

**PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF ENERGY, THE ARIZONA DEPARTMENT OF
COMMERCE ENERGY OFFICE AND
THE ARIZONA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE USE OF AN INTERAGENCY STATE AGREEMENT
FOR SECTION 106 REVIEW OF EECBG, SEP AND WAP UNDERTAKINGS**

WHEREAS, the United States Department of Energy (DOE) administers the following financial assistance programs: *the Energy Efficiency and Conservation Block Grant Program* under the Energy Independence and Securities Act of 2007 (EECBG); *the State Energy Plan* under the Energy Policy and Conservation Act of 1975 and the State Energy Efficiency Programs Improvement Act of 1990 (SEP); and *the Weatherization Assistance Program (WAP)* for Low-Income Persons under Title IV of the Energy Conservation and Production Act, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009 (ARRA); collectively referred to as the "Programs";

WHEREAS, the projects funded by the Programs are undertakings subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA), and its implementing regulations at 36 CFR part 800, and include rehabilitation, energy efficiency retrofits, renewables, and weatherization (Undertakings);

WHEREAS, on February 5, 2010, the Advisory Council on Historic Preservation (ACHP) designated a Prototype Programmatic Agreement regarding the Undertakings (Prototype PA) that, under its Stipulation III, authorizes the Section 106 review of these Undertakings in accordance with State interagency agreements;

WHEREAS, the Arizona State Historic Preservation Office (SHPO) and the Arizona Department of Commerce (Recipient) agree that the "Programmatic Agreement between the AZ Department of Commerce-Energy Office and the Arizona State Historic Preservation Office" (interagency agreement), applies to the referenced Undertakings and provides a historic preservation review process that is similar to that provided by the other terms of the Prototype PA;

WHEREAS, the terms of the interagency agreement were in negotiation on or before February 5, 2010 and the interagency agreement was executed prior to February 19, 2010; and

WHEREAS, DOE, does not object to the use of the interagency agreement, as supplemented by the terms of this Programmatic Agreement, to fulfill the requirements of Section 106 for the referenced Undertakings in Arizona; and

NOW, THEREFORE, DOE, the Recipient, and the Arizona SHPO agree that the Programs shall be administered in accordance with the following stipulations to satisfy DOE's Section 106 responsibilities for all individual Undertakings of the Programs in Arizona.

DOE, the Recipient, and the SHPO agree to the following stipulations and shall ensure that the following stipulations are carried out:

1. The Recipient and SHPO will review Undertakings in accordance with the terms of the interagency agreement (attached as Appendix A to this Programmatic Agreement) and with the terms of this Programmatic Agreement.
2. Stipulation I of the interagency agreement identifies those activities which the Recipient is not required to submit to the SHPO as those activities do not have the potential to cause effects on historic properties even when historic properties may be present. Recipient will maintain file records with verification that undertakings were determined to be exemptions for a period of three (3) years

from project completion and make them available for review if requested by DOE or the ACHP.

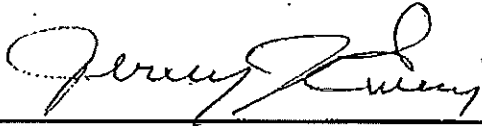
3. If an activity is not identified in Stipulation I of the interagency agreement, and involves a property greater than fifty years old, then the Recipient shall review the undertaking in accordance with the following procedures:
 - a. Identification and Evaluation
 - 1) The Recipient shall establish the Area of Potential Effect (APE) for all program undertakings defined in the DOE grant agreement for the State.
 - 2) The Recipient shall complete the identification and evaluation of historic properties utilizing existing information including the National Register, state surveys, and county and local surveys. In addition, the Recipient and SHPO may use or develop protocols that are consistent with 36 CFR Section 800.4 for the review of consensus determinations of eligibility.
 - 3) The Recipient shall consult with Indian tribes or NHOs to determine if there are historic properties of religious or cultural significance that were not previously identified or considered in surveys or related Section 106 reviews, as appropriate.
 - 4) Archaeology surveys are required only for new ground disturbing project undertakings and shall be limited in scope subject to the concurrence of Indian tribes or NHOs that may attach religious or cultural significance to historic properties in the project area. Project undertakings requiring more than minimal ground disturbance shall be forwarded to the SHPO and THPOs or Indian tribes or NHOs concurrently for review.
 - 5) In order to avoid potential delays, prior to initiating undertakings the SHPO may review the Recipient's scopes of work for above ground surveys and archaeology surveys that are deemed necessary to administer the Recipient's Programs and to implement the terms of this PA.
 - 6) The Recipient shall refer disputes regarding determinations of eligibility to DOE for review and referral to the Keeper of the National Register in accordance with 800.4(c)(2).
 - b. Treatment of Historic Properties
 - 1) When the Recipient and the SHPO concur that an undertaking is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal Register*) (Standards), that undertaking will not be subject to further Section 106 review.
 - 2) The Recipient and SHPO will make best efforts to expedite reviews through a finding of "No Adverse Effect with conditions" when the Recipient and the SHPO concur that plans and specifications or scopes of work can be modified to ensure adherence to the Standards. If the undertaking cannot meet the Standards or would otherwise result in an adverse effect to historic properties, the Recipient will proceed in accordance with Stipulation 3(c) (entitled Resolution of Adverse Effects) of this Programmatic Agreement.
 - c. Resolution of Adverse Effects
 - 1) The Recipient shall consult with the SHPO, and Indian tribes or NHOs as appropriate, to resolve adverse effects. The Recipient will notify DOE of the pending consultation, and DOE will participate through its designated representative.
 - 2) Consultation shall be coordinated to be concluded in 45-days or less to avoid the loss of funding. In the event the consultation extends beyond this period, DOE shall formally invite the ACHP to participate in consultation. The ACHP will consult with DOE regarding the issues and the opportunity to negotiate a Memorandum of Agreement (MOA). Within seven (7) days after notification, the ACHP will enter consultation and provide its recommendation for either concluding the Section 106 review through an MOA or Chairman's comment from the ACHP to the Secretary of DOE within 21 days.
 - 3) In the case of an ACHP Chairman comment, DOE may proceed once DOE provides

its response to the ACHP.

- d. Public and Consulting Party Involvement
 - 1) The Recipient shall maintain a list of undertakings and shall make the documentation available to the public. The Recipient shall notify the SHPO if it is notified of other consulting parties or public interest in any undertakings covered under the terms of the PA.
 - 2) The Recipient, independently or at the recommendation of the SHPO, may invite interested persons to participate as consulting parties in the consultation process for adverse effects.
4. Administrative Coordination
 - a. The Recipient, in consultation with the SHPO, may develop procedures allowing for the use of local reviews conducted by Certified Local Governments (CLG) when such procedures avoid the duplication of efforts.
 - b. The Recipient, in consultation with the SHPO, may determine that an undertaking has already been reviewed under an existing Section 106 effect determination or agreement document, then no further Section 106 review under this PA is required.
 - c. The SHPO shall provide comments to the Recipient within thirty (30) days, unless otherwise agreed upon by the SHPO and the Recipient, for reviews required under the terms of this PA with the exception of emergency undertakings. In the event that the SHPO fails to comment within the established period, the Recipient can assume the SHPO has concurred, and proceed.
 - d. The Recipient shall advise sub-grantees in writing of the provisions in Section 110 (k) of the Act and will advise the sub-grantees that Section 106 reviews may be compromised when project undertakings are initiated prematurely.
 - e. The SHPO and the Recipient shall make every effort to expedite Section 106 reviews for a period of less than the 30-day review when consistent with the terms of the DOE grant agreements and the Recipient intends to utilize the services of qualified professionals.
 - f. For projects that will require either an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA), nothing contained in this PA shall prevent or limit the Recipient and DOE from utilizing the procedures set forth in 36 CFR 800.8 to coordinate and conduct the historic preservation review in conjunction with the NEPA review.
 5. Dispute Resolution
 - a. Should the SHPO object within the time frames outlined in this PA to any project undertakings, the Recipient shall consult further with the SHPO to attempt to remove the basis for the SHPO's objection. In the event that the SHPO's objection is not withdrawn, then the Recipient shall refer the matter to DOE. The Recipient shall forward all documentation relevant to DOE, who will notify and consult with the ACHP.
 - b. The ACHP will provide its recommendations, if any, within 21 days following receipt of relevant documentation. DOE will take into account the ACHP's recommendations or formal comments in reaching a final decision regarding the dispute.
 6. Reporting and Monitoring
 - a. DOE, the ACHP, and the SHPO may monitor any undertakings carried out pursuant to this PA. The ACHP may review undertakings, if requested by DOE. DOE shall be entitled to address and make determinations on overall policy or administrative issues related to the implementation of these Programs. The Recipient shall adhere to DOE's established protocols for ARRA reporting program undertakings.
 - b. DOE will submit annual reports to ACHP and NCSHPO commencing October 15, 2010 summarizing the Programs' undertakings, to include data on number of undertakings, the number of exempt undertakings, and reviews conducted under this PA.

7. To the extent that provisions of the interagency agreement and provisions of this Programmatic Agreement are in conflict, the provisions of this Programmatic Agreement shall prevail.
8. This Programmatic Agreement will be in effect for a period of three years from the date of its execution.
9. DOE will send a copy of this Programmatic Agreement to the ACHP upon execution.

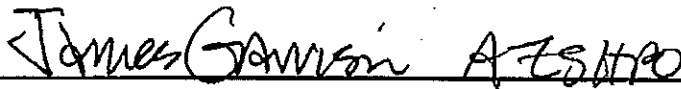
Signatories:



6-23-10

ARIZONA DEPARTMENT OF COMMERCE ENERGY OFFICE

Date

 ATSHPO

6/28/10

ARIZONA STATE HISTORIC PRESERVATION OFFICE

Date



~~REMOVED~~ 5/25/10

UNITED STATES DEPARTMENT OF ENERGY

Date

OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY

OFFICE OF WEATHERIZATION AND INTERGOVERNMENTAL PROGRAMS



ARIZONA DEPARTMENT
OF COMMERCE

Appendix A

Programmatic Agreement
between the
AZ Department of Commerce - Energy Office
and the
Arizona State Historic Preservation Office
regarding
Energy Efficiency & Conservation Block Grant
Weatherization Assistance Program, and State Energy Program

Whereas, the United States Department of Energy (DOE) administers the following financial assistance programs: *the Energy Efficiency and Conservation Block Grant Program* under the Energy Independence and Securities Act of 2007 (EEOB); *the State Energy Plan* under the Energy Policy and Conservation Act of 1975 and the State Energy Efficiency Programs Improvement Act of 1990 (SEP); and *the Weatherization Assistance Program (WAP)* for Low-Income Persons under Title IV of the Energy Conservation and Production Act, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009 (ARRA); collectively referred to as the "Programs"; and

Whereas, by memorandum dated August 28, 2009, DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to grantees and sub grantees of funding from the Programs (Recipients); and

Whereas, according to the August 28, 2009 memorandum, the Recipients are authorized, to initiate Section 106 compliance in accordance with 36 CFR 800.2 (c)(4); and

Whereas, the proposed actions qualify the Project as a federal undertaking subject to the provisions of section 106 of the National Historic Preservation Act; and

Whereas, pursuant to 24 CFR Part 58 the Arizona Department of Commerce (Commerce) is the responsible entity for compliance with Section 106 on behalf of DOE; and

Whereas, the State Historic Preservation Office (SHPO) assists Federal Agencies and their agents in fulfilling their Section 106 responsibilities pursuant to 36 CFR Part 800; and

Whereas, the Area of Potential Effects (APE) encompass multiple sites throughout the State of Arizona, and areas that have not been surveyed to identify historic properties;

Now Therefore, Commerce and SHPO agree, in order to avoid adverse effects on any historic properties, Commerce will assure that the contracts with sub-grantees require that the projects within the EECBG, SEP and WAP will be conducted in accordance with the following stipulations:

I. Conditional Rehabilitation Actions and Conditions:

Commerce will insure, and confirm in an annual report to SHPO, that the projects and activities are limited to the Actions and Conditions of Implementation listed below in consideration of the projects goals and concerns for the protection of historic properties:

1. EECBG/SEP Rehabilitation Actions:

a. Energy Efficiency Retrofit:

- i. Replacement of HVAC system including existing duct work
- ii. Replacement of Hot Water Heater
- iii. Replacement of plumbing system
- iv. Replacement of Street Lighting Fixture
- v. Replacement of Ball Park Lighting Fixtures
- vi. Lamp replacement
- vii. Installation of motion controls for lights
- viii. Replacement of Thermostats and various HVAC control equipment
- ix. Replacement of interior and exterior lighting fixture
- x. Replacement of Windows and Doors
- xi. Roofing replacement
- xii. Door and Window weather stripping
- xiii. Removing or adding insulation
- xiv. Installation of Energy Management System

2. EECBG/SEP Conditions of Implementation:

- a. Energy Efficiency retrofits will match the existing size and closely approximate the design configuration of the existing fixture.
- b. Replacement of windows and doors will match the existing in material, size; and, closely approximate the design configuration of the existing.
- c. Re-roofing material will match the existing in material and scale.
- d. Provided that matching the existing material is neither feasible nor prudent, pursuant to the economic objectives of the project, substitute material should closely approximate the design and appearance of the existing.

3. WAP Rehabilitation Actions:

- a. Envelop air sealing
- b. Duct sealing
- c. Replacement of the duct system
- d. Repair or replacement of windows and doors
- e. Repair, service and replacement to HVAC equipment
- f. Repair, service and replacement of evaporative coolers
- g. Repair, service and replacement of water heaters
- h. Repair, service and replacement of gas stoves
- i. Installation of insulation
- j. Installation of storm windows, shade screen and awnings

- k. Efficient lighting products
- l. Refrigerators
- m. Reflective roof coating on mobile homes
- n. Installation of combustion air to minimum code requirement
- o. Installation of fresh air ventilation to meet minimum ventilation requirements
- p. Installation of return air paths

4. WAP Condition of Implementation:

- a. Replacement windows and doors will match in material, size; and, closely approximate the design configuration of the existing.
- b. Re-roofing material will match the existing in material and scale.
- c. Replacement HVAC and evaporative coolers will be in the same location as that removed.
- d. Replacement duct systems will be in the same location as that removed.
- e. Provided that matching materials neither feasible nor prudent, pursuant to the economic objectives of the project, substitute material should closely approximate the design and appearance of the existing.

III. Duration

This Agreement shall remain in effect, unless amended or terminated, for a period of three years, at which time this Agreement is null and void unless the parties agree to an extension.

IV. Termination

This Agreement may be terminated by providing 30-calendar-days' written notice, to the other party, provided the parties consult during that period to seek agreement on amendments which would avoid termination.

V. Failure to Carry Out Terms of the Agreement

In the event Commerce fails to carry out the terms of the agreement, Commerce shall comply with CFR Part 800 for each and every BECBG, SEP and WAP Project activity as a separate and discrete undertaking.

VI. State of Arizona Contracting Requirements

A. Equal opportunity/nondiscrimination

The parties agree to comply with Chapter 9, title 41, Arizona Revised Statutes (Civil Rights), Arizona Executive Orders 75-5 and 99-4, and any other Federal or State Laws relating to equal opportunity and nondiscrimination, including the Americans with Disabilities Act.

B. Conflict of Interest

This Agreement is subject to cancellation by the State under A.R.S. §38-511 if any person significantly involved in the Agreement, on behalf of the State, is an employee or consultant of the contractor at any time while the Agreement or any extension of the Agreement is in effect.

C. Nonavailability of Funds

This Agreement shall be subject to available funding, and nothing in this Agreement shall bind the State and Federal parties to expenditures in excess of funds appropriated and allocated for the purposes outlined in this Agreement.

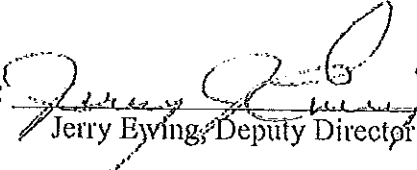
D. Records

The parties agree this Agreement does not involve the furnishing of goods, equipment, labor, materials, or services to the State of Arizona or any of its agencies, boards, commissions, or departments; and therefore A.R.S. §35-214 and §35-215 do not apply.


E. Arbitration

The parties agree to utilize any arbitration required under applicable court rules.

Arizona Department of Commerce

By:  _____ Date: 2-18-10
Jerry Ewing, Deputy Director

Arizona State Historic Preservation Officer

By:  _____ Date: 18 FEBRUARY 2010
James Garrison, SHPO