

**PROGRAMMATIC AGREEMENT (PA)
AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR (NATIONAL PARK SERVICE)
AND THE....
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 CityArchRiver2015 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

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 CityArchRiver2015 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 development and execution of this PA fulfills stipulation IV.H of the memorandum of agreement among the National Park Service, ACHP, Illinois and Missouri SHPOs and CityArchRiver 2015 Foundation executed July 13, 2010 to guide the design completion; and

WHEREAS, the NPS consulted with the Advisory Council on Historic Preservation (ACHP) and the Missouri and Illinois State Historic Preservation Officers (SHPO) pursuant to 36 CFR part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the NPS, ACHP, and SHPO's concur that the Undertaking will affect historic properties, as defined at 36 CFR §800.16(l)(1), the NPS shall defer, pursuant to 36 CFR §800.4(b)(2), the agency's final identification and evaluation of historic properties, as well as assessment of effects, pending completion of the schematic design development phase of the design process (36 CFR §800.14(b)(1)(ii)); 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 through both the context of complying with the National Environmental Policy Act of 1969 (NEPA) and public meetings to be held during the schematic and design development phases of the design process; and

WHEREAS, the NPS consulted with the following tribes concerning the Undertaking and historic properties of cultural significance to them: 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; and

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

WHEREAS, **the Federal Highway Administration and Missouri Department of Transportation** have participated in the consultations and been invited to execute this agreement; and

WHEREAS, **Missouri Preservation, Great Rivers Greenway, (others ?)** have participated in the consultations and been invited to concur in this agreement;

NOW, THEREFORE, the signatories executing this PA (???) 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, and further agree that these stipulations shall govern the Undertaking and all of its parts until this PA expires or is terminated.

STIPULATIONS

I) THE UNDERTAKING

The Programmatic Agreement (PA) applies to the design and construction of the Undertaking defined in Appendix A. 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 compliance with Section 106 of the National Historic Preservation Act, the National Environmental Policy Act (NEPA), and Section 4F of the Department of Transportation Act of 1966, as amended, for 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 Eli Smith Square and the Memorial's national historic landscape, and of the redesign of the Interstate ramps at Washington Avenue. The NPS shall cooperate with the transportation agencies as provided in an existing Memorandum of Understanding, dated August 25, 2011, as a consulting party for Section 106 and NEPA consultation.

The Federal Highway Administration shall prepare a determination of eligibility for listing in the National Register of Historic Places for the Poplar Street Bridge and submit the DOE to the Missouri and Illinois SHPO's for review and comment as part of complying with Section 106.

Riverfront components of the Design Competition are mostly outside the boundary of Jefferson National Expansion Memorial but will directly impact the Memorial. United States Coast Guard and United States Army Corps of Engineers permitting are required. The permit needs and source of funding requires collaboration between the Coast Guard, Corps of Engineers, the NPS and any other federal agency that might have a funding role in the project. The Great Rivers Greenway is coordinating fund raising and is a concurring signatory to this PA. The Riverfront redevelopment has the potential for an adverse effect on the historic properties of the Memorial, and the NPS shall be a signatory in any memorandum of agreement to mitigate such an effect.

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 inventory or documentation of 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 SHPO's.

(C) The signatories executing this PA acknowledge that historic properties covered by 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, having so acknowledged, shall ensure that all actions and documentation prescribed by this PA are consistent with said sections.

III) AREA OF POTENTIAL EFFECTS

The area of potential effects is depicted in the graphic in Appendix B.

IV) IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

(A) Identification, Evaluation, and Treatment of Archeological Resources

Archeological investigations need to be completed for all areas where ground disturbance is expected to occur during implementation of the *Framing a Modern Masterpiece* project at the Jefferson National Expansion Memorial. Both prehistoric and historic archeological resources are known from nearby areas of St. Louis. Investigations will vary depending upon the location and anticipated findings. Preliminary historic research and construction plans will guide on-the-ground archeological investigations. The project area may be grouped into two distinct locations, outlined below, each with its own archeological needs.

Area West of the Arch

Much of the area west of the Arch and east of the interstate is highly disturbed and contains fill material of varying depths from demolition of the 19th-Century warehouse district and subsequent construction of the Memorial. However, there is still potential for the presence of undisturbed deposits beneath the fill material. Depending upon the depth of fill in this area of the Memorial, undisturbed evidence of French period St. Louis as well as the later warehouse district may still exist. In addition, the presence of prehistoric mounds north of the Memorial indicates that there may be evidence of aboriginal peoples in the area west of the Arch as well. Archeological investigations in this area will consist of a combination of geophysical investigations and coring, followed by testing of identified anomalies and features.

Area Between Courthouse and Arch

Construction plans for this location do not currently call for intensive disturbance, however archeological investigations are still required. The project area between the courthouse and the west entrance to the Memorial has not been disturbed as extensively as other parts of existing NPS property, and may contain evidence of early St. Louis. Although on a different scale, investigations in this area will be similar to those in other parts of the site and will involve geophysical investigations where feasible and testing based on identified anomalies and the scope of construction activities.

(B) Preparation of Determination of Eligibility for St. Louis Mississippi River Levee

The NPS shall prepare a determination of eligibility for listing in the National Register of Historic Places (DOE) for the St. Louis Mississippi River Levee. The NPS shall ensure that the DOE is fully compliant with the following National Register Bulletin: *How to Apply the National Register Criteria for Evaluation*. The format used for DOE shall either be 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.

The NPS shall submit the DOE to the SHPO for review and concurrence no later than <<date>>. The SHPO shall have thirty (30) calendar days from the date of receipt to provide comments to the NPS. If the SHPO fails to respond within this time period, the NPS shall assume the SHPO concurs with the determination of eligibility.

V) DEVELOPMENT OF DESIGN STANDARDS

(A) CityArchRiver 2015 Foundation and NPS shall agree in writing to a set of deliverables and standards that all design contractors shall adhere to in the development of design documents. CityArchRiver 2015 Foundation shall ensure that the design contractors receive these standards and adhere to them in the development of all design documents. NPS shall distribute the agreement to all parties who will review the documents.

(B) Standards: at a minimum, design standards shall include

- (1) Application of the Secretary of the Interior's Standards for the Rehabilitation of Cultural Landscapes to applicable design;
- (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>;

(C) Deliverables: at a minimum the design contractors shall be required to

- (1) Provide responses to all design comments that outline how the comment will be dealt with in subsequent design documents;

(2) Provide meeting notes that summarize discussions about design issues.

VI) REVIEW OF DRAFT SCHEMATIC DESIGN DOCUMENTS AND ASSESSMENT OF EFFECTS

(A) The NPS shall submit to the signatories executing this PA draft schematic design documents (100%) for review and comment, and an assessment of effect (*no adverse effect* or *adverse effect*), after applying the criteria of adverse effect at 36 CFR § 800.5(a)(1), for historic properties in the area of potential effects. The signatories executing this PA shall have thirty (30) calendar days from the date of receipt to review the draft schematic design documents and assessment of effect, and provide comments to the NPS. If any of the signatories executing this PA fail to respond within this time period, NPS shall assume the signatory has no comments and concurs with the NPS assessment of effect.

(B) During the thirty (30) day review of the draft schematic design documents the NPS shall conduct one public scoping meeting, to present the draft schematic design to the general public and solicit comments on how the proposed design may affect historic properties and possible ways to avoid, minimize, or mitigate adverse effects that have been identified.

(C) Within thirty (30) calendar days of receiving comments from the signatories executing this PA and the public, the NPS shall provide the signatories a point-by-point response to comments including, as necessary, how the design will be revised to address comments.

(D) If the NPS and signatories executing this PA determine that the Undertaking will result in adverse effects to historic properties, the NPS and signatories shall consult to avoid, minimize, or mitigate such effects. The Historic American Buildings Survey (HABS)/Historic American Engineering Record (HAER)/Historic American Landscapes Survey (HALS) coordinator in the NPS Midwest Regional Office shall participate in the consultations to develop appropriate mitigation. The mutually agreed upon mitigation shall be agreed upon prior to the commencement of any construction activities.

VII) REVIEW OF 90% DRAFT DESIGN DEVELOPMENT DOCUMENTS

(A) The NPS shall submit to the signatories executing this PA 90% draft design development documents for review and comment. The signatories executing this PA shall have thirty (30) calendar days from the date of receipt to review the 90% draft design development documents, and provide comments to the NPS. If any of the signatories executing this PA fail to respond within this time period, NPS shall assume the signatory has no comments.

(B) During the thirty (30) calendar day review of the 90% draft design development documents the NPS shall conduct one public scoping meeting, to present the design development documents to the general public and solicit comments on how the proposed design may affect historic properties and possible ways to avoid, minimize, or mitigate adverse effects that have been identified.

(C) Within thirty (30) calendar days of receiving comments from the signatories executing this PA and the public, the NPS shall provide the signatories a point-by-point response to comments including, as necessary, how the design will be revised to address comments.

VIII) MITIGATION OF ADVERSE EFFECTS

<<The below is subject to negotiation by all consulting parties.>>

NPS commits to the following actions to mitigate potential adverse effects on the NHL and other historic properties within the APE:

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

(C) The NPS and CityArchRiver 2015 Foundation and will oversee development of a public interpretation display explaining the Design Competition and resulting changes to the appearance and character of the JNEM, using models, documents, etc. from the competition.

(D) After each design meeting and public comment period, NPS use the meeting summaries to develop a list of adverse effects identified and potential mitigations to share with the signatories of this PA for comment. NPS and CityArchRiver 2015 will take this feedback into account in determining what additional mitigation, avoidance, or minimization measures may be feasible to include in the next set of design documents or implement separately and will solicit feedback on these decisions at the next public meeting.

IX) INADVERTANT DISCOVERIES AND UNANTICIPATED EFFECTS

(A) Objectives: The following procedures shall be used in the event that previously unreported and unanticipated historic properties are found during activities conducted by or on behalf of the NPS.

(B) The cultural resource investigator or construction contractor must immediately stop all work activity within a ninety (90) meter radius buffer zone, notify the NPS of the discovery, and implement interim measures to protect the discovery from looting and vandalism. Construction may continue outside the buffer zone. Within forty-eight (48) hours of receipt of this notification of the discovery, the NPS shall:

- (1) inspect the work site to determine the extent of the discovery and ensure that work activities have halted within the ninety (90) meter radius buffer zone;
- (2) clearly mark the area of the discovery;
- (3) implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
- (4) notify the respective SHPO and the Tribes of the discovery.

(C) The NPS, in consultation and concurrence with the respective SHPO and interested Tribes, shall have seven (7) business days following notification to determine the National Register of Historic Places eligibility of the discovery. The NPS may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR §800.13(c).

(D) If the find is National Register eligible, the NPS shall consult with the respective SHPO and the interested Tribes regarding appropriate measures for site treatment pursuant to 36 CFR §800.6(a). The SHPO and interested Tribes shall have seven (7) business days to provide their objections or concurrence on the proposed actions. Concurrence on the part of the respective SHPO and the interested Tribes is required for all adverse effect resolution measures. These measures may include:

- (1) formal archeological evaluation of the site;
- (2) visits to the site by the respective SHPO and the Tribes;
- (3) exploration of potential alternatives to avoid the site;
- (4) preparation of a mitigation plan by the NPS in consultation and concurrence with the Tribes for approval by the respective SHPO; and
- (5) implementation of a mitigation plan.

(E) If the find is determined to be either isolated or completely disturbed by construction activities, the NPS shall consult with the respective SHPO and the Tribes prior to resuming construction within the ninety (90) meter radius buffer zone.

X) 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).

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) and Human Skeletal Remains Protection Act (Illinois Comp. Stat. Ann. 20 ILCS 3440/0:01, et seq.). The excavation of human remains shall follow guidance obtained through the NPS, Missouri SHPO and the Indian Tribes consulted,

depending under which Missouri Revised Statute applies. 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 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.

XI) DISPUTE RESOLUTION

(A) The signatories executing this PA agree that this PA shall guide the implementation of the Undertaking for addressing its effects to and treatment of historic properties until this PA expires or is terminated. 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 (7) 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 fifteen (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 thirty (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.

If any of the signatories executing this PA object to the final decision, the objecting party shall notify the other signatories, and the ACHP shall follow the procedures at 36 CFR 800.7(c).

(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.

(E) At any time during implementation of the terms of this PA, should a member of the public object to the manner of such implementation, the NPS shall consult with the objecting party and inform the signatories executing this PA in writing of the objection, the results of the consultation, and the NPS's proposed resolution of the objection. The NPS shall implement its decision should the signatories executing this PA fail to comment within fifteen (15) days of receipt of the NPS decision, or NPS shall consult further with the signatories executing this PA, as necessary, and the objecting party to resolve the objection.

XII) 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.

XIII) TERMINATION

(A) 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.

(B) 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.

(C) Should this PA be terminated, the NPS shall consult regarding the Undertaking with the executing signatories in accordance with 36 CFR §800.

XIV) DURATION OF THE PA

Unless terminated pursuant to stipulation XV, the duration of this PA is five (5) 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.

XV) EFFECTIVE DATE OF THE PA

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

XVI) 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, its subsequent filing with the ACHP, 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, SHPO's, and associated Tribes 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: _____

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

Jan Grimes
Date: _____

State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler
Executive Director

Date: _____

OSAGE NATION

John D. Red Eagle
Principal Chief

Date: _____

CITYARCHRIVER2015 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: _____

APPENDIX A
THE UNDERTAKING

APPENDIX B AREA OF POTENTIAL EFFECTS

LEGEND

- - - - - Park Boundary
- _____ NHL Boundary
- Area of Potential Effect
- 1. Missouri Athletic Club Association Building
- 2. J. Kennard and Sons Carpet Company Building
- 3. Laclede's Landing Historic District
- 4. Security Building
- 5. Mississippi Valley Trust Company Building
- 6. Laclede Building
- 7. Old Courthouse, fountain, and sundial
- 8. Eads Bridge
- 9. North and South Overlooks
- 10. Railroad tunnel cuts
- 11. Gateway Arch
- 12. Museum of Westward Expansion
- 13. Grand Staircase
- 14. International Fur Exchange
- 15. American Zinc, Lead and Smelting Company Building
- 16. Old Cathedral
- 17. Pet Plaza
- 18. St. Mary of Victories Church
- 19. Crunden-Martin Manufacturing Company Historic District
- 20. Peabody Coal Company National Headquarters

