

**PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR (NATIONAL PARK SERVICE), THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE MISSOURI STATE HISTORIC
PRESERVATION OFFICER, AND THE CITY/ARCH/RIVER | 2015 FOUNDATION
REGARDING
IMPLEMENTATION OF THE WINNING DESIGN OF THE FRAMING A MODERN
MASTERPIECE INTERNATIONAL DESIGN COMPETITION**

WHEREAS, the United States Department of the Interior, National Park Service, Jefferson National Expansion Memorial (NPS) and the CityArchRiver 2015 Foundation (Foundation) propose to implement the winning design of the *Framing a Modern Masterpiece* International Design Competition (the Design Competition) by carrying out the physical and programmatic elements called for by that design in Appendix A (the Undertaking) and in doing so must meet the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the Design Competition was undertaken after being identified as the preferred alternative of the October 2009 General Management Plan/Environmental Impact Statement (GMP/EIS) for Jefferson National Expansion Memorial (the Park); and

WHEREAS, the Foundation sponsored the Design Competition focusing on the Park, a National Historic Landmark (NHL), to result in the selection of a design “to integrate the park, the east and west sides of the Mississippi River, the surrounding attractions and the downtown into a single and vibrant dynamic destination;” and

WHEREAS, the US Coast Guard and US Army Corps of Engineers and the Federal Highway Administration (FHWA) are providing permitting, funding, or approval for elements of this Undertaking and have designated the NPS as the lead Federal agency to act on their behalf fulfilling their collective responsibilities under section 106; and

WHEREAS, the FHWA has satisfied the requirements of Section 106 for the proposed construction of a 300-foot wide landscaped ‘lid’ over the sunken lanes of I-70 between Market and Chestnut streets as demonstrated by a concurrence by the Missouri SHPO dated September 30, 2011 with FHWA’s finding of a no adverse effect; and

WHEREAS, the NPS has identified the Area of Potential Effect (APE) as indicated in Appendix ____; and

WHEREAS, any portion of the winning design that extended beyond the referenced APE will not be implemented under this PA, except as noted herein or as amended pursuant to the terms herein; and

WHEREAS, the NPS acknowledges that removal of parking will create a demand for parking accommodation beyond the confines of the Site, and the connection to this Undertaking, if any, will be clarified and NPS agrees to undertake separate review of that action under Section 106, as appropriate; before the removal of the parking garage will commence; and

WHEREAS, the NPS, consulted with the Advisory Council on Historic Preservation (ACHP) and the ACHP will be a signatory to this PA; and

WHEREAS, the development and execution of this Programmatic Agreement (PA) fulfills stipulation IV.H of the memorandum of agreement among the NPS, ACHP, Illinois and Missouri SHPOs and the Foundation executed July 13, 2010 to guide the design completion; and

WHEREAS, the NPS consulted with the Missouri and Illinois State Historic Preservation Officers (SHPO) and the Illinois SHPO declined to participate in negotiations to develop the PA or be a signatory to the PA; and

WHEREAS, the NPS consulted with the Absentee-Shawnee Tribe of Indians of Oklahoma, Delaware Nation of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Kaw Nation, Kickapoo Tribe in Kansas, Miami Tribe of Oklahoma, Muscogee Creek Nation, Osage Nation of Oklahoma, Ponca Tribe of Nebraska, Peoria Tribe of Oklahoma, Quapaw Tribe

of Indians, Sac and Fox Tribe of the Missouri in Kansas and Nebraska, Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Oklahoma concerning the Undertaking and historic properties of cultural significance to them; and

WHEREAS, the Osage Nation desires to continue participating in consultations and has been invited to execute this agreement; and

WHEREAS, the NPS has and continues to provide the public with information about the Undertaking and shall continue to seek and consider the views of the public regarding the Undertaking; and

WHEREAS, Missouri Preservation has participated in consultation and has been invited to sign this agreement; and

WHEREAS, the National Trust for Historic Preservation has participated in consultation and has been invited to concur in this agreement;

NOW, THEREFORE, the NPS, the ACHP, and the Missouri SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

Consistent with assurances contained in the GMP/EIS for the Park, the National Park Service will *not allow the implementation of a project that would cause impairment to the Memorial, and all of the enhancements would be required to be located in such a manner as to preserve the integrity of the National Historic Landmark and National Register Historic District*. In furtherance of this assurance, the National Park Service will ensure that the following measures are carried out.

I. APPLICABILITY AND SCOPE

A. This PA applies to the design and construction of the Undertaking defined in Appendix _____. The NPS is the lead federal agency for fulfilling the Section 106 requirements in accordance with this PA. The PA does not apply to the components of the Design Competition design where the Federal Highway Administration, United States Coast Guard, and the United States Army Corp of Engineers are the lead federal agency. The Federal Highway Administration, in partnership with the Missouri Department of Transportation, is the lead federal agency for major transportation improvements associated with the Undertaking, to include the design and construction of the closing of Memorial Drive through Jefferson National Expansion Memorial to Washington Avenue, of a lid over the existing Interstate 70 connecting Luther Ely Smith Square and the Memorial's national historic landscape, and of the redesign of the Interstate ramps at Washington Avenue.

B. With funding assistance from FHWA and other sources, the Great Rivers Greenway District is a principal partner in this undertaking and proposes to . . .

1. Great Rivers Greenway District will coordinate with the NPS and adhere to the terms of this PA in the implementation of components of the Undertaking for which it has taken funding and contracting responsibility.
2. Great Rivers Greenway District shall prepare and provide to the NPS a National Register determination of eligibility for any potential historic property identified during consultation, or during the conduct of archaeological survey or implementation of components for which they have taken funding and contracting responsibility. NPS will consult with the Missouri SHPO, and consistent with the terms of the PA, will seek to identify and implement measures to avoid or mitigate adverse effects to historic properties found to be eligible for inclusion in the National Register.

II. PROFESSIONAL QUALIFICATIONS AND STANDARDS

A. All stipulations implemented pursuant to this PA shall be carried out by or under the direct supervision of a person or persons meeting at a minimum the Secretary of Interior's *Professional Qualifications Standards* (48 FR 44738-39) for the discipline appropriate to the historic property in question. Nothing in

this stipulation may be interpreted to preclude NPS or any agent or contractor thereof from using the properly supervised services of persons who do not meet the professional qualification standards.

B. Any testing, inventory or documentation of potential or known historic properties pursuant to implementation of the PA shall conform to the provisions of the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 FR. 44716-44740) and applicable standards and guidelines for historic preservation established by the applicable SHPO's.

III. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. **Historic Structures, Buildings, Objects and Landscapes.** Through its management of the Park, the NPS has compiled extensive documentation on the presence and significance of historic properties. This documentation includes analysis of the existing contributing features and contributing landscape features of the NHLs within the Site (Appendix ____) and identification of known historic properties and their qualifying characteristics within the APE (Appendix__). NPS will ensure that this documentation is fully taken into account. In carrying out the components of the Undertaken identified in Appendix ____, the NPS will not need to undertake any additional studies to identify at grade historic properties, unless otherwise set forth in this PA.

B. **Archeological Resources - Identification.** It is possible that implementation of the Undertaking could result in damage to previously unknown archeological resources. Accordingly, the NPS will consult with the Missouri SHPO, the Osage Nation, and other signatories to this PA, as appropriate, and carry out needed archeological surveys to determine if any such archeological sites are present and whether such sites are eligible for inclusion in the National Register consistent with the following measures.

1. *Survey Scope.* The NPS will identify all surface areas that may be altered in any way by construction activities, to include any areas subject to temporary disturbance due to construction activities, lay-down areas, access roads, etc. An archeological identification effort will be carried out for these areas with the exception of any areas for which sufficient archeological information is already known or there is clear evidence that an area has been disturbed by previous activity to the extent that the presence of archeological deposits is highly unlikely.
2. *Survey Timing.* The NPS will schedule survey activities to reflect the sequential nature of construction activities and to ensure that survey activities are completed well in advance of any construction related soil disturbance activities.
3. *Survey Methodology.* The NPS will consult with the Missouri SHPO, the Osage Nation, and other signatories to this PA, and develop an efficient and effective survey methodology, ensuring that it is sufficient to generate information necessary to apply the National Register Criteria to any identified sites. The NPS shall ensure that the determinations of eligibility are consistent with the National Register Bulletin: *How to Apply the National Register Criteria for Evaluation* and follow the format consistent with the *State of Missouri, Department of the Natural Resources, Preliminary National Register of Historic Places Eligibility Assessment* (<http://www.dnr.mo.gov/forms/780-1878-f.pdf>) or another format mutually agreed upon by the NPS and Missouri SHPO.
4. *Outcome.* Based on its analysis of survey results and further consultation with appropriate signatories to this PA, NPS will apply the National Register Criteria and determine what, if any, identified archeological sites are eligible for inclusion in the National Register.

C. **Archeological Resources – Treatment.** For identified archeological properties determined to be eligible for the National Register, the NPS, in consultation with the Missouri SHPO, the Osage Nation, and other signatories to this PA, as appropriate, will develop treatment measures. Priority will be given to avoidance alternatives, to include burying sites under fill or incorporating them into the Undertaking, provided that the long-term protection of the archeological site can be assured by such measures. If avoidance options are not practical, NPS will undertake a data recovery plan for the recovery of archeological data from the site. Such data recovery will be guided by a scope of work that includes:

1. Research questions to be addressed through the data recovery.
2. Methods to be used, with an explanation of their relevance to the research questions.
3. Methods to be used in the analysis, data management, and dissemination of data, including a schedule.

4. Proposed disposition of recovered materials and records. And,
5. Proposed methods for involving the public and disseminating results of the work to the public.

Following approval, the NPS will ensure that the data recovery plan is carried out and the signatories to the PA notified of the results.

D. **Site Disclosure.** All archeological resources identified in carrying out the terms of this PA are subject to the provisions of section 304 of the National Historic Preservation Act, relating to the disclosure of archeological site information and NPS will ensure that all actions and documentation prescribed by this PA are consistent with said sections.

E. **St. Louis Mississippi River Levee.** The NPS shall prepare a determination of eligibility for the National Register for the St. Louis Mississippi River levee. The NPS shall submit the determination of eligibility to the SHPO and the Osage Nation for review no later than _____. The SHPO and the Osage Nation shall have 30 calendar days from the date of receipt to provide comments to the NPS. If the SHPO or the Osage Nation fail to respond within this time period, the NPS shall assume concurrence with its determination of eligibility.

IV. OUTREACH TO AND INVOLVEMENT OF TRIBES

A. The NPS is committed to working with the Osage Nation and interested Tribes to assist in identifying and minimizing project impacts on important cultural resources, graves, and isolated human remains and recognizes that tribal monitoring is a vital contributing element in this effort.

B. Tribal monitoring will follow protocols and procedures established through consultation (Appendix _____) and will be conducted in areas identified by the Osage Nation as having significance.

C. **Unanticipated Discovery of Human Remains or Graves.** In the case of an unanticipated discovery of human remains or graves on Federal land, the NPS shall follow the procedures outlined by the Native American Graves Protection and Repatriation Act, as amended (43 C.F.R. 10, Subpart B), and pursuant to the Archeological Resources Protection Act of 1979 (43 C.F.R. 7).

1. Any human remains (other than from a crime scene or covered under RSMo 214 - Cemeteries) that may be discovered or excavated during archaeological investigations on state land in Missouri are subject to the immediate control, possession, custody and jurisdiction of the Missouri SHPO, pursuant to the Missouri Unmarked Human Burials Sites Act (RSMo. 194.400-194.410).
2. The excavation of human remains shall follow guidance obtained through the NPS, SHPO, Osage Nation, and interested Tribes consulted, depending under which Missouri Revised Statue applies.
3. The NPS shall ensure that the excavation and handling of any such human remains and associated funerary objects, sacred objects, or objects of cultural patrimony are excavated, handled, and processed in accordance with the SHPO, Osage Nation, and interested Tribes' instructions and pursuant to any provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) applicable to such remains and artifacts found on non-federal lands.

V. DESIGN DEVELOPMENT

The Undertaking will be designed consistent with design objectives expressed in the outcome of the winning design and as conveyed in rendering provided by the Foundation (Appendix ____). Implementation of the design and development of design documents and specifications for the various component parts of the Undertaking will present overlapping and demanding schedules to meet construction schedules. To accommodate these factors while ensuring that there is adequate opportunity for input from the signatories to this PA, NPS will implement the following measures.

A. **Design Standards.** The NPS, the Foundation, and Great River Greenway District will ensure that all design contractors working on the Undertaking are provided design standards, to include at a minimum, the following:

1. The Secretary of the Interior's *Standards for the Rehabilitation of Cultural Landscapes*.

2. Formatting and content consistent with the NPS Denver Service Center Design Workflows guidelines for schematic, design, and construction documents <http://www.nps.gov/dscw/designbidbuild.htm>.
3. A copy of this executed PA. And,
4. Other design standards recommended by signatories to this PA as deemed appropriate by the NPS and Foundation.

The NPS and the Foundation will ensure that the design contractors adhere to these standards in the development of all design documents including change orders necessitated after award of any construction contracts implementing the Undertaking or part thereof.

B. Establishment of Collaborative Design Review Team. To ensure that signatories to this PA have opportunity to assist the NPS in meeting its design goal that the Undertaking preserve the integrity of this historic setting, the NPS, with assistance from the Foundation, will establish and provide administrative support to a Collaborative Design Review Team.

1. *Membership.* Membership on the team will consist of a representative of the NPS, the Foundation, the Missouri SHPO, and Missouri Preservation. Additional members would be added to this team at the discretion of its members and based on the nature of the particular component of the Undertaking being reviewed.
2. *Team Mission.* The primary purpose of the team will be to evaluate how project design and specifications may affect qualifying characteristics of properties included in or eligible for inclusion in the National Register and to make recommendations on how relationships between the design and historic properties might be improved and/or adverse effects avoided.
3. *Team Support.* The NPS, with assistance from the Foundation, will facilitate the function of this Team by providing for regularly scheduled meetings during the design process, ensuring that Team members are provided all appropriate construction documents in a timely fashion, and documenting the outcome of team meetings.
4. *Team Outcome and Dispute Resolution.* The members of the Team will strive diligently to work toward mutually agreeable outcomes on design issues addressed by the Team. If, during the course of Team review of a design proposal an impasse is reached, any member of the Team can take steps to have the dispute resolved through the provisions set forth in stipulation ___ of this PA.
5. *Team Duration.* The Team will remain in place until the close of the design development process for the components of the Undertaking or sooner if mutually agreed to by all of the Team members.

VII. DOCUMENTATION

A. The NPS shall prepare Historic American Landscape Survey (HALS) recordation of the NHL prior to alterations in the Design Competition's rehabilitation of or introduction of new features into the historic landscape. HALS documentation will be completed prior to the commencement of any construction activities.

B. The NPS shall update the NHL documentation to include more information about the significance of the historic landscape to the overall NHL designation.

IX. INADVERTANT DISCOVERIES AND UNANTICIPATED EFFECTS

In the event that previously unreported and unanticipated historic properties are found during activities conducted by or on behalf of the NPS, the NPS will ensure that the procedures set forth Appendix ___ are fully carried out.

X. INTERPRETIVE TREATMENTS

A. The NPS will seek to interpret for future visitors to the Jefferson National Expansion Memorial the changes that have occurred at the Park as a consequence of the Design Competition and implementation of the Undertaking. The NPS will consider a wide range of options for how best to achieve this interpretive program, to include a permanent exhibit within the Museum, explaining the Design Competition and

resulting changes to the appearance and character of the JNEM, using models, documents, etc. from the Competition and/or other electronic media and exhibits.

B. In the development of this interpretive program the NPS will consult with the signatories to this PA and examine possible techniques and interpretive techniques that will provide visitors with information on historic properties known to have existed prior to construction of the Arch and Grounds and archeological features preserved in place in carrying out the Undertaking.

XI. DISPUTE RESOLUTION

A. Should the signatories executing this PA at any time object in writing to the manner in which the terms of this PA are implemented, to any action carried out or proposed with respect to implementation of this PA, or to any document prepared in accordance with and subject to the terms of this PA, the objecting party shall notify the other signatories, and the signatories shall consult within seven calendar days to resolve the objection.

B. If the objection is resolved through consultation, the NPS may proceed with the disputed action in accordance with the terms of such resolution.

C. If, after initiating consultation, the NPS determines that the objection cannot be resolved through consultation, or if the duration of the consultation has exceeded 15 days from the commencement of consultation to resolve the dispute, the NPS shall forward all documentation relevant to the objection to the ACHP, including the NPS's proposed resolution of the objection, with the expectation that the ACHP shall within 30 days after receipt of such documentation:

1. Advise the NPS that the ACHP concurs in the NPS's proposed resolution of the objection, whereupon the NPS shall notify the signatories executing this PA, and NPS shall resolve the objection accordingly; or
2. Provide the NPS with recommendations, which the NPS shall take into account in reaching a final decision to resolve the objection. The NPS shall notify the signatories executing this PA of its final decision.

D. The procedures outlined in Stipulations XI.A to XI.C, above, shall apply only to the subject of the objection. The NPS's responsibility to carry out all actions under this PA that are not the subjects of the objection, and which do not foreclose the consideration of alternatives to resolve the objection, shall remain unchanged.

XII. ADMINISTRATIVE PROVISIONS

A. Amendments. Any signatory executing this PA may propose that this PA be amended, whereupon the NPS and other executing signatories shall consult to consider such amendment. This PA may be amended only upon the written agreement of the executing signatories. The amendment shall be effective on the date a copy signed by all of the signatories is filed with the ACHP by the NPS.

B. Termination. If any signatory executing this PA proposes termination of the PA, the party proposing termination shall, in writing, notify the other signatories executing this PA, explain the reasons for proposing termination, and consult to seek alternatives to termination. Should such consultation fail, the signatory proposing termination may terminate this PA by promptly notifying in writing the other executing signatories. Termination shall render this PA without further force or effect. Should this PA be terminated, the NPS shall consult regarding the Undertaking with the executing signatories in accordance with 36 CFR Part 800.

C. Duration of the PA. Unless terminated pursuant to stipulation XV, the duration of this PA is five years from the date of its execution. NPS may initiate consultation with the signatories executing this PA approximately one (1) year prior to the expiration date of this PA to reconsider its terms. Reconsideration may include the continuation or revision of this PA by amendment or termination.

D. Effective date of the PA. This PA shall take effect on the date that it has been signed by the last executing signatory.

E. Anti-deficiency Act. Any requirement for the payment or obligation of funds by the Government established by the terms of this PA shall be subject to availability of appropriated funds. No provision in this PA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC Section 1341. If the availability of funds and compliance with the Anti-Deficiency Act impair the NPS' ability to perform under this PA, then the NPS shall consult in accordance with Stipulation VIX of this PA.

Execution of this PA and implementation of its terms evidence that the NPS has taken into account the effects of this Undertaking on historic properties and has afforded the ACHP an opportunity to comment on the Undertaking and its effect on historic properties.

SIGNATORIES

NATIONAL PARK SERVICE

Thomas A. Bradley
Superintendent, Jefferson National Expansion Memorial

Date: _____

MISSOURI STATE HISTORIC PRESERVATION OFFICER

Sara Parker Pauley
Director, Department of Natural Resources and State Historic Preservation Officer

Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler
Executive Director

Date: _____

OSAGE NATION

John D. Red Eagle
Principal Chief

Date: _____

CITYARCHRIVER 2015 FOUNDATION

Walter L. Metcalfe, Jr

Date: _____

FEDERAL HIGHWAY ADMINISTRATION

<<NAME>>

Date: _____

MISSOURI DEPARTMENT OF TRANSPORTATION

<<NAME>>

Date: _____

Concur:

MISSOURI PRESERVATION

Barbara L. Fitzgerald
Executive Director

Date: _____