

**PROGRAMMATIC AGREEMENT
AMONG
MISSOURI STATE OFFICE OF ADMINISTRATION-DIVISION OF FACILITIES
MANAGEMENT DESIGN AND CONSTRUCTION,
CITY OF JEFFERSON,
COLE COUNTY,
MISSOURI STATE HISTORIC PRESERVATION OFFICE,
MISSOURI STATE PENITENTIARY REDEVELOPMENT COMMISSION,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
FOR THE MISSOURI STATE PENITENTIARY REDEVELOPMENT PROJECT**

WHEREAS, the City of Jefferson (City) is the recipient of Community Development Block Grant (CDBG) assistance through the Department of Housing and Urban Development (HUD) for the demolition occurring in Phase A of the multi-phased MSP redevelopment, and the City has assumed HUD's environmental responsibilities in accordance with 24 CFR Part 58, including Section 106 of the National Historic Preservation Act, as amended [16 U.S.C. Sec. 470f] and its implementing regulations, 36 CFR Part 800; and

WHEREAS, the Missouri State Office of Administration-Facilities Management Design and Construction (FMDC) and the Missouri State Penitentiary Redevelopment Commission (MSPRC) adopted a Master Plan (attached as Appendix A) for the redevelopment of the Missouri State Penitentiary (the project). The City adopted this Plan by Ordinance #14102 and Cole County has considered and approved this Plan; and

WHEREAS, the State of Missouri currently owns the property known as the Missouri State Penitentiary (MSP) in Jefferson City, Cole County, Missouri; and the property is currently administered by the FMDC; and

WHEREAS, the MSPRC was established by Sections 217.900 to 217.910, RSMo, in order to acquire title to the property historically utilized as MSP and to lease or sell real property to developers who will utilize the property consistently with the Master Plan; and

WHEREAS, the City plans to carry out the project, thereby making the project an undertaking as defined by 36 CFR Part 800.16(y); and

WHEREAS, the Area of Potential Effect has been determined to be the area bounded on the west by Lafayette Street and the northerly projection of Lafayette Street extending to the Missouri River; on the north by the Missouri River; on the east by the eastern property line of the MSP property, said line being located approximately along the northerly projection of Pierce Street extending to the Missouri River; on the south by Riverside Drive, Water Street and Capitol Avenue; and

WHEREAS, the City has determined that the project may have an adverse effect on the MSP, which is eligible for listing in the National Register of Historic Places, and has consulted with the Missouri State Historic Preservation Office (SHPO) pursuant to 36 CFR Part 800; and

WHEREAS, since the project effects cannot be fully determined at this time, a Programmatic Agreement, as allowed under 36 CFR Part 800.14(b)(1)(ii) needs to be executed; and

WHEREAS, the City and FMDC have contacted federally-recognized Tribes, as listed in Appendix B, for which the MSP may have religious and cultural significance, and have invited the Tribes to sign this Programmatic Agreement (PA) as concurring parties; and

WHEREAS, the City provided information to and sought feedback from the public regarding the MSP redevelopment and Master Plan in the various ways, including a press conference conducted by the Missouri Commissioner of Administration Kelvin Simmons on December 30, 2009 at which the MSP redevelopment was announced, discussed and detailed; public meetings of the MSPRC on March 24, April 28 and May 26, 2010 at which the MSP redevelopment was discussed at length; a public open house conducted on March 4, 2010 providing the public information concerning aspects of the MSP redevelopment; public deliberations of both the City Council and the Cole County Commission after which the MSP Master Plan was approved; and public consideration, approval and acceptance of the HUD grant by the City Council for demolition of buildings on the MSP site on April 19, 2009; and

WHEREAS, another Federal agency that provides permitting or financial assistance to this Project may satisfy its own Section 106 compliance responsibilities by accepting and complying with the terms of this Agreement; and

WHEREAS, redevelopment of the Missouri State Penitentiary property may involve other yet unidentified parties as necessary planning, design, financing and permits occur and are obtained, which may later be invited to join this Agreement either as parties or concurring parties; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the City has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has decided to participate in the consultation to resolve adverse effects;

NOW, THEREFORE, FMDC, MSPRC, the City, Cole County, SHPO and the ACHP agree that future redevelopment of the MSP property shall be administered in accordance with the following stipulations to take into account the effect of the undertaking on historic properties:

STIPULATIONS

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

I. Qualifications of Personnel

- a. All personnel designated to oversee the fulfillment of the stipulations of this Agreement must meet the Secretary of the Interior's *Professional Qualifications Standards* outlined in 36 CFR Part 61, Appendix A (also found as Appendix C of this document), or attend a minimum of one (1) annual Section 106 training session, as provided or agreed to by SHPO.
- b. The signatories must notify SHPO of the personnel responsible for overseeing this Agreement and will notify SHPO when there is a change in personnel. In such event, signatories and SHPO shall meet to review the terms, conditions and implementation of this Agreement.
- c. When conditions dictate, signatories will ensure that appropriate qualified professionals who at minimum meet the Secretary of the Interior's *Professional Qualifications Standards* at 36 CFR Part 61, Appendix A are contracted with or retained to carry out specific stipulations. Signatories will make the professional's resume and contact information available to SHPO upon request.
- d. The Department of Natural Resources maintains a "List of Qualified Professionals" that meet the Secretary of the Interior's *Professional Qualifications Standards* and SHPO shall make the list available to signatories upon request.

II. Recordation

For any building or structure proposed for demolition, documentation on condition of the property and setting shall be prepared and submitted to SHPO as follows:

- a. Photographs and documentation as described above for specific buildings and structures proposed for demolition shall be supplemented with available drawings and other building historical documents, to the extent that such drawings and documents are currently in FMDC's possession; and include a descriptive narrative for each structure. To the extent available, such documents shall be of the quality established for conformance with HABS level II documentation and formatting consistent with National Register of Historic Places nominations.
- b. Photographs and documentation submitted shall be reviewed and commented on by SHPO within 30 days of receipt; and any party submitting documentation shall seek to address SHPO comments in a subsequent submission.
- c. Copies of the documentation shall be provided to SHPO and the State Archives.
- d. FMDC, City, Cole County, MSPRC and SHPO intend to cooperate in the preparation of a nomination of the MSP to the National Register of Historic Places. FMDC, City, Cole County, MSPRC and SHPO will seek to prepare a nomination of the site for inclusion in the Register with the goal that a draft nomination be submitted to SHPO with a target date of January 2011 for its review and comment with the intention that the nomination be considered by the Missouri Advisory Council on Historic Preservation at its scheduled meeting in May, 2011. This target date may be modified with the consent of the parties.

- e. The purpose of the documentation shall be for the recordation of the MSP site and structures for potential future nomination to the National Register of Historic Places.
- f. In the event that such a nomination occurs and subject to the availability of funds appropriated specifically for such purpose, FMDC shall retain a 36 CFR Part 61, Appendix A qualified historian/architectural historian to complete the nomination to the National Register of Historic Places of the MSP.

III. Archaeological Surveys and Treatment

The City and / or FMDC shall contract with a qualified archaeologist to conduct an archaeological survey of the MSP grounds, prior to any substantial ground disturbing activities associated with project activities with the exception of those areas already determined, with concurrence of SHPO, not to have a potential for archaeological resources. Remote sensing may be utilized. The City and / or FMDC shall notify the SHPO and request an opinion of the potential existence of archaeological resources. The SHPO will respond within thirty (30) working days from receipt of submission, unless the SHPO requests additional information. If a reasonable potential for archaeological resources exists, an archaeological assessment of the affected area will be carried out in consultation with the SHPO. If archaeological resources are found which meet the National Register criteria, they will be avoided or preserved in place, whenever feasible. When this is not feasible, the SHPO will be consulted and a data recovery plan consistent with the Council's handbook "Treatment of Archaeological Properties" and approved by the SHPO will be developed and implemented.

IV. Activities Exempt from Further Review

The following actions have limited or no potential to effect historic properties as long as the work is done in conformance with the Standards, and therefore are exempt from further review or consultation with SHPO or ACHP under this agreement. For the purpose of this Agreement, "in-kind" replacement/repair is defined as a replacement action or repair that uses materials that match the original material in terms of composition, appearance, dimension, detailing and durability. In addition, to the extent practicable, original materials will be preserved and reused for in-kind replacement/repair.

- a. Site Work - as long as an approved archaeological investigation report has been reviewed and approved by SHPO and the action is within a zone with no archaeological concerns.
 - i. In-kind replacement/repair of:
 - 1. concrete, masonry or stone retaining walls, steps, driveways, curbs, and gutters within the existing footprint
 - 2. city streetlights, signs, traffic lights, transportation shelters, or street furniture
 - ii. Replacement/repair of:

1. concrete, masonry, stone or asphalt sidewalks, driveways, alleys, parking lots, and street overlays
 2. concrete, masonry or stone retaining walls, curbs and gutters
 3. utilities such as water, gas, sewer, and electrical lines that do not extend beyond the dimensions of the previously disturbed trench or excavation
- iii. Installation of vegetative landscaping when no grading is required and when excavation of holes for individual plantings is no more than thirty (30) inches deep.
 - iv. Installation of temporary, reversible barriers such as fencing and construction of pedestrian walkways or bridges.

b. Exterior Rehabilitation

- i. Installation of scaffolding and other temporary construction-related structures including barriers, screening, fences, protective walkways, signage, office trailers and restrooms.
- ii. Temporary stabilization which causes no permanent damage to the building or site, including installation of temporary bracing, shoring, and tarps.
- iii. Application of exterior paint on previously painted surfaces, including masonry.
- iv. All lead paint abatement which does not involve removal or alteration of exterior features and/or a window's surrounding casings sash components, trim and sills. The National Park Service Preservation Brief Number 37, "Appropriate Methods of Reducing Lead-Paint Hazards in Historic Housing" shall be consulted as necessary.
- v. In-kind replacement/repair of:
 1. Concrete, masonry or stone foundations, floor joists, and ceiling joists
 2. basement bulkhead doors
 3. wood siding and trim
 4. roof cladding, flashing, gutters, soffits, and downspouts and with no change in roof pitch or configuration
 5. window glazing and weather stripping. Replacement of existing clear glass with new clear glass is allowed
 6. exterior vents
- vi. Replacement/repair of:
 1. concrete, masonry or stone foundations
 2. exterior heating, ventilation, and air conditioning (HVAC) mechanical units excluding new duct work or new locations for heating and cooling units.

V. Rehabilitation

Rehabilitation that does not meet the definition of exempt activities below of the contributing buildings within the MSP Historic District shall be in conformance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (Standards) and the Master Plan.

As individual buildings and/or projects implementing the Master Plan are undertaken, documentation shall be provided to the SHPO at the earliest planning stage. SHPO shall review and comment on the conformance of each project to the Standards. The SHPO will respond to FMDC submissions within 30 days of receipt of the project, unless the SHPO requests information. SHPO comments shall be incorporated into the plans for rehabilitation whether conducted by FMDC, the City or a private developer.

If the proposed rehabilitation is determined by the SHPO to not meet the Standards, the project shall be determined to have an adverse effect and the programmatic agreement will no longer apply therefore the process outlined in 36 C.F.R. Part 800.5-7 shall apply.

VI. New Construction and Reconstruction

New construction or reconstruction shall be designed in conformance with the Standards and the Master Plan. Copies of all new construction or reconstruction projects shall be submitted to the SHPO for review and comment within 30 days of receipt of the project, unless the SHPO requests information. Should the proposed new construction or reconstruction be determined by the SHPO to not meet the Standards, the project shall be determined to have an adverse effect and the programmatic agreement will no longer apply therefore the process outlined in 36 C.F.R. Part 800.5-7 shall apply.

VII. Public Participation

- a. State recipients shall share information about identification of historic properties, as appropriate, at public hearings and in public notifications.
- b. State recipients shall seek and consider the views of the public in a manner that reflects the nature, magnitude and complexity of the redevelopment master plan, development standards and design guidelines and its effects on historic properties, the likely interest of the public in the effects on historic properties and the potential for controversy, confidentiality concerns of private individuals, Tribes and businesses, and other state and federal agency involvement.
- c. State recipients shall give due consideration to the views of local historic preservation commissions, Tribes, and other groups or individuals known to be interested in historic resources in the area affected by the redevelopment master plan, development standards and design guidelines. State Recipients shall provide information upon request to SHPO and/or ACHP of members of the public or Tribes known to have an interest in an undertaking covered under the terms of this Agreement.

VIII. Objections from Tribes and the Public

At any time during implementation of an undertaking covered by this Agreement, should an objection be raised by a Tribe or member of the public, the State recipient shall give appropriate consideration to the objection and consult as needed with the objecting party, SHPO and/or ACHP to resolve the objection.

IX. Technical Assistance

Nothing in this Agreement shall be construed as meaning that the City or FMDC cannot request the advice, council, or assistance of SHPO or ACHP at any time.

X. Coordination with Other Federal Funding

Another Federal agency that provides permitting or financial assistance to this Project may satisfy its own Section 106 compliance responsibilities by accepting and complying with the terms of this Agreement. The Federal agency shall notify the City, FMDC, MSPRC, SHPO and ACHP in writing of its intent to adhere to this Agreement in lieu of completing a separate Section 106 review.

XI. Duration

This Agreement will continue in full force and effect for five (5) years from the date all signatories have signed the Agreement. At any time in the six-month period prior to the Agreement's expiration, any party to this Agreement may request the other parties to extend the Agreement for five (5) more years, provided the request is made in writing and that all parties agree.

XII. Unanticipated Discoveries

The City and / or FMDC shall include the following provisions in construction documents for all construction activities on the MSP site:

1. In the event that human remains or a previously unidentified archeological resource is discovered during ground disturbing activities, the City and / or FMDC shall notify SHPO. Within forty-eight (48) hours of the discovery, the City and / or FMDC shall also notify Indian tribes that might attach religious and cultural significances to the affected property. All construction work involving subsurface disturbance will be immediately halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur pursuant to Sections 194.400-410, RSMo.
2. The City and / or FMDC and SHPO, or an archeologist possessing the qualifications described in Section I, will immediately inspect the work site and determine the area and nature of the affected discovery or archeological resource.

- Appropriate steps shall be taken to secure the resource. Construction may then occur in the project area outside the affected resource upon notification to SHPO.
3. In the event human remains are encountered and are likely to be of Native American origin, all reasonable efforts will be made to avoid disturbing the remains and any artifacts pursuant to Sections 194.400-410, RSMo. To the extent possible, the public will be excluded from viewing the remains or artifacts and no photographs will be released to the public or news media.
 4. The City and / or FMDC, after consultation with SHPO, will determine the National Register eligibility of the archeological site. If SHPO concurs that the resource is eligible for the National Register, the City and / or FMDC shall consult with SHPO to resolve adverse effects pursuant to 36 CFR Part 800.6.

XIII. Monitoring and Reporting

- a. The SHPO or the ACHP may monitor activities carried out pursuant to this Agreement. The City shall cooperate with SHPO or the ACHP in carrying out their monitoring and review responsibilities. The City shall make project information under this Agreement available as necessary.
- b. Compliance with the terms of this Agreement shall be documented by the City through recordkeeping, and shall include copies of photographs and the location map of the Project. Records will be made available to SHPO and the ACHP for monitoring compliance as necessary.
- c. Appendix D contains the addresses of all signatories.

XIV. Dispute Resolution

Should any signatory to this PA object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the City shall consult with such party to resolve the objection. If the City determines that such objection cannot be resolved, the City will:

- a. Forward all documentation relevant to the dispute, including the City's proposed resolution, to the ACHP. The ACHP shall provide the City with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the City shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The City will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the City may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the City shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to this Agreement, and provide them and the ACHP with a copy of such written response.

- c. The responsibilities of the parties to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XV. Amendments

This Agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

XVI. Termination

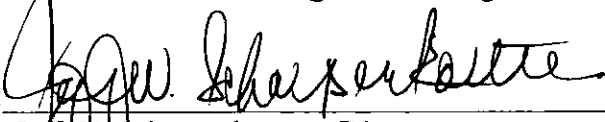
If any party to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XVI. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

In the event of termination, and prior to work continuing on the Project, the City will comply with 36 CFR Parts 800.3 through 800.6 with regard to any undertakings heretofore covered by this Agreement.

Execution and implementation of this Agreement evidences that the parties have taken into account the potential effects of the project on historic properties and have afforded the ACHP an opportunity to comment.

Signed:

Division of Facilities Management, Design & Construction

By: 
Jeff W. Schaeperkoetter, Director

Date: 6/18/2010

Missouri State Penitentiary Redevelopment Commission

By: 
Daniel K. Carr, Chairperson

Date: 6/23/10

Missouri State Historic Preservation Office

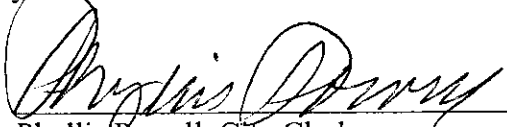
By: 
Mark Templeton, State Historic Preservation Officer

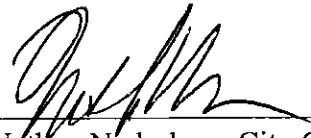
Date: 6-30-10

City of Jefferson, Missouri

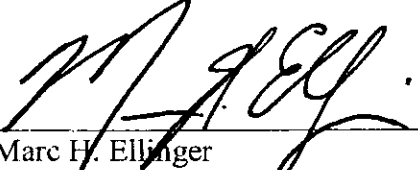
By: 
John Landwehr
Mayor

Date: 7/20/10

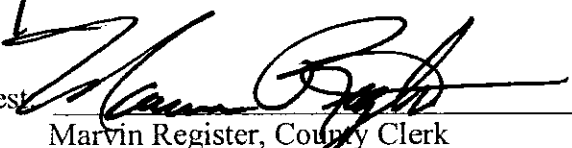
Attest: 
Phyllis Powell, City Clerk

Approved as to form: 
Nathan Nickolaus, City Counselor


COUNTY OF Cole, Missouri


Marc H. Ellinger
Presiding Commissioner

Date: _____

Attest: 
Marvin Register, County Clerk

Advisory Council on Historic Preservation

By: 
Title: _____

Date: 8/5/10