

**PROGRAMMATIC AGREEMENT AMONG  
THE IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT,  
IOWA STATE HISTORIC PRESERVATION OFFICER,  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
SUPPLEMENTAL COMMUNITY DEVELOPMENT BLOCK GRANT  
FUNDING FOR  
ECONOMIC RECOVERY AND STIMULUS PROJECTS IN IOWA**

**WHEREAS**, numerous cities and counties in the State of Iowa will utilize U.S. Department of Housing and Urban Development (hereinafter, HUD) funds for economic development and to meet otherwise unmet urban development needs (see Appendix A); and,

**WHEREAS**, HUD has allocated supplemental Community Development Block Grant funds (hereinafter, CDBG) to the Iowa Department of Economic Development (hereinafter, IDED) for various economic stimulus and recovery programs (Appendix A), including but not limited to the Neighborhood Stabilization programs (hereinafter, NSP) authorized under Act(s) including, but not limited to the American Recovery and Reinvestment Act of 2009 and the Housing and Economic Recovery Act of 2008 for the purposes of economic development and to meet otherwise unmet urban development needs; and,

**WHEREAS**, HUD has unique statutory authority to delegate its environmental compliance responsibilities promulgated at 24 CFR § 58 to State, tribal, and local governments (hereinafter, Responsible Entities or REs), including obligations under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. §§ 470 *et seq.*, hereinafter, Act) and its implementing regulations 36 CFR § 800; and,

**WHEREAS**, IDED, in keeping with its agency mandate to administer the equitable distribution of supplemental CDBG funding to eligible entitlement and non-entitlement REs and to maintain regulatory oversight of the REs once funds have been awarded, hereby represents all REs in the formulation and signatory execution of this agreement and in any future amendments thereto; and,

**WHEREAS**, upon acceptance of supplemental funding all REs, pursuant to 24 CFR §§ 58, 36 CFR § 800, and other relevant legislation, bind themselves to the roles, responsibilities, and terms of this agreement and its appendices; and,

**WHEREAS**, IDED, on behalf of the REs, has consulted with the Iowa State Historic Preservation Officer (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**, given the magnitude of Iowa's economic recovery effort and the immediate need for governmental assistance, IDED, SHPO, and ACHP have agreed that consultation and compliance for undertakings enabled by supplemental CDBG funding program should be addressed programmatically and in accordance with procedures outlined in this programmatic agreement and its attachments (Agreement) in order to effectively and expeditiously meet regulatory obligations; and,

**WHEREAS**, IDED, SHPO, and ACHP encourage Res to enter into lead federal agency agreements pursuant to 36 CFR § 800.2(a)(2) when more than one federal agency and/or RE is involved in an undertaking, and when such an agreement is mutually advantageous and of net benefit to the ultimate recipient of federal aid; and,

**WHEREAS**, IDED has contacted federally recognized tribes (Appendix B) on behalf of the Res, notifying them of HUD's involvement in Iowa's Federal economic stimulus 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 economic stimulus 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 Agreement in the capacity of a concurring party; and,

**WHEREAS**, IDED, SHPO, and ACHP agree that the Res will identify other interested parties and initiate consultation with them on a case-by-case basis, and the Res 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 §§ 58.43; 58.45-46; 58.59 and other applicable sections of that part.

**NOW THEREFORE**, Iowa Department of Economic Development on behalf of the Responsible Entities, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation as signatories, agree that, upon execution of this Agreement, the undertakings of programs enabled by supplemental CDBG funds 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**

IDEED shall ensure that the following stipulations are carried out:

### **I. IDEED RESPONSIBILITIES**

- A. IDEED shall represent the REs 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. IDEED shall require all REs by contract to follow the requirements set forth in this Agreement.

- C. IDED shall serve as the primary technical assistance contact for the REs in matters concerning the interpretation of this agreement and the routine execution of its terms. IDED, at their discretion, may consult directly with the SHPO and ACHP when issues of a complex nature arise.
- D. IDED shall employ administrative staff and a historic preservation specialist(s) to fulfill its obligations under Stipulation I.C.
- E. In accordance with Stipulation IX, IDED shall monitor the RE'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 SHOP review pursuant to applicable stipulations in this Agreement. IDED 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.

- A. The REs 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 shall ensure that appropriate interim controls, as allowed by 24 CFR § 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, IDED, and the SHPO to be "practicable and feasible".
- C. The REs 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 shall ensure that documentation submitted to SHPO for review meets or exceeds the standards outlined at 36 CFR § 800.11. The documentation standards with examples of submittals are attached as Appendix D. The Res shall withhold certain information from public disclosure in accordance with Section 304 of the Act (16 U.S.C. 470w-3) and Chapter 22.7(22) of the Iowa Code.
- E. The REs 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.

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- F. The REs 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 § 79).
- G. The REs shall comply with Section 110(f) of the Act (16 U.S.C. § 470h-2(f)), and consult directly with the SHPO and National Park Service (hereinafter NPS), on all undertakings that may directly and adversely affect a National Historic Landmarks.
- H. The REs shall provide letter notification to IDED 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 shall invite the participation of consulting parties, and consider request for consulting party status, as provided in 36 C.F.R. § 800.2. This applies to all undertakings with the exception of those that are exempt under HUD regulation (24 CFR § 58.34) or are categorically excluded as being not subject to review of the laws listed at 24 CFR § 58.5 in accordance with 24 CFR § 58.35(b), and those exempt from Section 106 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 the resolution of disputes as provided in Stipulation VI below, and may participate in consultations when it determines that 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 shall ensure that consultation in accordance with this agreement has been completed prior to the approval of any individual or block grant 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

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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 Burials Program at the University of Iowa - Office of the State Archaeologist (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 Chapter 263 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 appropriate law enforcement authorities and the Iowa Department of Health are notified.
- B. *Archaeological material (non-mortuary related)*. The REs 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 IDED or the RE 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 must determine the NRHP eligibility of the archeological resource in consultation with the SHPO.
  4. Upon a determination that a property is eligible for the National Register of Historic Places, the RE shall submit a plan for avoidance, protection, recovery of information, or destruction without data recovery to the SHPO for review and comment. The RE 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 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:

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- a. The development and implementation of an appropriate data recovery plan, other recommended mitigation procedures, or agreement among the RE and the SHPO that the site does not warrant mitigation; or,
  - b. Agreement by SHPO and the RE that the newly located archeological materials are not eligible for inclusion on the NRHP.
- C. *Adverse effects upon Architectural Properties.* The REs 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 shall notify IDED and SHPO of the discovery.
  2. An architectural historian retained by IDED or the RE 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 shall provide its determination of effect and report of the consulting historian's findings to the SHPO who shall have 7 working days to provide comments.
  3. Upon assessment of adverse effect, the RE shall submit a plan for after-the-fact mitigation to the SHPO for review and comment. The RE 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 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 SHPO that the effects are not adverse; or,
    - b. The development and implementation of an appropriate mitigation plan, or agreement among the RE and the SHPO that the site does not warrant mitigation.

## VI. DISPUTE RESOLUTION.

- A. IDED shall represent itself and REs petitioning singly or as a group in all dispute resolution situations.
- B. Should any signatory to this Agreement or RE (represented by IDED) object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, IDED shall consult with such party to resolve the objection.
- C. If, after initiating consultation, IDED determines that such objection cannot be resolved through consultation, then the IDED will:

1. Forward all documentation relevant to the dispute, including the IDEDED's proposed resolution, to the ACHP. The ACHP shall provide the IDEDED 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, IDEDED 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. IDEDED 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 IDEDED may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, IDEDED 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. IDEDED'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 IDEDED.
3. The responsibilities of the signatories to the Agreement to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

## VII. AMENDMENT

- A. IDEDED shall represent itself and REs petitioning singly or as a group in all requests for amendments to this agreement.
- B. Any of the signatories to this Agreement, or REs represented by IDEDED, 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 § 800.13, to consider such amendment. IDEDED must notify the ACHP of its intent to amend the Agreement and invite the ACHP's review and comment. The amendment will be effective on the date a copy of it is signed by all of the signatories is filed with the ACHP. IDEDED 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 IDEDED shall ensure that the ACHP is provided file copies of finalized versions that reflect all revisions.

## VIII. TERMINATION AND DURATION

- A. IDEDED shall represent itself and all REs 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 signatory shall immediately consult with the other signatories to

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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 becomes null and void, and prior to work continuing on undertakings referenced in this PA, IDEED must either execute a new agreement pursuant to 36 CFR § 800.6. review the undertakings under the scope of this Agreement in accordance with 36 CFR §§ 800.3 through 800.7. IDEED shall notify the signatories as to the course of action it will pursue.
- D. This agreement will become void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, IDEED may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation VII, above.

### IX. PERIOD REVIEW

IDEED shall monitor the REs' full compliance with this agreement and shall provide the SHPO with an annual report by January 1, 2010, 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.

### X. EXECUTION OF THE AGREEMENT

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

**SIGNATORIES:**

**Iowa Department of Economic Development (IDED)**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Vince Lintz, Deputy Director

**State Historic Preservation Office (SHPO)**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Barbara A. Mitchell, Deputy State Historic Preservation Officer

**SIGNATORIES:**

**Advisory Council on Historic Preservation (ACHP)**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
John M. Fowler, Executive Director

DRAFT

**CONCURRING PARTIES**

**Iowa Historic Preservation Alliance**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Rod Scott, Chairman

DRAFT

**CONCURRING PARTIES**

**University of Iowa, Office of the State Archaeologist**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
John Doershuk, State Archaeologist

DRAFT

**CONCURRING PARTIES**

**National Trust for Historic Preservation**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Royce Yeater, Director, Midwest Office

DRAFT

APPENDIX A

APPLICABLE HUD PROGRAMS AND AUTHORIZING LEGISLATIVE AUTHORITY

Neighborhood Stabilization Program (authorized 2008)

Neighborhood Stabilization Program 2 (authorized 2009)

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APPENDIX B  
List of Tribes Notified

- |    |  |    |   |
|----|--|----|---|
| A. | Flandreau Santee Sioux Ex. Com.<br>Attn: Mr. Leonard Eller<br>P.O. Box 283<br>Flandreau, SD 57028                      | I. | Sac & Fox Nation in Kansas<br>Attn: Ms. Freida Perkins<br>305 North Main Street<br>Reserve                          |
| B. | HO-Chunk Nation<br>Attn: Mr. George W. Garvin<br>W9814 Airport Road, P.O. Box 667<br>Black river Falls, WI 54615       | K. | Sac & Fox Tribe of the Mississippi in Iowa<br>Attn: Mr. Johnathan Buffalo<br>349 Meskwaki Road<br>Tama, IA 52339    |
| B. | HO-Chunk Nation<br>Attn: Mr. Troy Swallow<br>W9814 Airport Road, P.O. Box 667<br>Black River Falls, WI 54615           | L. | Santee Sioux Tribe of Nebraska<br>Attn: Mr. Roger Trudell<br>425 Frazier Ave N, suite 2<br>Niobrara, NE 6876        |
| B. | HO-Chunk Nation<br>Attn: Mr. George R. Lewis<br>W9814 Airport Road, P.O. Box 667<br>Black River Falls, WI 54615        | M. | Sisseton-Wahpeton Dakota Nation<br>Attn: Mr. James "JC" Crawford<br>P.O. Box 509<br>Agency Village, SD 57262        |
| C. | Iowa Tribe of Kansas & Nebraska<br>Attn: Mr. Louis De Roin<br>3345 B Thrasher Road<br>White Cloud, KS 66094            | N. | Spirit Lake Tribal Council<br>Attn: Mr. Valentino White<br>P.O. Box 359<br>Fort Totten, ND 58335                    |
| D. | Iowa Tribe of Oklahoma<br>Attn: E. Bernadette Huber<br>RR 1, Box 721<br>Perkins, OK 74059                              | O. | Upper Sioux Community of MN<br>Attn: Mr. Tom V. Ross<br>P.O. Box 147<br>Granite Falls, MN 56241                     |
| E. | Lower Sioux Indian Com. Council<br>Attn: Ms. Ann Larsen<br>39527 RES Highway 1, Box 308<br>Morton, MN 56270            | P. | Winnebago Tribal Council<br>Attn: Mr. David Lee Smith<br>LPTC P.O. Box 270<br>Winnebago, NE 68071                   |
| F. | Omaha Tribal Council<br>Attn: Mr. Donald grant<br>P.O. Box 368<br>Macy, NE 68039                                       |    | Yankton Sioux Tribal Business & Claims Committee<br>Attn: Ms. Madonna Archambeau<br>P.O. Box 248<br>Marty, SD 57361 |
| G. | Otoe-Missouri Tribe of Indians<br>Attn: Ms. Mildred Hudson<br>612 South 9 <sup>th</sup> Street<br>Ponca City, OK 74601 | S. | Sac & Fox Nation of Oklahoma<br>Attn: Ms. Kay Rhoads<br>Route 2, Box 246<br>Stroud, OK 74079                        |
| H. | Prairie Island Community Council<br>Attn: Ms. Doreen Hagen<br>5636 Sturgeon Lake Road<br>Welch, MN 55089               | T. | Sac & Fox Nation of Missouri<br>Attn: Mr. Edmore Green<br>Rural Route 1, Box 60<br>Reserve, KS 66434                |

## 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 Historic Preservation Specialists (HPS) at the Iowa Department of Economic Development will serve as the primary point of contact for the RE's for routine technical assistance and shall provide quality control of documentation through pre-review screening. IDED 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 for the relevant RE 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-lining of water and/or sewer clay pipes and 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 that does not involve earthmoving satisfies the non-specific exclusion on criteria under Part II, Section 3. Similarly, the construction of a new water treatment plant 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 Part II, Section 2.

If the RE determines that the project *does not* fulfill the exclusion criteria under Part II, Sections 1-3, then the RE shall proceed to Step 2 of the process. Decision-making charts are included in Section 2

and 3 to assist the RE in determining the exclusion status of a project. The RE should direct any questions regarding the completion of Step 1 to IDED's HPS.

**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 § 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 boundaries that are difficult to define - once again, depending on the scope of the undertaking. For instance, the footprint of a new building may be 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 may be greater and increases in magnitude with its height and relative proximity to those historic properties.

The APE of a project will 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 should direct any questions regarding the completion of Step 2 to IDED's HPS. The RE and IDED's HPS 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 RE has determined the scope and APE of the undertaking, the RE 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 § 800.16(1)]. 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 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 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 National Register eligibility status on a particular property or district under consideration.

At this point the RE 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, Indian Tribes or other 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. The RE should seek the opinion of IDED’s HPS when determining the appropriate level of investigation.

Once the historic properties investigation has been completed and the results are known, the RE must make a determination on whether the undertaking may result in an effect to a historic property, and, if so, whether that effect may be adverse. The RE will then prepare a documentation submittal to support that determination. The RE is encouraged to consult directly with the IDED HPS when assessing project effects on historic properties.

-36 CFR § 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 § 800.5 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 also include a completed IOWA SITE INVENTORY form for each building, structure, and district within the APE (Appendix D – Exhibit C). Any questions regarding the preparation of a submittal packet should be directed to IDED’s HPS.

The RE must send the completed submittal to the IDED HPS for pre-review screening, which must then forward it to the SHPO for 30-day review and comment. (For an example, see Appendix D – Exhibit D). If SHPO finds the submittal to be incomplete, SHPO will return it to the RE along with instructions on how to correct the deficiency. The RE will send the revised submittal to IDED HPS for final vetting and delivery to SHPO.

In cases where the RE has determined that there are no historic properties present within the APE or no effects on historic properties and the SHPO concurs (or does not respond within the 30 day review period), then the RE 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 must apply the Criteria of Adverse Effect as defined at 36 CFR § 800.5 in order to determine their magnitude. The RE is encouraged to consult directly with the IDED HPS 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 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 IDED HPS for pre-review screening and delivery to SHPO for 30-day review. If the SHPO concurs, the RE shall document his/her finding and attach it to the project’s environmental assessment document, concluding the 106 process.

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

If the SHPO objects with the RE's definition of the project scope or APE or with the RE's finding of effect, then the RE and SHPO shall appeal to IDED to seek resolution under Stipulation VI of the 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, and any related dispute resolutions, the RE determines that the project may result in adverse effects on historic properties, then the RE must consult with the SHPO with measures to avoid, minimize, or mitigate those effects. This will involve the direct consultation of the SHPO, the RE, the Applicant, the University of Iowa – Office of the State Archaeologist, Iowa Historic Preservation Alliance, 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 the RE, IDED and SHPO have consulted with all interested parties and the RE, IDED, 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 with the assistance of the IDED HPS and signed by the RE, IDED, 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 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 § 58.34) or are categorically excluded as being not subject to review of the laws listed at 24 CFR § 58.5 in accordance with 24 CFR § 58.35(b), the signatories agree that the RE has no further obligations under Section 106 regarding the following types of activities, once it has concluded Part 1, Step 1 of this Appendix.

### **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 listed or eligible or that are 50 years or age or older in the Area of Potential Effects, **AND** either of the following conditions (a and b, below) is met, the project regardless of activity will not be subject to Section 106 review 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 IDED.

#### 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 not be subject to Section 106 review 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.

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- 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.
- j. Connecting pits relating to directional boring for utility lines no bigger than 10 feet by 10 feet.
- k. In-place replacement of water and/or sewer mains, if no known National Register of Historic Places 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 listed or 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 listed or 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 listed or found eligible for listing on the National Register of Historic Places.*
- v. Foundation repair that does not extend beyond three feet from the existing wall.

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

### Non-Specific Excluded Activities

If any of the following criteria (a through d, below) are met, the architectural portion of a project will not be subject to Section 106 review consideration 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 IDED.

Qualifying Criteria:

- a. The Project will involve a building of any type that is less than 50 years old.
- 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 not be subject to Section 106 review, 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 IDED.

#### 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>.)*

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- 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