

PROGRAMMATIC AGREEMENT CITY OF LANCASTER, PENNSYLVANIA

WHEREAS, the City of Lancaster, Pennsylvania (City) now administers or may administer in the future certain programs funded by the U.S. Department of Housing and Urban Development (HUD), including, among others, the Community Development Block Grant Program, HOME Investment Partnership Program, and Emergency Shelter Grant Program, which have the potential to affect properties listed in or eligible for listing in the National Register of Historic Places and, therefore, require compliance with Section 106 of the National Historic Preservation Act (16 USC 470f) and its implementing regulation (36 CFR Part 800); and

WHEREAS, the City has determined that the implementation of these programs will affect properties included in or eligible for inclusion in the National Register of Historic Places and has requested the comments of the Advisory Council on Historic Preservation (Council) and the Pennsylvania State Historic Preservation Officer (SHPO), pursuant to 36 CFR Part 800, "Protection of Historic Properties," implementing Section 106 and Section 110(f) of the National Historic Preservation Act; and

WHEREAS, the City serves as the responsible entity for HUD-funded programs under statutes that authorize HUD to provide for assumption of environmental responsibilities by recipients of HUD assistance and other responsible entities, in accordance with HUD's Environmental Review Procedures, 24 CFR Part 58, published in the Federal Register on April 30, 1996, and as may be amended from time to time; and

WHEREAS, the City will assist HUD with the administration of HUD's Section 106 compliance responsibilities for programs funded under statutes that do not authorize HUD to provide for assumption of environmental responsibilities by a Responsible Entity, i.e., Public Housing Assistance, HOPE III Program, in accordance with HUD's Environmental Review Procedures; and

WHEREAS, on January 27, 1997 the City entered into an Environmental Review Cooperation Agreement (Exhibit A) with the Lancaster City Housing Authority, whereby the Authority designated the City as the responsible entity with respect to the environmental review responsibilities of the Authority pursuant to 24 CFR Part 58, such Agreement to be effective until December 31, 2006, with the option of extension by mutual consent; and

WHEREAS, the City has been designated a Certified Local Government under Section 101(a)(c) of the National Historic Preservation Act, as amended, and has agreed to integrate preservation planning and cultural resource identification into local government planning and development; and

WHEREAS, activities which affect historic properties include but are not limited to repair and rehabilitation of residential and nonresidential properties; construction of buildings or additions to existing buildings within historic districts; demolition of structures and buildings within historic districts; and installation of public improvements within historic districts; and

WHEREAS, the City of Lancaster, SHPO, Council, and HUD (for projects undertaken via Statutes that do not authorize HUD to provide for the assumption of its general environmental review responsibilities by a responsible entity) have determined that the execution of a Programmatic Agreement in accordance with 36 CFR 800 will expedite the City's fulfillment of its responsibilities as a recipient and administrator of Federal funds under Section 106 of the National Historic Preservation Act;

NOW, THEREFORE, the consulting parties agree that undertakings assisted or funded by HUD Programs shall be implemented in accordance with the following measures in order to determine the effects of activities on historic properties and to avoid adverse effects:

STIPULATIONS

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

A. PERSONNEL

The City shall assign personnel with the professional qualifications in architecture, architectural history, or other related fields, as specified in the Secretary of the Interior's Professional Qualifications Standards, 36 CFR Part 61 (hereinafter Certified Staff), with the responsibility to review all undertakings covered by this Agreement, determine compliance with *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (hereinafter Standards), consult with the SHPO as needed, and monitor project work. If the City does not have Certified Staff or is unable to employ or contract with consultants having the required professional qualifications, the City shall consult with the SHPO in all cases, unless an activity is specifically determined to be exempt, as set forth in Stipulation C.

B. CONSULTATION WITH NATIVE-AMERICAN TRIBES

To make a reasonable and good faith effort to identify historic properties of religious and cultural significance to Native-American tribes, the City will notify, by letter, the Tribal Leaders on the list of Native-American tribes provided by the SHPO. The City will ask the Tribal Leaders if they are interested in participating in the City's Section 106 review process as set forth in 36 CFR 800.3(f). Native-American tribes that respond in the affirmative, providing a demonstrated interest, will be consulted as described in this Agreement.

C. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

1. All properties individually listed in the National Register of Historic Places, contributing properties in listed or eligible National Register historic districts, or newly identified historic properties or districts determined by Certified Staff to be

eligible for the National Register shall be treated as resources covered in the stipulations of this Agreement. In the event that the City is unable to come to a determination on whether a property is a contributing element in a historic district and/or eligible for the National Register, the City will forward all documentation to the SHPO for evaluation in accordance with 36 CFR 800.

- a. If the SHPO's opinion is not rendered within 30 days of SHPO receipt of the submission of adequate documentation (Pennsylvania Bureau for Historic Preservation Resource Form), it will be assumed that the SHPO is in agreement with the City's determination of eligibility.
 - b. If the City and SHPO cannot agree as to whether a property meets the National Register Criteria, or the Council or the Secretary of the Interior so requests, the City will request a formal determination of eligibility from the Secretary of the Interior in accordance with 36 CFR 800.
 - c. The City will keep a written record of all determinations, and of the reasons why any property does or does not appear to meet the Criteria, and will forward a copy of this record to the SHPO for review on a schedule to be agreed upon by the City and SHPO.
2. If the Certified Staff determines that no historic properties are involved in a Program activity, the Certified Staff will document the basis for that determination and include a copy in the individual project files.

D. PROGRAM ACTIVITIES NOT REQUIRING REVIEW

The following proposed undertakings, which have limited potential to affect historic properties, may be approved by the Certified Staff without further consultation with the SHPO or Council:

1. Rehabilitation

a. Exterior

- (1) Repair or in-kind replacement (installation of a new element that duplicates the material, dimensions, configuration and detailing of the original element) of exterior features, such as doors, windows, porches and architectural details.
- (2) Painting masonry walls, wood siding, or wood components and trim.
- (3) Masonry repair using materials, mortar composition, color, joint profile, and width which matches the historic materials.

- (4) Caulking, weatherstripping, reglazing, and/or scraping.
- (5) Installation of exterior storm doors and windows, provided they conform to the shape and size of the historic windows and doors, and that meeting rails of storm windows coincide with that of existing sash.
- (6) Rebuilding of wheelchair ramps.
- (7) Installation of exterior decorative or security lights, provided no permanent alteration of original elements or features contributing to the structure's historical significance occurs.
- (8) Replacement of existing roofing materials with alternative roofing materials on roof surfaces not visible from a public street.
- (9) Replacement of exterior bulkhead wood cellar doors at the rear of building with metal doors.
- (10) Emergency or required securing of property by boarding over window and door openings.

b. Interior

- (1) Repair or in-kind replacement (installation of a new element that duplicates the material, dimensions, configuration and detailing of the original element) of interior features, such as moldings and mantels.
- (2) Repair, replacement, or installation of heating, plumbing, air conditioning, electrical, fire protection or similar systems, provided no permanent alteration of original elements or features contributing to the structure's historical significance occurs.
- (3) Interior window or door security bars or gates, provided no permanent alteration of original elements or features contributing to the structure's historical significance occurs.
- (4) Weatherization activities, including weatherstripping, roof insulation, insulation of basements and interior walls, and installation of interior storm windows.
- (5) Interior surface treatments, including repainting, refinishing, repapering or installing carpet or linoleum, provided no original feature significant to the historic character of the structure is altered or lost.

- (6) Replacement of interior deteriorated plaster with drywall, provided plaster does not have original decorative details.
- (7) Replacement of original lighting fixtures for safety, efficiency or aesthetic reasons.
- (8) Replacement of severely damaged interior doors with replacement doors similar in design.

2. Site and Public Improvements

The following improvements, provided there is no earth disturbance within or changes to previously undisturbed areas:

- a. Reconstruction or resurfacing of roads, and replacement or installation of curbs and/or sidewalks.
- b. In-kind repair or replacement of site improvements, including, but not limited to fences, retaining walls, and landscaping.
- c. Installation of ramps not adjoining buildings and other improvements for accessibility for persons with disabilities.
- d. Replacement/installation of gas, sanitary and storm sewer, water, electrical, cable, or other underground facilities.
- e. Replacement/installation of park and playground equipment, landscaping, and facilities, excluding buildings.
- f. Replacement/installation of traffic signals, street name and regulatory signage, street lights, and street trees.
- g. Installation of temporary construction-related barriers, such as screening or temporary fences.

E. TREATMENT OF HISTORIC PROPERTIES OR CONTRIBUTING PROPERTIES

Individual properties that are determined by the Certified Staff to be eligible for, nominated to, or listed in the National Register, or properties determined by the Certified Staff to be contributing elements within a National Register listed or eligible Historic District will be treated as follows:

1. Rehabilitation

- a. All residential and commercial rehabilitation projects will be done in accordance with the *Standards*.
- b. Prior to the initiation of project activities, Certified Staff shall review all plans and specifications or work write-ups and ensure compliance with the *Standards*.
- c. If the Certified Staff determines that the project will have no effect or no adverse effect, the Staff shall issue a Letter of Approval, citing the specific *Standards* which serve as a basis for the determination; and rehabilitation work may proceed.
- d. The City will retain written documentation, including work write-ups, before and after photographs, and Section 106 review comments, in individual project files.
- e. If the Certified Staff determines that the proposed activity will have an adverse effect, the City shall consult with the SHPO and initiate the procedures set forth in 36 CFR 800.
 - (1) Documentation provided by the City to the SHPO for the consultation shall include, at a minimum, the following: (a) colored 35 mm photographs of the building's primary facade, the elevation or location where the alteration is proposed, and the streetscape; (b) location map; (c) description of proposed alteration; (d) conditions assessment; (e) analysis of alternatives, including costs; and (f) proposed mitigation measures to avoid or minimize adverse effects on historic properties.
 - (2) Known interested or affected parties shall be invited to join in consultation, and opportunity for public comment shall be provided, as set forth in 36 CFR 800.
 - (3) The SHPO shall provide written comments within 30 days of receipt of documentation. If appropriate, the City and SHPO shall execute a Memorandum of Agreement (MOA), pursuant to 36 CFR 800. The City shall submit the MOA to the Council for comment.
 - (4) If the City and SHPO fail to reach agreement, the City shall request Council recommendations in accordance with 36 CFR 800 and provide pertinent documentation.

2. New Construction and Additions

- a. New construction or additions to historic or contributing buildings within listed or eligible National Register districts or adjacent to historic properties listed in or eligible for the National Register will be designed in accordance with the guidelines for new construction and additions contained in the *Standards* and in National Park Service Preservation Brief 14, "New Exterior Additions to Historic Buildings: Preservation Concerns," and will be responsive to the overall character of the historic property in terms of height, scale, massing, set-backs, color, materials, and detailing.
- b. The project architect or designer will submit preliminary plans, including all elevations visible from public streets, lot layout, and descriptions of materials, to the Certified Staff for review and approval. Certified Staff will document findings and the basis for approval. A copy of the preliminary plans and the written determination of approval of the Certified Staff will be sent to the SHPO for review. The SHPO will respond in writing within 30 days of receipt of the preliminary plans. If there is no response within 30 days, the City will assume that the SHPO agrees with the determination of Certified Staff, and work may proceed. The final design will be consistent with approved preliminary plans and modified to address any recommendations by the SHPO.
- c. Prototype designs may be developed for specific blocks or target areas when deemed appropriate by the City and SHPO. Once a prototype has been approved by the SHPO, Certified Staff may review and approve subsequent new construction projects based upon approved prototypes, without further consultation with the SHPO.
- d. When Certified Staff determines that the new construction or addition would have an adverse effect on historic resources, consultation with the SHPO in accordance with 36 CFR 800 will occur prior to work on the design proceeding.
 - (1) The City shall submit, at a minimum, the following documentation to the SHPO for comment: (1) brief narrative description of proposed project, including an analysis of alternatives and costs thereof; (2) colored 35mm photographs of site to be developed and of the block faces from which the new building or addition will be visible; (3) architectural renderings, including all elevations visible from a public street and description of proposed materials; and (4) proposed mitigation measures.

- (2) Known interested or affected parties shall be invited to join in consultation, and opportunity for public comment shall be provided, as set forth in 36 CFR 800.
- (3) The SHPO shall provide written comments within 30 days following receipt of documentation. If appropriate, the City and SHPO shall execute a Memorandum of Agreement (MOA), pursuant to 36 CFR 800. The City shall submit the MOA to the Council for comment.
- (4) If the City and SHPO fail to reach agreement, the City shall request Council recommendations in accordance with 36 CFR 800 and provide pertinent documentation.

3. Americans with Disabilities Act (ADA) Compliance

- a. The City will explore alternative methods for handicapped accessibility to historic buildings consistent with the *Standards*, National Park Service Preservation Brief No. 32, "Making Historic Properties Accessible," and the Department of the Interior's report, *Access to Historic Buildings for the Disabled: Suggestions for Planning and Implementation*.
- b. To the extent feasible, handicapped access ramps and chair lifts 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.
- c. If the Certified Staff determines that the proposed ADA improvement will have no effect or no adverse effect, the Staff shall issue a Letter of Approval, citing the specific *Standards* which serve as a basis for the determination; and work may proceed.
- d. If the Certified Staff determines that the proposed ADA improvement will have an adverse effect, the City shall follow the procedures set forth above in Stipulation E.1.e.

4. Site Improvements and Public Improvements

- a. Site improvements and public improvements involving or adjacent to historic properties or within historic districts, including installation of landscaping, street lighting, and street furniture, shall adhere to the *Standards* and be designed to ensure that character defining elements of historic properties are preserved. Any new materials or features introduced in a historic district will be responsive to the character of that district.

- b. Plans and specifications for site and public improvement projects will be reviewed and approved by the Certified Staff. If the Certified Staff determines that the proposed improvements will have an adverse effect, the City shall follow the procedures set forth above in Stipulation E.1.e.

5. Lead-Based Paint Hazard Reduction and Abatement

- a. When the City's Lead Specialist finds lead-based paint hazards in residential structures, the Specialist shall determine the degree of lead hazard and identify those surfaces or areas where reduction or abatement of lead-based paint hazards must occur.
- b. The Specialist shall consult with the City's Certified Staff in determining the appropriate methods for treating lead-paint hazards in historic buildings. Evaluation of reduction and abatement activities shall be based upon the *Standards*, HUD's "Title X Requirements for Housing Receiving Federal Assistance," issued by the HUD Office of Lead-Based Paint Abatement and Poisoning Prevention, and Preservation Brief 37 of the U.S. Department of the Interior National Park Service.
- c. If the Certified Staff determines that the proposed abatement or reduction plan will have no effect or no adverse effect, the Staff shall issue a Letter of Approval, citing the specific *Standards* which serve as a basis for the determination; and work may proceed.
- d. If the Certified Staff determines that the proposed abatement or reduction plan will have an adverse effect, the City shall follow the procedures set forth above in Stipulation E.1.e.

6. Demolition

a. Demolition of Historic or Contributing Buildings

- (1) Demolition of any building identified as a resource under Stipulation C.1. shall be reviewed on a case-by-case basis by the SHPO. At a minimum, the City shall submit the following documentation to the SHPO for review:
 - (a) Location (U.S.G.S. and/or City map) and description of affected building, including a statement of its historic and/or architectural significance as a resource within the listed or eligible National Register district;

- (b) Reasons for demolition, e.g. condemnation of building due to code violations, certification of the property as blighted, creation of a public park, or redevelopment activities, and statement why rehabilitation, reuse, or plan alteration is not feasible or desirable;
 - (c) Photographs of each elevation, the interior, and any significant architectural elements;
 - (d) Photographic evidence and written description of the deteriorated condition of the building.
 - (e) Feasibility analysis for alternatives to demolition, addressing rehabilitation, partial demolition, adaptive reuse for other purposes, stabilization with the intent to market and sell the property, or alteration of redevelopment plans;
- (2) Known interested or affected parties shall be invited to join in consultation, and opportunity for public comment shall be provided, as set forth in 36 CFR 800.
 - (3) The SHPO shall review the documentation and within 30 days of receipt of adequate documentation, concur or object in writing to the proposed demolition, and forward an informational copy to the Council. If the SHPO finds that the demolition will have an adverse effect, the City will consult with the SHPO to develop a Memorandum of Agreement in accordance with 36 CFR 800. The City shall submit the MOA to the Council for comment.
 - (4) If the City and SHPO fail to reach agreement, the City shall request Council recommendations in accordance with 36 CFR 800 and provide pertinent documentation.
- b. Demolition of Nonhistoric or Noncontributing Buildings
- (1) Buildings within or adjacent to listed or eligible historic districts that are identified as nonhistoric or noncontributing in accordance with Stipulation B may be demolished without review by the SHPO following the issuance of a Letter of Approval by Certified Staff. The City will retain documentation of all such demolitions in its project files, including exterior photographs from all elevations of any structure to be demolished.

- (2) Demolition shall be performed in a manner which will have minimal impact on adjoining buildings. Where walls of a building to be demolished adjoin a historic building, the wall of the historic building will be cleaned of debris and, if necessary, faced with a material compatible with its principal facade. Any new structure proposed for construction on a cleared site within a listed or eligible historic district shall be reviewed prior to building plan approval in accordance with Stipulation E.2.

c. Emergency Demolition

- (1) When emergency demolition of a historic property is required to comply with local regulations and to avoid imminent threat to public health and safety, the City will forward documentation to the SHPO via overnight mail, with a request for comments within seven (7) business days. The documentation will include a copy of the official City order requiring demolition, photographs of the property, documentation regarding the property's eligibility and map location (U.S.G.S. and/or City map).
- (2) The SHPO will notify the City in writing of its approval and any required mitigation measures, e.g., recordation, additional photographic documentation, architectural salvage, etc.
- (3) In the event the SHPO objects to the emergency demolition, the City will contact the Council directly to initiate consultation or initiate the demolition procedure in E.6. above.

F. ARCHEOLOGY

If major ground disturbance activities are planned as part of a rehabilitation, new construction, or site improvement project, the City, in consultation with the SHPO, shall determine whether the project site contains archeological resources or that a high probability of archaeological resources may be present. If archeological resources are found that meet the National Register Criteria, they shall be avoided or preserved in place. If preservation is not feasible, the City will consult with the SHPO to develop a treatment plan consistent with the Council's Handbook, *Treatment of Archeological Properties*, and the SHPO *Guidelines for Archaeological Investigations*. The plan will be implemented by the City following approval of the SHPO.

G. PROPERTY DISPOSITION

1. When disposing of historic or contributing properties acquired with HUD funds, the City will include adequate restrictions or conditions in the transfer documents to ensure preservation of the property's significant historic features.
2. The City will submit proposed restrictions or conditions to the SHPO for approval 30 days prior to execution of the transfer document.
3. If the City and SHPO cannot agree on acceptable restrictions or conditions, the City shall consult with the Council in accordance with 36 CFR 800.

H. COORDINATION

1. Project Coordination

Certified Staff will advise project sponsors, agencies, recipients, subrecipients, and City departments and staff of the requirements of this Programmatic Agreement and the need to complete Section 106 reviews prior to the initiation of project activities.

2. Coordination with Other Federal Activities

Other Federal agencies providing financial assistance for Program activities covered under the terms of this Agreement may, with the concurrence of the City and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this Agreement. In such situations, the City and the Federal agency shall notify the SHPO and Council in writing of their agreement. If the SHPO does not respond within 15 day of receipt of such notification of intent, the City and other Federal agency will assume SHPO concurrence. Copies of all notification letters shall be maintained in files established by the City for each undertaking.

I. DISPUTE RESOLUTION

1. Should the SHPO object within 30 days to any plans or specifications provided pursuant to this Agreement, the City shall consult with the SHPO to resolve the objection. If the City determines that the objection cannot be resolved, the City shall request the recommendation of the Council. The Council shall provide its recommendation within 30 days following receipt of pertinent documentation.

2. Any Council recommendation provided in response to such a request will be taken into account by the City with reference only to the subject of the dispute. In accordance with 36 CFR 800, the City shall consider the Council's comments in reaching a final decision on the proposed undertaking and shall report its decision to the Council, and if possible, will do so prior to initiating the undertaking.

J. TECHNICAL ASSISTANCE AND EDUCATION

The SHPO shall provide the City with technical assistance, consultation and training upon request in order to carry out the terms of this Agreement.

K. MONITORING

1. The City shall retain documentation, including work write-ups and before and after photographs, for all activities carried out pursuant to the Agreement. Files will be retained for a minimum of three (3) years.
2. The City will provide an annual report, including the addresses of properties subject to Section 106 review and a summary of "no effect," "no adverse effect," and "adverse effect" determinations, to the SHPO by September 30 each year. Supporting documentation will be available to the SHPO upon written request. The City will also arrange site visits for the SHPO upon request.
3. The City's project files for HUD-assisted project activities shall be made available for review to representatives of HUD, the SHPO and Council for field monitoring upon request.

L. PUBLIC PARTICIPATION

1. Public Notice

Each year the City will inform the public, through the publication of a detailed notice in a general circulation newspaper, about the City's current activities funded by HUD and will make available for public inspection documentation on the City's HUD-funded Program activities. Included in this documentation will be general information on the type(s) of activities undertaken with Program funds provided by HUD; information on identified historic properties which might be affected by these activities; the amount of program funds available in the current Program year; and how interested persons can receive further information on the Program activities.

2. Public Objections

- a. In those cases where a timely and substantive public objection related to historic preservation is received by the City, City staff will review the objection to determine the basis of the objection and consult with the objecting party, as appropriate, in order to resolve the issue.
- b. Where the City staff is unable to resolve the objection to the satisfaction of the objecting party, the City will consult with the SHPO, and, if necessary, the Council.

M. AMENDMENT AND TERMINATION

1. Amendment

Any party to the Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.

2. Termination

Any party to this Programmatic Agreement may terminate it by providing thirty (30) 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 City will comply with 36 CFR 800 with regard to individual undertakings covered by this Agreement.

N. TERM OF AGREEMENT

This Programmatic Agreement will become effective on the date of last signing and will continue in force through and including December 31, 2011. During calendar year 2010, the City, SHPO and Council will review this Agreement for possible modification, termination or extension.

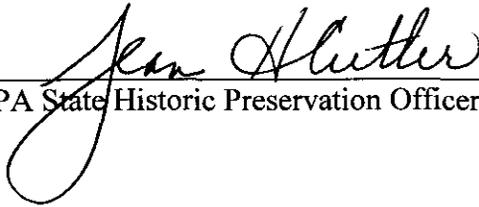
Execution and implementation of this Programmatic Agreement is evidence that the City and HUD have afforded the Council and SHPO an opportunity to comment on their HUD-funded programs and their effects on historic properties, that the City and HUD have taken into account the effects of their undertakings on historic properties, and that the City and HUD have satisfied their Section 106 responsibilities for all individual undertakings of the programs.

IN WITNESS WHEREOF, the parties to this Programmatic Agreement have hereunto affixed their hands and seals as evidence of their acceptance of the above described process as adequate and appropriate compliance with Section 106 of the National Historic Preservation Act.



Mayor, City of Lancaster

6/2/06
Date



PA State Historic Preservation Officer

7-31-06
Date

Advisory Council on Historic Preservation

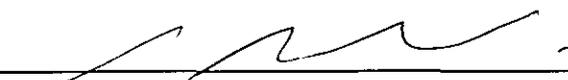
Date

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: 

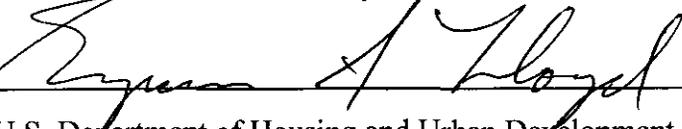
U.S. Department of Housing and Urban Development
Community Planning and Development

Date: 6/12/06

By: 

U.S. Department of Housing and Urban Development
Multifamily Hub

Date: 6/16/06

By: 

U.S. Department of Housing and Urban Development
Home Ownership Center

Date: 6/13/06

By: 

U.S. Department of Housing and Urban Development
Office of Public Housing

Date: 6/13/06