

**PROGRAMMATIC AGREEMENT  
AMONG  
THE CITY OF CLEVELAND HEIGHTS, OHIO,  
THE OHIO HISTORIC PRESERVATION OFFICE  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FOR THE CITY'S PROGRAMS FUNDED THROUGH  
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

WHEREAS, the City of Cleveland Heights, Ohio (hereinafter "City") receives funds for the Community Development Block Grant (CDBG) and Home Investment Partnership (HOME), as administered by the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the City has determined that these programs administered by the Department of Planning and Development and the Housing Preservation Office through December 31, 2006, may have an affect on properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter "National Register"), and has consulted with the Advisory Council on Historic Preservation Office (hereinafter "Council") and the Ohio Historic Preservation Office (hereinafter "OHPO") pursuant to Section 106 and Section 110(f) of the National Historic Preservation Act (16 U.S.C. 470) and its implementing regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800); and

WHEREAS, the City's Director of Planning and Development will administer the terms of this Programmatic Agreement (hereinafter "PA") and shall assign qualified City staff (hereinafter "Qualified Staff") or shall assign City personnel from the Department of Planning and Development (hereinafter "Staff") to assist a qualified consultant (hereinafter "Consultant") in the review of all programs covered within this agreement; and,

WHEREAS, all capitalized terms shall have the meaning ascribed to them by 36 CFR Part 800 unless otherwise defined by this agreement.

NOW, THEREFORE, the City, the OHPO, and the Council agree that these programs shall be administered in accordance with the stipulations stated in this PA to take into account the effect of individual Undertakings carried out under these programs on Historic Properties:

**STIPULATIONS**

The City will ensure that the following measures are carried out:

**I. Qualified Personnel**

The City shall ensure that its Department of Planning and Development shall employ the services of full- or part-time staff (hereinafter "Qualified Staff") or a consultant (hereinafter "Consultant") each of whom meets the Secretary of the Interior's *Professional Qualifications Standards*, found in Appendix A to 36 CFR Part 61. The City shall ensure that all historic preservation work

carried out pursuant to this Agreement is conducted by or under the direct supervision of the Qualified Staff or Consultant. The City will provide the OHPO with the qualifications and name of the Qualified Staff or Consultant the City intends to designate to carry out the PA terms.

The City will notify the OHPO of any proposed changes in the Qualified Staff/Consultant position. If the City does not have a Qualified Staff/Consultant in place, the City will comply with 36 CFR Sections 800.3 through Section 800.13 with regard to individual undertakings covered by this PA. The City will provide the OHPO with the name(s) of staff person(s) assigned to assist the Qualified Staff/Consultant in the review of programs and will notify the OHPO of any changes in the staff position(s).

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## II. Exempt Activities Which Have Limited Potential to Affect Historic Properties

If, on the basis of the information submitted under Stipulation III. A. (Determination of Historic Eligibility Form), the Staff determines that the undertaking is an exempt activity, as defined by Stipulation II. B. and C., then the undertaking shall be deemed exempt and require no further review under this PA. The Staff will keep the completed Determination of Historic Eligibility Form (Attachment A) on file with other project documentation as evidence that the historic review process has been completed.

A. If the proposed Undertaking falls within one of the following categories, the activity shall be deemed exempt:

### (1) Non-Construction Work

- (a) Public service program that does not physically impact buildings or sites.
- (b) Architectural and engineering fees and other non-construction fees and costs.
- (c) Rental or purchase of equipment.
- (b) Repairs to include only: temporary repairs to floor framing or flooring, temporary repair of falling ceilings, temporary bracing or shoring of structural members to prevent collapse, or temporary repairs to prevent water damage provided that such work is done without permanent damage to the building.

### (2) Site Work

- (a) Maintenance, repair, replacement, line painting, and resurfacing of existing streets, roads, alleys, sidewalks, curbs, ramps, and driveways; maintenance, repair, replacement or new installation of street lights, traffic signals and traffic signs; and maintenance, repair or replacement in place of existing drainage systems.
- (b) Maintenance and repair of existing landscape features, including planting, fences, retaining walls and walkways. Also to include removal of dead plant material.

- (c) Repair or replacement of existing water, gas, storm, and sewer lines in the same trench.
- (d) Repair of existing historic or traditional fences or installation of new fences that are compatible with neighborhood vernacular fences in terms of materials, style, scale and color.

(3) Exterior Rehabilitation Activities

- (a) Exterior scraping with non-destructive means and painting of wood siding, features and trim; exterior painting of masonry, if existing surfaces are already painted. Power washing is not an exempted activity.
- (b) Repair or replacement in-kind (that is, with the same material) of asphalt, fiberglass shingle, or metal roofs; replacement of structural roof components or decking; and replacement of a flat roof not visible from a public right-of-way.
- (c) Repair or replacement in-kind of historic attic vents in original openings, and installation of new ridge vents when new roofing is installed.
- (d) Installation of screens and storm windows provided they:
  - (1) Completely fill the original window opening.
  - (2) Match the meeting rail or other major divisions.
  - (3) Exterior storms must not protrude more than ½" beyond the face of the building.
  - (4) Interior storms must not cause damage to the original interior trim.
  - (5) Interior storms must be designed to seal completely so as to protect the primary window from condensation damage.
- (e) Installation of storm doors, if they are simple and undecorated, of a full-view type, and are anodized or painted to complement existing trim.
- (f) Repair of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim as long as any new material matches existing features in composition, design, color, finish (paint, stain, etc.), texture and other visual and physical qualities.
- (g) Repair of masonry foundations, walls, or chimneys by repointing using matching mortar composition, color, joint width and profile, only when mortar is missing.
- (h) Repair of gutters and downspouts.
- (i) Rebuilding of existing wheelchair ramps.
- (j) Caulking, reglazing and weather-stripping.

(4) Interior Rehabilitation Activities

- (a) Repair, replacement, or installation of electrical, heating and ventilation

(HVAC) and plumbing systems, where no structural or decorative feature alteration, such as chair rails, baseboards, cornices, etc, is involved.

- (b) Installation of insulation in floors, attics and openings and installation in side walls from the interior with a vapor barrier on the inside.
  - (c) Repair of wood floors, installation of new floor coverings, except for vinyl covering or carpet over wood flooring in main living areas (living room, dining room, kitchen, bedrooms) where the existing hardwood floors are in good condition.
  - (d) Repair of plaster walls and ceilings by patching plaster where possible, or repairing with drywall that has a smooth finish when plaster repairs are not feasible.
  - (e) Reuse or replace in-kind trimwork in its original location, where new wall and ceiling surfaces are installed or where replacement is needed.
  - (f) Installation of simple standard light fixtures to replace missing or broken interior and exterior light fixtures.
  - (g) Installation of new kitchen cabinets and countertops and installation of new bathroom fixtures if no walls, windows or doors are altered.
  - (h) Installation of new ceiling openings and pull-down attic steps; removal and sealing up of obsolete pull-down attic steps.
  - (i) Lead-based paint and asbestos abatement activities, such as cleaning and vacuuming, that do not involve removal or alteration of any structural, architectural, or decorative features.
- (5) Where construction or other ground disturbing activities will be demonstratively restricted in scope, horizontally and vertically, to documented areas of former construction within the Area of Potential Effect (APE), such as the footprint of a building demolished within the past fifty years.

Activities defined in 24 CFR ~~Part 58~~ Section 58.34 of the "Environmental Review Procedures for Community Development Block Grant, Rental Rehabilitation, and Housing Development Grant Programs" are exempt from review under this PA.

Activities defined in 24 CFR Section 58.35(b), of the "Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities, as amended" are exempt from review under this agreement.

### III. Identification and Evaluation

A. Prior to the City taking action on any Undertaking covered by this PA, the Staff will generate a Determination of Historic Eligibility Form (Attachment A) containing the following information:

- (1) the Department/Office/Agency responsible;
- (2) source of funds;

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- (3) location (map);
  - (4) description of the proposed work, including work write-ups, plans or specifications;
  - (5) color photographs of all elevations of the building or site and streetscapes;
  - (6) date the structure was built, if applicable; and
  - (7) proposed date of the start of the Undertaking.
- B. On the basis of this information, the Staff will determine if the proposed Undertaking constitutes an exempt activity as defined by Stipulation II. If it is exempt, the staff will follow the procedures in Stipulation II.
- C. If the Staff determines that the proposed Undertaking is not exempt in accordance with Stipulation II, then the Staff will submit the information described in Stipulation III.A. to the Qualified Staff/Consultant who shall be responsible for identification and evaluation of Historic Properties, in accordance with the National Register Criteria, that may be affected by the Undertaking.
- D. The Qualified Staff/Consultant shall identify and evaluate any Historic Properties within the Undertaking's Area of Potential Effect (APE).
- (1) The Qualified Staff/Consultant will rely on the current listing of the National Register, the list of properties determined by the Keeper of the National Register to be eligible for the National Register, the Ohio Historic Inventory (OHI), the Ohio Archaeological Inventory (OAI), Cleveland Heights Landmark Register, maps of Cleveland Heights' existing and potential Historic Properties and Historic Districts (Attachment D) and other available data.
  - (2) If the Qualified Staff/Consultant determines that a survey is needed to identify and evaluate Historic Properties, other than archeological properties eligible for listing in the National Register, then the City will ensure that such a survey is implemented. Identification of archeological sites will be conducted in accordance Stipulation III.D.3. of this PA. Survey work will be conducted in accordance with the Secretary of the Interior's Archeological and Historic Preservation: Standards and Guidelines (1983), OHPO guidelines and previous studies. All survey reports will be submitted to the OHPO for review and acceptance.
  - (3) For proposed ground-disturbing activities that are not exempt under Stipulation II., the City will notify the OHPO and will submit adequate project documentation (as outlined in the Determination of Historic Eligibility form) to the OHPO for review.
    - (a) Prior to approval of the Undertaking, the City shall request that, within thirty (30) days of receiving adequate documentation, the OHPO provide the City with a written decision regarding the need to conduct an archeological identification and evaluation survey within the project's APE.
    - (b) If, on the basis of a high probability for the presence of significant

archeological properties within the APE, the OHPO requests that an archeological survey designed to identify and evaluate historic properties be conducted, the City will ensure that such an archeological survey is implemented within the project area by or under the direct supervision of a qualified professional archeologist who meets the Secretary of the Interior's *Professional Qualifications Standards* (36 CFR Part 61 Appendix A). The city shall submit the scope of work for the archeological survey to the OHPO for review and acceptance.

- (c) If the OHPO does not request a survey, no further review of the ground-disturbing activities is required under this PA.
  - (d) On the basis of the results of the archeological survey, the Qualified Staff/Consultant and the OHPO shall consult to determine whether archeological properties listed in or eligible for listing in the National Register will be affected by the proposed Undertaking. Any disagreement between the Qualified Staff/Consultant and the OHPO regarding the eligibility of an archeological property shall be resolved in accordance with 36 CFR Section 800.4(c).
- (4) If the Qualified Staff/Consultant determines that a historic property is located within the APE, the Qualified Staff/Consultant will record the determination on the Determination of Historic Eligibility Form and treat the Historic Property in accordance with Stipulation IV.
  - (5) If the Qualified Staff/Consultant determines that the property is not listed in or eligible for inclusion in the National Register, the Qualified Staff/Consultant will record that determination on the Determination of Historic Eligibility Form and submit the Form to the Staff. The Staff will complete the Form, retain a copy of the Form as documentation for project files and provide a copy of the Form to the responsible Department/Office/Agency as notification of the completion of the Historic Review Process.
  - (6) At any time, the OHPO or public may request that the City submit its determination of the property's eligibility for listing in the National Register to the OHPO for review and acceptance. The city will submit its determination of eligibility along with all relevant project documentation to the OHPO for review within fifteen (15) days of receipt.
  - (7) If the OHPO submits a timely objection to the determination of the Qualified Staff/Consultant under Stipulation III.D.4., the City will resolve the objection in accordance with 36 CFR Section 800.4(c). If the OHPO does not object or does not respond, the City may elect to proceed with its determination.

#### **IV. Treatment of Historic or Contributing Properties**

Individual properties that are determined eligible for, nominated to or listed in the National

Register, or properties determined to be contributing elements within a National Register-listed or eligible Historic District will be treated as follows:

A. Rehabilitation

- (1) The Qualified Staff/Consultant shall review all proposed rehabilitation work write-ups, plans or specifications to determine if the proposed work conforms to the recommended approaches identified in the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (U.S. Department of the Interior, National Park Service 1990; hereinafter "Standards").
- (2) If the Qualified Staff/Consultant determines the proposed work meets the Standards, then the Undertaking may proceed and no further review under this PA is required.
  - (a) The Qualified Staff/Consultant shall complete the Determination of Historic Eligibility Form verifying that the project will meet the Standards. Work may not begin until a completed Determination of Historic Eligibility Form has been issued by the Qualified Staff/Consultant. All work will conform to the approved proposal and to the conditions stated on the Determination of Historic Eligibility Form. Rehabilitation accomplished in this manner will require no further review under this PA.
  - (b) The documentation of each project will be retained by the City as part of the permanent project files and may be reviewed by the OHPO upon request, or as part of the annual report. Such documentation will include, at a minimum, those items specified in Stipulation III.A., as well as photos of the project upon completion.
- (3) If the Qualified Staff/Consultant determines the proposed work does not meet the standards:
  - (a) The Qualified Staff/Consultant will return the documentation for the undertaking to the responsible Staff and request that the Staff or Project Applicant modify the work write-ups, plans or specifications to bring the Undertaking into compliance with the Standards.
  - (b) The modified work write-ups, plans or specifications will be submitted to the Qualified Staff/Consultant for review and acceptance.
    - (1) If the Qualified Staff/Consultant determines that the modified work write-ups, plans or specifications meet the Standards, the Undertaking will be approved by the Qualified Staff/Consultant who shall comply with Stipulation IV.A.(2).
    - (2) If the Qualified Staff/Consultant determines that the modified work write-ups, plans or specifications cannot meet the Standards, the City will provide all project documentation to the OHPO who will determine within thirty (30) calendar days whether it is appropriate

to execute a Standard Mitigation Measures Agreement (Attachment B) or a Memorandum of Agreement in accordance with Stipulation VII.: Resolution of Adverse Effect.

#### B. New construction and additions

- (1) New construction within, immediately adjacent to historic districts or individual historic properties will be designed to adhere to the Standards. If the Qualified Staff/Consultant determines that the plans meet the Standards and no eligible or listed archeological properties will be affected, the project will be approved and the Undertaking can proceed. In these instances, the City will comply with Stipulation IV.A.(2)(a-b).
- (2) If the Qualified Staff/Consultant determines that the Standards cannot be met or that the plans cannot be modified to meet the Standards or that an eligible archeological site will be affected, then prior to taking any action, the City will provide all project documentation to the OHPO who will determine whether it is appropriate to execute a Standard Mitigation Measures Agreement (Attachment B) or comply with the procedures set forth at 36 CFR Section 800.6.
- (3) Additions to historic buildings or contributing buildings within historic districts shall adhere to the Standards and be consistent with guidelines in the National Park Service's Preservation Brief No. 14, "New Exterior Additions to Historic Buildings: Preservation Concerns." Plans for such additions shall be reviewed and approved by the Qualified Staff/Consultant to ensure consistency with these guidelines using the procedures in IV.A(2).

#### C. Handicapped accessibility

Handicapped accessibility projects undertaken by the City to comply with the Americans With Disabilities Act and other local and federal requirements will follow these guidelines:

- (1) The Staff and Qualified Staff/Consultant will explore all alternative methods to provide handicapped accessibility to historic buildings consistent with the Secretary of the Interior's Standards, National Park Service Preservation Brief No. 32, "Making Historic Properties Accessible," and the Department of the Interior's report Access to Historic Building for the Disabled: Suggestions for Planning and Implementation.
- (2) To the extent feasible, handicapped accessibility features (i.e. ramps and elevators) will not be located on primary elevations of historic buildings and will not result in the removal of significant historic or architectural features or materials. Final plans and specifications for handicapped accessibility projects shall be reviewed and approved by the Qualified Staff/Consultant if the projects meet these standards. If the standards cannot be met or the plans cannot be modified to meet the standards, then prior to taking any action, the City will provide all project documentation to the OHPO who will determine whether it is appropriate to execute a Standard Mitigation Measures Agreement (Attachment

B) or comply with the procedures set forth at 36 CFR Section 800.6.

**D. Site improvements and public improvements**

- (1) Site and public improvement projects within historic districts including sidewalk improvements, repaving of streets, installation of landscaping, street lighting and street furniture and other infrastructure improvements will adhere to the Secretary of the Interior's Standards and will be designed to ensure that character-defining elements of historic properties are preserved through repair or replacement in-kind. Any new materials or features introduced in a historic district will be responsive to the character of that district.
- (2) Final plans and specifications for site and public improvement projects shall be reviewed and approved by the Qualified Staff/Consultant. If the Qualified Staff/Consultant determines that the Standards cannot be met or the proposed activity modified to meet the Standards or if the contemplated action could have an adverse effect on properties eligible for the National Register, then prior to taking any action, the City will provide all project documentation to the OHPO which will determine whether it is appropriate to execute a Standard Mitigation Measures Agreement (Attachment B) or comply with the procedures set forth at 36 CFR Section 800.6.

**V. Demolition**

**A. Demolition of non-historic or non-contributing properties**

The City or its program participants may proceed with the demolition of non-historic properties or non-contributing buildings located in National Register Historic Districts or National Register-eligible areas without further review of the OHPO or the Council. The City shall retain documentation of all such demolitions in its project files. No demolition may proceed until the Qualified Staff/Consultant has completed the review procedures in Stipulation III.

**B. Demolition of historic or contributing properties**

Prior to the demolition of historic properties or contributing properties within a Historic District, not covered under Stipulation V. C. (emergency demolition provision) of this PA, the City shall forward the following documentation to the OHPO:

- (1) Location and description of the property including a map showing the location of the building within the City.
- (2) Reasons for demolition, including documentation of code violations, structural damage and deterioration, and an explanation of why rehabilitation is neither prudent nor feasible.
- (1) Recent photographs of each elevation, applicable streetscapes and any significant architectural elements.
- (2) Landmark Nomination Form, Ohio Historic Inventory (OHI) or National Register Nomination form, if one exists.

- (3) Future plans for the property if available.
- (6) Planned schedule for the demolition.

C. OHPO Review

The OHPO will review the documentation submitted and within thirty (30) days after receipt of adequate documentation will concur or object in writing to the proposed demolition.

- (1) If the OHPO agrees that there are no prudent or feasible alternatives to demolition of the Historic Property, the OHPO will determine if it is appropriate to execute a Standard Mitigation Measures Agreement or a Memorandum of Agreement in accordance with Stipulation VII., Resolution of Adverse Effect.
- (2) If the OHPO objects to the proposed demolition, the City will consult with the OHPO and any ~~interested~~ <sup>consulting</sup> Persons the City has identified to consider alternatives to the proposed demolition. If the parties cannot reach resolution, the dispute shall be resolved in accordance with 36 CFR Sections 800.3 through 800.13.

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D. Emergency Demolition

- (1) In the event the City determines that emergency demolition (pursuant to Cleveland Heights Codified Ordinances, General Offenses Chapter 553 "Abatement of Nuisances," and Rule 4101:2-1-39 "Unsafe Building, Administrative Section, Ohio Basic Building Code") of an historic property or a contributing property within a historic district is required to comply with local regulations and avoid an imminent threat to the health and safety of residents, the City shall immediately deliver documentation to the OHPO with a request for its concurrence with the City's decision to conduct an emergency demolition and the proposed mitigation.
- (2) Within five (5) days of receipt of the documentation from the City, the OHPO shall notify the City of its decision in writing.
  - (a) If the OHPO concurs with the City's decision, upon the receipt of such notification, the City shall implement the proposed mitigation measures, if any, and then proceed with the demolition.
  - (b) If the OHPO objects to the City's decision to demolish or the proposed mitigation, and if the property cannot be adequately secured to ensure the safety of the community, the Staff will forward the OHPO's objection to the City Manager. The City Manager shall respond to the OHPO's objection, in writing, within fourteen (14) days of receipt of the objection. Following which, the City may proceed with the demolition.

VI. Archaeology

- A. In consultation with the Applicant and OHPO, the Qualified Staff shall determine if the proposed Undertaking will adversely affect an archeological property listed in or eligible

for listing in the National Register.

1. If the Qualified Staff determines that the Undertaking will not adversely affect an archeological property listed in or eligible for listing in the National Register, then no further review is necessary and the City will comply with Stipulation III.
  2. If the Qualified Staff determines that an adverse effect can be avoided, and OHPO concurs, then no further review is necessary and the City will comply with Stipulation III.
  3. If the OHPO agrees that the adverse effect cannot be avoided, the City shall adequately document that finding for the OHPO. Within thirty (30) days of receipt of the documentation, the OHPO shall determine whether it is appropriate to execute a Standard Mitigation Measures Agreement or a Memorandum of Agreement in accordance with Stipulation VII, "Resolution of Adverse Effect."
- B. The Qualified Staff shall ensure that a data recovery plan is developed which is consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37) and take into account the Council's "Draft Treatment of Archeological Properties" (including any revisions made by the Council), and appropriate OHPO guidelines, and is implemented by or under the direct supervision of a qualified professional archaeologist prior to approval of the Undertaking and is submitted to the OHPO for review and approval.
- C. The City shall submit the data recovery plan to the OHPO for review and approval, and shall ensure that the approved data recovery plan is implemented by or under the direct supervision of a professional who meets the Secretary of the Interior's *Professional Qualification Standards* for Archaeology, found in Appendix A to 36 CFR Part 61.

### **VII. Resolution of Adverse Effect**

- A. When the OHPO determines that it is appropriate to execute a Standard Mitigation Measures Agreement (as outlined in Attachment B), the Agreement shall be signed by the City and the OHPO prior to approval of the Undertaking.
- (1) The City shall retain the original executed Standard Mitigation Measures Agreement in the project files and provide the OHPO with a copy.
  - (2) Upon execution of the Standard Mitigation Measures Agreement, no further review of this undertaking by the Council is required.
- B. When the OHPO determines that it is not appropriate to execute a Standard Mitigation Measures Agreement, the City shall comply with 36 CFR Section 800.6.

### **III. Public Notification and Participation**

Each year the City will notify the public of the City's current HUD-funded programs and make

available for public inspection documentation on the Programs. Included in this documentation will be information on the Programs, information on the types of activities undertaken with HUD-delegated program funds and how the public can receive further information on the Programs and participate in the historic preservation review process as defined by the terms of this PA. Notice of HUD-funded program activities shall be made by placing an advertisement in a local general circulation newspaper. The dissemination of this information will be coordinated with existing public hearing schedules. Additionally, for Federally-funded undertakings involving structures locally designated as Landmarks or Historic Districts, the Cleveland Heights Landmark Commission will review the proposed work items and issue Certificates of Appropriateness as warranted.

### IX. Post Review Discovery

In consultation with the OHPO, the City will develop a plan that will govern the actions to be taken when historic properties are discovered during the implementation of an undertaking. The City will submit the plan to the OHPO for review and acceptance. The City will work with OHPO to determine a mutually-agreeable plan. When the OHPO has accepted the plan, the City will insure that the plan is adopted and implemented by the applicants, when appropriate.

### X. Annual Report/Monitoring

- A. The Staff will submit an annual report to the OHPO within 60 days from the end of the calendar year summarizing the activities carried out under the terms of this PA for the preceding year. The report will include the following information:
- (1) A list of properties determined eligible for listing in the National Register of Historic Places.
  - (2) A list of the activities covered by this PA undertaken by the City.
  - (3) A brief description of each activity undertaken.
  - (4) A complete list of all undertakings covered by this PA in a spreadsheet format describing the activity, status of the structure or site (Register eligible or not), work write-up reviews, and ultimate disposition.
  - (5) Three sample projects, including photographic documentation which demonstrate that the Secretary of the Interior's Standards have been met.
- B. Upon written request with reasonable advance notice, the City will make arrangements for the OHPO to review records and conduct on-site inspections of projects.

### XI. Dispute Resolution

- A. If at any time during the implementation of this PA, the OHPO, the Council or <sup>any</sup> ~~an~~ <sup>consultant</sup> interested Person objects to any action or any failure to act pursuant to this PA, they may <sup>MJE</sup> file written objections with the City. <sub>1/18/06</sub>

- (1) The City shall notify the parties to this PA of the objection, and take the objection

into account, consulting with the objector and, should the objector request, with any of the parties to this PA to resolve the objection.

- (2) The City shall initiate such consultation to resolve any objections.
- B. If the City determines that the objection cannot be resolved, the City will forward all documentation relevant to the dispute to the Council and request that the Council comment. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:
- (1) Provide the City with recommendations, which the City will take into account in reaching a final decision regarding the dispute; or
  - (2) Notify the City that it will comment pursuant to 36 CFR Section 800.7(b) and Section 110 (l) of the National Historic Preservation Act, and proceed to comment.
- C. The City will take into account any Council comment provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The City's responsibility to carry out all actions under this PA that are not the subject of dispute will remain unchanged.
- D. The City will comply with 36 CFR Section 800.11 in the event that historic properties are discovered after the approval or implementation of an Undertaking.

## **XII. Default**

In the event the City does not carry out the terms for this PA, the City will comply with 36 CFR Section 800.3 through 800.13 with regard to individual undertakings covered by this PA.

## **XIII. Termination**

Any signatory to this PA may terminate it by providing thirty (30) days written notice to the other signatories, 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 City, in consultation with the Advisory Council and the OHPO, will determine how to carry out the City's responsibilities under Section 106 in a matter consistent with the applicable provisions of 36 CFR Part 800.

## **XIV. Renewal**

This PA will continue in force until December 31, 2006. At any time, in the six month period prior to that date, the City may request the OHPO and the Council to review its Programs and to consider an extension or amendment of this PA. No extension or modification will become effective until all parties to the PA have agreed to it in writing.

**XV. Amendments**

- A. This PA may be reviewed for possible amendment at any time.
- B. Any party to the PA may request that it be amended at any time, whereupon the parties will consult in accordance with 36 CFR Section 800.6(c)(7) to consider such amendments.
- C. Any resulting amendments shall be developed and executed among the signatories in the same manner as this PA.

**XVI. No Oral Representation**

This PA embodies the entire agreement and understanding between the City, the OHPO and the Council and supersedes all prior agreements and understandings relating to the subject matter hereof.

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**XVII. Notices**

All notices, consents, requests, demands and other communications required hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if mailed by certified mail to the City of Cleveland Heights, Department of Planning and Development, 40 Severance Circle, Cleveland Heights, Ohio 44118, Attn.: Richard Wong, Director; and to the OHPO at the State Historic Preservation Office, 567 East Hudson Street, Columbus, Ohio 43211, Attn.: Department Head, Resource Protection and Review; and to the Advisory Council on Historic Preservation at the Old Post Office Building, 1100 Pennsylvania Avenue, NW, #809, Washington, DC 20004.

**XVIII. Construction of Agreement**

This PA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Also, section headings are for convenience only and shall not effect the interpretation of this Agreement. In addition, all the terms and conditions of the PA between the parties are stated herein.

**XIV. Law of Ohio**

This PA shall be deemed to have been executed and delivered within the State of Ohio, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the law of the state of Ohio, as applicable, without regard to principles of conflicts of laws.

EXECUTION and implementation of this PA evidences that the City has afforded the Council a reasonable opportunity to comment on the Community Development Block Grant, and Home Investment Partnership programs as administered by the U.S. Department of Housing and Urban Development and that the City has taken into account the effects of the Programs on historic properties.

**CITY OF CLEVELAND HEIGHTS**

Robert C. Downey 3/8/06

Robert C. Downey  
City Manager

Date:

**OHIO STATE HISTORIC PRESERVATION OFFICER**

Mark J. Epstein 1/19/06

Mark J. Epstein, Dept. Head  
Resource Protection & Review

Date:

Approved as to legal form:  
John H. Gibbons by  
hauve A Wagon  
2-8-06

**ATTACHMENT A**  
**DETERMINATION OF HISTORIC ELIGIBILITY**  
**(following pages)**

# CLEVELAND HEIGHTS

## DETERMINATION OF HISTORIC ELIGIBILITY SECTION 106 REVIEW FOR BUILDINGS (revised 6/17/02)

### STAFF COMPLETE FOR ALL PROJECTS:

Date of Request: \_\_\_\_\_ Dept./Office/Agency: \_\_\_\_\_ Program: \_\_\_\_\_

Property Address: \_\_\_\_\_

Homeowner name: \_\_\_\_\_

Project (activity) Description: \_\_\_\_\_

Prepared By (printed name & signature) \_\_\_\_\_

Year Built \_\_\_\_\_

Proposed Activity Start Date: \_\_\_\_\_

**Proposed Activities Exempt?** Yes \_\_\_ No \_\_\_

Per section II (Exempt Activities Which Have Limited Potential to Affect Historic Properties) of Programmatic Agreement. **If "Yes," stop here**, file p. 1 of this form in your project file & submit copy to Development Planner (Karen Knittel). **If "No,"** complete entire form & submit to Historic Preservation Planner (Kara Hamley O'Donnell).

### STAFF COMPLETE IF NON-EXEMPT ACTIVITY (also complete page 2):

Program: Rehabilitation \_\_\_\_\_ Demolition \_\_\_\_\_ Addition \_\_\_\_\_

Attachments: Photographs \_\_\_ Research \_\_\_ OHI \_\_\_ Maps \_\_\_

Specifications Attached? Yes \_\_\_ No \_\_\_

### QUALIFIED STAFF/CONSULTANT TO COMPLETE:

Date Received: \_\_\_\_\_

Site Inspection? Yes \_\_\_ No \_\_\_

National Register Status: Listed \_\_\_ Eligible \_\_\_

Not Eligible \_\_\_

Contributing/Historic District Name: \_\_\_\_\_

Comments: \_\_\_\_\_

Disposition: \_\_\_\_\_

Determined By (name/signature): \_\_\_\_\_

Date: \_\_\_\_\_

**DETERMINATION OF HISTORIC ELIGIBILITY**  
**SECTION 106 REVIEW, cont'd**  
(please copy back-to-back)

**I have enclosed the following REQUIRED MATERIALS:**

- |   |   |
|---|---|
| <input type="checkbox"/> photographs of overall building                                  | <input type="checkbox"/> parcel map of this neighborhood showing project site                             |
| <input type="checkbox"/> close-up photographs of area(s) where work is to be completed    | <input type="checkbox"/> architectural drawing of major changes (porches, decks, railings, enclosures)    |
| <input type="checkbox"/> photos of general streetscape (same and opposite side of street) | <input type="checkbox"/> description of property condition as it relates to specific item(s) listed below |
| <input type="checkbox"/> map of entire city showing location of this property             | <input type="checkbox"/> detailed description or specifications of work proposed                          |

**The planned renovations are as follows (check all that are applicable):**

- |   |  |
|---|--|
| <input type="checkbox"/> changes to foundation material surface and design                                  | <input type="checkbox"/> installation of synthetic siding (vinyl, aluminum)  |
| <input type="checkbox"/> replacement/alteration of original door(s)/window(s)                               | <input type="checkbox"/> demolition of any portion of the building (removal of moldings, corner boards, rafter tails, elimination of window/door, removal of clay tile/cast cement/slate roof, etc.) |
| <input type="checkbox"/> replacement/alteration of original porch   | <input type="checkbox"/> other _____   |
| <input type="checkbox"/> replacement/alteration of original architectural feature(s) that are not "in-kind" |  |

**Description of condition of property and planned renovations (include here or attach):**



## ATTACHMENT B

### STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The City of Cleveland Heights (City) and the Ohio Historic Preservation Office (OHPO) may develop and execute an agreement that includes one or more of the following Standard Mitigation Measures, as modified by the OHPO, for those undertakings which cannot conform to the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (U.S. Department of the Interior, National Park Service, 1990).

1. The city shall ensure that, prior to the implementation of the proposed demolition or new construction, the historic property is photographically documented in accordance with guidelines established by the OHPO. The OHPO shall identify an appropriate archive for the deposit of recordation materials.
2. The City shall ensure that, prior to the implementation of the proposed demolition or new construction, the OHPO has the opportunity to select architectural elements for (select-curation, public education, reuse, incorporation into new construction). The City shall ensure that the selected items are removed in a manner that minimizes damage and are delivered with legal title to the OHPO or other recipient approved by the OHPO.
3. In consultation with the OHPO, the City shall ensure that an archeological data recovery plan is prepared for the mitigation of adverse effects to archeological sites and that such plan is implemented prior to and in coordination with those project activities that could disturb this site. The plan which shall be approved by the OHPO before it is implemented shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 FR 44734-37) and take into account the Council's publication, *Treatment of Archeological Properties* (1980), as well as any applicable guidelines prepared by the OHPO. At a minimum, the data recovery plan shall specify (a) the research questions to be addressed through data recovery; (b) the methods to be used with an explanation of their relevance and importance; (c) methods of data analysis, management and dissemination to be employed; (d) the disposition of recovered archeological data; (e) a procedure for the discovery of unanticipated remains; and (f) methods for public education and involvement. All archeological data recovery shall be carried out by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualification Standards* (48 FR 44738-9).

# CLEVELAND HEIGHTS

## ATTACHMENT C

Partial listing of current HUD-funded programs administered by the City of Cleveland Heights:

1. Single-family (homeowner and investment) housing rehabilitation city-wide and in priority target neighborhoods
2. Multi-family housing rehabilitation
3. Exterior Paint Program
4. Nuisance Abatement (Exterior rehabilitation of blighted properties with a history of non-compliance with code enforcement. Demolition of severely substandard, vacant properties may occur.)
5. Economic development grants, loans and storefront renovation grant and loans.
6. Public improvements
7. Historic Preservation activities
8. Lead-Based Paint Hazard Control
9. Other eligible activities such as administration, planning and public service programs.