

PROGRAMMATIC AGREEMENT
Between the
CITY OF TEMPE
And the
ARIZONA STATE HISTORIC PRESERVATION OFFICE
Regarding
HUD-FUNDED PROGRAM ACTIVITIES

WHEREAS, in response to numerous programs undertaken by the City of Tempe (CITY) with the US Department of Housing and Urban Development (HUD) funding sources;

WHEREAS, Maricopa County is the entity that certifies reviews and has acknowledged the Agreement and the participation of the other parties in the Agreement;

WHEREAS, the CITY has determined that implementation of these HUD-funded programs will result in Undertakings, as defined in 36 CFR Part 800.16, that may affect properties listed in or eligible for the National Register of Historic Places (Historic Properties) and/or culturally significant sites, and the CITY has consulted with the Arizona State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, implementing sections 106 and 110(f) of the National Historic Preservation Act (NHPA), 16 USC Section 470;

WHEREAS, as a result of funding sources administered by the CITY, the CITY will in turn provide monies and other assistance to programs, subrecipients and eligible applicants to alleviate the effects of housing deterioration and facilitate infrastructure improvements, demolition, new construction, renovation, reconstruction and acquisition activities. The CITY through its Community Development Department will be responsible for administering the terms of this Programmatic Agreement (Agreement),

WHEREAS, any and all activities that involve less than one acre shall be exempt from any required archeological study; and

WHEREAS, no adverse effects will result in adhering to these standards to any eligible historic properties or listed eligible properties listed in the City of Tempe, State of Arizona or National Register of Historic Places.

NOW, THEREFORE, the CITY and SHPO (also sometimes hereinafter referred to as “Party” or “Parties”) agree that these HUD-funded programs will be administered in accordance with the following stipulations to satisfy the CITY’s Section 106 responsibilities for all Undertakings for achieving the national policy of providing affordable housing and preserving historic resources. The CITY will not approve funding of any Undertaking until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with SHPO, the CITY shall require that the following measures are implemented:

- I. **LEAD AGENCY COORDINATION**
 - A. When the CITY is determined to be the Lead Agency in any HUD-funded activities, the CITY will coordinate the Section 106 review activities.

APPLICABILITY OF AGREEMENT

- II. **UNDERTAKING WILL ADHERE TO THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION FOR HISTORICAL BUILDINGS AS MODIFIED WITH THE FOLLOWING ENUMERATED EXHIBITS:**
- A. This Agreement applies only to CITY program activities implemented and funded in part or in whole using HUD funds.
 - B. Standards for Undertaking Activities in the **Housing Improvement Program** are enumerated in Exhibit "A". An Undertaking consisting of activities enumerated in Exhibit "A" as well as activities not listed in Exhibit "A" shall be reviewed pursuant to the terms of this Agreement.
 - C. Standards for Undertaking Activities in the **Emergency Housing Improvement Program** to ensure the life, health and safety of the occupants. These activities may include interior work, replacement/repair of existing mechanical units/systems, plumbing replacement/repair, electrical replacement/repair, structural work, or any other repair that will eliminate threat(s) to occupants' life health and safety. Any Undertaking enumerated in Exhibit "A" may qualify for emergency assistance as long as the work is required to eliminate threat(s) to life, health or safety.
 - D. Standards for Undertaking Activities related to **Demolition** are enumerated in Exhibit "B".
- III. **GENERAL**
- A. Except as detailed elsewhere in this Agreement, the CITY's responsibilities are:
 - 1. The CITY will provide SHPO with an annual report for the previous calendar year by June 30th of each year that this agreement is in effect. The report will summarize the actions taken to implement the terms of this Agreement, and recommend any actions or revisions that should be considered during the next year
 - B. Except as detailed elsewhere in this Agreement, SHPO's responsibilities are:
 - 1. SHPO will review submitted annual report information to determine if amendments to the Agreement are necessary
- IV. **INITIAL COORDINATION FOLLOWING DECLARATION OF A FEDERAL EMERGENCY**
- A. The CITY will:
 - 1. Determine with SHPO those historic properties (standing structures) that have not retained integrity. This Agreement will only apply to historic properties that retain integrity, in the aftermath of the declared federal emergency, pursuant to 36 CFR Part 60. If the CITY and SHPO do not agree on whether a listed property has retained integrity, the CITY will review all Undertakings that may affect the property in

accordance with standards and stipulations set forth in Section II above.

2. Consult with other federal agencies having jurisdiction for Undertakings related to the various housing programs to ensure compliance with applicable historic laws and regulations.
3. Develop with SHPO a feasible plan for involving the public in the Section 106 review process.

B. SHPO will:

1. Provide the CITY with available information about historic properties within a declared Disaster Area or designated Emergency Assistance Zone, including:
 - a. Properties listed in, or previously determined to be eligible, for the National Register of Historic Places;
 - b. Properties listed in the State of Arizona and National Register of Historic Places; and
 - c. Geographic areas with high potential for archeological resources, and areas where it is known that there are not any archeological resources.
2. Work with the CITY to jointly compile a list of previously identified or unevaluated historic properties, and geographic areas with a high potential for unidentified historic properties.
3. Identify SHPO staff or consultants to assist the CITY staff with its Section 106 responsibilities, and to identify, in coordination with the CITY, specific activities that SHPO may perform at the CITY's request for specific projects.
4. Assist the CITY in identifying any organizations or individuals that may have an interest in historic properties affected by the declared Disaster. The CITY and SHPO will jointly contact these interested parties to inform them of this Agreement and to request information on the location of damaged historic properties.

V. DURATION, AMENDMENTS, AND TERMINATION

- A. Unless terminated pursuant to Stipulation V (D) below, this Agreement shall remain in effect the lesser of five years from the date of implementation or as long as the CITY, in consultation with all other signatories, determines that the terms of this Agreement have been satisfactorily fulfilled, or until 5 years, whichever is less.
- B. Upon the determination of either Party that this Agreement is not being fulfilled, this Agreement will terminate, and the CITY will provide all other signatories with written notice of the determination and termination.
- C. If any signatory to the Agreement determines that the Agreement cannot be fulfilled, the signatories will consult to seek amendment of the Agreement.

Any amendment will be specific to the dispute being resolved unless otherwise agreed to by the signatories.

- D. The CITY or SHPO may terminate this Agreement by providing a 90-day written notice to the other interested parties.
- E. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by the CITY's implementation of Alternate Procedures, pursuant to 36 CFR 800.14(a).

VI. NON-DISCRIMINATION

The parties agree to comply with Chapter 9, Title 41, Arizona Revised Statutes (Civil Rights), Arizona Executive Orders 75-5 and 99-4 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

VII. CONFLICT OF INTEREST

This Agreement is subject to cancellation by either Party under ARS § 38-511 if any person significantly involved in the Agreement on behalf of that party is an employee or consultant of the contractor at any time while the Agreement or any extension of the Agreement is in effect.

VIII. IMMIGRATION LAW COMPLIANCE

- A. Each Party, and on behalf of any subcontracting Party, warrants, to the extent applicable under ARS § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with ARS § 23-214(A) which requires registration and participation in the E-Verify Program.
- B. Any breach of warranty under subsection A above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- C. Each Party retains the legal right to inspect the papers of any Party or subcontracting Party's employee who performs work under this Agreement to ensure that the Party or any subcontracting Party is compliant with the warranty under subsection A above.
- D. Each Party may conduct random inspections, and upon request, the Parties shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection A above. The Parties agree to keep papers and records available for inspection during normal business hours and will cooperate with each other in exercise of their respective duties and not deny access to business premises or applicable papers or records for the purposes of enforcement of this section VIII.
- E. The Parties agree to incorporate into any subcontracts under this Agreement the same obligations imposed upon each Party and expressly accrue those obligations directly to the mutual benefit of the Parties.
- F. Each Party's warranty and obligations under this section to each other continues throughout the term of this Agreement or until such time as the

Parties determine, in their sole discretion, that Arizona law has been modified and that compliance with this section is no longer a requirement.

- G. The "E-Verify Program" above means the employment verification program administered by the United State Department of Home Security, the Social Security Administration, or any successor program.

IX. PROHIBITIONS

Each Party, and on behalf of any subcontracting Party, certifies, to the extent applicable under ARS §§ 35-391 *et seq.* and 35-393 *et seq.*, that neither has scrutinized business operations in Sudan or Iran.

X. NON-AVAILABILITY OF FUNDS

This Agreement shall be subject to available funding, and nothing in this Agreement shall bind the State of Arizona or CITY to expenditures in excess of funds appropriated and allotted for the purposes outlined in this Agreement.

XI. ARBITRATION

To the extent required ARS §§ 12-1518 (B) and 12-133, the Parties agree to resolve any dispute arising out of this Agreement by arbitration.

XII. RECORDS

Pursuant to ARS §§ 35-214, 35-215 and 41-2548, all books, accounts, reports, files and other records relating to this Agreement shall be subject, at all reasonable times, to inspection and audit by either Party for five years after the termination of this Agreement.

XIII. IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT

This Agreement may be implemented in counterparts, with a separate page for each signatory, and the CITY will ensure that each Party is provided with a complete copy. This Agreement will become effective on the date of the last signature.

CITY OF TEMPE
PROGRAMMATIC AGREEMENT
FOR
HUD-FUNDED PROGRAM ACTIVITIES

CITY OF TEMPE

MAYOR

DATE

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF TEMPE
PROGRAMMATIC AGREEMENT
FOR
HUD-FUNDED PROGRAM ACTIVITIES

ARIZONA STATE HISTORIC PRESERVATION OFFICER:

By: _____ Date: _____

Title: _____

Date: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

On this the _____ day of _____ 20____, before me, the undersigned Notary Public, personally appeared _____, _____, of the City of Tempe, who acknowledged that (s)he executed the foregoing for the purpose and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public Signature

CITY OF TEMPE
PROGRAMMATIC AGREEMENT
FOR
HUD-FUNDED PROGRAM ACTIVITIES

Concurring Party: Maricopa County Consortium:

By: _____

Title: _____

Date: _____

Attest:

Clerk of the Board

Approved as to form:

County Attorney

STATE OF ARIZONA)
) ss
County of Maricopa)

On this the _____ day of _____ 20____, before me, the undersigned Notary Public, personally appeared _____, _____, of the City of Tempe, who acknowledged that (s)he executed the foregoing for the purpose and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public Signature

Exhibit "A"

City of Tempe
Programmatic Agreement for Housing Improvement Programs

The following standards shall apply to all owner-occupied rehabilitation projects, whether completed on an emergency basis or not, taking into consideration economic and technical feasibility

1. **Exterior Coverings:** 1. Retain and repair existing period exterior walls, including their materials and features (remove substituted siding and repair original); 2. replace deteriorated components and replace same to match as close as possible; 3. when the severity of deterioration requires replacement of a feature, the new feature shall match the old in design, color, texture, and where possible, materials; and 4. where replacement with same material is cost prohibitive, alternative materials may be used (i.e. new siding/stucco materials).

2. **Foundations:** 1. Retain and repair masonry, block, brick foundations, chimneys and exterior steps; 2. remove deteriorated masonry, block, brick and replace to match original as close as possible; 3. when the severity of deterioration requires replacement of a feature, the new feature shall match the old in design, color, texture and where possible material; and 4. where replacement with same material is cost prohibitive, alternative materials may be substituted or the feature removed permanently.

3. **Flatwork:** 1. Repair existing concrete, brick driveways/walkways with matching material and form; and 2. replace driveways/walkways with aggregate gravel or concrete.

4. **Windows:** 1. Retain and repair significant sash and frames, including their materials and features; 2. if all or parts of a window are missing or too badly deteriorated to repair, remove any severely deteriorated components and replace them to match the original as closely as possible; 3. when the severity of deterioration requires replacement of a feature, the new feature shall match the old in design, color, texture and where possible material; and 4. where replacement with same material is cost prohibitive, alternative materials, as indicated below, may be substituted (i.e. metal, dual glaze, energy-efficient type) to match the original in style as close as possible.

5. **Doors (exterior):** 1. Retain and repair existing doors, including their materials and features; and 2. replacement of door with type that matches characteristics of original as closely as possible.

6. **Exterior Trim:** 1. Retain and repair significant period trim work (door casings, cornice moldings, brackets, skirt boards and pilasters), including their materials and features (remove, if any, substituted siding and repair original); 2. replace deteriorated components and replace them to match as

closely as possible to original; 3. install new trim work to match as closely as possible to original; and 4. where replacement with same material is cost prohibitive, alternative materials may be substituted or the feature removed permanently.

7. **Interior Wall Coverings:** 1. Repair existing wall coverings; and 2. replace and install new drywall, with finished surface.
8. **Doors (Interior):** 1. Retain and repair interior doors and frames, including their materials and features; 2. replacement of door with hollow core type that matches characteristics of original as close as possible.
9. **Flooring:** 1. Repair wood flooring; and 2. remove and install floor tile in wet areas and FHA-approved carpet in all other areas.
10. **Interior Trim:** 1. Retain and repair significant period trim work (door casings, corner blocks, chair rails, picture moldings and crown moldings), including their materials and features; 2. replace deteriorated components, replace them to match as closely as possible; and 3. install new trim work throughout
11. **Cabinetry:** Replace with new cabinets, as approved by National Kitchen and Bath Association.
12. **Countertops:** Replace with new countertop, Formica, Wilson Art, equal or better product.
13. **Insulation:** Apply blown insulation into attic areas and batt insulation into exterior walls.
14. **Lead:** 1. Unless qualifying for an exemption, all residences built prior to 1978 shall be tested for Lead Based Paint; and 2. Residences possessing lead based paint hazards discovered through testing shall follow all HUD requirements for 25 CFR 35.
15. **Electrical Work:** 1. Repair of existing system; and 2. new electrical system installed per 2006 International Residential Code (IRC) or adopted current code.
16. **Plumbing Work:** 1. Repair of existing system; and 2. new plumbing system installed per 2006 IRC or adopted current code
17. **Mechanical Work:** 1. Repair of existing systems; and 2. New mechanicals installed per 2006 IRC or current adopted code.
18. **Roof:** 1. Replacement of existing clay tile, wood shake, metal or shingle type roof, with like material; 2 where replacement with like is not preferred or is cost prohibitive, programs will install 30-year shingles over 15 lb. felt; 3. replacement of existing rolled roofs with modified bitumen roofs over patios and other flat roofs; 4. replacement of existing roofing over flat roofs with sprayed polyurethane foam roofing materials; 5. repair of any damaged fascia/soffit to match as closely as

possible to original; when the severity of deterioration requires replacement of a feature, the new feature shall match the old in design, color, texture and where possible materials; where replacement with same design features is cost prohibitive, install new fascia, drip edge, and flashing to industry standards or remove feature.

19. **Site Work:** 1. landscape – installation of xeriscape type landscaping materials; 2. fences – repair existing wood/block or chain link fencing with like materials to match existing as close as possible; or if necessary; 2. replace wood, block or chain link fencing with new wood, block or chain link materials.
20. **Accessibility:** 1. ramps – installation of new wood, concrete or steel ramps to front or side entry doors of residence; 2. stairs – installation of new stairways, with continuous handrail on both sides to front or side entry doors of residence; 3. bath tubs – installation of new in-tub seta, grab bars, controls and shower units in existing bath tubs; 4. installation of new seat, grab bars, controls, shower unit and wheelchair accessible shower stall; 5. toilets – installation of new handicap toilets and grab bars; 6. doors – installation of new lever, push-type or u-shaped handles; installation of new motorized door opener or closer; 7. sinks – installation of new wall-mounted, wheelchair-accessible sinks and controls; 8. Kitchen cabinets/countertops – installation/modification of cabinets/countertops to accommodate wheelchair accessibility needs.
21. **Energy-Efficiency/
Water Conservation:** Installation/modification of building components and systems that improve energy efficiency and water conservation within a dwelling, including systems related to HVAC/mechanicals, windows, doors, insulation, roofing, plumbing upgrades and xeriscape landscaping

Exhibit "B"

City of Tempe
Programmatic Agreement for Demolition Activities

The following standards shall apply to all demolition projects, taking into consideration economic and technical feasibility

1. **Demolition**
 1. Demolish existing residential and commercial structures which are beyond economic repair and have no historical significance.