

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF GARY, INDIANA
AND
THE INDIANA STATE HISTORIC PRESERVATION OFFICER**

**SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 C.F.R. SECTION 800.6 (b) (iv)**

**REGARDING THE Rehabilitation of the Dalton Apartments and Annex,
located at 101-37 East 5th Avenue,
using natural resource and community development block grant funds**

in Gary, Calumet TOWNSHIP, Lake COUNTY, INDIANA

WHEREAS, the City of Gary ("City") proposes to rehabilitate the Dalton Apartments and Annex in Gary, Calumet Township, Lake County, Indiana; and

WHEREAS, the City is receiving Department of Housing and Urban Development Community Development Block Grant ("CDBG") Funds to partially rehabilitate the Dalton Apartments and Annex; and

WHEREAS, the Department of Housing and Urban Development has previously delegated its Section 106 responsibilities to its applicants receiving CDBG Funds; and

WHEREAS, the City, in consultation with the Indiana State Historic Preservation Officer ("Indiana SHPO"), has defined the undertaking to rehabilitate the Dalton Apartments and Annex's area of potential effects, as the term is defined in 36 C.F.R. Section 800.16 (d), to be the area within a two (2) block radius around the of the Dalton Apartments and Annex, being more particularly described as: the area within the Toll Road to the north; Eighth Avenue to the south; Maryland Street to the east; and Massachusetts Street to the west; and

WHEREAS, the City, in consultation with the Indiana SHPO, has found that the Dalton Apartments and Annex is within the area of potential effects; and

WHEREAS, the City, in consultation with the Indiana SHPO, has determined, pursuant to C.F.R. Section 800.4 (c), that the Dalton Apartments and Annex is an outstanding resource within the Gary City Center Historic District and recognizes that the Gary City Center Historic District is listed in the National Register of Historic Places; and

WHEREAS, the City, in consultation with the Indiana SHPO, has determined, pursuant to 36 C.F.R. Section 800.5 (a), that the Rehabilitation of the Dalton Apartments and Annex will have an adverse effect on the Dalton Apartments and Annex; and

WHEREAS, the City has consulted with the Indiana SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f) and its implementing regulations (36 C.F.R. Part 800) to resolve the adverse effect on the Dalton Apartments and Annex; and

WHEREAS, the City has invited the Indiana State Historic Preservation Officer to participate in the consultation and to become a signatory to this memorandum of agreement; and

WHEREAS, the City has consulted with the Indiana SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f) and its implementing regulations (36 C.F.R. Part 800) concerning the scope of work as presented in the materials and plans dated January 30, 2004, and agreed to proceed with the project as proposed,

NOW, THEREFORE, the City and Indiana SHPO agree that, upon the submission of a copy of this executed memorandum of agreement, as well as the documentation specified in 36 C.F.R. Section 800.11 (e) and (f), to the Advisory Council on Historic Preservation ("Council") pursuant to 36 C.F.R. Section 800.6 [b] [1] [iv] and upon the NRA and the City's approval of the Rehabilitation of the Dalton Apartments and Annex, the City of Gary shall ensure that the following stipulations are implemental in order to take into account the effect of the Rehabilitation of the Dalton Apartments and Annex on historic properties:

Stipulations

The City of Gary will rehabilitate the Dalton Apartments and Annex.

- 2 The original windows will be retained and repaired, to the greatest extent possible. If the original windows are beyond repair, the City will adequately document the condition with a description of their condition and close-up photographs.

In order to determine the feasibility of repair, the City will commission a window survey, documenting the condition of each window in detail, and submit the same to DNR to determine the feasibility of repair. The window survey shall reflect which windows will require minor repair and which windows may require more extensive repairs.

Several estimates for window repair shall be obtained from window specialists to ensure that a competitive and reasonable quotation is obtained. The window survey will be distributed to interested bidders to help provide consistency for cost estimate repairs.

In addition, the City will provide to DNR a cost estimate for replacement windows that match the original windows in size, proportions of the frame and sash configuration of window panes, muntin profiles, material and characteristics of decorative elements.

If evidence is provided demonstrating that wholesale repair is infeasible or if evidence is provided demonstrating that some percentage of the windows require replacement, then the City, in conjunction with the DNR, will consider an appropriate replacement window. Replacement windows must match the existing historic windows, as herein provided. Consequently, efforts will be made to find a wood window that closely resembles the existing wood windows with true divided lights.

3. The City of Gary will provide the Indiana SHPO with a copy of plans and Specifications for review and comment prior to the window replacement or repairs on the 2nd to the 7th floors of the Dalton Apartments and Annex.
4. If after review, it is found that one or more of the items included in the scope of work cannot be performed or will be modified in some way, then the City of Gary and the Indiana SHPO will consult to develop appropriate mitigation to resolve an adverse effect.
5. OBJECTION RESOLUTION PROVISION

Disagreements and misunderstandings about how this memorandum of agreement is or is not being implemented shall be resolved in the following manner:

- A. If the Indiana SHPO or any invited signatory to this memorandum of agreement should object in writing to the City regarding any action carried out or proposed with respect to the Rehabilitation of the Dalton Apartments and Annex or implementation of this memorandum of agreement, the City shall consult with the objecting party to resolve the objection. If after initiating such consultation, the City determines that

the objection cannot be resolved through consultation, the City shall forward all documentation relevant to the objection to the Council, including the DNR's proposed response to the objection. Within 45 days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

i. Provide the City with a staff-level recommendation, which the City shall take into account in reaching a final decision regarding its response to the objection;

or

ii. Notify the City that the objection will be referred for formal comment pursuant to 36 C.F.R. Section 800.7 (c), and proceed to refer the objection and comment. The City shall take into account the Council's comments in reaching a final decision regarding its response to the objection.

B. If comments from the Council are provided in accordance with Stipulation 5 (A) of this memorandum of agreement, then the City shall take into account any Council comment provided in accordance with 36 C.F.R. Section 800.7 (a) (4) with reference only to the subject of the objection. The City's responsibility to carry out all actions under this memorandum of agreement that are not the subjects of the objection shall remain unchanged.

6. POST REVIEW DISCOVERY

In the event that one or more historic properties – other than the Dalton Apartments and Annex – are found during the implementation of this memorandum of agreement, the City shall follow the procedure specified in 36 C.F. R. Section 800.13.

7. AMENDMENT

Any signatory to the memorandum of agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreements on amendments or other actions that would avoid termination. In the event of termination, the City shall comply with 36 C.F.R. Sections 800.3 through 800.7 with regard to the review of the Rehabilitation of the Dalton Apartments and Annex.

The execution of this memorandum of agreement by the City and the Indiana SHPO, the submission of a copy of it to the Council with the appropriate documentation specified in 36 C.F.R. Section 800.11 (e) and (f), and the implementation of its terms evidence that the City has afforded the Council an opportunity to comment on the Rehabilitation of the Dalton Apartments and Annex and its effects on historic properties and that the City of Gary has taken into account the effects of the Rehabilitation of the Dalton Apartments and Annex on historic properties.

SIGNATORIES (Required):

INDIANA STATE HISTORIC PRESERVATION OFFICER

Signed by:



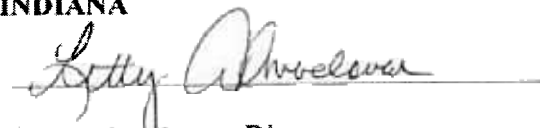
Date: Dec 7, 2004

Name and Title:

Jon C. Smith
Deputy State Historic Preservation Officer

CITY OF GARY, INDIANA

Signed by:



Date: 11/10/04

Name and Title:

Letty Almodovar, Director
Department of Community Development