall provide completion photographs on each rehabilitation project to the SHPO upon request and shall retain documentation of the rehabilitation, including the work write-ups and photographs as part of its permanent records.
- B. Additionally, the City shall consult in writing with the SHPO to determine if an undertaking which includes ground disturbing activities has the potential to affect archaeological properties that may be eligible for inclusion in the National Register. The City shall investigate historical records and pertinent information available at the Northwest Information Center at Sonora State University and shall complete any further studies recommended by the SHPO to determine if the undertaking has the potential to affect archaeological properties that may be eligible for inclusion in the National Register. If it is agreed that the following ground disturbing activities have the potential to affect historic properties: excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines, and septic tanks, except where installation is restricted solely to areas previously disturbed by the installation of these utilities; and, installation is restricted to these areas previously disturbed by the installation of such systems.

1. If an undertaking has the potential to affect any archaeological property that may be eligible for inclusion in the National Register, the City shall redesign the project to avoid the archaeological property and shall provide the SHPO with documentation regarding the property and the steps it has taken to avoid such property.
2. If the undertaking cannot be redesigned to avoid the archaeological property, the City shall develop a plan in consultation with the SHPO to complete the identification, evaluation, and, if necessary, mitigation of the property. If the City and the SHPO cannot agree that the potential to affect archaeological properties exists or cannot agree on a plan for the consideration of such properties, the City will initiate consultation with the SHPO and Council in accordance with 36 CFR 800.5(e).

VI. COMBINED REVIEWS OF ELIGIBILITY AND EFFECT

The City may elect to submit the documentation set out in Stipulations IV. and V. above in one package for the SHPO's review. The SHPO will provide comments on the City of San Jose's determinations of eligibility and effect within thirty (30) days after receipt of such submission. The City will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations IV. and V. to determine if additional review by the SHPO or the Council is required to fulfill the terms of this Agreement.

VII. SHPO RESPONSIBILITIES

- A. The SHPO is permitted thirty (30) calendar days after the receipt of any submitted documentation to review and comment on such material, with the exception of Stipulation V.A.1. If the SHPO does not provide comments within this time period, the City of San Jose may assume that the SHPO does not object to its determination.
- B. The SHPO will provide technical assistance and training on the application of the Standards and the SHBC to the City of San Jose to the extent possible.

VIII. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these programs, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or a known historic property may be affected in an unanticipated manner, the City will assume its responsibilities pursuant to 36 CFR 800.11(b)(2).

IX. REPORTING

The City shall forward an annual report of all undertakings covered by the terms of this Agreement to the SHPO, and Council. This report will list the undertakings that were exempted under Stipulation II and those that were reviewed under the terms of Agreement. The undertakings should be listed by property address.

X. MONITORING

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

XI. DISPUTE RESOLUTION

If the City and the SHPO are unable to resolve any disagreement arising under the provisions of this Agreement, the City of San Jose shall, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the project, the basis for the dispute, and request the comments of the Council in accordance with 36 CFR 800.5(e).

XII. CITY STAFFING

The City will assign staff to assure that rehabilitation work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by the City. Such staff will also monitor undertakings limited to work item enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed. Responsible City staff will certify that work was carried out as planned, and will maintain records for each project which document compliance with the terms of this Agreement.

XIII. AMENDMENTS

Any party to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.13 to consider such amendment. No amendment to this Agreement will go into effect without written concurrence of all consulting parties.

XIV. 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 the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the City of San Jose will comply with 36 CFR 800.4 - 800.6 with respect to individual undertakings covered by this Agreement.

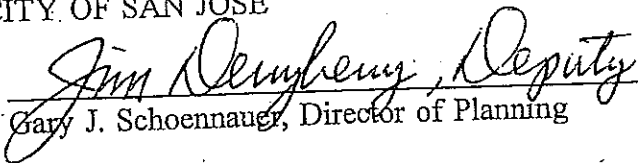
XV. FAILURE TO COMPLY WITH TERMS OF AGREEMENT

In the event the City cannot carry out the terms of this Agreement, it shall not take or sanction any action or make any irreversible commitment that would result in an adverse affect to historic properties or would foreclose the Council's consideration of modifications or


alternatives to the undertaking, and the City will comply with 36 CFR 800.4 - 800.6 with regard to each individual undertaking covered by this Agreement.

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

THE CITY OF SAN JOSE

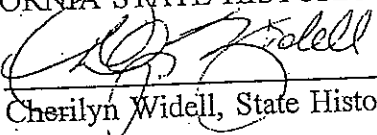
By: 
Gary J. Schoenauer, Director of Planning

Date: 12/6/95

By: 
Alex Sanchez, Director of Housing Department

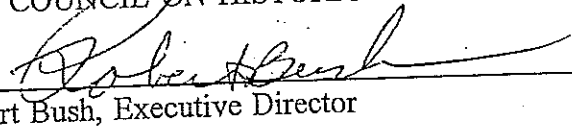
Date: 12/10/95

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: 
Cheryl Widell, State Historic Preservation Officer

Date: 1/12/96

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 
Robert Bush, Executive Director

Date: 2/9/96

ATTACHMENT A
TO
PROGRAMMATIC AGREEMENT FOR
HOUSING REHABILITATION PROGRAM

Housing Rehabilitation Program Activities Not Requiring Review:

1. On structures 50 years old or greater:

- a. Any interior work within private living spaces (i.e., single-family dwellings, duplex units and multi-family apartments or condominium units, but not including lobbies, corridors, stairways, elevators or other publicly accessible interior spaces in multi-family structures) which does not affect the exterior or exterior appearance of the building, including but not limited to repair, replacement or installation of: electrical wiring and fixtures; plumbing and plumbing fixtures; furnaces and other mechanical equipment; fire or smoke detectors; cabinetry; appliances; door; floor coverings and refinishing; thermal insulation; handicap accessibility features; and painting.

In lobbies or other publicly accessible interior spaces in multi-family structures:
(1) repainting of existing painted surfaces if destructive preparation treatments are not used; and (2) repair or replacement of floors, walls and ceiling s(including decorative trim and other features) when the repair or replacement is done in-kind to match the existing materials and form.

- b. Exterior repainting, irrespective of color, of existing painted surfaces if destructive preparation treatments are not used, including but not limited to waterblasting, sandblasting and chemical removal.
- c. Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in-kind to match materials and form.
- d. Replacement of deteriorated window frames when the replacement is done in-kind to match the existing materials and form.
- e. Replacement of window panes in-kind or with double or triple glazing so long as glazing is clear and not colored, and replacement does not alter existing window frame materials and form.
- f. Caulking and weatherstripping with compatibly colored materials.

- g. Installation of security devices, including dead bolts, door locks, window latches, and door peepholes, and the installation of electronic security systems.
- h. Repair or replacement of fencing visible from the street when work is done in-kind to match existing materials and forms.
- i. Installation of fencing visible from the street where there is none pre-existing.
- j. Repair, replacement or installation of side- and rear-yard fencing, in accordance with local codes, using any which is not visible from the street, using any materials and form.
- k. Installation of front-yard landscaping.
- l. Repair or replacement of front driveways and walkways when work is done in-kind to match existing materials and form.
- m. Installation of paved driveways where there is none pre-existing.
- n. Repair or replacement of signs or awnings when work is done in-kind to match existing materials and form.
- o. Repair or replacement of roofs when work is done in-kind to match existing materials, except that existing wood shingles or shakes may be replaced with like-colored dimensional composition shingles.