PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF ENERGY, THE TENNESSEE STATE HISTORIC PRESERVATION OFFICE, THE TENNESSEE DEPARTMENT OF HUMAN SERVICES, AND THE TENNESSEE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT REGARDING THE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM, THE STATE ENERGY PLAN AND THE WEATHERIZATION ASSISTANCE PROGRAM UNDERTAKINGS
PURSUANT TO 36 CFR PART 800
October 28, 2010

TN. HISTORICAL COMMISSION
NOV 10 2010
RECEIVED

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"; and,

WHEREAS, the unprecedented levels of funding available to the Programs, due in large measure to ARRA, has created a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds, that create new jobs, and improve local and state economies; and,

WHEREAS, the Tennessee State Historic Preservation Office (SHPO) is experiencing unprecedented numbers of requests for historic preservation review of undertakings funded by all Federal Agencies, including undertakings funded by the Programs; and,

WHEREAS, the Tennessee Department of Human Services and Tennessee Department of Economic and Community Development (Recipients) are receiving financial assistance from DOE to carry out the Programs; and,

WHEREAS, the Tennessee Department of Human Services and Tennessee Department of Economic and Community Development are passing a portion of this financial assistance along to various sub-recipients (Sub-Recipients); and,

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); and,

WHEREAS, DOE has determined that these undertakings may adversely affect properties that

are listed in or eligible for listing in the National Register of Historic Places (National Register) and subject to the requirements of the National Historic Preservation Act (NHPA); and,

WHEREAS, in accordance with 36 CFR 800.14(b)(4), the Advisory Council on Historic Preservation (the ACHP) has designated this Agreement as a Prototype Programmatic Agreement (PA), which does not require the participation or signature of the ACHP;

WHEREAS, DOE, the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that the requirements of Section 106 can be more effectively and efficiently fulfilled if a programmatic approach is used to stipulate roles and responsibilities, exempt undertakings from Section 106 review, establish tribal protocols, facilitate identification and evaluation of historic properties, establish treatment and mitigation measures, and streamline the resolution of adverse effects; and,

WHEREAS, by memorandum dated August 28, 2009 (attached as Appendix C), DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to Recipients and Sub-Recipients of funding from the Programs; 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 undertakings covered under this PA are not located on Tribal lands and are primarily smaller scale activities and routine projects, rather than complex undertakings with a greater potential to adversely affect historic properties, which would require completion of the Section 106 review process as codified at 36 CFR 800.3 through 800.7; and,

WHEREAS, DOE and the ACHP were guided by the principles set forth in the ACHP's Affordable Housing Policy statement, adopted on November 9, 2006, in negotiating the Prototype Programmatic Agreement upon which this PA is based.

NOW, THEREFORE, the U.S. Department of Energy, the Tennessee Department of Human Services, the Tennessee Department of Economic and Community Development and the Tennessee State Historic Preservation Office agree that the Programs shall be administered in accordance with the following stipulations to satisfy the U.S. Department of Energy's Section 106 responsibilities for all individual undertakings of the Programs in Tennessee:

STIPULATIONS

DOE, the Recipients, and the SHPO shall ensure that the following stipulations are carried out:

I. Roles and Responsibilities

A. DOE shall be responsible for providing oversight of the PA, executing PAs with SHPOs, participating in the resolution of disputes between the SHPO and the

Recipients, and providing technical assistance and guidance as needed. DOE shall be responsible for government-to-government consultation with Indian tribes. If any activity has the potential to effect any cultural resources with tribal religious and cultural significance, the recipient must notify DOE immediately in order for DOE to initiate tribal consultation before the project proceeds further.

B. The Recipients shall be responsible for consulting with consulting parties and conducting Section 106 reviews in a timely manner, preparing documentation for the SHPO and DOE, and maintaining records on all Program undertakings. The Recipients shall submit all undertakings that involve properties fifty (50) years old and older that are not listed as exemptions on either Appendices A or B to the SHPO for review in accordance with this PA.

C. Recipients shall ensure that the provisions of this PA apply to their Sub-Recipients by inclusion of requirements for adherence to Section 106 procedures and the stipulations contained in this PA in their contracts or amendments to such contracts with Sub-Recipients. The Tennessee SHPO, through the Department of Human Services and the Department of Economic and Community Development, shall provide training to their WAP, SEP, and EECBG sub-recipients regarding Section 106 requirements.

D. In carrying out their Section 106 requirements, the Recipients will utilize qualified professionals certified by the SHPO.

E. The SHPO shall be responsible for promptly reviewing and commenting upon project documentation and participating in consultation as set forth in this PA.

F. The ACHP shall be responsible for providing technical guidance, participating in dispute resolutions if it so requests, and monitoring the effectiveness of this PA.

II. Tribal Review

A. Execution of this PA presumes that DOE will continue to carry out its government-to government responsibilities with federally recognized Indian tribes consistent with applicable Federal laws and regulations. The Recipients shall not substitute for DOE in matters related to findings of potential effects on historic properties of cultural and religious significance to Indian tribes.

B. DOE acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of properties with tribal religious and cultural significance to them. DOE shall , consult with them, as appropriate, in identifying historic properties listed in or eligible for listing in the Area of Potential Effect (APE) of program areas.

C. If either of the Recipients notifies DOE that an undertaking under this PA may result in an adverse effect on historic properties with tribal religious and cultural significance, DOE shall notify Indian tribes of individual undertakings that may result in an adverse effect on cultural resources with tribal religious and cultural significance and invite them to participate in consultations. Indian tribes and the Recipients may develop a bi-party agreement that outlines their review procedures

for undertakings covered in this PA. Such agreements will be submitted to DOE and the SHPO for review and approval, and a copy sent to the ACHP for its records.

III. Exemptions from Section 106 review

A. The Recipients shall not submit to the SHPO undertakings listed in Appendices A or B of this PA as they do not have the potential to cause effects on historic properties even when historic properties may be present. The Recipients and the SHPO may agree to modify Appendix A and/or Appendix B, with advance notification of such modifications to the ACHP and DOE. Recipients will maintain file records with verification that they determined the undertakings to be exemptions under this PA for a period of three (3) years from project completion and make these file records available for review if requested by DOE, the SHPO or the ACHP.

B. Recipients of any of the Programs may utilize either Appendix A or Appendix B in identifying exempt undertakings.

IV. Review Procedures for Non-exempt Undertakings

A. The Recipients shall review the undertaking in accordance with Stipulations V through IX below, or shall review the undertakings consistent with other SHPO approved historic preservation protocols that may be attached to this PA by amendment.

V. Identification and Evaluation

A. The Recipients shall establish the Area of Potential Effect (APE) for all program undertakings as defined in the DOE grant agreement for the State. B. The Recipients and SHPO shall complete the identification and evaluation of historic properties not excluded from further review by this PA utilizing existing information: including the National Register of Historic Places, review by SHPO of its historic property site files, state surveys, and county and local surveys. In addition, the Recipients and the SHPO may use or develop protocols that are consistent with 36 CFR 800.4 for the review of consensus determinations of eligibility in the form of cultural resources survey reports. Subject to this PA, the Tennessee Department of Human Services will use Appendix D and the Tennessee Department of Economic and Community Development will use Appendix E as the protocols developed for the process of the identification and evaluation of all properties located within Programs APEs, consistent with 36 CFR 800.4, for determination of their eligibility for listing on the National Register of Historic Places.

C. Recipients shall commission the preparation of Archaeological Survey Reports only in cases where there are anticipated significant new ground disturbing Program undertakings. In those cases, Recipients shall inform DOE and DOE will consult with Indian tribes that may attach religious or cultural significance to historic properties within the undertaking's area of potential effects. To determine the scope of such Surveys and to avoid potential delays, the SHPO will review and comment upon the Recipient's scopes of work for both above ground surveys and archaeological surveys that satisfy the requirements of this PA before Recipients commission them.

D. Recipients shall forward undertakings requiring more than minimal ground disturbance to the SHPO and DOE for review and comment, which will inform the Recipients' proposed Scopes of Work. DOE will share the results of any such Surveys with affected Tribes.

E. The Recipients shall refer disputes regarding determinations of eligibility to DOE for review and referral to the Keeper of the National Register in accordance with 36 CFR 800.4(c)(2).

VI. Treatment of Historic Properties

A. When the Recipients and the SHPO have concurred that the subject of a Program undertaking is eligible for listing in the National Register of Historic Places, or the Keeper of the National Register has made a Formal Determination to that effect, and the Recipients and the SHPO have formally concurred that the particular undertaking has been 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), the SHPO will so state in a formal letter to the Recipient within three (3) business days of receipt, and that Program undertaking will not be subject to further Section106 review.

B. The Recipients and SHPO will make their best efforts to expedite reviews through a formal SHPO finding of "No Adverse Effect with conditions" within three (3) business days of receipt of adequate documentation when the Recipient and the SHPO have concurred 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 Recipients will proceed in accordance with Stipulation VII.

VII. Resolution of Adverse Effects

A. The Recipients shall consult with the SHPO, to resolve adverse effects. The Recipients will notify DOE to consult with Indian tribes as appropriate. The Recipients will notify DOE of the pending consultation with the SHPO, and DOE will participate through its designated representative.

B. The Recipients may use standard stipulations included in Attachment A of this

PA, or as negotiated as part of this PA between the SHPO and the Recipients, or if the project warrants, mitigations carried in an alternate PA due to the complexity of the undertaking.

C. All Signatories to this PA shall make every effort to ensure that this consultation shall conclude within 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) specific to the undertaking under consultation. 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.

D. In the case of an ACHP Chairman comment, DOE may proceed once DOE provides its response to the ACHP.

VIII. Emergency Situation Undertakings

A. When a Recipient has designated a particular undertaking as an emergency undertaking and it is associated with an historic property, the Recipient shall submit appropriate documentation to the SHPO by email and afford the SHPO one (1) business day to respond by e-mail. For the purposes of this PA, emergencies exist when there is a need to eliminate an imminent threat to the health and safety of the residents of the historic property as stated formally by the local or County building inspectors, fire department officials, or other local or County building officials.

1) The Recipient shall forward documentation listed in Appendix D and E to the SHPO for review immediately upon notification that an emergency exists. This documentation should include a) the nature of the emergency; b) the address of the historic property involved; c) photographs showing the current condition of the building; and d) the time-frame allowed by local officials to respond to, or correct, the emergency situation.

2) The Recipient shall consider mitigation measures recommended by the SHPO and implement them. If the Recipient finds that the SHPO recommendations are infeasible, the Recipient shall consult with the SHPO to resolve the issue and take SHPO recommendations into account when determining its appropriate action.

IX. Public and Consulting Party Involvement

A. The Recipients shall maintain a list of Program undertakings and shall make this documentation available to the public. The Recipient shall notify the SHPO if it is notified of other consulting party or public interest in any undertakings covered under the terms of the PA.

B. The Recipients, independently or at the recommendation of the SHPO, may

invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with Stipulations VI, VII, and VIII.

X. Administrative Coordination

A. The Recipients, in consultation with the SHPO, may determine that a Program undertaking has already been reviewed under a previous Section 106 effect determination or an agreement document that is still in effect. In such cases no further Section 106 review under this PA is required.

B. Upon receipt of adequate documentation, The SHPO shall provide comments to the Recipients within three (3) business 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 may assume the SHPO has concurred, and proceed.

C. The Recipient shall advise Sub-Recipients, in writing, that they may have their grant funding for a specific project disallowed for violation of the provisions in Section 110(k) of the Act which states that a Sub-Recipient who, with intent to avoid the requirements of Section 106 of the National Historic Preservation Act, has, previous to the grant award, intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur.

D. The SHPO and the Recipients shall make every effort to expedite Section 106 reviews. To this end, the SHPO will respond to Recipient requests to review and comment upon Architectural and Archaeological Survey Reports accompanied with adequate documentation in fewer than the three (3) day when such response times are consistent with the terms of the DOE grant agreements and the Recipient has utilized the services of qualified professionals to prepare the Reports; and in one (1) business day by e-mail in emergency circumstances where the Recipient has submitted appropriate documentation.

E. 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.

XI. Discoveries

If Recipients, Sub-Recipients, or their contractors and consultants discover historic properties within a Program undertaking's Area of Potential Effects (APE) after the undertaking has been initiated, the Recipient will ensure the implementation of the following procedures:

A. The Recipient or affected Sub-Recipient shall immediately cease all operations for the portion of the undertaking with the potential to affect an historic property;
B. The Sub-Grantee shall advise the Recipient that it has discovered the National Register eligibility of the historic property and the potential of the undertaking to impact its qualifying characteristics. In addition, the Sub-Recipient shall provide the Recipient an explanation of the nature of the adverse effect. Upon receipt of this notification the Recipient shall notify the DOE and consult with the SHPO either to resolve the affected property's National Register eligibility or to prepare either avoidance, minimization treatment plan, or a mitigation plan.
C. The Recipient shall notify DOE who will then notify Indian tribes of any discoveries and any Program undertakings that have the potential to adversely affect sites or buildings of religious or cultural significance to them. After reviewing such discoveries, the Indian tribes can request further consultation on the project by notifying
DOE, ACHP, and the SHPO in writing.
D. In consultation with the SHPO, the Recipient or Sub-Recipient shall develop and implement an avoidance, treatment or mitigation plan and advise the Recipient, the SHPO, and DOE, if appropriate, of the satisfactory completion of the approved work. Once the approved work is complete, the Sub-Recipient may resume the activities that were halted to address the discovery situation.

XII. Dispute Resolution

A. Should the SHPO, either by letter or electronic mail, object within the time frames outlined in this PA to any Program undertakings, the Recipient shall consult further with the SHPO to attempt to resolve the SHPO's objection. If the SHPO does not withdraw its objection, 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 to resolve the objection.
B. The ACHP will provide its recommendations, if any, within twenty-one (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.

XIII. 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.

B. The Recipients shall adhere to DOE's established protocols for ARRA reporting program undertakings.

C. Beginning on October 15, 2010, DOE will submit annual reports to the ACHP and the NCSHPO summarizing the Programs' undertakings, to include data on the total number of undertakings, the number of exempt undertakings, and the number of reviews conducted under this PA.

XIV. Amendments

DOE, the SHPO, or the Recipient may request that this PA be amended, whereupon DOE, the Recipients, the SHPO, and the ACHP, if it has requested, will consult to consider such an amendment. Any such amendment shall be drafted and executed among DOE, the Recipient, and the SHPO in the same manner as this PA, and pertain only to this State's PA.

XV. Duration of Agreement

This PA will be valid for three (3) years from the date of execution, as verified with DOE filing the PA with the ACHP.

XVI. Termination of Agreement

DOE, the SHPO, or the Recipient may terminate the PA, provided that the party proposing termination notifies the other signatories and the ACHP in writing explaining the reasons for termination and affording the other signatories at least thirty (30) days to consult and seek alternatives to termination. If, after thirty days, consultation has not resolved the reasons for termination, this PA shall be terminated. If this PA is terminated, DOE will complete the requirements of 36 CFR 800.3 through 800.7 relative to the Programs.

XVII.

The execution of this PA among the U. S. Department of Energy, the Tennessee State Historic Preservation Officer, the Tennessee Department of Human Services, and the Tennessee Department of Economic and Community Development, and the implementation of its terms evidences that the U. S. Department of Energy has taken into account the effects of these undertakings on historic properties.

SIGNATORIES

United States Department of Energy
Office of Energy Efficiency and Renewable Energy
Office of Weatherization and Intergovernmental Programs

11/5/10
Name, Date

Tennessee State Historic Preservation Officer

E. Patrick McIntyre, Jr. 11/15/10
Name, Date

Tennessee Department of Economic and Community Development

Matthew Kisber 11/1/10
Name, Date

Tennessee Department of Human Services

10-28-10
Name, Date

APPENDIX A—WAP UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

All undertakings will be done in accordance with applicable local building codes or the International Building Code, where applicable. In accordance with 36 CFR 800.3(a)(1), the following undertakings have been determined to have no potential to cause effects on historic properties:

A. Exterior Work

1) Air sealing of the building shell, including caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds in a manner that does not harm or obscure historic windows or trim. These measures in residential homes should be conducted in accordance with the Southeast Weatherization Field Guide or successor standard building guides for the Southeast.
2) Thermal insulation, such as non-toxic fiberglass and foil wrapped, in walls, floors, ceilings, attics, and foundations in a manner that does not harm or damage historic fabric.
3) Blown in wall insulation where no holes are drilled through exterior siding, or where holes have no permanent visible alteration to the structure.
4) Removable film on windows (if the film is transparent), in a manner that does not harm or obscure historic windows or trim.
5) Roofing in a manner that closely resembles the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline, or where not on a primary roof elevation or visible from the public right-of-way.
6) Full View Storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim
7) In-kind replacement or repair of primary windows, doors and door frames that duplicate as closely as possible in appearance and materials the existing substrate and framing.
8) Repair of minor roof and wall leaks prior to insulating attics or walls, provided repairs duplicate as closely as possible in appearance and materials existing surface composite.
9) Energy audits
10) Painting over previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal)
11) Repair or replacement of existing exterior siding provided that new siding duplicates as closely as possible in appearance and materials the existing siding in dimension, profile and texture
12) Installing foundation vents, if painted or finished to match the existing foundation material.

13) Installing sun tubes or skylights not on a primary roof elevation or visible from the public right-of-way.

B. Interior Work

Special Note: Undertakings to interior spaces where the work will not be visible from the public right of way; no structural alterations are made; no demolition of walls, ceilings or floors occurs; no drop ceilings are added; or no walls are leveled with furring or moved, and incidental repairs to any walls, ceiling or floors that are associated with energy efficiency work, heating and cooling system work, energy efficiency work affecting the electric base load of the property, or health and safety measures, shall be automatically excluded from **SHPO** review. This work includes:

1. Energy efficiency work within the building shell:

a. Thermal insulation in walls, floors, ceilings, attics, crawl spaces, ducts and foundations
b. Blown in wall insulation where no decorative plaster is damaged.
c. Plumbing work, including installation of water heaters, and water conservation measures such as low flow faucets, shower heads, etc.
d. Electrical work, including improving lamp efficiency
e. Sealing air leaks using weather stripping, door sweeps, and caulk and sealing major air leaks associated with bypasses, ducts, air conditioning units, etc.
f. Repair or replace water heaters
g. Adding adjustable speed drives such as fans on air handling units, cooling tower fans, and pumps
h. Install insulation on water heater tanks and water heating pipes
i. Install solar water heating systems, provided the structure is not visible from the public right of way
j. Install waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment
k. Repair or replace electric motors and motor controls like variable speed drives
l. Incorporate other lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming

2. Work on heating and cooling systems:

a. Clean, tune, repair or replace heating systems, including furnaces, boilers, heat pumps, vented space heaters, and wood stoves
b. Clean, tune repair or replace cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers
c. Install insulation on ducts and heating pipes
d. Conduct other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent

dampers
e. Modify duct and pipe systems so heating and cooling systems operate efficiently and effectively, including adding return ducts, replace diffusers and registers, replace air filters, install thermostatic radiator controls on steam and hot water heating systems
f. Install programmable thermostats, outdoor reset controls, UL listed energy management systems or building automation systems and other HVAC control systems

3. Energy efficiency work affecting the electric base load of the property:

a. Convert incandescent lighting to fluorescent
b. Add reflectors, LED exit signs, efficient HID fixtures, and occupancy (motion) sensors
c. Replace refrigerators and other appliances

4. Health and safety measures:

a. Installing fire, smoke or carbon monoxide detectors / alarms
b. Repair or replace vent systems on fossil-fuel-fired heating systems and water heaters to ensure that combustion gases draft safely to outside
c. Install mechanical ventilation, in a manner not visible from the public right of way, to ensure adequate indoor air quality if house is air-sealed to building tightness limit

APPENDIX B – SEP AND EECBG UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

A. Category 1 - No Consultation Required

In addition to the undertakings provided in ***Exhibit A (WAP Undertakings exempt from Section 106 Review)***, DOE and the SHPO have concluded that the following undertakings do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a)(1):

1. General efficiency measures not affecting the exterior of the building:

a. Energy audits and feasibility studies
b. Weatherization of mobile homes and trailers
c. Caulking and weather-stripping around doors and windows in a manner that does not harm or obscure historic windows or trim.
d. Water conservation measures – like low flow faucets, toilets, shower heads, urinals – and distribution device controls
e. Repairing or replacing in kind existing driveways, parking areas, and walkways with materials of similar appearance
f. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions
g. Ventilating crawl spaces
h. Replacement of existing HVAC equipment including pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers that do not require a change to existing ducting, plumbing, electrical, controls or a new location, or if ducting, plumbing, electrical and controls are on the rear of the structure or not visible from any public right of way.
i. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors and carbon monoxide detectors (wired or non-wired)
j. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors, provided the work conforms with applicable state and local permitting requirements
k. Adding variable speed drive motors
l. Insulation of water heater tanks and pipes
m. Furnace or hot water tank replacement that does not require a visible new supply or venting

2. Insulation measures not affecting the exterior of the building:

a. Thermal insulation installation in walls, floors and ceilings (excluding spray foam insulation)
b. Duct sealing, insulation, repair or replacement in unoccupied areas
c. Attic insulation with proper ventilation; if under an effective R8 - add additional R-19 up to R-38 (fiberglass bat only)
d. Band joist insulation - R-11 to R19 as applicable
e. Water heater tank and pipe insulation

3. Electric base load measures not affecting the exterior of the building:

a. Appliance replacement (upgrade to EnergyStar appliances)
b. Compact fluorescent light bulbs
c. Energy efficient light fixtures, including ballasts (Replacement)
d. LED light fixtures and exit signs (Replacement)
e. Upgrade exterior lighting (replacement with metal halide bulbs, LEDs, or others) along with ballasts, sensors and energy storage devices not visible from any public right of way

4. Electric Street Lamp and Traffic Signal Replacement:

a. Replacement of traffic signals and street lamp bulbs with LED or other energy-efficient bulbs and interior components.

B. Category 2 - No Consultation Required if grant recipients follow the Secretary of the Interior's Standards for Rehabilitation contained in ATTACHMENT B of this PA

1. Efficiency and repair measures:

a. Painting over previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal)
b. Installation or replacement of downspout extensions, provided that the color of the extensions is historically appropriate for the period and style of the property
c. Repairing or upgrading electrical or plumbing systems and installing mechanical equipment, in a manner that does not permanently change the appearance of the interior or exterior of the building
d. Installation of new HVAC equipment (such as pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, or heat exchangers) in a manner that does not permanently change the appearance of the building.
e. Integrated shingle-style or thin film solar systems on the rear roof of the structure,

behind the parapet or not visible from the public right of way.
f. Solar systems (including photovoltaic and solar thermal) not visible from the public right of way and if ground-mounted can be installed without ground disturbance and if roof-mounted will not require new building reinforcement.
g. Wind system additions to existing wind power facilities that will not require ground disturbance and if building mounted will not require building reinforcement.
h. Lead-based paint abatement in accordance with the Standards and Preservation Brief #37
i. Building cleaning in accordance with the Standards and Preservation Briefs #1, #6, and #10
j. Repairing masonry, including re-pointing and rebuilding chimneys in accordance with the Standards and Preservation Brief # 2
k. New lighting controls including photo-sensors and shading elements if not visible from the public right of way
l. New metering devices in a manner that does not permanently change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure and is not visible from the public right of way
m. New water efficient fixtures and fittings in a manner that does not permanently change the appearance of the interior or exterior of the building

2. Installation or repair of roofing, siding, and ventilation:

a. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs not visible from the public right-of-way
b. Rainwater catches and/or gray water systems not viewable from the public right of way
c. Repair or replacement of existing exterior siding provided that new siding closely resembles the existing siding in dimension, profile and texture
d. Flat or shallow pitch roof replacement (shallow pitch is defined as a pitch with a rise-to-run ratio equal to or less than 3" to 12") with no part of the surface of the roof visible from the ground
e. Roof repair or replacement with materials that duplicate as closely as possible in appearance and materials the historic materials and form, or with replacement materials that are close to the original in color, texture, composition and form to restore the original feature based on historic evidence, and in a manner that does not alter the roofline
f. Installing vents (such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit and frieze board vents or combustion appliance flues) if not located on a primary roof elevation or not visible from the public right-of-way
g. Installing foundation vents, if painted or finished to match the existing foundation material.

3. Windows and doors:

a. Installing full storm windows, storm doors or wood screen doors in a manner that does not harm or obscure historic windows, doors or trim.
b. Installing insulated exterior replacement doors where the door openings are not altered and are not visible from the public right-of-way
c. Window or glazing treatments that do not change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure

APPENDIX C – AUGUST 28, 2009 DELEGATION MEMORANDUM

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Appendix D

Historic Properties Identification and Review Procedures
Weatherization Assistance Program- Referral Process for Non-Exempt Properties to SHPO for Review

A. The Recipient shall prepare, or have prepared, the documentation in Section B for submittal to SHPO for review and comment upon the eligibility of a building or structure fifty (50) years or older for inclusion in the National Register of Historic Places; provided the dwelling or the work to be performed on the exterior or interior of the dwelling has not already been determined to be exempt from Section 106 review as established in Appendices A or B of this Agreement.

B. The Recipient, or the Sub-Recipient shall provide via E-Mail to the SHPO the following item for buildings not exempt from review: a letter requesting Section 106 review of the National Register eligibility of the building or structure that should include:

(a) The street address, city, and county of the building or structure;

(b) Digital 4x6 inch photographs of the exterior and interior of the building or structure; and

(c) The building or structure's date of construction.

C. The SHPO will review the information submitted, and, within three (3) business days, provide a written response (via E-Mail) to the requesting party regarding the building's National Register eligibility, with a copy to the Weatherization Program Director. In the case of an emergency request, the SHPO will provide a response within one (1) business day, per section VIII of this PA.

D. If the SHPO and Recipient determine that the building is not eligible for inclusion in the National Register of Historic Places, no further action regarding coordination with SHPO is required for the Section 106 review of that undertaking and weatherization assistance program services will proceed.

E. 1. If the SHPO determines that the property is eligible for inclusion on the National Register of Historic Places, and the Recipient agrees with this determination, the Recipient shall provide to the SHPO a project narrative/work write-up in sufficient detail regarding the work to be performed on the property that is subject to SHPO review, including materials to be used, to enable a reader unfamiliar with the undertaking or its location to gain a full understanding of the undertaking and all of its elements and their potential to affect directly and indirectly the subject historic property. 2. The SHPO shall review and comment upon this project narrative/work write up within three (3) business days from the date of receipt with a

finding either that the project will not adversely affect the historic property or that the project will adversely affect the historic property. If the former, the weatherization work will begin. If the latter, the Recipient and the SHPO will then consult to resolve the adverse effect in accord with stipulations contained in this PA.

3. If the Recipient disagrees with the SHPO respecting the National Register eligibility of the building, the Recipient will submit the documentation required by stipulations contained in this PA to DOE for a Formal Determination of Eligibility by the Keeper of the National Register. If the Keeper determines the building not to be National Register eligible, there will be no further review under Section 106 or the provisions of this PA. If the Keeper determines the building to be National Register eligible, the Recipient will proceed in accordance with sub-sections 1 and 2 of this section.
4. All instructions, notices, consents, demands, or other communications required or contemplated by Appendix D shall be in writing, and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with Recipient confirmation.

Appendix E

Historic Properties Identification and Review Procedures for the Energy Efficiency and Conservation Block Grant (EECBG) Program and the State Energy (SEP) Program- Referral Process for Non-Exempt Properties to SHPO for Review

A. The Recipient shall prepare, or have prepared, the documentation in Section B for submittal to SHPO for review and comment upon the eligibility of a building or structure fifty (50) years or older for inclusion in the National Register of Historic Places; provided the work to be performed on the exterior or interior of the building has not already been determined to be exempt from Section 106 review as established in Appendices A or B of this PA.

B. The Recipient, or sub-recipients, shall provide the SHPO the following item in writing for buildings not exempt from review: a letter requesting Section 106 review of the National Register eligibility of the property that should include:

(a) The street address, city, and county of the building or structure;

(b) Digital 4x6 inch photographs of the exterior and interior of the building or structure; and

(c) The building or structure's date of construction.

C. The SHPO will review the information submitted, and within three (3) business days provide a written response to the requesting party regarding the property's eligibility, with a copy to the Director of the Office of Energy Policy in the Department of Economic and Community Development for Section 106 review. In the case of an emergency request, SHPO will provide a response within one (1) business day, per section VIII of this agreement.

D. If the SHPO and Recipient determine that the property is not eligible for inclusion in the National Register of Historic Places, no further action regarding coordination with SHPO is required for the Section 106 review of that undertaking and Energy Efficiency and Conservation Block Grant (EECBG) program or State Energy Program (SEP) measures and services will proceed.

E. 1. If the SHPO determines that the property is eligible for inclusion on the National Register of Historic Places, and the Recipient agrees with this determination, the Recipient shall provide to the SHPO a project narrative/work write-up in sufficient detail regarding the work to be performed on the property that is subject to SHPO review, including materials to be used, to enable a reader unfamiliar with the undertaking or its location to gain a full understanding of the undertaking and all of

its elements and their potential to affect directly and indirectly the subject historic property.

2. The SHPO shall review and comment upon this project narrative/work write up within three (3) business days from the date of receipt with a finding either that the project will not adversely affect the historic property or that the project will adversely affect the historic property. If the former, the Energy Efficiency and Conservation Block Grant (EECBG) program or State Energy Program (SEP) services work will begin. If the latter, the Recipient and the SHPO will then consult to resolve the adverse effect in accord with stipulations contained in this PA.
3. If the Recipient disagrees with the SHPO respecting the National Register eligibility of the building, the Recipient will submit the documentation required by stipulations contained in this PA to DOE for a Formal Determination of Eligibility by the Keeper of the National Register. If the Keeper determines the building not to be National Register eligible, there will be no further review under Section 106 or the provisions of this PA. If the Keeper determines the building to be National Register eligible, the Recipient will proceed in accordance with sub-sections 1 and 2 of this section.
4. All instructions, notices, consents, demands, or other communications required or contemplated by Appendix D shall be in writing, and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with Recipient confirmation.

ATTACHMENT A: STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The Recipient and the SHPO may develop and execute an Agreement that includes one or more of the following Standard Mitigation Measures, as may be modified to a particular activity, with the concurrence of both parties, for undertakings found to have an adverse effect on listed or eligible historic properties. The ACHP will not be a party to these Agreements.

1. Recordation

The Recipient shall ensure that the historic property is recorded before its alteration in accordance with methods or standards established in consultation with the SHPO. The SHPO shall identify appropriate archive locations for the deposit of recordation materials and the Recipient shall be responsible for submitting required documentation to identified archive locations. The Recipient and the SHPO may mutually agree to waive the recordation requirement in situations where the integrity of the building has been compromised or other representative samples of a similar historic resources has been previously recorded.

2. Architectural Salvage

The Recipient, in consultation with the SHPO, shall identify significant architectural features for salvage, and appropriate parties to receive the salvaged features. The Recipient shall ensure that any architectural features identified for salvage are salvaged prior to initiation of undertakings and properly stored and curated. When feasible, and determined appropriate in consultation with SHPO, salvaged architectural features shall be reused in other preservation projects.

3. Rehabilitation

If the SHPO has found that a proposed rehabilitation of an historic property does not meet the *Standard* or SHPO approved design guidelines, the Recipient shall ensure that the rehabilitation of this historic property is carried out in accordance with treatments agreed upon by the Recipient and the SHPO and that these agreed to treatments are incorporated in the project's final plans and specifications. The SHPO will approve the project's final plans and specifications before the Recipient initiates the undertaking.

4. New Construction

If the SHPO has found that a proposed new addition to an historic property or new construction that adversely affects an historic property does not meet the *Standard* or SHPO approved design guidelines, the Recipient shall ensure that the new construction is carried out in accordance with treatments agreed upon by the Recipient and the SHPO and

that these agreed to treatments are incorporated in the project's final plans and specifications. The SHPO will approve the project's final plans and specifications before the Recipient initiates the undertaking.

5. Archaeology

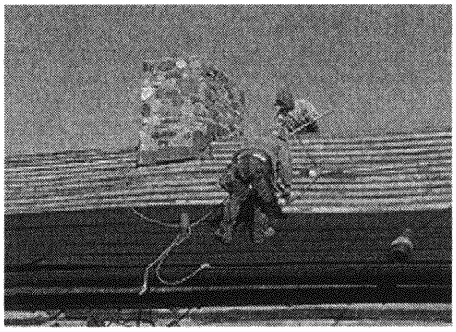
In cases where the undertaking will cause unavoidable adverse effects to National Register eligible archaeological properties, the Recipient shall notify the DOE who will consult with affected tribes, and, in the event that the archaeological property contains no human remains, grave goods, or funerary objects, the Recipient shall consult with the SHPO to determine whether archaeological data recovery or some other treatment measure is appropriate and in the public interest. If all consulting parties agree that archaeological data recovery is the appropriate treatment measure, the Recipient shall consult further with the SHPO to develop and implement a data recovery plan for those portions of the historic property that will be adversely affected. The data recovery plan shall:

- be based on firm background data, sound planning, and accepted archaeological methods;
- be consistent with applicable State laws and regulations;
- be accomplished in a thorough, efficient manner, using the most cost effective techniques practicable;
- provide for appropriate curation of archeological materials and records, and
- provide for reporting and interpretation of what has been learned in a format understandable and accessible to the public;
- be consistent with the National Park Service's *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (at: http://www.nps.gov/history/local-law/arch_stnds_7.htm), and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999), ACHP Section 106 *Archaeology Guidance* (at: http://www.achp.gov/archguide/), and any archaeological guidance issued by the SHPO.

ATTACHMENT B:
SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

Standards for Rehabilitation

REHABILITATION is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.



1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Rehabilitation as a Treatment

When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, Rehabilitation may be considered as a treatment.