

The purpose of this Programmatic Agreement is twofold. First, it clarifies the boundaries of the DNR's authority to implement the Section 106 process for both SRF funding from the Clean Water Act and the Safe Drinking Water Act through the Standard Project Review language. Second, the PA excludes certain activities from a full SHPO review in the Section 106 process, when projects have limited potential of negatively impacting historic properties. Both these features of this PA will streamline the Iowa SRF funding process to allow wastewater and drinking water treatment projects to move quickly towards completion.

**PROGRAMMATIC AGREEMENT AMONG
THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 7,
THE IOWA STATE HISTORIC PRESERVATION OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE IOWA DEPARTMENT OF NATURAL RESOURCES,
REGARDING SECTION 106 COMPLIANCE FOR CLEAN WATER ACT AND SAFE
DRINKING WATER ACT STATE REVOLVING FUND PROGRAMS**

WHEREAS, the U.S. Environmental Protection Agency (EPA) administers the clean water state revolving fund (CWSRF) created by 33 U.S.C. Section § 1383, including awarding Capitalization Grants to the States and providing oversight of the CWSRF; and,

WHEREAS, the EPA administers the drinking water state revolving fund (DWSRF) created by 42 U.S.C. § 300j-12, including awarding Capitalization Grants to the States and providing oversight of the DWSRF; and,

WHEREAS, Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. § 300101 *et seq.*) (Section 106), and regulations implementing Section 106 (36 CFR Part 800) requires federal agencies to take into account the effect of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings in accordance with the implementing regulations at 36 CFR Part 800; and,

WHEREAS, EPA has determined that projects funded through the state revolving fund monies distributed annually to the states are undertakings under the NHPA; and,

WHEREAS, for the State of Iowa, the Iowa Department of Natural Resources (DNR), in conjunction with the Iowa Finance Authority, is the designated state agency in charge of the Iowa State Revolving Fund (SRF Agency); and,

WHEREAS, an existing nationwide programmatic agreement “Concerning Compliance with the National Historic Preservation Act Under EPA’s State Water Pollution Control Revolving Fund Program” effective March 28, 1990, (1990 nPA) among the EPA, the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO), attached as Appendix C, delegates to the local state revolving fund agencies for projects funded through the CWSRF only, the responsibility to carry out the requirements pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the NHPA without direct EPA involvement provided no disputes exist; and,

WHEREAS, Stipulation 4 of the 1990 nPA requires the SRF Agency to consult and coordinate with their respective State Historic Preservation Office (SHPO) consistent with 36 CFR 800; and,

WHEREAS, the EPA authorized the DNR, in a letter dated November 17, 2022 pursuant to 36 CFR 800.2(c)(4) (2022 Letter), attached as Appendix D, to begin the Section 106 consultation process with the Iowa State Historic Preservation Office (SHPO) on projects funded through the DWSRF;

WHEREAS, pursuant to the 1990 nPA and the 2022 Letter, and subject to the limitations provided in those documents, for CWSRF and DWSRF projects in the State of Iowa, the DNR coordinates all Section 106 reviews, decision-making, and actions applicable under Section 106 and its implementing regulations; and,

WHEREAS, this Agreement does not alter the provisions of the 1990 nPA in any way, except to the extent that this Agreement excludes certain projects from SHPO review; and;

WHEREAS, relative to the projects it is authorized to take action on, the DNR has consulted with the Iowa SHPO, the ACHP, and other consulting parties and has determined that certain SRF undertakings can be excluded from further Section 106 review by the Iowa SHPO in accordance with Appendix B; and,

WHEREAS, on September 29, 2023 the EPA initially contacted federally recognized tribes (Tribes) that may attach religious and cultural significance to historic properties that may be affected by SRF-funded undertakings, as identified in Appendix A of this Agreement, notifying them of aspects of this Agreement and invited Tribes to review, comment, consult, and become a concurring party on the Agreement; and,

WHEREAS, this Agreement does not apply on tribal lands, which is defined as all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities pursuant to 36 CFR § 800.16(x); and,

WHEREAS, unless otherwise requested by a Tribe(s), this Agreement allows the DNR to notify and conduct consultation with Tribes, on behalf of the EPA, regarding individual projects covered by this Agreement where a Tribe or Tribes may have an interest. Any Tribe that may have an interest in an individual project, however, may request to consult directly with the EPA at any time, at which point the EPA will lead any further consultation on the project with that Tribe; and,

[TRIBES consulting party language placeholder]

WHEREAS, EPA contacted other potential consulting parties (local governments, historical societies, CLGs) and [results of consultation]; and

WHEREAS, EPA and DNR notified the public about the development of this PA through an EPA Region 7 website, SRF website, and DNR listservs; and

WHEREAS, on October 25, 2023, the EPA and the DNR held a virtual consultation meeting for Tribes and other potentially interested parties; and,

WHEREAS, on [DATE], the draft PA was made available for a 30 day review and comment period; and,

WHEREAS, it is the intent of this Agreement to efficiently conduct Section 106 consultation with the

SHPO, and not modify the DNR's existing policy of consulting with other interested parties including federally recognized Tribes on the location and/or type of undertakings in accordance with 36 CFR § 800.3 through 800.7; and,

WHEREAS, it is the intent of this Agreement to ensure that the EPA continues to meet its responsibilities to conduct Section 106 consultation, while delegating certain responsibilities to the DNR as described herein; and,

WHEREAS, the EPA, through the DNR as detailed in this Agreement, will continue to consult with Tribes and other consulting parties and solicit public involvement in accordance with 36 CFR § 800.2 and 40 CFR Part 35 for undertakings, as appropriate; and,

WHEREAS, all references to time periods in this Agreement are in calendar days, unless otherwise noted;

NOW THEREFORE, the EPA, SHPO, ACHP, and DNR as signatories to this Agreement agree that, upon execution of this Agreement, undertakings where the EPA has delegated its Section 106 review responsibilities to DNR shall be implemented in accordance with the following stipulations.

STIPULATIONS

To the extent of its legal authority, in coordination with SHPO, and taking into account the comments of consulting parties, EPA will require that the following stipulations be implemented:

I. EPA RESPONSIBILITIES

- A. EPA Region 7 is responsible for Dispute Resolution between the SRF Agency and SHPO for CWSRF and DWSRF projects and to request assistance from the ACHP in accordance with Stipulation 5(b) of the 1990 nPA and Stipulation VI of this Agreement.
- B. The EPA shall be responsible for formal consultation with Tribes that request EPA consultation.

II. DNR RESONSIBILITIES

- A. The DNR currently employs, and shall continue to employ, environmental review specialists (ERS) whose job duties relative to this Agreement include completing analyses in the Section 106 process.
- B. The DNR may employ, in its sole discretion, a Historic Preservation Specialist (HPS) whose responsibilities relative to this Agreement are detailed further in these Stipulations and Appendix B of this Agreement.
- C. Other responsibilities of the DNR relative to the Section 106 process will be fulfilled by ERS.
- D. The DNR shall keep separate the management of the HPS and ERS under its employ to the extent required by law and professional responsibility such that the implementation of this Agreement is fair and impartial. The signatories recognize that a primary purpose of this Agreement is to demonstrate the procedures that will ensure this impartiality, and nothing in this Agreement shall be construed as creating or transferring the duties of the DNR to an employee.

- E. The DNR shall ensure that all applicable activities conducted pursuant to this Agreement are performed in accordance with the Secretary of the Interior's (SOI) Standards and Guidelines for Identification and Evaluation and shall be performed in a manner that is consistent with the SOI's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR Parts 60, 63 and 65) and the guidance provided in the most recent Association of Iowa Archaeologists' *Guidelines for Archaeological Investigations in Iowa*, draft *Guidelines for Historic Architectural Survey in Iowa*, additional guidance documents as provided by SHPO, recommendations and guidelines regarding architectural and historic survey per the SHPO, and all other federal or state standards as appropriate as indicated in 36 CFR § 800.4(b)(1).
- F. When required by Section 304 of the NHPA (54 U.S.C. § 307103) and/or Iowa Code Chapter 14 and sections 22.7(20) and 263B.10, the DNR shall withhold from disclosure to the public information relating to the location or character of historic resources and archaeological sites and recognizes disclosure of such information may create a substantial risk for harm, theft, or destruction to such resources or to the area or place where such resources are located. Release of site location information must be coordinated with the University of Iowa, Office of the State Archaeologist (OSA).
- G. The DNR shall ensure that artifacts and records resulting from archaeological investigation made pursuant to this Agreement shall be curated at a facility in the State of Iowa that meets or exceeds the SOI's Standards (36 CFR Part 79), should landowners elect to donate artifacts found on their property(ies).
- H. The DNR shall consult directly with SHPO, ACHP, and the National Park Service Midwest Regional Office in Omaha on all undertakings that may affect a National Historic Landmark in accordance with 36 CFR § 800.10 (Special requirements for protecting National Historic Landmarks) and copy the DNR HPS (if any) on such consultation.
- I. The DNR shall be responsible for communicating and consulting, on EPA's behalf, with Tribes that may attach religious and cultural significance to an historic property or a particular location that may be affected by undertaking, as well as other consulting parties identified in 36 § CFR 800.2. Nothing in this section is intended to prevent Tribal consultation on undertakings excluded from SHPO review under this Agreement should a Tribe(s) wish to consult on the undertaking. A Tribe may also request consultation with EPA at any time pursuant to Stipulation I.B. of this Agreement.
- J. The DNR will provide signatories an annual report on all excluded undertakings in accordance with Stipulation XI.
- K. The DNR shall ensure its staff is sufficiently trained on the implementation of this Agreement.
- L. The DNR will consult with SHPO on a project-by-project basis for all undertakings not excluded under Stipulation V and Appendix B of this Agreement.
- M. The DNR shall ensure that any change in scope of work identified after project approval is reviewed pursuant to the terms of this Agreement to determine if the change in scope is excluded from further review or if further consultation is required.
- N. The DNR responsibilities relative to any HPS shall include the following:

1. A HPS retained by the DNR must meet the SOI Professional Qualification Standards in one or more of the following fields: History, Archaeology, Architectural History, Architecture, and/or Historic Architecture, as appropriate, and specific to their field. (<https://www.nps.gov/articles/sec-standards-prof-quals.htm>).
 2. In the event that the DNR is unable to comply with any stipulation due to the lack of appropriate SOI qualified staff for any duty assigned to an HPS by Stipulation VI or by Appendix B, the DNR shall instead consult directly with the SHPO in accordance with standard Section 106 consultation under 36 CFR § 800.3(c)(3) and Stipulation VI.
 3. A HPS, if any, shall carry out the duties tasked to an HPS by these Stipulations and by Appendix B of this Agreement. Nothing in this stipulation shall require HPS approval of ERS review under Stipulation II.O.1, under a standard Section 106 review, or of projects listed in Appendix B, Tier 1 projects, unless otherwise noted herein.
 4. The HPS shall ensure that all Section 106 documentation compiled or reviewed by the HPS is complete and accurate, meets or exceeds the standards outlined in 36 CF § 800.11, and is consistent with the ACHP's *Meeting the "Reasonable and Good Faith" Identification Standard in Section 106 Review*). The HPS may request additional information from an ERS to ensure a complete submittal.
 5. The HPS shall review the Section 106 documents submitted for HPS approval when requested by an ERS for Tier 1 undertakings.
 6. The HPS meeting SOI qualifications for archaeology will review undertakings outlined in Tier 2 of Appendix B to determine the exclusion's applicability by considering: scope of the undertaking, demonstration of profound disturbance, archaeological site records, previous survey work, Historic Indian Location Database (HILD), Notable Locations database, historical documentation, landscape analysis, soil data, geoarchaeological analysis, and other sources of information as applicable. Justification for the exclusion(s) will be included in annual reporting (Stipulations II.J, and XI).
 7. The HPS meeting the SOI qualifications for history, architectural history, architecture, or historic architecture as appropriate, will review undertakings outlined in Tier 2 of Appendix B to determine exclusion's applicability by considering: scope of the undertaking and potential effect to above ground resources that are unevaluated, eligible, or listed National Register of Historic Places (NRHP) properties.
- O. The DNR responsibilities relative to ERS under its employ shall include the following:
1. ERS employed by the DNR shall be responsible for the initial review of undertakings to make a determination of whether the undertaking is excluded pursuant to Appendix B, Tier 1.
 2. If the undertaking is not excluded pursuant to Appendix B, Tier 1, the ERS will initiate Tier 2 review and submit appropriate documentation to the HPS for their review, or initiate the standard review process pursuant to Stipulation VI.

- P. Within 90 days of the effective date of this agreement, DNR shall promulgate a guidance document for the use of this agreement by DNR staff (ERS and HPS). Before promulgation, DNR shall provide SHPO an opportunity to view and comment upon the contents of the guidance document. SHPO shall review and comment upon the guidance document within 45 days of receipt of the guidance document from DNR. After receiving comments upon the proposed guidance document from SHPO, DNR shall consider all comments from SHPO and may further amend the guidance document. From time to time, DNR may modify the guidance document as needed. When DNR proposes a modification to the guidance document, it shall send proposed modifications to SHPO for review. Within 45 days of receiving the proposed guidance back from SHPO, the DNR shall either promulgate the updated guidance, return an updated guidance document to SHPO for another review in accordance with this section, or make the decision to not update the guidance. If the decision is made to not update the guidance, DNR shall notify SHPO of its decision in writing.

III. SHPO RESPONSIBILITIES

- A. The SHPO shall be available to discuss with the HPS within a fourteen (14) day time frame from a request for technical assistance.
- B. If the HPS is unable to perform the duties tasked to an HPS under this Agreement, as described in Stipulation II.E, the SHPO will consult on Tier 2 undertakings in accordance with 36 CFR §§ 800.3 through 800.7 until such time as the HPS can resume those duties.
- C. Within 45 days of receiving proposed modifications to the guidance document, SHPO shall comment upon and return the proposed guidance to DNR in accordance with Stipulation II. P.

IV. ACHP RESPONSIBILITIES

The ACHP shall participate, at the request of EPA Region 7, in cases requiring dispute resolution as required in Stipulation VIII and in instances when the Criteria for ACHP Involvement in Reviewing Individual Section 106 Cases are met (36 CFR Part 800, Appendix A) upon notification of an adverse effect finding by the DNR or a request for our review of an undertaking by any party involved in reviewing the undertaking.

V. EXCLUDED UNDERTAKINGS

- A. The DNR shall determine whether individual undertakings are excluded from SHPO review under this Agreement as further described in Appendix B of this Agreement, except in extraordinary circumstances or circumstances in which a normally excluded activity may have an adverse effect, in which case DNR must follow procedures in Stipulation VI of this Agreement.
- B. Undertakings cannot be segmented into activities that are excluded and activities that are not excluded. If the entire undertaking does not qualify for exclusion under the predefined criteria as described in Appendix B, then the entire undertaking must follow procedures in Stipulation VI of this Agreement. Similarly, Undertakings cannot be segmented according to funding streams or by any other agency action that is subject to Section 106 review (i.e., permit, license, assistance, etc.). If non-SRF federal agencies are involved in the undertaking subject to this Agreement and those activities cannot demonstrate independent utility, then the DNR will consider each of those

activities to be part of a single undertaking and will determine whether they are able to be reviewed under this Agreement.

- C. The DNR's determination that an undertaking shall be excluded from SHPO review shall be documented using the *Excluded from Review* form (Exhibit 1). The form and supporting documentation shall be included with the project file. The form shall be completed and reviewed by the ERS or HPS in accordance with Appendix B.
- D. If an undertaking is excluded from SHPO review under Stipulation V of this Agreement, the DNR shall notify the Tribe(s) and other interested parties of the undertaking, notify them of the undertaking's exclusion from SHPO review following the standard Section 106 process, and Stipulation VI of this Agreement. If an undertaking is not excluded, the DNR shall invite the Tribe(s) and other interested parties to be a consulting party pursuant to 36 CFR § 800.2 and Stipulation VI of this Agreement. Nothing in this section is intended to prevent Tribal consultation on undertakings excluded from SHPO review under this Agreement should a Tribe(s) wish to consult on the undertaking.

VI. STANDARD PROJECT REVIEW AND AUTHORITY

- A. If for any reason the DNR determines an undertaking cannot be excluded in accordance with Stipulation V and Appendix B of this Agreement, or if the DNR otherwise determines a standard project Section 106 review is necessary for any particular undertaking, the DNR shall initiate and ensure the completion of a standard Section 106 review of the undertaking in accordance with 36 §§ CFR 800.3 through 800.7 and any related guidance and law.
- B. For CWSRF undertakings, the EPA delegated DNR its responsibility to carry out a standard Section 106 review pursuant to the terms of the 1990 nPA, including resolution of adverse effects.
- C. For DWSRF undertakings, and consistent with Attachment E, the DNR shall have the authority to carry out a standard Section 106 review subject to the following terms:
 - 1. In compliance with its responsibilities under the NHPA, EPA through this Agreement requires the DNR to carry out the requirements of 36 CFR Part 800 for all DWSRF actions that receive federal assistance.
 - 2. EPA will participate in the DNR's standard Section 106 review to the extent agreed to by the DNR and the EPA's Region 7 Administrator, but at a minimum the EPA shall receive notice of any dispute pursuant to Stipulation VIII of this Agreement.
 - 3. The EPA shall review the State of Iowa's capitalization grant funding in a manner that is consistent with Stipulation 3 of the 1990 nPA. This stipulation is adopted by reference through Appendix C of this Agreement.
 - 4. For all DWSRF purposes, the signatories agree this Agreement demonstrates that the EPA sufficiently requires consultation among DNR, SHPO, and other consulting parties in a manner that is consistent with 36 CFR §§ 800.3 through 800.7.

VII. UNANTICIPATED DISCOVERIES

A. Any unanticipated discovery, including but not limited to human remains, found during an undertaking covered by this Agreement shall comply with applicable state notification standards, federal laws, 36 CFR § 800.13, this Agreement and the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects (March 1, 2023). The DNR and other participants to any undertaking covered by this Agreement may, but is not required to, use agreement documents pursuant to 36 CFR 800.13(a)(2) to ensure site-specific procedures are applied to unanticipated discoveries. Any such agreement documents are not an amendment to this Agreement, and the Signatories to this Agreement are not required to sign any such agreement documents for those documents to become valid.

B. Treatment of Human Remains

1. In the event that human remains are encountered during archaeological investigations or construction activity, [insert appropriate agency] shall ensure that the remains are left in place, that work within 100 feet of the remains will cease, the site will be secured, and the following entities will be contacted immediately upon discovery: local law enforcement, the State Medical Examiner, and the director of the Bioarchaeology Program at the OSA either directly or through the State Archaeologist. Signatories to this Agreement will also be notified within 24 hours of discovery.
2. All ancient human remains (over 150 years old) in Iowa are protected by the following sections of the Iowa Code: Chapter 263B, 523I.316(6), 685-11.1 and 716.5. Ancient human remains discovered on Federal and/or tribal lands as a result of the Undertaking are also protected under the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001-3005).
3. If the remains are determined to be ancient, the Bioarchaeology Program at the OSA shall have jurisdiction to ensure that the Iowa Code as well as Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR Part 10), as applicable, are observed. The disposition of the remains will be arranged by the director of the Bioarchaeology Program and the State Archaeologist in consultation with the culturally affiliated Tribe(s) and the OSA's Indian Advisory Council, or other descendant communities as applicable.
4. Any dispute regarding the applicability of NAGPRA as a result of the Undertaking shall be resolved in accordance with 43 CFR Part 10.17.
5. If the remains are determined to be less than 150 years old, the Iowa Department of Public Health will be notified. The OSA will coordinate with the State Medical Examiner (SME) to determine the ancestry and antiquity of the remains. If remains are identified as Native American and not of medicolegal significance, the OSA will coordinate with the SME and Tribes to determine the appropriate disposition.
6. At all times, human remains must be treated with the utmost dignity and respect, and in the manner consistent with the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects (March 1, 2023).

C. Treatment of Unanticipated Discoveries Not Involving Human Remains

1. If cultural materials 50 years old or older or potentially significant architectural properties/elements are discovered/affected during the Undertaking activities, an undertaking's applicant must cease all work within a 50-foot radius of the discovery as well as other areas where additional historic properties can reasonably be expected to occur, and notify DNR. The DNR shall inform SHPO of the discovery within 24 hours, and Tribes, EPA, and other consulting parties as necessary.
2. During construction and development, the undertaking's applicant will protect discoveries from additional effects until evaluated by SOI qualified personnel.
3. The DNR, or technical specialists employed by the DNR or Applicant, will have on-site inspections to ensure cultural resources are appropriately protected.
4. Specialists, including archaeologists and architectural historians, as appropriate, employed in response to the unanticipated discovery/effects, shall meet applicable Secretary of Interior's qualifications and have knowledge to assess the resources within the Undertaking's APE. Such specialists shall inspect the work site within three (3) business days after the discovery to assess the discovery and/or assess extent and magnitude of effects.
5. SHPO shall respond to the request for consultation within five (5) business days to the direct notification of an unanticipated discovery/effect.
6. Work can continue in areas outside the 50-foot radius of the discovery/effect where no historic properties are present after proper inspection by the Agency(ies) or specialist employed by the Applicant or Agency(ies). If the unanticipated discovery/effect appears to be a consequence of illegal activity, such as looting, on-site personnel will immediately contact appropriate law enforcement authorities.
7. The DNR shall evaluate the NRHP eligibility of the cultural resource(s) as well as a report of findings, make a determination of eligibility and finding of effect and consult with SHPO. The SHPO will have seven (7) business days to respond and provide comments to the DNR. If the SHPO indicates that further investigation is warranted to assess NRHP eligibility or that an adverse effect to an historic property has occurred, the DNR shall consult with SHPO (and other consulting parties) to develop a treatment plan which avoids an adverse effect, or in the case of adverse effects to a historic property, a mitigation plan, and allow SHPO (and other consulting parties) to comment.
8. Activities can resume with no further action required if the DNR determine that the discovery is not NRHP-eligible or, if an historic property can be avoided or that an unanticipated effect was not adverse and SHPO concurs. If further action is required, work can continue after appropriate treatment plan or mitigation plan are agreed upon.

VIII. DISPUTE RESOLUTION

- A. Any signatory may, at its own discretion, request that the EPA Region 7 office and/or the ACHP participate in the review of individual SRF projects or assist in resolving disputes that may arise among the Signatories during the implementation of this Agreement. The EPA and the ACHP will participate in reviewing and assisting the DNR and SHPO if so requested, and may

participate at their own discretion, when significant issues are raised from other sources, without such a request.

- B. In situations where disagreements among the Signatories cannot be resolved in consultation with either EPA Region 7 or the ACHP, the EPA will be responsible for resolving the dispute in consultation with ACHP in accordance with 36 CFR 800.3 through 800.7, as applicable.
- C. Should disagreements amongst signatories regarding a particular resource's NRHP eligibility arise, DNR will facilitate the provision of all documentation associated with the disputed property to the Keeper of the National Register of Historic Places, whose judgment on NRHP eligibility will be final.

IX. AMENDMENTS

- A. Any of the signatories to this Agreement may request in writing submitted to the DNR that this Agreement or its attachment "Appendix B" should be amended, including any or all of its stipulations subsequent to execution of this Agreement, whereupon the DNR will notify the other signatories who will consult to consider such amendment. The amendment will be effective on the date the amendment is signed by ACHP, following the signatures of all of the other signatories. DNR shall provide copies of the amended Agreement to the signatories.
- B. Excepting Appendix B, revisions to this agreement's appendices shall not require notification of and review by the ACHP. However, SHPO and the EPA must agree to any such changes and DNR shall provide the ACHP with file copies of finalized versions that reflect all revisions.

X. TERMINATION AND DURATION

- A. If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately notify all signatories. The DNR will then consult with the other signatories to attempt to develop an amendment per Stipulation IX or other form of resolution. If, within thirty (30) days after DNR notifies all signatories that resolution through amendment or other means cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.
- B. Upon the expiration or termination of this agreement, if this agreement is not renewed, in-progress work on CWSRF undertakings shall be performed in accordance with Section 106 of the NHPA, 36 CFR Part 800, and the 1990 nPA process, attached to this agreement as "Appendix C."
- C. Upon the expiration or termination of this agreement, if this agreement is not renewed, in-progress work on DWSRF undertakings shall be performed in accordance with all applicable law and the November 2022 letter sent from EPA region 7 to the Iowa Department of Cultural Affairs, attached to this agreement as "Appendix D."
- D. This Agreement will expire five (5) years from the date of its execution by all signatories. DNR will notify all parties in writing six (6) months prior to the expiration of this Agreement. Prior to Agreement expiration, the term of duration may be extended by consulting with signatories to execute an amendment in accordance with Stipulation IX.

XI. MONITORING AND REPORTING

By July 31 of each year, the DNR shall submit an annual report to signatories for review and comment on program activities that occurred from July 1 of the previous year through June 30. The report will include a summary of all projects reviewed by the DNR; those projects with documentation collected under Stipulation II of this Agreement; all projects excluded from SHPO review, setting out which exclusion of this Agreement the projects qualified for; and suggestions, if any, for additional actions that could be considered for inclusion as Programmatically Excluded Activities in Appendix B. DNR shall provide supporting documentation upon formal request. SHPO reserves the right to review files for the entire range of activities subject to Section 106 review to verify that DNR is properly implementing the terms of the Agreement.

The DNR shall provide copies of any identification and evaluation documents compiled, such as Iowa Site Inventory Forms (ISIFs) or Archaeological Investigation Reports, to the SHPO for inclusion in the statewide inventory at a minimum of once a year, along with a summary of projects processed under this Agreement, annual report, per Federal reporting year which ends each June 30th providing reporting content to the SHPO no later than July 31st annually in accordance with Stipulation XI of this Agreement.

XII. ADOPTABILITY OF THE AGREEMENT

The signatories expressly and preemptively authorize the joining to this Agreement as a signatory after the date of the Agreement's execution of any federal agency and any associated state or local counterpart(s) that assist(s) the federal agency in the dispersal of federal funding ("Non-SRF Agencies"). By this authorization, Non-SRF Agencies may unilaterally become signatories to this Agreement by signing and mailing to all other signatories a signature page titled in accordance with this Agreement which shall state the following:

- The undersigned Non-SRF Agency becomes a Signatory to the above titled Agreement solely for purposes of excluding from standard Section 106 review by the Iowa SHPO of any undertaking(s), including Unanticipated Discoveries, which are included in Appendix B and which are funded by both SRF monies and federal monies managed by the undersigned Non-SRF Agency. The undersigned Non-SRF Agency does not join any part of this Agreement which governs non-excluded undertakings. The undersigned Non-SRF Agency retains all rights to initiate standard SHPO review of any undertaking under its control. By entering into the Agreement as a signatory, the undersigned Non-SRF Agency does not delegate any of its responsibility related to Tribal outreach, consultation, or government-to-government communications, but to the extent allowed by law and guidance, may consider any such activities performed by the Iowa DNR and/or EPA Region 7 as meeting any requirements to perform similar activities.

XIII. EXECUTION OF THE AGREEMENT

This Agreement is considered executed after signatures by the EPA, SHPO, and the DNR have been provided to the ACHP and the ACHP signs the Agreement. Execution of this Agreement by the ACHP and the implementation of its terms is evidence that the EPA has taken into account program effects on historic properties and have afforded the ACHP an opportunity to comment.

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SIGNATORY: U.S. Environmental Protection Agency, Region 7

Dana Skelley, Director Water Division

Date

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SIGNATORY: State Historic Preservation Officer

Heather Gibb, State Historic Preservation Officer

Date

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SIGNATORY: Advisory Council on Historic Preservation

Sara Bronin, Chair

Date

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INVITED SIGNATORY: Iowa Department of Natural Resources

Kayla Lyon, Director

Date

APPENDIX A – CONTACTS INVITED TO CONSULT

TRIBES INVITED TO CONSULT ON THIS PA	
Iowa Tribe of Kansas & Nebraska	Iowa Tribe of Oklahoma
Kickapoo Tribe of Kansas	Lower Sioux Indian Community
Kickapoo Tribe of Oklahoma	Miami Tribe of Oklahoma
Omaha Tribe of Nebraska	Otoe-Missouria Tribe of Indians
Osage Nation	Pawnee Nation of Oklahoma
Ponca Tribe of Indians of Oklahoma	Peoria Tribe of Indians Of Oklahoma
Prairie Island Indian Community	Ponca Tribe of Nebraska
Sac and Fox Nation of Oklahoma	Prairie Band Potawatomi Nation
Sisseton-Wahpeton Oyate	Sac and Fox Nation of Mississippi In Iowa
Spirit Lake Tribe	Sac and Fox Nation of Missouri
Three Affiliated Tribes Mandan Hidatsa & Arikara Nations	Santee Sioux Nation
Yankton Sioux Tribe	Shakopee Mdewakanton Sioux Community
Ho-Chunk Nation	Upper Sioux Community
Citizen Potwatomi Nation	Winnebago Tribe of Nebraska
Flandreau Santee Sioux Tribe	

COUNCIL OF LOCAL GOVERNMENTS (CLG) INVITED TO CONSULT ON THIS PA	
Ackley Historic Preservation Commission	Iowa Falls Historic Preservation Commission
Adams County Historic Preservation Commission	Jackson County Historic Preservation Commission
Adel Historic Preservation Commission	Johnson County Historic Preservation Commission
Allamakee County Historic Preservation Commission	Jones County Historic Preservation Commission
Amana Land Use District Historic Preservation Commission	Lake View Historic Preservation Commission
Ames Historic Preservation Commission	La Porte City Historic Preservation Commission
Benton County Historic Preservation Commission	Laurens Historic Preservation Commission
Bloomfield Historic Preservation Commission	Le Mars Historic Preservation Commission
Buchanan County Historic Preservation Commission	Linn County Historic Preservation Commission
Burlington Historic Preservation Commission	Lisbon Historic Preservation Commission
Calhoun County Historic Preservation Commission	Louisa County Historic Preservation Commission
Carroll (city) Historic Preservation Commission	Madison County Historic Preservation Commission
Cedar Falls Historic Preservation Commission	Manning Historic Preservation Commission
Cedar Rapids Historic Preservation Commission	Maquoketa Historic Preservation Commission
Centerville Historic Preservation Commission	Marion Historic Preservation Commission
Chariton Historic Preservation Commission	Mason City Historic Preservation Commission
Charles City Historic Preservation Commission	McGregor Historic Preservation Commission
Cherokee (city) Historic Preservation Commission	Monona County Historic Preservation Commission
Clayton County Historic Preservation Commission	Montezuma Historic Preservation Commission

APPENDIX A – CONTACTS INVITED TO CONSULT

Clermont Historic Preservation Commission	Mount Pleasant Historic Preservation Commission
Clinton (city) Historic Preservation Commission	Mount Vernon Historic Preservation Commission
Clinton County Historic Preservation Commission	Muscatine (city) Historic Preservation Commission
Council Bluffs Historic Preservation Commission	Muscatine County Historic Preservation Commission
Crawford County Historic Preservation Commission	Nevada Historic Preservation Commission
Creston Historic Preservation Commission	Newton Historic Preservation Commission
Dallas County Historic Preservation Commission	Osceola Historic Preservation Commission
Davenport Historic Preservation Commission	Oskaloosa Historic Preservation Commission
Davis County Historic Preservation Commission	Ottumwa Historic Preservation Commission
Decorah Historic Preservation Commission	Perry Historic Preservation Commission
Des Moines (city) Historic Preservation Commission	Red Oak Historic Preservation Commission
Dubuque (city) Historic Preservation Commission	Ringgold County Historic Preservation Commission
Dubuque County Historic Preservation Commission	Sac City Historic Preservation Commission
Forest City Historic Preservation Commission	Sac County Historic Preservation Commission
Fort Atkinson Historic Preservation Commission	Sioux City Historic Preservation Commission
Fort Dodge Historic Preservation Commission	Spencer Historic Preservation Commission
Fort Madison Historic Preservation Commission	State Center Historic Preservation Commission
Greenfield Historic Preservation Commission	Stuart Historic Preservation Commission
Grinnell Historic Preservation Commission	Tama County Historic Preservation Commission
Grundy Center Historic Preservation Commission	Van Buren County Historic Preservation Commission
Guttenberg Historic Preservation Commission	Warren County Historic Preservation Commission
Hampton Historic Preservation Commission	Washington (city) Historic Preservation Commission
Harrison County Historic Preservation Commission	Waterloo Historic Preservation Commission
Henry County Historic Preservation Commission	Waverly Historic Preservation Commission
Humboldt (city) Historic Preservation Commission	Wilton Historic Preservation Commission
Iowa City Historic Preservation Commission	Winneshiek County Historic Preservation Commission

COUNCIL OF GOVERNMENTS (COG) INVITED TO CONSULT ON THIS PA	
Area 15 Regional Planning Commission	Northwest Iowa Planning & Development Commission
Chariton Valley Planning & Development	Siouxland Interstate Metropolitan Planning Council
Iowa Northland Regional Council of Governments	Southwest Iowa Planning Council
North Iowa Area Council of Governments	Central Iowa Regional Transportation Planning Alliance
Region XII Council of Governments	East Central Iowa Council of Governments
Southern Iowa Council of Governments	MIDAS Council of Governments
Bi-State Regional Commission	Region 6 Resource Partners
East Central Intergovernmental Association	Southeast Iowa Regional Planning Commission
Metropolitan Area Planning Agency	Upper Explorerland Regional Planning Commission

APPENDIX A – CONTACTS INVITED TO CONSULT

OTHER INTERESTED PARTIES INVITED TO CONSULT ON THIS PA
Council on Environmental Quality
National Park Service, Midwest Region
Iowa Association of County Conservation Boards
Iowa Department of Agriculture and Land Stewardship Soil Conservation Division
Iowa Economic Development Authority
Iowa Environmental Council
Iowa Finance Authority
Sierra Club
Environmental Law and Policy Center
Iowa Department of Public Health
Fish and Wildlife Service Rock Island Field Office (ES)
United States Department of Agriculture - Rural Development
United States Army Corps of Engineers

APPENDIX B – PROGRAMMATICALLY EXCLUDED ACTIVITIES

The signatories agree that the following types of undertakings can be excluded from further Section 106 review by the Iowa SHPO, regardless of whether historic properties are present on or near property involved in an undertaking. The DNR shall still conduct Tribal outreach prior to the initiation of an excluded undertaking, and will provide consultation to any Tribe which requests it. The DNR must complete an Excluded from Review form for all excluded undertakings; Tier II undertakings also require HPS approval. A completed Excluded from Review form and submission in the annual report to SHPO concludes the standard Section 106 review for an undertaking; no further action is required by any party, except in the event of an Unanticipated Discovery, which shall be handled in accordance with Section VII of the Agreement.

Tier 1

The following Tier 1 undertakings can be excluded from SHPO review, after review and analysis by an ERS or HPS. A full *Excluded from Review* form (Exhibit 1) is required to be filed with the project and reported to SHPO in the annual report.

- A. Connection Fee Only – An SRF loan that pays only for connection to a Rural Water Supply with no ground disturbance or impacted structures.
- B. Video Scoping of Existing Lines – An SRF loan that pays only for video scoping of existing lines with no ground disturbance or impacted structures.
- C. Emerging Contaminant Study – An SRF loan that pays only for the study of the presence and/or treatment of emerging contaminants in the water supply with no ground disturbance or impacted structures.
- D. Lead Service Line Inventory – An SRF loan that pays for the inventory of lead service lines with no ground disturbance or impacted structures.
- E. Lining Less Than 45 Years – An SRF project that consists of lining of water and/or sewer pipe less than 45 years of age and possible minor repairs, with no ground disturbance.
- F. Lining Greater Than 45 Years – An SRF project that consists of lining of water and/or sewer pipe older than 45 years of age that are not brick, stone, or wood, so long as the cured process doesn't degrade the piping material, and possible minor repairs, with no ground disturbance.
- G. Water Meter Replacements with No Historic Properties Present – An SRF project that consists of water meter replacements at existing water meter locations and no ground disturbance at buildings/structures that are less than 45 years old.
- H. Water Meter Replacements at Potential or Known Historic Properties – An SRF project that consists of only water meter replacements at existing water meter locations within basements or outside the structure with no new openings on the outside of the structure.
- I. Utility Upgrades and/or Updating Equipment Not Otherwise Identified In Tier 1 – An SRF project that consists of utility upgrades without ground disturbance where no existing structures are impacted.

APPENDIX B – PROGRAMMATICALLY EXCLUDED ACTIVITIES

Tier 2

The following Tier 2 undertakings can be excluded from SHPO review after review and analysis by an HPS. A full *Excluded from Review* form is required to be filed with the project and reported to SHPO in the annual report.

- J. Repairs Less Than 45 Years - An SRF project that consists of point and/or spot repairs of water and/or sewer pipe where the water and/or sewer pipe are less than 45 years of age, and all work can be completed before the pipes become 50 years of age as determined by the HPS through Stipulation II.N.6.
- K. Treatment Changes – An SRF project that consists of treatment changes at an existing water treatment plant or wastewater treatment plant with no impacts to existing buildings/structures or ground disturbance.
- L. Repairs on Pipe Greater Than 45 Years – An SRF project that consists of point and/or spot repairs of water and/or sewer pipe where the water and/or sewer pipe are greater than 45 years of age, as long as it is not made of brick, stone, or wood, and there is low potential for archaeological resources as determined by the HPS through Stipulation II.N.6.
- M. Hydrant - An SRF project that consists of hydrant replacement and repairs, that are not below brick pavers within NRHP-eligible or listed historic districts and there is low potential for significant archaeological resources as determined by the HPS through Stipulation II.N.6.
- N. Manholes – An SRF project that consists of manhole replacement and repairs, that are not below brick pavers within NRHP-eligible or listed historic districts and there is low potential for significant archaeological resources as determined by the HPS through Stipulation II.N.6.
- O. Utility Upgrades and/or Updating Equipment Not Otherwise Identified in Tier 2 – An SRF project that consists of utility upgrades without ground disturbance and no NRHP unevaluated, eligible, or listed properties are present are within the APE.
- P. Replacement Of Water/Sewer Service Lines And Main using Boring or Slit Trench – An SRF project that consists of new/replacement service lines and related appurtenances involving boring or slit trenches up to one (1) foot in width with connecting pits no bigger than 10 feet by 10 feet relating to connecting to utility lines, and no NRHP unevaluated, eligible, or listed properties are present within the APE and there is low potential for significant archaeological resources as determined by the HPS through Stipulation II.N.6.
- Q. Replacement of Water Service Lines with Pull Technique – An SRF project that consists of replacement of privately-owned water and/or sewer lines using the “pull” technique, replacing the service lines at the same depth as the originals with connecting pits no bigger than 10 feet by 10 feet relating to connecting to utility lines and there is low potential for archaeological resources as determined by the HPS through Stipulation II.N.6.
- R. In-place Replacement Of Water/Sewer Lines And Main – An SRF project that consists of in-place replacement of water and/or sewer mains less than 45 years old (i.e., polyvinyl,

APPENDIX B – PROGRAMMATICALLY EXCLUDED ACTIVITIES

fiber cement and other generic composite or plastic pipe; clay pipe less than 24 inches in diameter, post-WPA pre-cast concrete pipe and boxes), if no NRHP unevaluated, eligible, or listed properties are present within the APE; there is low potential for archaeological resources as determined by the HPS through Stipulation II.N.6.; work can be completed before water and/or sewer mains become 50 years old; and all earthmoving activities are confined to existing utility trenches or profoundly disturbed rights-of-way.

- S. Modifications to Existing Treatment Plants – An SRF project that consists of ground disturbances confined to the current disturbed footprint of an existing wastewater or water treatment plant in which no structures will be impacted; and no unevaluated, eligible, or listed NRHP properties are present; and there is low potential for archaeological resources as determined by the HPS through Stipulation II.N.6.
- T. Resurfacing – An SRF project that consists of resurfacing and/or rehabilitation of existing concrete sidewalks and curbs and concrete or asphalt roads, drives, or entries where there will be no change in the existing horizontal or vertical alignment if no unevaluated, eligible, or listed NRHP properties are present within the APE; and where any unevaluated, eligible, or listed NRHP properties, including sites and historic districts, are located more than 25 feet away from heavy equipment usage; and where all activities are contained to the roadway where the surface material is less than 45 years old. This exclusion does not apply to roads found eligible or listed on the NRHP that are contributing features to a NRHP eligible or listed historic district as determined by the HPS through Stipulation II.N.6.
- U. Road Conversion – An SRF project that consists of conversion of an existing gravel road to concrete or asphalt where there will be no change in the existing horizontal and vertical alignment if no unevaluated, eligible, or listed NRHP properties are present within the APE and where any unevaluated, eligible, or listed NRHP properties, including sites and historic districts, are located more than 25 feet away from heavy equipment usage, there is low potential for significant archaeological resources as determined by the HPS through Stipulation II.N.6., and all activities are confined to the existing roadway. This exclusion does not apply to roads found eligible or listed on the NRHP that are contributing features to a NRHP eligible or listed historic district.
- V. Test Boring/Test Wells – An SRF project that consists of test boring locations to determine soil suitability and/or test well locations, if no recorded archeological sites are within the direct APE or within 300 feet of the APE and there is low potential for significant archaeological resources as determined by the HPS through Stipulation II.N.6.
- W. Demolition – An SRF project that consists of demolition of buildings less than 45 years old and does not meet NRHP Criteria Consideration G when all activity is confined to the current footprint of the original construction; when ground surface conditions are stable enough to support the weight and movement of heavy equipment on profoundly disturbed bare ground or on temporary mats without sinking into the ground, rutting the ground surface, creating soil compaction, or resulting in any form of earthmoving at the demolition area; when work can be completed before the building(s) becomes 50 years of age; and if there are no known NRHP unevaluated, eligible, or listed properties, including sites and historic districts, within the APE and there is low potential for significant archaeological resources as determined by the HPS through Stipulation II.N.6.

APPENDIX B – PROGRAMMATICALLY EXCLUDED ACTIVITIES

- X. Disturbance of Brick Streets – An SRF project that consists of disturbance of unevaluated brick streets so long as the following conditions are met during the undertaking and are included in all contracts entered into by the Applicant: bricks shall be carefully removed, safely stored, cleaned, and placed back with any broken bricks replaced in kind as determined by the HPS; portions of brick streets that are disturbed shall have the cleaned bricks replaced in contextually appropriate configuration to project areas from which they were removed; and bricks that are damaged during removal shall be replaced in kind as determined by the HPS. This exclusion does not apply to roads found eligible for or listed on the NRHP or roads that are a contributing feature to a NRHP eligible or listed historic district.
- Y. Non-Specific Excluded Activities Below Ground in Previously Surveyed Areas - An SRF project involving below ground activities with an APE of vacant land that has low potential for significant archaeological resources as determined by the HPS through Stipulation II.N.6.; and where the APE was intensively surveyed using methods consistent with Association of Iowa Archaeologist Guidelines (1999 or after) to depths consistent with the current undertaking for the purposes of a previous Section 106 review and evaluated by a federal agency not to contain archaeological sites that are NRHP-listed, eligible, or unevaluated, and this survey was reviewed, concurred, and recommended for acceptance by the Iowa SHPO.
- Z. Directional Boring – An SRF project that consists of directional boring of utility lines with sending and receiving pits less than 10 feet by 10 feet (or connecting pits relating to directional boring for utility lines no bigger than 10 feet by 10 feet), if no NRHP unevaluated, eligible, or listed properties, including sites and historic districts, are within the APE and there is low potential for significant archaeological resources as determined by the HPS through Stipulation II.N.6., and all activities are confined to disturbed roadways or depths exceeding potential for archaeological resources.
- AA. Well Replacements Within Existing Well Field – An SRF project that consists of replacement of wells in existing well filed in existing locations, including well heads and casings, in existing well fields, and where the APE was intensively surveyed using methods consistent with Association of Iowa Archaeologist Guidelines (1999 or after) to depths consistent with the current undertaking for the purposes of a previous Section 106 review and evaluated by a federal agency not to contain archaeological sites that are NRHP-listed, eligible, or unevaluated, and this survey was reviewed, concurred, and recommended for acceptance by the Iowa SHPO.
- BB. Repair/Replacement of Sidewalk, Curbing, Driveways Parking Lots, Walkways – An SRF project that consists of in-kind replacement of concrete, asphalt, or brick sidewalks, curbing, driveways, parking lots, and/or walkways if unevaluated, eligible, or listed NRHP properties, including sites and historic districts, are within the APE provided that no vibrational impacts are expected and character defining features, including the front façade, are not affected and there is low potential for archaeological resources as determined by the HPS through Stipulation II.N.6.
- CC. Non-specific Excluded Activities Above Ground – If there is low potential for archaeological resources as determined by the HPS through Stipulation II.N.6. and either of the following conditions are met, it shall not be necessary for SHPO to review the

APPENDIX B – PROGRAMMATICALLY EXCLUDED ACTIVITIES

architectural portion of a project, regardless of activity. The HPS will document how the project meets the conditions on an *Excluded from Review form*.

- i. Condition 1: The project may impact a building/structure of any type that is less than 45 years old and that is not listed in or previously determined eligible for the NRHP and does not convey the level of exceptional significance to be considered eligible for the NRHP under Criteria Consideration G (individually or as a contributing component to a historic district). All work conducted as part of the Undertaking must be completed before the building(s) becomes 50 years old.
- ii. Condition 2: All relevant resources more than 45 years old have been surveyed by a professional historian or architectural historian within the last 5 years, determined not to contain historic properties or contributing to a NRHP potential or listed historic district, and the determination was accepted by the Iowa SHPO. Please note this does not include properties simply added to the Iowa Site Inventory within 5 years.

DD. Water Tower or Standpipe Removal – An SRF project that consists of removal and/or replacement of water tower or standpipe on the same parcel when that parcel is less than one (1) acre in size, if water tower to be demolished is less than 45 years old; where no adverse impact to the viewshed would occur if no NRHP listed, eligible, or unevaluated properties, including sites and historic districts, are within the APE. This work must be completed before the water tower becomes 50 years of age, and there is low potential for archaeological resources as determined by the HPS through Stipulation II.N.6.

APPENDIX C – 1990 CWSRF NATIONWIDE PA

(EPA) PW-95934563-0
2004

PROGRAMMATIC AGREEMENT
AMONG
THE ENVIRONMENTAL PROTECTION AGENCY,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL CONFERENCE OF STATE HISTORIC
PRESERVATION OFFICERS
CONCERNING COMPLIANCE WITH
THE NATIONAL HISTORIC PRESERVATION ACT
UNDER
EPA'S STATE WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

WHEREAS, the U.S. Environmental Protection Agency (EPA) awards capitalization grants to States to establish State Revolving Fund (SRF) programs within State Agencies (each hereinafter referred to as "SRF Agency") authorized under the Clean Water Act (CWA) (33 U.S.C. 1251 et. seq., as amended); and

WHEREAS, the EPA has issued Initial Guidance for the SRF program (January 1988), Appendix D of which (Attachment 1) contains criteria for approval of State Environmental Review Processes (SERPs); and

WHEREAS, Sections 106 and 110(b), (d) and (f) of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f and 470h-2(b), (d), and (f)) apply to all SRF assistance directly made available to States by federal capitalization grants (EPA federal assistance); and

WHEREAS, projects carried out with EPA federal assistance may have effects on properties included in, or eligible for inclusion in, the National Register of Historic Places (historic properties); and

WHEREAS, the EPA has consulted with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800, et seq.) implementing Sections 106 and 110(f) of the NHPA;

NOW, THEREFORE, the EPA, the Council, and the NCSHPO agree that the SRF program shall be administered in accordance with the following stipulations, which will be deemed to satisfy EPA's Section 106 and 110(f) responsibilities for all EPA SRF program actions and SRF Agency program actions undertaken with EPA federal assistance.

Stipulations

EPA will ensure that the following measures are carried out:

1. Purpose and Applicability.

(a) This Programmatic Agreement [PA] sets forth the process by which EPA will meet its responsibilities under Sections 106 and 110(d) and 110(f) of the NHPA with the assistance of SRF agencies. As such, it sets forth the basis for SRF Agency review of individual projects that may affect historic properties, and establishes how EPA will be involved in such review.

(b) This PA is applicable to the review of CWA Section 212 (wastewater treatment facilities), 319 (non-point source pollution control) and 320 (estuary protection) projects that receive EPA federal assistance under an SRF Agency's program.

2. Responsibilities of EPA and SRF Agencies.

In compliance with its responsibilities under the NHPA and as a condition of its award of any capitalization grant to a State, EPA shall require that the SRF Agency or another designated State agency carry out the requirements of 36 CFR 800.4 through 800.6, with reference to 36 CFR 800.1, 800.2, 800.3, 800.8, 800.9, 800.10, 800.11, 800.12 and 800.14 (see 36 CFR Part 800, Attachment 2) and applicable Council standards and guidelines for all SRF Agency actions that receive EPA federal assistance. EPA will participate in the process to the extent mutually agreed upon by the EPA Regional Administrator and the SRF Agency, but at a minimum, EPA must be notified by the SRF Agency if after routine consultation or coordination with the State Historic Preservation Officer (SHPO) disputes remain pursuant to stipulation #5.

3. Use of SRF Certification Reviews and Annual Reviews.

(a) Certification reviews. EPA will review, or re-review as may be necessary, the certification each State is required to provide as a part of its initial application for SRF capitalization grant funding to ensure that:

(1) The State has the authority and capability to carry out the responsibilities assigned to the SRF Agency as described in this PA; and

(2) The SRF Agency will carry out such responsibilities.

(b) Programmatic coordination and consultation. Whenever an EPA Regional Administrator prepares for an annual review of an SRF Agency's program, the EPA Regional Administrator will afford the appropriate SHPO and the Council the opportunity to comment on their experiences with EPA's and the SRF Agency's execution of their respective responsibilities assigned under this PA and the SRF capitalization grant agreement, and shall consider such comments in the conduct of its annual review. If problems are reported with the execution of responsibilities under this PA, the EPA will consult with the SHPO or the Council and other interested persons if appropriate, and if mutually agreed that participation is necessary, the EPA will invite the SHPO or the Council to participate directly in the EPA's annual review on SRF program matters involving their jurisdiction or expertise.

(c) Annual reviews. (1) During each annual review of an SRF Agency's program, the EPA Regional Administrator will ensure that the SRF Agency is using:

(i) adequate expertise to carry out its responsibilities consistent with the professional qualifications standards found in the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44738-9) (Attachment 3);

(ii) effective mechanisms for carrying out the responsibilities assigned to it under the capitalization grant agreement, in accordance with this PA, including those assigned pursuant to stipulation 2 above;

(iii) effective mechanisms for identifying historic properties subject to potential effect by SRF Agency actions using EPA federal assistance, taking into account the Council's publication: "Identification of Historic Properties: a Decisionmaking Guide for Managers" (1988) (Attachment 4);

(iv) effective procedures for involving interested parties and the public in the review process taking into account the

Council publication: "Public Participation in Section 106 Review: A Guide for Agency Officials" (1989) (Attachment 5); and

(v) effective mechanisms for avoiding, minimizing, or mitigating adverse effects on historic properties.

(2) The EPA will further ensure that deficiencies noted in carrying out of responsibilities under this PA and capitalization grant agreement (including any alternative review process contained in an approved SERP), as a result of oversight provided by the Council, SHPO and EPA's annual reviews, are remedied or effectively rebutted with appropriate documentation. Notification of deficiencies, suggested remedies affecting the work of the SRF Agency, and proposed EPA action (if any), shall be included in the report sent to the SRF Agency at the conclusion of an annual review. If the report identifies deficiencies, remedies or actions concerning NHPA compliance, a copy of those portions of the report will be sent to the appropriate SHPO and the Council.

4. State/SHPO Consultation/Coordination.

The Regional Administrator will ensure that a State's capitalization grant agreement provides consultation and coordination between the SRF Agency and the SHPO that is consistent with 36 CFR 800.4, 800.5, and 800.14, and with the guidance outlined in Attachment 6.

5. Dispute Resolution.

(a) Either the SRF Agency or the SHPO may, at its own discretion, request that the EPA Regional Office and/or the Council participate in the review of individual SRF projects or assist in resolving disputes that may arise between the two State agencies. The EPA and the Council will participate in reviewing and assisting the State agencies if so requested, and may participate at their own discretion, when significant issues are raised from other sources, without such a request.

(b) In situations where disagreements among the SRF Agency and SHPO cannot be resolved in consultation with either the EPA Regional Office or the Council, the EPA will be responsible for resolving the dispute in consultation with the Council in accordance with 36 CFR 800.4 through 800.6 as applicable.

6. Applicable Guidance.

(a) Implementation of this PA will be guided by Attachments 1 through 6 and such program guidance or regulations as EPA may

APPENDIX C - 1990 CWSRF NATIONWIDE PA

issue subsequently, and the applicable regulations, standards, guidelines and explanatory bulletins of the Council and the Department of the Interior.

(b) In consultation with SRF Agencies and the NCSHPO, the EPA and Council may from time to time jointly develop and provide SRF Agencies and SHPOs with additional guidance or training.

7. Distribution.

Following the Council's publication of the required notice of an approved PA in the Federal Register, EPA will distribute copies of this PA and its attachments to all EPA Regional SRF and National Environmental Policy Act (NEPA) Coordinators, SRF Agencies, SHPOs, and requesting parties.

8. Amendment.

Any party to this PA may request that it be amended, whereupon the parties will consult pursuant to 36 CFR 800.13 to consider such amendment.

9. Termination.

Any party to this PA may terminate it by providing ninety (90) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the EPA will ensure compliance with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this PA.

Execution of this PA, and carrying out its terms, evidences that the EPA has satisfied its Section 106 and 110(f) responsibilities under the NHPA for Title VI of the CWA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: [Signature]
Chairman

Date: March 19, 19

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: [Signature]
Director, Office of Federal Activities

Date: 3/23/90

By: [Signature]
Director, Office of Municipal Pollution Control

Date: 3/23/90

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

By: [Signature]
President

Date: 3/28/90

APPENDIX C – 1990 CWSRF NATIONWIDE PA

ATTACHMENT 6:

SRF AGENCY/SHPO COORDINATION

[These do not substitute for 36 CFR 800.4 through 800.6]

(A) Initial project consultation.

(1) Early in a project's planning phase, when project alternatives are identified which have the potential to affect historic properties, if any are present, the SRF Agency should, in conformance with 36 CFR Part 800.4(a)(1)(ii), consult with the SHPO and request their views, comments and advice on: (a) what further actions may be necessary by the SRF Agency to further identify and evaluate historic properties; (b) the significance of all identified historic properties; (c) possible effects on historic properties; and (d) project alternatives and suggested mitigation measures where effects are likely.

(2) If within a thirty day period (as provided under 36 CFR Section 800.1(c)) the SHPO does not respond to the SRF Agency's request(s), the SRF Agency shall proceed in accordance with 36 CFR 800.4, et. seq..

(B) Routine consultation.

Following initial contact, SRF Agencies should respond to the SHPO's views, comments and advice; shall take further actions as necessary to identify and evaluate historic properties and assess effects on them; and continue to consult and coordinate with the SHPO throughout the historic preservation review process. Where applicable, this review should be integrated with the SERP process (as defined in Attachment 1).

(C) Transmittal of decision documents.

(1) Prior to making a decision on a project, the SRF Agency shall notify the SHPO of measures it intends to incorporate in the project to avoid, minimize, or mitigate effects on historic properties, which must be consistent with any determinations made or agreements entered into by the SRF Agency pursuant to 36 CFR 800.4(d), 800.5(d), 800.5(e) (4), 800.5(e) (5), and/or 800.11(a) as applicable.

(2) The SRF Agency shall provide the SHPO with a copy of its final ER determination for all SRF projects that have involved consultation and coordination pursuant to 36 CR Part 800 et. seq. and the Programmatic Agreement among EPA, the Advisory Council on Historic Preservation, and the National Conference of SHPOs.

(3) In addition, the SRF Agency will routinely notify the SHPO that appropriate documentation regarding SRF 212 projects funded with EPA federal assistance that may affect historic properties is available whenever:

(i) A Draft ER document is finalized; or

(ii) Significant new information relevant to the project's environmental determination is identified, or significant changes to the project plan is made, following the issuance of a Final Determination (ER decision document), but prior to completion of construction; or

(iii) A mandatory five-year reassessment of a previously issued environmental determination has been conducted on projects and, as requested or otherwise agreed between the SRF Agency and SHPO, provide the SHPO with copies of such documentation.

(4) Appropriate documentation should also be provided the SHPO at similar intervals for 319 and 320 projects funded with EPA federal assistance that may affect historic properties.

APPENDIX D – 2022 DWSRF DELEGATION OF AUTHORITY LETTER



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

Ms. Susan Kloewer
Administrator, State Historical Society of Iowa
Iowa Department of Cultural Affairs
State Historical Building
600 East Locust Street
Des Moines, Iowa 50319

RE: Delegation of Authority for Section 106 Reviews of Iowa Drinking Water State Revolving Fund Projects

Dear Ms. Kloewer:

The United States Environmental Protection Agency, Region 7 sent a letter on October 7, 2022, to Lori McDaniel, Chief of the Water Quality Bureau, Iowa Department of Natural Resources notifying the IDNR of the EPA's intent to authorize the IDNR to initiate consultations required by Section 106 of the National Historic Preservation Act and implement regulations for the NHPA contained in 36 Code of Federal Regulations Part 800, Protection of Historic Properties, when the IDNR implements or oversees projects that have the potential to cause effects to historic properties with funds the IDNR receives pursuant to the Drinking Water State Revolving Fund Program. This letter follows that letter to further notify you of this authorization and further clarify the parameters of EPA Region 7's authorization.

EPA Region 7 administers the DWSRF Program, which awards capitalization grants to state agencies throughout Region 7, including the IDNR. In turn, the IDNR provides assistance to public and private community water systems as well as nonprofit non-community water systems for DWSRF projects. Projects carried out with the EPA assistance may have effects on properties included in, or eligible for inclusion in, the National Register of Historic Properties. Section 106 of the NHPA requires federal agencies to consider the effects of their undertakings on historic properties. The Advisory Council on Historic Preservation regulations at 36 CFR Part 800 provide procedures for federal agency compliance with this requirement.

Section 800.2(c)(4) of the ACHP regulations states that federal agencies may authorize applicants in a specific program to initiate consultation with the State Historic Preservation Office, Tribal Historic Preservation Officer(s), and other consulting parties by providing notice to the SHPO/THPO. As noted above, the IDNR is an applicant for assistance in the DWSRF program. After discussion with IDNR and the Iowa SHPO, in accordance with 36 CFR 800.2(c)(4) the EPA Region 7 hereby authorizes the IDNR to act on our behalf when initiating Section 106 consultation in connection with DWSRF assistance to public and private community water systems and nonprofit non-community water systems.

In accordance, with this authorization, effective immediately, the INDR may consult with the SHPO to initiate the review process established by the ACHP regulations, identify and evaluate historic



APPENDIX D – 2022 DWSRF DELEGATION OF AUTHORITY LETTER

properties, and assess effects. The EPA Region 7, however, will remain responsible for participating in the consultation process when:

- The IDNR determines that “Criteria of Adverse Effect apply to an undertaking;
- There is disagreement between the IDNR and the SHPO/THPO regarding identification of historic properties or evaluation of effects; or
- There is an objection from consulting parties or the public regarding findings or determination, or the implementation of agreed provisions.

The EPA Region 7 will remain responsible for its government-to-government relationships with Indian tribes who may attach significance to historic properties that may be affected by an undertaking. In addition, we expect the IDNR to involve consulting parties in Section 106 finding and determinations, and to carry out the exchange of documentation and information in a respectful, consistent, and predictable manner. If you have any questions, please contact Glenn Curtis, of my staff, at 913-551-7726 or at curtis.glenn@epa.gov.

Sincerely,

JEFFERY
ROBICHAUD

Digitally signed by
JEFFERY ROBICHAUD
Date: 2022.11.17
16:02:37 -06'00'

Jeffery Robichaud
Director
Water Division

cc: Lori McDaniel, IDNR Chief Water Quality Bureau
Rachael Mangum, MA, RPA, ACHP
Teresa Enright, IDNR SRF Coordinator
Aaron Smith, IFA
Heather Gibb, Deputy SHPO
Daniel Higginbottom, SHPO
Jamie Loichinger, Assistant Director ACHP