

WHEREAS, IFA, on behalf of the REs and Recipients, have consulted with the Iowa State Historic Preservation Office of Iowa (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, ACHP) and has determined that certain actions funded in whole or in part by HUD (hereinafter, Undertakings) have the potential to cause effects to historic properties while others do not; and,

WHEREAS, in an effort to streamline the consultation process and expedite the implementation, IFA, SHPO, and ACHP have agreed that consultation and compliance for undertakings enabled by the various federal funding program should be addressed programmatically and in accordance with procedures outlined in this agreement and its attachments in order to effectively and expeditiously meet regulatory obligations; and,

WHEREAS, IFA, SHPO, and ACHP encourage REs and Recipients to enter into lead federal agency agreements pursuant to 36 CFR Part 800.2(a)(2) when such an agreement is mutually advantageous and of net benefit to the ultimate recipient of federal aid; and,

WHEREAS, IFA has contacted federally recognized tribes (Appendix B) on behalf of the REs and Recipients, notifying them of HUD's involvement in Iowa's Federal programs, of the collective desire and intent of the signatories to address Section 106 compliance programmatically, to notify them of the types of undertakings pursued under the Federal programs and to solicit their views on which types of undertakings may have potential to affect properties of interest to them and how they wish to be consulted upon them, and finally to review and comment upon the programmatic agreement in the capacity of a concurring party; and,

WHEREAS, IFA, SHPO, and ACHP agree that the REs and Recipients will identify other interested parties and initiate consultation with them on a case-by-case basis, and the REs and Recipients shall involve the Public by disseminating information about those undertakings and their effects on historic properties in a proper and timely fashion and will seek public participation by utilizing HUD procedures for soliciting public involvement found at 24 CFR Part 58.43; 58.45-46; 58.59 and other applicable sections of that part and 24 CFR Part 50.23 and other applicable sections.

NOW THEREFORE, Iowa Finance Authority on behalf of the Responsible Entities and Recipients, the State Historic Preservation Office, and the Advisory Council Historic Preservation as signatories, agree that, upon execution of the Programmatic Agreement, the undertakings of programs enabled by HUD federally funded programs shall be implemented in accordance with the following stipulations and conditions in a timely manner and with adequate resources in order to take into account the effects of these undertakings on historic properties.

STIPULATIONS

I. IFA RESPONSIBILITIES

A. IFA shall represent the REs and Recipients in the administrative functions of this Agreement, particularly in its formulation and signatory execution, amendment, dispute resolution, termination, and period review (see Stipulations VI-X, below).

B. IFA shall require all REs and Recipients by contract to follow the requirements set forth in this Programmatic Agreement.

C. IFA shall serve as the primary technical assistance contact for the REs and Recipients in matters concerning the interpretation of this agreement and the routine execution of its terms. IFA, at their discretion, may consult directly with the SHPO and ACHP when issues of a complex nature arise.

D. IFA shall employ administrative staff to fulfill its obligations under Stipulation I.C.

E. In accordance with Stipulation IX, IFA shall monitor the RE's and Recipient's compliance with the terms of this agreement and shall compile an annual report detailing the types and numbers of projects involving consultation with the SHPO and those that are excluded from SHPO review. IFA shall ensure that the criteria for exclusion from SHPO review, as outlined in Appendix C, are being applied accurately and consistently.

II. RESPONSIBILITIES OF THE REs AND RECIPIENTS.

A. The REs and Recipients shall ensure that the procedures for project-specific consultation, historic properties identification and evaluation, assessment of effects, mitigation of adverse effects, and treatment of historic properties are implemented in accordance with procedures outlined in Appendix C.I.

B. The REs and Recipients shall ensure that appropriate interim controls, as allowed by 24 CFR Part 35.1330, shall be implemented in lieu of full lead-based paint abatement in all historic properties when such procedures are deemed by the RE, Recipient, IFA, and the SHPO to be "practicable and feasible."

C. The REs and Recipients shall ensure that all historic properties investigations, evaluations, and data recovery efforts conducted pursuant to this agreement shall be performed by or under the direct supervision of an individual that meets the Secretary of the Interior's Qualifications Standards (48 FR 44738-9, September 29, 1983); and, shall be performed in a manner that is consistent with Secretary of the Interior's Standards and the *Guidelines for Archaeological Investigations in Iowa*, and all other Federal or State standards as appropriate.

D. The REs and Recipients shall ensure that documentation submitted to SHPO for review meets or exceeds the standards outlined at 36 CFR Part 800.11. The documentation standards with examples of submittals are attached as Appendix D. Pursuant to Section 304 of the Act (16 U.S.C. 470w-3) and Chapter 22.7(22) of the Iowa Code, the REs and Recipients shall withhold from disclosure to the public, information relating to the location or character of historic resources when it has been determined that disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.

E. The REs and Recipients shall ensure that all archeological reports resulting from actions pursuant to this agreement shall be responsive to contemporary professional standards and to the Department of the Interior's Format Standards for Final Reports of

Data Recovery Program (42 FR 5377-79). Precise location data should be provided only in a separate appendix if it appears that release of such data could jeopardize archeological deposits.

F. The REs and Recipients shall ensure that artifacts and records resulting from historic properties investigation made pursuant to this agreement shall be curated at a facility in the State of Iowa that meets or exceeds the Secretary of the Interiors Standards (36 CFR Part 79).

G. The REs and Recipients shall consult directly with the SHPO, the ACHP and National Park Service (hereinafter NPS), and ACHP on all undertakings involving National Historic Landmarks in accordance with 36 CFR 800.10.

H. The REs and Recipients shall provide letter notification to IFA and SHPO of its intent to enter into a lead federal agency agreement. The notification shall specifically identify the HUD undertaking, partnering agencies, and indicate the REs lead or subordinate role under the agreement.

I. The REs and Recipients shall invite the participation of consulting parties. This applies to all undertakings with the exception of those that are exempt under HUD regulations (24 CFR Part 58.34) or are categorically excluded as being not subject to review of the laws listed at 24 CFR Part 58 in accordance with 24 CFR Part 58.35(b) and 24 CFR Part 50 in accordance with 50.19, and those exempt from SHPO review as itemized at Part 2 of Section I, Appendix C. Parties that have a consultative role in the Section 106 process include, but are not limited to the following: Federally recognized Indian tribes, representatives of local governments, county and municipal historic preservation commissions including those established under the Certified Local Governments program, the Public, and individuals and organizations who, due to the nature of their legal or economic relation to the undertaking, or their concern with the undertaking's effects on historic properties, demonstrate a legitimate interest.

III. RESPONSIBILITIES OF SHPO AND ACHP

A. SHPO shall comment on all undertakings designated for their review in a timely and efficient manner and in accordance with procedures outlined in Appendix C. I.

B. ACHP shall participate in cases in which dispute resolution among parties is required as indicated in Stipulation VI below, and in instances when the criteria for Council Involvement in Reviewing Individual Section 106 cases (36 CFR 800, Appendix A) are met.

IV. TIMING OF CONSULTATION

A. Consultation on Projects. The REs and Recipients shall ensure that consultation in accordance with this agreement has been completed prior to the approval of any individual or group federal action.

V. UNANTICIPATED DISCOVERIES

A. *Human remains.* Iowa law protects all human burials regardless of their historical age, sex, or cultural/ethnic affiliation. The REs shall ensure that the following procedures are observed in the event that human remains are encountered during construction or archaeological investigations.

1. In the event that human remains or burials are encountered during archeological investigations or construction activities, work shall cease in the area, appropriate steps shall be taken to secure the site, and officials at the University of Iowa – Office of the State Archaeologist Burials Program (OSA, Shirley Schermer, 319.384.0740) and the SHPO shall be notified.
2. If the remains appear to be ancient (i.e., older than 150 years), the Burials Program at OSA shall have jurisdiction to ensure that the appropriate procedures in accordance with Chapters 263B and 716.5 of the Iowa Code are observed.
3. Human remains less than 150 years old are protected under Chapter 566 of the Iowa Code. In the event that human remains appearing less than 150 years in age are encountered the REs shall ensure that the Iowa Department of Public Health is notified.

B. *Archaeological material (non-mortuary related).* The REs and Recipients shall ensure that the following procedures are observed in the event that previously undetected non-mortuary-related archeological materials are encountered.

1. All activities in the area of the resource shall cease immediately, appropriate steps shall be implemented to secure the site, and the SHPO shall be notified of the discovery.
2. An archaeologist retained by the RE and Recipient will inspect the work site and determine the extent of the affected archeological resource within 48 hours of its discovery. Construction work may then continue in the area outside the archeological resource as it is defined by the archaeologist in consultation with the SHPO.
3. Before work can resume in the area of any unanticipated discovery, the RE and Recipients must determine the NRHP eligibility of the archeological resource in consultation with the SHPO.
4. Upon a determination of eligibility, the RE and Recipient shall submit a plan for avoidance, protection, or recovery of information to the SHPO for review and comment. The RE and Recipient will notify all consulting parties of the unanticipated discovery and provide the proposed treatment plan for their consideration. The SHPO and consulting parties will have seven (7) calendar days to provide comments on the proposed treatment plan upon receipt of the information. The RE and Recipient may implement the proposed treatment plan if SHPO fails to respond within the allotted timeframe.

5. Work in the affected area shall resume upon either:
 - a. The development and implementation of an appropriate data recovery plan, other recommended mitigation procedures, or agreement among the RE and Recipient and the SHPO that the site does not warrant mitigation; or,
 - b. Agreement by SHPO and the RE Recipient that the newly located archeological materials are not eligible for inclusion on the NRHP.

C. *Adverse effects upon Architectural Properties.* The REs and Recipients shall ensure that the following procedures are observed in the event that post-review effects to historic buildings, objects, or districts are identified.

1. Work in the affected area shall cease and the RE and Recipient shall notify IFA, SHPO of the discovery and take all reasonable measures to avoid or minimize harm to the property until consultation regarding the discovery is concluded.
2. An architectural historian retained by the RE and Recipient will inspect the work site and determine the extent and magnitude of the effects upon the property within 48 hours of its discovery. The RE and Recipient shall provide its determination of effect and report of the consulting historian's findings to the SHPO who shall have seven (7) working days to provide comments.
3. Upon assessment of adverse effect, the RE and Recipient shall submit a mitigation plan to the SHPO for review and comment. The RE and Recipient will notify all consulting parties of the unanticipated discovery and provide the mitigation proposal for their consideration. The SHPO and consulting parties will have seven (7) calendar days to provide comments on the mitigation proposal upon its receipt. The RE and Recipient may implement the proposed mitigation plan if SHPO fails to respond within the allotted timeframe.
4. Work in the affected area shall resume upon either:
 - a. Agreement by the RE and Recipient and SHPO that the effects are not adverse; or
 - b. The development and implementation of an appropriate mitigation plan, or agreement among the RE and Recipient, and the SHPO that the site does not warrant mitigation.

VII. DISPUTE RESOLUTION.

- A. IFA shall represent itself and REs and Recipients petitioning singly or as a group in all dispute resolution situations.
- B. Should any signatory to this agreement or RE and Recipient (represented by IFA) object at any time to any actions proposed or the manner in which the terms of this

agreement are implemented, IFA shall consult with such party to resolve the objection.

- C. IFA determines that such objection cannot be resolved, then IFA will:
1. Forward all documentation relevant to the dispute, including the IFA's proposed resolution, to the ACHP. The ACHP shall provide the IFA with its advice on the resolution of the objection within fifteen (15) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, IFA shall prepare a written response that takes into account any advice or comments regarding the dispute from the ACHP and/or signatories and provide them with a copy of this written response. IFA will then proceed according to its final decision.
 2. If the ACHP does not provide its advice regarding the dispute within the fifteen (15) day period, then the IFA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, IFA shall prepare a written response that takes into account any comments regarding the dispute from the signatories to the agreement, and provide them and the ACHP with a copy of such written response. IFA's final decision on the dispute will be provided on a schedule compatible with all internal and external review as may be determined necessary by IFA.
 3. The responsibilities of the PA signatories to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.

VIII. AMENDMENT

- A. IFA shall represent itself and REs and Recipients petitioning singly or as a group in all requests for amendments to this agreement.
- B. Any of the signatories to this Agreement, or REs and Recipients represented by IFA, may request that any or all of its articles be amended subsequent to the Agreement's execution, whereupon the other signatories will consult in accordance with 36 CFR Part 800.13, to consider such amendment. IFA must notify the ACHP of its intent to amend the Agreement and invite the ACHP's review and comment of the amendment. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP. IFA shall ensure that copies of the amended Agreement are provided to all of the signatories.
- C. Revisions to the appendices shall not require notification of and review by the ACHP. However IFA shall ensure that the ACHP is provided file copies of finalized versions that reflect all revisions.

IX. TERMINATION AND DURATION

- A. IFA shall represent itself and all REs and Recipients when the latter petition as a unanimous body to terminate this agreement.
- B. If any signatory to this agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII, above or other form of resolution. If within thirty (30) days resolution through amendment or other means cannot be reached, any signatory may terminate the agreement upon written notification to the other signatories.
- C. Once the agreement is terminated or expires, and prior to work continuing on undertakings referenced in this PA, IFA must either execute a new agreement pursuant to 36 CFR § 800.6, or, request, take into account, and respond to the comments of the Council under 36 CFR § 800.7. IFA shall notify the signatories as to the course of action it will pursue.
- D. This agreement will be binding on a party upon the date of its signature for a period of five (5) years. At any time in the twelve-month period to that date, IFA may request SHPO and ACHP in writing to review IFA's program and consider an extension or modification of this Agreement. No extension or modification shall be effective unless all parties to the Agreement have agreed to it in writing.

X. PERIOD REVIEW

IFA shall monitor the REs and Recipients full compliance with this agreement and shall provide the SHPO with an annual report by January 1, 2012, and once every year thereafter while this Agreement remains in effect. The report shall account for projects that are both excluded from and subject to SHPO review and will include individual project numbers and names, level of historic property investigation, historic properties identified, and determinations of effect.

XI. EXECUTION OF THE AGREEMENT

Execution of this agreement by IFA on behalf of HUD's recipient, Responsible Entities, the State Historic Preservation Office, and the Advisory Council on Historic Preservation and the implementation of its terms evidence that HUD has taken into account program effects on historic properties and has afforded the SHPO and ACHP an opportunity to comment.

SIGNATORIES TO EXTEND PA:

Iowa Finance Authority (IFA)

BY:  Date: July 14, 2016
David D. Jamison, Executive Director

State Historic Preservation Office (SHPO)

BY: _____ Date: _____
Steve King, Deputy State Historic Preservation Office

CONCURRING PARTIES

Preservation Iowa

BY: _____ Date: _____
Caleb Giesel, Executive Director

University of Iowa, Office of the State Archaeologist

BY: _____ Date: _____
John Doershuk, State Archaeologist

SIGNATORIES TO EXTEND PA:

Iowa Finance Authority (IFA)

BY: _____ Date: _____
David D. Jamison, Executive Director

State Historic Preservation Office (SHPO)

BY:  _____ Date: 25 July 2016
Steve King, Deputy State Historic Preservation Office

CONCURRING PARTIES

Preservation Iowa

BY: _____ Date: _____
Caleb Giesel, Executive Director

University of Iowa, Office of the State Archaeologist

BY: _____ Date: _____
John Doershuk, State Archaeologist

SIGNATORIES TO EXTEND PA:

Iowa Finance Authority (IFA)

BY: _____ Date: _____

David D. Jamison, Executive Director

State Historic Preservation Office (SHPO)

BY: _____ Date: _____

Steve King, Deputy State Historic Preservation Office

CONCURRING PARTIES

Preservation Iowa

BY: _____ Date: _____

Caleb Giesel, Executive Director

University of Iowa, Office of the State Archaeologist



BY: _____

John Doershuk, State Archaeologist

Date: 7/18/2016

SIGNATORIES TO EXTEND PA:

Iowa Finance Authority (IFA)

BY: _____ Date: _____
David D. Jamison, Executive Director

State Historic Preservation Office (SHPO)

BY: _____ Date: _____
Steve King, Deputy State Historic Preservation Office

CONCURRING PARTIES

Preservation Iowa

BY: *Caleb Giesel* Date: 7/19/2016
Caleb Giesel, Executive Director

University of Iowa, Office of the State Archaeologist

BY: _____ Date: _____
John Doershuk, State Archaeologist

APPENDIX A

APPLICABLE HUD PROGRAMS

HOME Investment Partnerships Program
Tax Credit Assistance Program (TCAP)
Emergency Shelter Grant Program (ESGP)
Supportive Housing Program (SHP)
Shelter Plus Care (S + C)
National Housing Trust Fund (NHTF)

APPENDIX B

**Office of the State Archaeologist
700 South Clinton St.
The University of Iowa
Iowa City, IA 52242**

Current Contact: Lara Noldner

Phone: 319.384.0732

TRIBES OF IOWA

Flandreau Santee Sioux Ex. Com.
PO Box 283
Flandreau, SD 57028

Prairie Island Indian Community in the State of
Minnesota
5636 Sturgeon Lake Road
Welch, MN 55089

HO-Chunk Nation of Wisconsin
W9814 Airport Rd, PO Box 667
Black River Falls, WI 54615

Sac & Fox Nation of Missouri in Kansas and Nebraska
305 N. Main St.
Reserve, KS 66434

Apache Tribe of Oklahoma
PO Box 1330
Anadarko, OK 73005

Sac & Fox Nation, Oklahoma
920883 South Highway 99 Building A
Stroud, OK 74079

Iowa Tribe of Kansas & Nebraska
3345 B Thrasher Road
White Cloud, KS 66094

Sac & Fox Tribe of the Mississippi in Iowa
349 Meskwaki Rd.
Tama, IA 52339

Iowa Tribe of Oklahoma
335588 E 750 Rd.
Perkins, OK 74059-3268

Santee Sioux Nation, Nebraska
425 Frazier Ave N, Suite 2
Niobrara, NE 68760-8605

Little Traverse Bay Bands of
Odawa Indians, Michigan
7500 Odawa Circle
Harbor Springs, MI 49740

Santee Sioux Nation, Nebraska
108 Spirit Lake Avenue West
Niobrara, NE 68760

Lower Sioux Indian Community in
State of Minnesota
PO Box 308
Morton, MN 56270

Menominee Indian Tribe of Wisconsin
PO Box 910
Keshena, WI 54135

Sisseton-Wahpeton Oyate of the Lake Traverse
Reservation, South Dakota
Old Agency Box 717
Agency Village, SD 57262-0509

Miami Tribe of Oklahoma
PO Box 1326
Miami, OK 74355

Sisseton-Wahpeton Oyate of the Lake Traverse
Reservation, South Dakota
PO Box 509
Agency Village, SD 57262-0509

Omaha Tribe of Nebraska
PO Box 368
Macy, NE 68039

Spirit Lake Tribe, North Dakota
PO Box 359
Fort Totten, ND 58335-0359

Otoe-Missouria Tribe of Indians,
Oklahoma
8151 Highway 177
Red Rock, OK 74651-0348

Upper Sioux Community, Minnesota
PO Box 147
Granite Falls, MN 56241

Ponca Tribe of Nebraska
PO Box 288
Niobrara, NE 68760

Winnebago Tribe of Nebraska
PO Box 687
Winnebago, NE 68071

White Earth Band of the Minnesota
Chippewa Tribe
PO Box 418
White Earth, MN 56591

Yankton Sioux Tribe of South Dakota
P.O. Box 1159
Wagner, SD 57361

APPENDIX C

Part I. PROCEDURES FOR PROJECT REVIEW (See Chart 1).

The process for standard project reviews covered under this agreement has been distilled down to the four principal steps discussed below. Other steps may be involved depending on the nature, location, and complexity of the project and the types of historic properties involved. The objective here is to establish a streamlined review process that utilizes standardized protocols and documentation. Deviation from these when unnecessary may slow and complicate what is intended to be a straightforward and seamless procedure. Occasionally, exceptions will appear. However, these will be dealt with on a case-by-case basis.

The Environmental Specialist at the Iowa Finance Authority will serve as the primary point of contact for the RE's and Recipients for routine technical assistance and shall provide quality control of documentation through pre-review screening. IFA at its discretion may defer to or consult with the SHPO, HUD, or ACHP in complex procedural matters.

STEP 1. DETERMINE IF THE ACTION IS EXCLUDED FROM SECTION 106 REVIEW.

The signatories have agreed that certain defined and undefined activities have no potential to affect historic properties and therefore may be excluded from further consideration under Section 106.

The first step in the review process is to determine whether or not a project is excluded from review. For the purposes of this agreement, excluded activities fall into three categories. The first are itemized in Part II, Section 1, below, and comprise activities relating to administrative costs and non-brick and mortar financial assistance. These activities by their nature have no potential to cause effects. The second category is discussed in Part II, Section 2 below, and includes undertakings involving earthmoving. The third category, covered in Part II, Section 3, includes activities involving architectural and other historical resources.

The last two categories include both specific and non-specific activities. Specific excluded activities are those that by their *nature* have no potential to adversely affect historic properties, for example, the re-surfacing of water and/or sewer clay pipes or caulking and weather stripping of windows and doors. A non-specific excluded activity could be any action that, by its *circumstances*, has no potential to affect historic properties. A project must meet certain pre-defined criteria in order to qualify as a non-specific project exclusion. For example, any activity involving a building of any type that is less than 50 years in age and not listed in or previously determined eligible for the National Register of Historic Places (NRHP) and that does not involve earthmoving satisfies the non-specific exclusion on criteria under Section 3. Similarly, a project involving no buildings, districts, objects, structures, sites, or landscapes greater than 50-years in age, and located in an area that has been profoundly disturbed by past earthmoving activities, such as borrowing, satisfies the non-specific exclusion criteria under Section 2.

If a project qualifies as an excluded activity, then the Responsible Entity (RE) and Recipient shall document his/her findings by completing the EXCLUDED FROM SHPO REVIEW, PROJECT DETERMINATION FORM (Appendix D – Exhibit A) and attaching it to the project's environmental

assessment document. A copy of this form must be submitted to IFA for compliance monitoring and record keeping purposes. This concludes the RE's and Recipient's responsibilities for complying with the terms of the programmatic agreement. If the project *does not* fulfill the exclusion criteria under Sections 1 -3, then the Responsible Entity and Recipient shall proceed to Step 2 of the process. Decision-making charts are included in Sections 2 and 3 to assist the RE and Recipient in determining the exclusion status of a project. The RE and Recipient should direct any questions regarding the completion of Step 1 to IFA.

STEP 2. DEFINE THE PROJECT SCOPE AND DETERMINE THE PROJECT AREA OF POTENTIAL EFFECTS (APE).

It is important to properly define the scope of the undertaking in its entirety at the very outset to ensure that all the review and compliance obligations are met in a timely and efficient manner. Incomplete or inaccurate project scoping can extend the consultation process unnecessarily resulting in project delays and cost overruns. Additionally, comprehensive project scoping is critical in accurately defining the project area of potential effects.

The rules governing the Section 106 process define "Area of Potential Effects" or APE as, "the geographical area or areas within which an undertaking may directly or indirectly cause alterations in the character of use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking" [36 CFR Part 800.16(d)].

The area of potential effects is three dimensional meaning that it has length, width, and depth. Defining the APE is very important because it establishes the physical parameters for historic properties identification procedures outlined in Step 3. In many cases, the APE will be quite localized, and, depending on the scope of the project, will include just the area directly affected by the project activities. One example would be property lines or lot boundaries in instances of infill construction or house rehabilitation when planned activities are confined by those physical boundaries.

In other instances, however, the APE may be defined in larger terms to include neighborhoods, districts, or other areas with arbitrary, non-physical boundaries - once again, depending on the scope of the undertaking. For instance, the footprint of a new telecommunication facility is relatively small so its potential for direct physical impacts on historic properties is correspondingly small. However, its potential to cause indirect, adverse, visual effects on historic properties that lie beyond its footprint, lot line, or property line is far greater and increases in magnitude with its height and relative proximity to those historic properties.

The APE of a project must encompass the areas of any activity or ancillary project whose construction, while not federally funded, is integrally connected to the federally funded undertaking and which could not exist but-for the federal undertaking. For instance, a road built by a developer within a subdivision using private funds, becomes a federal undertaking when that developer accepts federal funds to construct a bridge connecting the two sections of the road, because the road would not exist without the bridge. Privately funded actions executed in anticipation of a federal undertaking may also become part of the undertaking. For instance, the privately funded demolition of a building to make way for a new building whose construction is federally funded becomes part of the federal undertaking.

For routine projects, the RE and Recipient should direct any questions regarding the completion of Step 2 to IFA. The RE and Recipient and IFA are encouraged to consult directly with the SHPO early in the planning process when scoping complex or multiple-phase projects and when defining their APEs.

STEP 3. IDENTIFY AND EVALUATE HISTORIC PROPERTIES WITHIN THE PROJECT APE AND ASSESS PROJECT EFFECTS.

Once the scope and APE of an undertaking have been defined, the RE and Recipient must investigate for the presence of historic properties within the APE. 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...” [36 CFR Part 800.16(l)]. The location of a project, along with its scope and its magnitude to cause effects on historic properties should be taken into account when determining the level of investigation pursued.

Records review is the most basic level of investigation and in some instances may be all that is necessary to confirm the presence/absence of historic properties within the APE. The RE and Recipient is advised to consult *I-SitesPro Archaeological Sites and Surveys Databases* maintained by the University of Iowa, Office of the State Archaeologist (OSA) to determine if all or part of the APE has been previously surveyed and if there are any recorded sites present. Access to *I-SitesPro* is restricted to professional archaeologists holding a licensing agreement with the OSA. However, the results of a site file search may be obtained for a fee by applying directly to the OSA Site File Manager.

The RE and Recipient should also consult the *Iowa Site Inventory* maintained by the State Historic Preservation Office. The *Iowa Site Inventory* contains information on over 140,000 rural and municipal properties and districts in the State of Iowa. The *Inventory* may provide information regarding the age, history, and NRHP eligibility status on a particular property or district under consideration.

At this point the RE and Recipient should also be seeking input from other parties that may have a particular interest in the undertaking and may have information to offer regarding the history of the APE and any historic properties that may be affected within. Potential consulting parties include, but are not limited to, Native American Tribes or other ethnic groups or organizations, historic preservation commissions of certified local governments, local historical and genealogical societies, local governing bodies, and the public at large.

Project proponents often find that it is in their best interest to retain the services of a professional historic preservation consultant to conduct the records review, also known as a reconnaissance-level survey, and compile a report detailing their findings and recommendations on whether or not additional investigation is warranted. The next level of investigation, known as an intensive level survey, involves a field investigation component where the consulting archaeologist, architect, or historian performs an on-the-ground inspection of the APE. There are instances where the project proponent may find it to be more cost-effective to by-pass the reconnaissance survey and order an intensive-level survey at the outset.

Once the historic properties investigation has been completed and the results are known, the RE and Recipient must make a determination of effect and then prepare a documentation submittal to support

that determination. 36 CFR Part 800.16(i) defines “effect” as: “alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.” Effects may be adverse or not adverse depending upon their magnitude. See 36 CFR Part 800.5 (a) for criteria and examples of adverse effects.

The submittal will include a copy of all archaeological or architectural survey reports completed for the project, descriptions of the project scope and APE, and a description of the impacts including depths of excavations. It will also include a completed REQUEST FOR SHPO COMMENT ON PROJECT form (Appendix D – Exhibit B) with attachments. For projects involving existing built features, the submittal must include a completed IOWA SITE INVENTORY form for each building, structure, and district within the APE that is 50 years old or older (Appendix D – Exhibit C). Any questions regarding the preparation of a submittal packet should be directed to IFA.

The completed submittal is sent to the IFA, who then forwards it to the SHPO for 30-day review and comment if it is found to be complete (For an example, See Appendix D – Exhibit D). The submittal is returned to the RE and Recipient if it is found to be incomplete or is otherwise unacceptable along with instructions on how to correct the deficiency. The revised submittal is then returned to IFA for final vetting and delivery to SHPO.

In cases where the RE and Recipient has determined that there are no historic properties present within the APE or when there are no effects on historic properties and the SHPO concurs, then the RE and Recipient shall document his/her finding and attach it to the project’s environmental assessment document, concluding the Section 106 process.

If historic properties will be affected by project activities, then the RE and Recipient must apply the Criteria of Adverse Effect as defined at 36 CFR Part 800.5 in order to determine their magnitude. The RE and Recipient is encouraged to consult directly with the IFA when assessing project effects on historic properties. If, having taken into account the results of unbiased professional assessments and comments by other consulting parties, the RE and Recipient concludes that the project will result in no adverse effects, then he/she shall prepare a documentation packet supporting that determination and submit it to the IFA for pre-review screening and delivery to SHPO for 30-day review. If the SHPO concurs, the RE and Recipient shall document his/her finding and attach it to the project’s environmental assessment document, concluding the Section 106 process.

If the RE and Recipient concludes that the project will result in adverse effects, then he/she must proceed to Step 4 in the process.

If the SHPO disagrees with the RE’s and Recipient’s definition of the project scope or APE or with the RE’s and Recipient’s finding of effect, no matter what it might be, then the RE, Recipient and SHPO shall appeal to IFA to seek resolution under Stipulation VI of the programmatic agreement.

STEP 4. RESOLVE ADVERSE EFFECTS & IMPLEMENTATION OF MITIGATION MEASURES

The majority of projects covered under this agreement will not advance to Step 4. However, some will. If at the conclusion of Step 3 the RE and Recipient determines that the project will result in adverse effects on historic properties, then measures must be implemented to avoid, minimize, or mitigate those effects. This will involve the direct consultation of the SHPO, the RE and Recipient, the Applicant, the

University of Iowa – Office of the State Archaeologist, Preservation Iowa, the National Trust for Historic Preservation and other consulting parties such as Tribes or a local Historic Preservation Commission.

It is impossible to suggest stock mitigation strategies here owing to the diversity of projects covered under this agreement, the incalculable degree of their effects, and the variety of historic properties that might be involved. Cases involving adverse effects of necessity must be handled individually and based upon their own merits.

In some instances, it may be possible to redesign the project to avoid historic properties altogether or to reduce the level of effects to a degree that they are no longer adverse. Other cases may require a more involved approach to the mitigation of effects -- such as architectural documentation or archaeological data recovery -- when avoidance or design alternatives are judged to be impractical, unfeasible, or undesirable. Timely and inclusive consultation invites diverse points of view and potential for a broad range of alternatives including thoughtful consideration to the merits and weaknesses of each.

Once the RE and Recipient, IFA and SHPO have consulted with all interested parties and the RE and Recipient, IFA, and SHPO have agreed upon the most appropriate measures to address project adverse effects, they shall be formalized in a Letter of Agreement (LOA) drafted by the RE and Recipient with the assistance of the IFA and signed by the RE and Recipient, IFA, and SHPO. Once the LOA has been executed, the mitigation measures shall be implemented according to the terms of the LOA. Copies of the fully executed LOA shall be provided to all of the signatory parties. The RE's and Recipient's Section 106 compliance obligations will have been met upon successful implementation of the mitigation measures as stipulated by the LOA.

Part II. CATEGORICALLY EXCLUDED ACTIVITIES

In addition to projects and activities that are either exempt under HUD regulations (24 CFR Part 58.34) or are categorically excluded as being not subject to review of the laws listed at 24 CFR Part 58 in accordance with 24 CFR Part 58.35(b) or 24 CFR Part 50 in accordance with 24 CFR Part 50.19, the signatories agree that the following types of activities do not have the potential to cause adverse effects on historic properties, assuming such historic properties are present, and therefore the Responsible Entity has no further obligations under Section 106.

Section 1. Administrative Costs and Non –Brick and Mortar Financial Assistance

- a. Economic development activities including equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs associated with construction or expansion of existing operations where physical improvements, if any, will be limited to those listed in Excluded Activity 3.1—3, below;
- b. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payments assistance, interest buydowns, interim mortgage assistance, and similar activities that result in the transfer of title where no change in use will occur and physical improvements, if any, will be limited to those listed in Excluded Activities 3.1 –3, below;

- c. Building acquisition where physical improvements, if any, will be limited to those listed in Excluded Activity 3.1 – 3, below.

Section 2. Undertakings Involving Ground Disturbance (see Chart 2)

Non-Specific Activities.

If the project will **NOT** involve buildings, districts, objects, structures, sites, or landscapes that are 50 years or age or older in the Area of Potential Effects, **AND** either of the following conditions is met, SHPO does not need to review the project regardless of activity. Document how the project meets the qualifying criteria on an EXCLUDED FROM SHPO REVIEW FORM (Appendix D – Exhibit A) for submittal to IFA.

Qualifying Criteria:

- a. The Area of Potential Effects (APE) was intensively surveyed after 1989, determined by the federal agency not to contain historic properties, and this finding was accepted by the Iowa SHPO. This requires consultation with Office of the State Archaeologist or *I-SitesPro* online databases to determine.
- b. The APE has been profoundly disturbed. *Profound disturbance* as it relates to the APE occurs when a past activity or activities have physically altered the *three-dimensional* APE of an undertaking *in its entirety* to the point where there is no potential for an archaeologically significant property to remain.

Specific Excluded Activities

When the following ground disturbing activities are proposed for any project locations not meeting the Qualifying Criteria, they will be considered excluded from further review by the SHPO or ACHP, because the activities have limited potential to adversely affect historic properties (some exceptions noted in *italics* below):

- a. Photoscopic pictures of water and/or sewer pipe.
- b. Re-lining of plastic, clay, or concrete water and/or sewer pipe.
- c. Point repairs of water and/or sewer pipe.
- d. Hydrant replacements.
- e. Manhole cover replacements.
- f. New/replacement service lines and related appurtenances involving boring or slit trenches up to one (1) foot in width.
- g. Equipment replacement, purchase, removal, and/or installation.
- h. Disturbances confined to the current footprint of an existing facility compound, such as water and/or sewer treatment plants where there are no documented sites present.
- i. Directional boring of utility lines without sending and receiving pits if no archaeological sites are in the vicinity.
- j. Connecting pits relating to directional boring for utility lines no bigger than 10 feet by 10 feet if no recorded archaeological sites are in the vicinity.

- k. In-place replacement of water and/or sewer mains, if no known NRHP listed or eligible properties, including sites and historic districts, are within the Area of Potential Effects.
- l. Wells in existing well fields.
- m. Test boring/well sites to determine soil suitability, if no recorded archeological sites are in the vicinity.
- n. Replacement of concrete or asphalt sidewalks.
- o. Replacement of water towers on the same parcel when that parcel is less than one (1) acre in size, if water tower to be demolished is less than 50 years old and the new tower is not more than a 10% increase in capacity or an increase of more than 20 feet in height as compared to the existing water tower.
- p. Utility upgrades without land disturbance.
- q. Parking lot rehabilitation or construction of less than one (1) acre in size, located on row-cropped agricultural land, provided that any ground disturbance activities will be confined to the plowzone, which generally extends 10 to 12 inches below the surface where there are no archeological sites present .
- r. Overhead power line replacement over existing poles.
- s. Resurfacing and/or rehabilitation of existing concrete or asphalt roads, drives, or entries where the area is within both existing horizontal and vertical alignment. *This does not apply to roads found eligible for listing on the National Register of Historic Places.*
- t. Conversion of an existing gravel road to concrete or asphalt where the area is within both existing horizontal and vertical alignment. *This does not apply to roads found eligible for listing on the National Register of Historic Places.*
- u. Pavement widening and/or shoulder construction and the addition of auxiliary lanes, such as turn lanes or climbing lanes where the area is within both existing horizontal and vertical alignment of an existing right of way. *This does not apply to roads found eligible for listing on the National Register of Historic Preservation.*
- v. Foundation repair that does not extend beyond three feet from the existing wall.
- w. Demolition of non-historic building when all activity is confined to the current footprint, which is here to include a presumed builder's trench extending three (3) feet beyond the existing foundation footing, and, when ground surface conditions are stable enough to support the weight and movement of heavy equipment on bare ground or on temporary mats without sinking into the ground, rutting the ground surface, or resulting in any form of earthmoving at the demolition site. Existing utilities will be capped in place and not removed. *This does not apply to demolition located inside of or within 100 feet of the boundaries of a previously recorded archaeological site listed or eligible for listing on the National Register of Historic Places.*

Section 3. Undertakings Involving Architectural/Historical Resources (see Chart 3)

Non-Specific Excluded Activities

If any of the following conditions are met, SHPO does not need to review the architectural portion of a project regardless of activity. Document how the project meets the qualifying criteria on an EXCLUDED FROM SHPO REVIEW FORM (Appendix D – Exhibit A) for submittal to IFA.

Qualifying Criteria:

- a. The Project will involve a building of any type that is less than 50 years old and that is not listed in or previously determined eligible for the NRHP (individually or as a contributing component to a historic district).
- b. The Area of Potential Effect (APE) has been intensively surveyed by a professional historian or architectural historian within the last 10 years, determined not to contain historic properties, and the finding was accepted by the Iowa SHPO.
- c. The APE was subject to a reconnaissance survey conducted by a professional historian or architectural historian as a result of the 2008 natural disasters (e.g., those surveys conducted through the Iowa Homeland Security and Emergency Management for FEMA undertakings), determined not to contain historic properties, and the Iowa SHPO accepted the finding.
- d. The Project will involve a building that has been reviewed by the SHPO within the last 10 years and found to be “not eligible” for listing on the National Register of Historic Places.

Specific Excluded Activities

When the following activities are proposed for any architectural properties not meeting the Qualifying Criteria, they will be considered excluded from further review by the SHPO, because the activities have limited potential to adversely affect historic properties (some exceptions noted in *italics* below). Document how the project meets the qualifying criteria on an EXCLUDED FROM SHPO REVIEW FORM (Appendix D – Exhibit A) for submittal to IFA.

1. Exterior Rehabilitation

- a. Caulking and weather stripping in a color complementary to the adjacent surfaces
- b. Scraping, extremely low-pressure (less than 100 psi) washing, and/or repainting of exterior cladding. *This does not apply to destructive surface preparation treatments, such as water blasting, sand or other particle blasting, power sanding, or chemical cleaning.*
- c. Repair or in-kind replacement (i.e., the new features will duplicate the extant material, dimensions, and detailing) of the following features (*consideration should be given first to identifying ways to repair rather than replace damaged historic materials*):
 - i. Porches - railings, post/columns, brackets, cornices, steps, flooring, ceilings, and other decorative treatments.
 - ii. Roofs.
 - iii. Siding.
 - iv. Exterior architectural details and features.
 - v. Doors, including cellar/bulkhead doors (See below, 3. *Windows and Doors*, for details).
 - vi. Gutters and downspouts.

- d. Repair or reconstruction of concrete/masonry walls, parapets, chimneys, or cornices, provided any new masonry or mortar matches the color, strength, composition, rake, and joint width of existing walls, and no power tools are used on historic materials. (*Work on historic masonry must follow the guidance provided in Preservation "Brief #2: Repointing Mortar Joints in Historic Masonry Buildings," currently found online at <http://www.nps.gov/history/hps/tps/briefs/brief02.htm>.)*)
 - e. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
 - f. Construction or replacement of wheelchair ramps, provided the ramps are on secondary façades and will not directly impact the material fabric of the building.
 - g. Installation of temporary wheelchair ramps on any façade.
 - h. Substantial repair or in-kind replacement of signs or awnings. *This does not apply to historic sign—painted, neon, or otherwise.*
 - i. Foundation repair and replacement can be a poured concrete or concrete masonry unit below grade. Above grade must be face materials (i.e., must either be original historic materials or matched historic materials) and not higher than pre-existing foundation.
2. Interior Rehabilitation
- a. Non-destructive or concealed testing for damage assessment or identification of hazardous materials (e.g., lead paint, asbestos, etc.).
 - b. Plumbing rehabilitation/replacement, including pipes and fixtures when no structural alteration is involved. *This does not apply to historic fixtures, which must be repaired for this allowance to apply.*
 - c. HVAC system rehabilitation, replacement, and/or cleaning, including furnaces, pipes, ducts, radiators, or other HVAC units when no structural alteration or exposed new ductwork is involved. *This does not apply to historic fixtures, which must be repaired for this allowance to apply.*
 - d. Electrical wiring, including switches and receptacles. *This Allowance does not apply to exposed wiring such as surface mounted wiring, conduits, piping, or to the installation of new systems where they will affect significant interior features.*
 - e. Replacement of interior fire detection, fire suppression, or security alarm systems. *This Allowance does not apply to exposed wiring such as surface mounted wiring, conduits, piping, or to the installation of new systems where they will affect significant interior features.*
 - f. Restroom improvements for handicapped accessibility, provided the work is contained within existing restroom and significant interior features (e.g., historic trim or architectural details) are not altered.

- g. Repair or in-kind replacement of interior floors, walls, and ceilings. This applies to the repair of interior finishes, including plaster and wallboard, provided the repair is restricted to the damaged area and does not affect adjacent materials. *This does not apply to historic architectural finishes such as decorative plaster or plaster substrates for decorative materials such as murals, gold leaf, etc.*
 - h. Installation of drywall over existing wall surface, provided no decorative plaster or other decorative features are being covered.
 - i. Installation of insulation in ceilings, attic spaces, and crawl spaces.
 - j. Installation of insulation in wall spaces, provided an appropriate interior vapor barrier or vapor barrier paint is used and historic exterior clapboards are removed and reinstalled carefully. *This does not apply to the installation of urea formaldehyde foam insulation or any other thermal wall insulation containing water.*
 - k. Repair or pouring of concrete cellar floor in an existing cellar.
 - l. Repair or replacement of cabinets and countertops. *Historic "built-in" cabinets must be repaired for this to apply.*
3. Windows and Doors
- a. Repair or in-kind replacement of windows (i.e., new windows will duplicate the material, dimensions, design, detailing, and operation of the extant or known historic windows), as follows (*this does not apply to the replacement of existing archaic, decorative, or architectural/structural glass*):
 - i. Repair, scrape, paint, and re-glaze existing windows.
 - ii. Repair or in-kind replacement of window sash, glass, and/or hardware, including jam tracks. Consideration should be given first to identifying ways to repair rather than replace damaged historic materials. If low-e glass is to be used, it must be completely clear and without tint.
 - iii. Repair or in-kind replacement of damaged and non-operable transoms. Consideration should be given first to repair rather than replacement of damaged historic materials.
 - b. Installation of storm windows and doors, provided that they conform to the shape and size of the historic windows and doors. The meeting rail of storm windows must coincide with that of the existing sash. Color should complement trim; mill finish aluminum is not acceptable.
 - c. Primary elevation- the elevation that contains the historic front door or main entryway
 - i. In commercial buildings, aluminum replacement windows must match the existing window proportions and glass sidelights.
 - ii. Vinyl, aluminum clad windows or windows with removable muntins are not included in this exclusion.
 - d. Basement window sash
 - i. Primary and secondary facades (this applies to any or all sides of the building, while not the primary elevation, that are either visible from the public right-of-way or roadway): repair or in-kind replacement of basement window sash; replacement with wood,

fiberglass, or non-white vinyl windows of similar design, detailing, and operation if replacement window sash are of the same size (e.g., the window opening shall not be enlarged or reduced). Consideration should first be given to repair rather than replacement. Color of replacement windows should complement existing trim.

- ii. Tertiary (non-primary or secondary elevations) or any other elevation: removal or replacement of basement window sash.

- e. Window replacements if the windows match dimensions, design, detailing, and operation of historic windows.
 - i. Non-clad wood windows on primary and secondary elevations on individually listed or eligible properties
 - ii. Non-clad wood windows on primary elevations of listed and potentially eligible Historic Districts.
 - iii. Clad windows of the secondary elevations in listed Historic Districts.

- f. Doors
 - i. Retain and repair of historic door.
 - ii. Replacement of the primary elevation door that duplicates material, dimensions, design, and detailing of the historic door.
 - iii. Crossbuck or solid steel doors are not included in this exclusion.

4. *Site Improvements*

- a. Repair or in-kind replacement of driveways, parking lots, and walkways, although consideration should be given first to repair rather than replacement of damaged historic materials whenever feasible.

- b. Repair or in-kind replacement of non-historic landscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.

- c. Repair or in-kind replacement of fencing and other exterior retaining or freestanding walls, provided masonry and mortar matches the color, strength, composition, rake, and joint width of historic wall and no power tools are used on historic materials. (*Work on historic masonry must follow the guidance provided in Preservation "Brief #2: Repointing Mortar Joints in Historic Masonry Buildings," currently found online at <http://www.nps.gov/history/hps/tps/briefs/brief02.htm>.)*

APPENDIX D

Exhibit A. EXCLUDED FROM SHPO REVIEW, PROJECT DETERMINATION FORM

Exhibit B. REQUEST FOR SHPO COMMENT ON PROJECT FORM

Exhibit C. IOWA SITE INVENTORY FORM

Exhibit D. EXAMPLE OF COMPLETED DOCUMENT SUBMITTAL