

**PROGRAMMATIC AGREEMENT
AMONG
THE CITY OF PHILADELPHIA, PENNSYLVANIA,
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE
UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

WHEREAS, the City of Philadelphia, Pennsylvania (the City), now, or may in the future, administer Programs, or serve as the responsible entity for grant recipients under Programs, that are funded by the U.S. Department of Housing and Urban Development (HUD) and for which HUD provides for the City to assume HUD's environmental review responsibility in accordance with its Environmental Review Procedures, 24 CFR Part 58, published in the Federal Register on April 30, 1996 (as may be amended from time to time), including but not limited to the:

Community Development Block Grant Program
Emergency Shelter Grant Program
HOME Investment Partnerships Program
Shelter Plus Care Program
McKinney Homeless Programs

WHEREAS, in accordance with 24 CFR Part 58, the City may agree to assist HUD with the implementation of its Section 106 compliance responsibilities for Programs funded under statutes that do not provide for the City's assumption of HUD's environmental responsibilities, e.g., HOPWA, Section 202, etc.; and

WHEREAS, the City, for its designated Empowerment Zones, proposes to complete its Section 106 compliance responsibilities, for HUD Program funded undertakings within its Empowerment Zones, through implementation of the provisions of this Agreement; 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 decision making; and

WHEREAS, The City has authorized the Philadelphia Historical Commission (Commission), a City department established by the City to oversee administration of local preservation ordinances, to administer the provisions of this Agreement; and

WHEREAS, the Commission has conducted, and will continue to conduct, historic resource surveys to identify properties eligible for inclusion in the National Register of Historic Places; and

WHEREAS, the City and HUD have determined that the implementation of covered HUD Programs during program years 2005-2010 may affect properties included in, or eligible for, the National Register of Historic Places (National Register) and has consulted with the Advisory Council on Historic Preservation (ACHP) and the Pennsylvania State Historic Preservation Office (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 agrees that as part of the implementation of low and moderate income housing activities, the City and Commission will consider the principles set forth in the ACHP's "Policy Statement on Affordable Housing and Historic Preservation" when carrying out the stipulations of this Agreement

NOW, THEREFORE, the City, HUD (for projects undertaken via statutes that do not authorize HUD to provide for assumption of its general environmental review responsibilities by a responsible entity), the SHPO, and the ACHP agree that undertakings implemented with financial assistance from covered HUD Programs will be implemented in accordance with the following Stipulations to take into account the effect of the undertakings on historic properties.

STIPULATIONS

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

I. PERSONNEL

- A. The City shall ensure that all historic preservation work performed pursuant to the Agreement is carried out by or under the direct supervision of a person(s) on the Commission staff or a consultant who meets the qualifications published in 36 CFR Part 61 (hereinafter referred to as Certified Staff).
- B. The City shall notify the SHPO in writing annually of the Commission staff person(s) or consultants that it intends to designate to administer this Agreement. The SHPO will evaluate the training and experience of the staff and advise the City if it is qualified to make determinations of eligibility, assess effect, and apply *The Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards)* as Certified Staff.

- C. The City shall notify the SHPO in writing of any proposed staffing changes or vacancies. If the City does not have Certified Staff in place, or if the SHPO determines that a City staff person or consultant is not qualified to carry out the review, the City and the SHPO shall consult to develop alternative administrative procedures for implementing this Agreement.

II. CONSULTATION WITH INDIAN TRIBES

- A. When the City administers programs, or serves as the responsible entity for grant recipients under programs, that are funded by the U.S. Department of Housing and Urban Development (HUD) and for which HUD provides for the City to assume HUD's environmental review responsibility, the City shall identify and notify, by letter, the appropriate contact for any tribes that may attach religious and cultural significance to historic properties that may be affected by the undertaking. The City will provide a description of the proposed project, photographs of the property, documentation regarding the property's eligibility, and a site location map to the tribes and will ask the tribal leaders if they are interested in participating in the City's Section 106 review process pursuant to 36 CFR Part 800.3(f). Any Indian tribe that responds in writing that it attaches religious and cultural significance to historic properties affected by the undertaking shall be consulted.
- B. For programs funded under statutes that do not provide for the City's assumption of HUD's environmental responsibilities, HUD shall identify and notify, by letter, the appropriate contact for any tribes that may attach religious and cultural significance to historic properties that may be affected by the undertaking. HUD will provide a description of the proposed project, photographs of the property, documentation regarding the property's eligibility, and a site location map to the tribes and will ask the tribal leaders if they are interested in participating in the HUD's Section 106 review process pursuant to 36 CFR Part 800.3(f). Any Indian tribe that responds in writing that it attaches religious and cultural significance to historic properties affected by the undertaking shall be consulted.

III. REVIEW PROCESS

- A. The City shall ensure that City staff, affected citizen groups and local preservation groups are provided copies of this Agreement and any associated written guidance. The City will ensure all sub-recipients of HUD funding in the City are aware of this Agreement,

its requirements, and the need to complete the Section 106 review in coordination with Certified Staff prior to the initiation of project activities. The City in consultation with Certified Staff shall advise sub-recipients and project sponsors of the requirements of Section 110(k) of the National Historic Preservation Act should properties be adversely affected prior to compliance with Section 106.

- B. The City shall adopt and implement internal procedures to ensure that all Program activities that will affect, or have the potential to affect, historic properties, are forwarded to the Certified Staff for review, pursuant to this Agreement, prior to implementation.

IV. IDENTIFICATION AND EVALUATION

City Program management staff and/or HUD Program fund recipients shall submit requests for review to Certified Staff for compliance with the Section 106 process and the stipulations of this Agreement. Requests will document the location and nature of proposed undertakings. Certified Staff will make an initial determination as to the National Register status or eligibility of site locations in accordance with the following provisions.

- A. Certified Staff will consult the National Register listings for Philadelphia, the SHPO list of "Properties Determined Eligible by Bureau for Historic Preservation" as well as building and block files, survey forms, maps and database maintained by the Commission. Properties that have not previously been evaluated will be evaluated by the Certified Staff against National Register criteria and determinations of eligibility made. Those properties and districts determined eligible by the Certified Staff will be treated as eligible properties covered by this Agreement. Summaries of determinations of eligibility will be forwarded by the Certified Staff to the SHPO as part of the annual report required under this Agreement, unless the SHPO and Certified Staff agree to an alternate reporting schedule.
- B. Certified Staff will forward initial findings, within 30 days, to the responsible Program staff to advise Program staff as to the potential effect of undertakings on historic resources. If Program staff objects to initial findings, the Certified Staff shall consult with the SHPO and, as appropriate, the Keeper of the National Register in accordance with Stipulation IV.E-I of this Agreement.
- C. If the Certified Staff determines that no historic properties are affected by a Program activity, it will document the basis for that determination and the HUD-assisted activity may proceed as planned. These determinations shall be on file with Certified Staff.

A copy of these determinations shall also be maintained in each individual project/activity file by relevant City Program management staff.

- D. If the Certified Staff determines that a Program activity will have no effect on any historic properties it shall document the basis for that determination and the activity may proceed as planned. These determinations shall be on file with Certified Staff. A copy of these determinations shall also be maintained in each individual project/activity file by relevant City Program management staff.
- E. In the event that the Certified Staff has questions concerning a property's eligibility for the National Register, the Certified Staff will forward all documentation, including a Pennsylvania Historic Resource Survey Form, to the SHPO for evaluation along with its determination, if one can be made by Certified Staff.
- F. If the SHPO's opinion is not rendered within 30 days of receipt of the submission of adequate documentation the Certified Staff may assume that the SHPO concurs with the Certified Staff's determination concerning eligibility.
- G. If the Certified Staff is unable to make a determination as to the eligibility of a property for the National Register, and the SHPO does not respond to a request for a determination of eligibility within 30 days of receipt of such a request, the Certified Staff shall request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR Part 800.
- H. If the Certified Staff and the SHPO disagree about whether a property meets National Register criteria, or the Secretary of the Interior or ACHP so request, the City shall request a formal Determination of Eligibility from the Keeper of the National Register in accordance with 36 CFR Part 800.
- I. The Certified Staff will keep a written record of its consultation process regarding National Register eligibility determinations. Certified Staff will forward summaries of the consultation process to the SHPO as part of the annual report required under this Agreement, unless the SHPO and Certified Staff agree otherwise.

V. EXEMPT ACTIVITIES

If activities are limited solely to those listed as "Exempt Activities" on Appendix 1, as determined by Certified Staff, further review will not be required under this Agreement. Documentation concerning these determinations shall be

maintained in each individual project file by relevant City, sub-recipient or Non-Governmental Grant Recipient program management staff. Files shall be made available for review by Certified Staff, or the SHPO, in accordance with Stipulation XI of this Agreement.

VI. TREATMENT OF HISTORIC OR CONTRIBUTING PROPERTIES

Individual properties that are eligible for, nominated for, or listed in the National Register, or properties determined to be eligible or contributing elements within a National Register-listed or eligible historic district, will be treated as follows. The City shall be responsible for assuring compliance with the following stipulations.

A. Rehabilitation

Rehabilitation of historic properties which include activities other than those in Stipulation V, Exempt Activities, will be undertaken in the following manner:

1. Activities will be carried out following the recommended approaches in the *Standards*.
 - a. Certified Staff shall review project specifications to confirm compliance with the *Standards*. Preliminary plans will be developed in consultation with the Certified Staff. Final plans and specifications will be submitted to the Certified Staff for review and approval prior to initiation of project activities.
 - b. Certified Staff shall retain documentation, including an approval letter, plans, work write-ups and photographs taken prior to project implementation and upon completion of the project, as evidence of the Certified Staff's application of the *Standards*.
 - c. The relevant Program Staff shall also retain documentation, including Certified Staff's approval letter, work write-ups and photographs taken prior to project implementation and upon completion of the project.
 - d. The Certified Staff shall have 30 days from the date of its receipt of a complete submission to review and comment on the preliminary/final plans and specifications.
2. If the *Standards* cannot be met, or if the proposed action could have an adverse effect on such properties and/or district, the Certified Staff will consult with the SHPO in

accordance with Stipulation VII prior to taking any action on the project.

3. When the proposed rehabilitation does not conform to the *Standards*, and it has been determined that a Standard Mitigation Measures Agreement (SMMA) is not applicable to the undertaking in accordance with Stipulation VII.C criteria, the Certified Staff shall consult with the SHPO and other consulting parties regarding alternatives to avoid, minimize or mitigate the adverse effects. The Certified Staff shall notify the ACHP of the adverse effect finding and determine ACHP participation by providing the ACHP the following documentation:
 - a. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary.
 - b. A copy of Certified Staff's determination of eligibility.
 - c. A conditions assessment or structural engineer's report.
 - d. An analysis of the undertaking and alternatives considered, including costs, and the proposed mitigation measures.
 - e. The Adverse Effect determination from Certified Staff; and copies of any relevant comments, recommendations or correspondence between Program Staff and Certified Staff concerning the adverse effect.
 - f. Any comments received from the SHPO as a result of consultations initiated in accordance with Stipulation VII of this Agreement.
 - g. Any relevant comments received from consulting parties and/or the public.

B. Additions and New Construction

1. Proposals for new construction and/or new additions determined to have a potential effect on historic properties shall be developed according to the *Standards*.
2. Preliminary and final plans shall be developed in accordance with the procedures set forth at Stipulation VI.A.1 of this Agreement.

3. Additions to historic buildings or contributing buildings within historic districts shall adhere to the *Standards* and be consistent with Guidelines in National Park Service Preservation Brief #14: *New Exterior Additions to Historic Buildings: Preservation Concerns*. Plans for such additions must be reviewed and approved by the Certified Staff to ensure consistency with the *Standards* in accordance with Stipulation VI.A.1 of this Agreement.
4. If the *Standards* cannot be met, or if the proposed action could have an adverse effect on properties eligible for the National Register, then prior to taking any action, the Certified Staff shall follow the procedures set forth in Stipulation VI.A.2 and 3 of this Agreement.

C. Americans with Disabilities Act Compliance

1. The City Program Staff and Certified Staff will explore alternate methods for providing handicapped accessibility to historic buildings consistent with the *Standards*, National Park Service Preservation Brief # 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*.
2. 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.
3. Preliminary and final plans and specification for handicapped accessibility projects shall be developed and approved in accordance with the procedures set forth at Stipulation VI.A.1 of this Agreement.
4. If the project involves emergency repairs to existing accessibility systems and the *Standards* cannot be met, or if the project has been determined to have an adverse effect on a historic property, then prior to taking any action, the Certified Staff shall follow the procedures set forth in Stipulation VI.A.2 and 3 of this Agreement.

D. Site Improvements and Public Improvements

1. Site improvements and public improvements within, or adjacent to, historic districts, including, but not limited to, installation or repair of streets/curbs/sidewalks, landscaping, street lighting, and street furniture, and water/sewer lines shall adhere to the *Standards* and will be designed to ensure that character defining elements of historic properties are preserved.
2. Preliminary and final plans and specifications for site and public improvements projects will be reviewed and approved in accordance with procedures set forth at Stipulation VI.A.1 of this Agreement.
3. If the project involves emergency repairs to existing site improvements and the *Standards* cannot be met, or if the project could have an adverse effect on historic properties, then prior to taking any action, the Certified Staff shall follow the procedures set forth in Stipulation VI.A.2 and 3 of this Agreement.

E. Lead Paint Abatement/Hazard Reduction

1. When lead paint abatement/hazard reduction is proposed for a listed, or eligible property, either as part of a rehabilitation or a lead-based paint abatement program, the City Program Staff shall consult with Certified Staff to explore alternatives to minimize alteration of significant historic features. Evaluation of abatement and reduction activities shall be based upon the *Standards*, HUD's Program Guide for lead-based paint abatement, as modified for those situations where the HUD responsible entity is also a Certified Local Government (Appendix 2), and the National Park Service's Preservation Brief #37: *Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*.
2. Preliminary and final plans shall be developed in accordance with the procedures set forth at Stipulation VI.A.1 of this Agreement.
3. When it is determined that the proposed abatement or reduction plan does not adhere to the *Standards*, or emergency abatement is necessary, the Certified Staff will consult with the SHPO and initiate the procedures set forth in Stipulation VI.A.2 and 3 of this Agreement.

F. Archeological Resources

1. Prior to any substantial ground-disturbing activities associated with Program activities, the Certified Staff shall consult with the SHPO to determine if the project area contains known archeological resources, including human remains, that are listed in or eligible for listing in the National Register, or if there is a high probability that such resources may be present within the project area.
2. When archeological resources, including human remains, are found that meet the National Register criteria they will be avoided and preserved in place, whenever feasible. When it is determined infeasible to avoid the archeological resources, the Certified Staff will consult with the SHPO to develop a treatment plan to avoid adverse effects, consistent with the ACHP's Handbook, *Treatment of Archeological Resources*. This plan will be implemented by the City following SHPO approval.
3. If it has been determined that an undertaking will have an adverse effect on such a resource, then, prior to taking any action that could affect the resource, the Certified Staff shall consult with the SHPO and the ACHP, in accordance with 36 CFR Part 800, to develop an appropriate treatment/mitigation plan.

G. Property Disposition

1. When disposing of listed or eligible properties, or properties within a listed or eligible historic district, which have been acquired or are being disposed of with Program funds, the City Program Staff shall consult with the Certified Staff to develop preservation covenants. Covenants shall include adequate restrictions or conditions for inclusion in the transfer instrument to ensure the preservation of the property's significant historic features and/or no adverse effect on surrounding historic properties.
2. The City Program Staff shall submit proposed disposition agreements to the Certified Staff for review to ensure that language is included to adequately preserve and protect listed or eligible properties and also requires enforcement of the preservation restrictions by the SHPO. The Certified

Staff shall have thirty days from its date of receipt to review each disposition agreement.

3. If the City and Certified Staff cannot agree on acceptable restrictions or conditions, or the Certified Staff recommends that covenants be waived, the Certified Staff shall consult with the SHPO and follow the procedures set forth in Stipulation VII of this Agreement.

H. Demolition

1. Non-Contributing/Non-Historic Demolitions. The City may proceed with the demolition of non-historic, non-contributing, or historic buildings that have lost their integrity as determined by Certified Staff and concurred with by the SHPO. The City shall retain documentation of all such demolitions in its project files. With the exception of emergency demolitions, no demolition may proceed until approved by Certified Staff in accordance with the terms of this Agreement and/or compliance with 36 CFR Part 800.
2. Emergency Demolition. In the event that the City determines that emergency demolition of a historic property is required to comply with local regulations and to avoid imminent threat to health and safety, the Certified Staff shall forward documentation to the SHPO via express mail, or facsimile, with notification of its intent to comply with the emergency review procedure set forth in this Agreement, and a request for comments within seven days, if circumstances permit. The documentation shall include: a copy of the official order citing the condition and mandating the demolition (made in accordance with local building codes); photographs of the property; documentation regarding the property's eligibility; a site location map; and the comments of Certified Staff if time permits. A copy of this documentation shall be maintained by the Certified Staff and Program Staff in the project file for the subject emergency demolition action. A copy of any comments received from the SHPO in response to an emergency demolition notification shall be included in the project file and the files of Certified Staff. If the SHPO objects to an Emergency Demolition request, the undertaking shall be submitted to the ACHP in accordance with 36 CFR Part 800.
3. Non-Emergency Demolition. Demolition of any properties listed in, or eligible for listing in, the National Register, or

within a district listed, or eligible for listing, in the National Register, will be reviewed on a case-by-case basis with the SHPO and ACHP in accordance with 36 CFR Part 800. The City Program Staff shall ensure that demolition, or demolition related activities, are not initiated until the Section 106 review process is completed and the relevant Program staff and HUD-funding recipients are notified accordingly.

VII. RESOLUTION OF ADVERSE EFFECTS

A. Standard Mitigation Measures Agreements

1. If the Certified Staff or SHPO determine that a non-demolition project meets the ACHP's Criteria of Adverse Effect, it shall consult with the SHPO to determine whether the historic properties should be treated in accordance with the Standard Mitigation Measures Agreement (SMMA) outlined in Appendix 3. The Certified Staff shall submit the following documentation to the SHPO for review:
 - a. Location information, including maps, of the property/site.
 - b. Background documentation to include an analysis of alternatives:
 - i. For rehabilitation, include an explanation of why treatment to *Standards* is neither prudent nor feasible.
 - ii. For rehabilitation projects, 35mm photographs of each existing elevation and any significant architectural feature or elements. For new construction projects, 35mm photographs of the National Register listed/eligible structures which will be adversely affected by the project.
 - iii. For new construction, include an explanation of why plans and specification cannot be developed to meet the *Standards*.
 - c. Comments and recommendations from the Certified Staff.
 - d. An analysis of alternatives that were considered.
 - e. Its proposed Standard Mitigation Plan for the historic properties, prepared in accordance with Appendix 3, "Standard Mitigation Measures for Adverse Effect," or

a statement of other mitigation actions, if any are proposed, and why.

- f. A brief description of measures taken to solicit the views of the public and the comments received.
2. The SHPO will review the documentation submitted, and, within 30 days of receipt, concur, object, request additional information, submit its own mitigation plan proposal to the City for its review and approval, or notify the City of its determination that an SMMA is not appropriate.
3. All SMMA, prepared in accordance with this Agreement, must be reviewed, approved and signed by the City and SHPO before any project activities may proceed. The scope and duration of SMMA must be clearly specified.
4. A copy of the fully executed SMMA shall be maintained by the relevant City Program Staff and Certified Staff in the file created for the undertaking(s) covered. Copies of the executed SMMA shall be submitted to the SHPO, ACHP and relevant Program/Project managers by the Certified Staff within 30 days of execution. No further review of the undertaking is required by the ACHP.
5. Any modifications or revisions to an SMMA must be reviewed by SHPO in accordance with Stipulations VII.A.1-4 of this Agreement.

B. Comprehensive Mitigation for Redevelopment Plans

If a neighborhood revitalization, urban renewal or Empowerment Zone project, developed in consultation with the Certified Staff and consistent with an approved redevelopment or renewal plan, is determined to have an adverse effect on historic properties, the City and Certified Staff may elect to consult with the SHPO to develop a Comprehensive Mitigation Plan (CMP) to address effects to historic properties in a balanced and holistic manner as set forth in the following provisions.

1. In lieu of the case-by-case reviews described in Stipulation VI.A, the Certified Staff may consult with the SHPO to develop a Comprehensive Mitigation Plan (CMP), to include: a recordation plan and a development plan or series of plans that may include design guidelines for rehabilitation and/or new construction. The CMP may include prototypes for new construction for specific geographic areas within the City that include listed or eligible historic properties or districts.

Unless other review requirements are recommended by the SHPO, responsibility for the review and approval of undertakings specified in the CMP will rest with the Certified Staff.

2. All CMP Agreements will be incorporated into SMMA(s) which must be reviewed, approved and signed by the City and SHPO before any project activities may proceed. The scope and duration of CMP must be clearly specified in the SMMA.
3. A copy of the fully executed SMMA shall be maintained and distributed by the Certified Staff in accordance with Stipulation VII.A.4 of this Agreement. No further review of covered undertakings is required by the ACHP unless the SHPO or public object and notify the ACHP of concerns with the City's implementation strategy.
4. City Program Staff shall submit annual reports to the Certified Staff and SHPO summarizing activities carried out in accordance with the provisions of the SMMA. Upon written request from the Certified Staff or SHPO, the City Program Staff shall provide access to project files and sites. These reports shall be integrated into the annual report referenced in Stipulation XII below.
5. If the SHPO determines that the terms of a SMMA are not being met for a CMP, the SHPO may nullify the SMMA, after which activities previously covered by the CMP/SMMA shall be reviewed on a case-by-case basis in accordance with Stipulations V and VI.A of this Agreement.

C. Situations Where SMMA(s) Are Not Applicable

The City and SHPO shall not enter into a SMMA and shall initiate the consultation process set forth in 36 CFR Part 800, in the following situations:

1. The Certified Staff or SHPO determine that Appendix 3 Stipulations do not apply.
2. The Certified Staff and SHPO cannot agree on a Plan in accordance with Stipulation VII.B.
3. The SHPO withdraws from consultations or requests the participation of the ACHP.

4. There is public controversy regarding a preservation issue and the public has previously notified the SHPO or ACHP.
5. SHPO determines that listed or eligible archeological resources will be adversely affected.
6. National Historic Landmark (NHL) properties are involved.

VIII. COORDINATION WITH OTHER FEDERAL REVIEWS

- A. 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 ACHP in writing of their intent to use this Agreement to achieve compliance with Section 106 requirements. If the SHPO and ACHP do not respond within 21 days of receipt of such a notice of intent, the City and other Federal agency will assume SHPO and ACHP concurrence, as referenced above. Copies of all such notification letters shall be maintained in the files established by Certified Staff for each such undertaking.
- B. For rehabilitation projects subject to the local historical review process and/or the Federal Historic Rehabilitation Tax Credit review by the SHPO and National Park Service, the Certified Staff will consult with the relevant Commission staff and SHPO staff to discuss coordination of compliance requirements.

IX. DISPUTE RESOLUTION

- A. Should the SHPO object within 30 days of receipt to any plans and specifications, or documents, provided to it pursuant to this Agreement, the Certified Staff shall consult with the SHPO to resolve the objections. If the City determines that the objections cannot be resolved, the Certified Staff shall request the recommendation of the ACHP. The ACHP shall provide its recommendation within 30 days following receipt of adequate documentation.
- B. Any ACHP recommendation concerning disputes between the Certified Staff and the SHPO will be taken into account by the Mayor in accordance with 36 CFR Part 800 with reference only to the subject of the dispute. The City's responsibility to carry out all

actions under this Agreement that are not subjects of the dispute will remain unchanged.

X. PUBLIC NOTIFICATION AND INVOLVEMENT

The City, in cooperation with the Certified Staff and SHPO, has developed public notification procedures to ensure that interested parties are provided with timely and substantial information concerning National Register listed or eligible historic resources that may be affected by individual undertakings covered by this Agreement, and procedures to invite and/or involve the public in decisions concerning the effect of covered Program activities on historic resources. The City, unless it has already done so, shall submit a copy of the public notification procedures to the ACHP. Public notification and involvement procedures shall include, but not be limited to, the following:

- A. Each year the City will notify the public of its current activities funded by HUD and 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 to be undertaken with Program funds during the current Program Year and the general amount of Program funds available from HUD, identified historic resources that may be affected, and how interested persons can receive further information on Program activities. The City may accomplish public notification by incorporating information concerning potential effects on historic resources into the City's procedures for complying with the public participation requirements set forth in 24 CFR Part 58 provided pertinent information regarding historic preservation issues has been developed by the City.
- B. The City's Office of Housing and Community Development (OHCD) annual Consolidated Plan for HUD-funded Programs shall include, at a minimum, a summary of the Section 106 process and a description of this Agreement and its requirements. OHCD staff and Certified Staff shall ensure that information regarding this Agreement and the Section 106 process is included in periodic newsletters and other notices for public distribution.
- C. The Certified Staff will be available, as appropriate, for any public hearings, City Council meetings, Planning Commission meetings, Historical Commission meetings, Community Group meetings, etc., planned to discuss Program activities determined to have a potential effect on listed or eligible historic properties.
- D. The City shall notify the Certified Staff of any public interest, concerning a preservation issue, in any Program activity covered

under the terms of this Agreement. The Certified Staff shall consider any preservation-related comments from parties identified as interested, either by the City or Certified Staff itself, concerning specific Program activities, as it implements the stipulations of this Agreement.

XI. PUBLIC OBJECTIONS

- A. In those cases where a public objection, regarding a preservation issue, is received by the City, Certified Staff will review the objection to determine its basis and consult with the objecting party, as appropriate, to resolve the issue.
- B. Where the Certified Staff is unable to resolve the objection to the satisfaction of the objecting party and the City, the Certified Staff will consult with the SHPO or ACHP, as appropriate.

XII. MONITORING

- A. Certified Staff shall submit an annual report to the SHPO summarizing activities carried out under the terms of this Agreement in a format agreed to by Certified Staff and SHPO. Annual reports shall be submitted each January for the previous year.
- B. Certified Staff will maintain records documenting its Section 106 review and approval procedures in accordance with this Agreement. Records maintained shall include, but not be limited to, eligibility determinations, survey forms, maps, a computer database and project files. Project files shall contain, but are not limited to, project site photographs, work write-ups and plans, approval letters, memoranda, meeting minutes and correspondence.
- C. The City Program Staff shall also retain documentation, including work write-ups and before and after photographs, for all activities carried out pursuant to this Agreement. Files will be retained for a minimum of three (3) years from project completion.
- D. Upon written request by the SHPO or Certified Staff, the City will arrange for the SHPO or Certified Staff to inspect individual project files and to conduct on-site inspections to verify that the terms of the Agreement are being properly implemented by City Program Staff or HUD funding recipient.

XIII. TECHNICAL ASSISTANCE AND EDUCATIONAL ACTIVITIES

- A. The SHPO's staff shall provide technical assistance, consultation, and training as requested by the City and/or Certified Staff to assist in complying with the terms of this Agreement.
- B. The Certified Staff shall provide periodic training and develop guidance documents in cooperation with the SHPO to assist the City Program Staff in complying with the terms of this Agreement.
- C. Nothing in this Agreement shall be construed as meaning that the City or its Certified Staff cannot request the advice or assistance of the SHPO at anytime.

XIV. TERMINATION

Any party to this Agreement may terminate it by providing thirty (30) days written 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 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

XV. AMENDMENT/RENEWAL

The Agreement will become effective on the date of the last signing and will continue in force through December 31, 2012. At the request of any of the parties, this Agreement may be reviewed for possible modification or termination at anytime. Any amendment or addendum shall be executed in the same manner as the original Agreement. One year prior to renewal, the Agreement will be reviewed by all parties for possible modifications, termination, or extension.

Execution and implementation of this Agreement evidences that the City and HUD have afforded the SHPO and ACHP an opportunity to comment on their 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 implemented in accordance with the Agreement's Stipulations.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Alan M. Swick

Date 8/3/07

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

Jan Hutler

Date 6-25-2007

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Signature]
Community Planning and Development

Date 4/15/07

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Signature]
Philadelphia Hub

Date 6/7/07

ENCLOSURE
Director
Philadelphia, Multifamily HUB

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Signature]
Homeownership Center

Date 6/8/07

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT


Office of Public Housing

6/11/07
Date

CITY OF PHILADELPHIA

Date

CONCURRENCE:

PHILADELPHIA HISTORICAL COMMISSION


7/23/07
Date

APPENDIX 1

ACTIVITIES NOT REQUIRING REVIEW (NO EFFECT ACTIVITIES)

The following project activities, which have limited potential to affect historic properties, may be undertaken without further consultation with the Pennsylvania State Historic Preservation Office (SHPO) when undertakings are limited solely to these activities:

A. Rehabilitation

1. Interior:
 - a. Plumbing rehabilitation/replacement – includes pipes and fixtures when no structural alteration is involved.
 - b. Heating, ventilation, air conditioning (HVAC) system rehabilitation/replacement/cleaning – includes furnaces, pipes, ducts, radiators, or other HVAC units when no structural alteration is involved.
 - c. Electrical wiring – includes switches and receptacles when no structural alteration is involved.
 - d. Restroom improvements for handicapped access – provided that work is contained within the existing restroom and no structural alterations are involved.
 - e. Interior surface treatments (floors, walls, ceilings, decorative plaster, woodwork) – provided the work is restricted to repairing, repainting, in-kind patching, refinishing, repapering, or laying carpet or vinyl floor materials.
 - f. Interior feature treatments including but not limited to doors, moldings, fireplaces, and mantels – provided the work is limited to in-kind repair, patching, repainting, and refinishing.
 - g. Insulation – provided it is restricted to ceilings, attics, and other enclosed, unobtrusive spaces. This does not include blown insulation.
 - h. Repair of, or pouring of, concrete cellar floor in an existing cellar.
 - i. Activities required to bring a property up to code standards – provided no structural alterations are involved.
 - j. Asbestos removal – provided no structural alteration is involved.
 - k. Lead-based paint removal – provided it involves only paint removal and not removal of trim.

- I. Installation of fire and smoke detectors.
2. Exterior:
 - a. Caulking, weather-stripping, reglazing, scraping, and/or repainting of windows.
 - b. Flat or shallow pitch roof repair/replacement (shallow pitch is understood to have a rise-to-run ratio equal to or less than three inches (3") to twelve inches (12")).
 - c. Window repair and or replacement-in-kind. This is understood to mean new windows that duplicate the material, dimension, design, detailing, and operation of the historic windows.
 - i. Repair, scrape, repainting of existing windows.
 - ii. In-kind replacement of window sash, glass, and hardware, including jam tracks.
 - iii. In-kind replacement of damaged and non-operable transoms.
 - d. Storm windows and storm doors – provided they conform to shape and size of historic windows and doors. The meeting rail of storm windows must coincide with that of the existing sash. Color should match trim; mill finish aluminum is not acceptable.
 - e. In-kind replacement – this is understood to mean that the new features/items will duplicate the material, dimensions and detailing of the original:
 - i. Porches, railings, posts/columns, brackets, cornices, steps, flooring, and other decorative treatments
 - ii. Roofs
 - iii. Siding
 - iv. Exterior architectural details and features
 - v. Doors
 - vi. Cellar/bulkhead doors
 - vii. Gutters and downspouts
 - viii. Awnings
 - ix. Installation of door and/or window locks and/or electronic security apparatus.
 - f. Rebuilding of wheelchair ramps.

- g. Clean and seal treatments. However, the application of a cleaning treatment requires consultation with the Certified Staff.
- h. Masonry repair using materials, mortar composition, color, joint profile, and width that match the historic materials. However, pointing repairs require consultation with the Certified Staff.
- i. In-kind repair or replacement of non-historic features.
- j. Exterior lead paint abatement that includes scraping and repainting of exterior wood or masonry surfaces. Other activities as listed in Tier 1 of "HUD-Funded Lead-Based Paint Hazard Control Program Guide: Lead Paint in Low Income Historic Housing.

B. Site Improvements

- 1. Line painting, maintenance, repair, resurfacing, or reconstruction of existing roads – provided that no change in width, surfaces, or vertical alignment of drainage is to occur. Also repair or replacement of guide rails and traffic signalization.
- 2. Repair or replacement of existing curbs, sidewalks, driveways, streetlights, and ramps – provided that the work is done in kind to match closely the existing materials and form, and that only minimal change of dimension or configuration occurs. Also installation of handicapped curb cuts.
- 3. Maintenance and repair of existing parks, playgrounds, and landscape features, including plantings, fences, and in-kind replacement of dead, overgrown, or unsafe landscape features, as deemed necessary by relevant City Departments, and documented as such by them in relevant project files.
- 4. Recreation activities in existing parks, including resurfacing of tennis courts, basketball courts, and street hockey courts – provided there is no change in location.
- 5. Repair or replacement of fencing or retaining walls when the work is done in-kind to match closely the existing material and form.

C. Infrastructure

- 1. Repair to or replacement of water, gas, storm and sanitary sewer, electrical, and cable lines – provided that work is confined to

existing and disturbed rights-of-way, within dimensions of the existing trench, or on existing locations on buildings.

2. Construction or installation of new sewer lines or water lines – provided the construction activity is limited to a road cartway or berm which has been previously disturbed or excavated and no new ground disturbance is proposed.
3. Sewer or water treatment plant equipment replacement.

D. Other Activities

1. Acquisition – this is understood to mean that no change in use will occur and any future rehabilitation or change in use activities will be subject to Section 106 review.
2. Clean and seal treatments or stabilization activities necessary to secure and protect vacant structures, listed in or eligible for the National Register, against further damage and deterioration, and protect the public from imminent threats to health and safety – provided that those activities do not alter the historic features of the property.
3. City acquisition of properties that is limited to the legal transfer of ownership with no physical improvements proposed.
4. Installation of temporary, reversible barriers such as construction-related chain link fences, or screens, and polyethylene sheeting and tarps.

APPENDIX 2

HUD-FUNDED LEAD-BASED PAINT HAZARD CONTROL PROGRAM GUIDE: LEAD-BASED PAINT IN LOW-INCOME HISTORIC HOUSING

This guide is to assist recipients undertaking Federally funded lead-based paint (LBP) removal/management for low- to moderate-income housing that is eligible for or listed in the National Register of Historic Places, or is contributing to a registered historic district. These undertakings must attempt to meet **minimum** historic preservation concerns while maximizing the elimination of high risk sources of lead.

This guide uses a three-tiered approach. Tier I (Retention/Repair/Maintenance) will not need to be reviewed property by property under the terms of this agreement, Tier II (Substantial Repair/Replacement) and Tier III (Replace/Remove Extremely Deteriorated Elements) will require consultation with the SHPO, and possibly the ACHP, and execution of Standard Mitigation Measures Agreement or Memorandum of Agreement prior to project implementation unless alternative procedures (see footnotes) have been negotiated with the SHPO.

The buildings falling within this guide are low- to moderate-income housing units that contribute to historic districts listed in or eligible for the National Register of Historic Places and which are receiving limited Federal funds for lead reduction. Buildings which are individually listed in the National Register generally have a higher level of architectural integrity, and any abatement work must be carefully coordinated with the SHPO. This guide is not for buildings that are undergoing substantial rehabilitation where lead abatement work can be incorporated at a more reasonable cost with other work, and where more historic materials can be preserved. It is not a substitute for comprehensive review for projects receiving Investment Tax Credits for historic rehabilitation.

It is the goal of this guide to protect the most significant elements of a historic building that convey its history to the community while providing relief for high risk or high cost elements, such as friction surfaces of windows, painted wood floors, siding, windows and costly trim. The following original/significant elements must be evaluated.

BUILDING EXTERIOR

Primary elevations (fronts or corner elevations) and their wall surfaces, primary window frames and trim, front and corner cornice treatments, original front doors, porch or other distinctive features.

BUILDING INTERIORS

Entrance vestibules, front staircases, main first floor parlor or living rooms with mantels, front window or door trims and casings, and other significant trim. (Other interior spaces are not subject to review under this Program.)

GENERAL GUIDANCE

While recipients are encouraged to retain and repair historic features, particularly when these features are an integral part of the building's historic character, replacement is a viable option when a feature is too deteriorated or costly to repair. The replacement element should match the qualities of the historic element size, configuration, details, operability and color. If the same kind of material is not technically or economically feasible, a visually compatible substitute material may be used. If a decorative feature is missing it does not need to be replaced unless failure to replace it is in conflict with local housing codes.

DEFINITIONS

Abatement means any set of measures designed to **permanently** eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes 1) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and 2) all preparation, clean-up, disposal, and post-abatement clearance testing activities associated with such measures.

Accessible surface means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

Costly or High Cost means the cost of treating a property relative to 1) the value of the property; 2) the number of properties to be treated; and 3) the resources available to treat such properties.

Deteriorated paint means any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.

Friction surface means an interior surface that is subject to abrasion or friction, including window, floor and stair surfaces.

Hazard reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

High risk means the presence of deteriorated lead-based paint, lead-based paint on an accessible surface or lead-based paint on a friction surface.

Impact surface means an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

Interim controls means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The grant recipient* and the SHPO may develop and execute an agreement that includes one or more of the following Standard Mitigation Measures, as modified by the SHPO, for abatement/hazard reduction activities. The ACHP **shall not** be a party to these agreements.

1. The grant recipient shall ensure that prior to the initiation of lead abatement/hazard reduction activities on the historic property, the historic property is photographically documented in accordance with guidelines established by the SHPO. The SHPO shall identify an appropriate archive for the deposit of recordation materials and the grant recipient shall be responsible for submitting such materials. The SHPO may waive the recordation requirement as it deems appropriate.
2. The grant recipient has determined that it cannot adhere to the procedures set forth in the executed Programmatic Agreement for its Lead-Based Paint Hazard Control Program. The grant recipient, in consultation with the SHPO, has developed alternate treatment plans, project specifications, or design guidelines for (***) property) or (neighborhood or target area located at [specify boundaries]). The grant recipient shall implement the abatement/hazard reduction project (upon receipt of written approval of the treatment plans, project specifications or design guidelines by the SHPO) or (in accordance with the treatment plans, project specifications, or design guidelines prepared by *** and dated ***, and approved by the SHPO.)

* Grant Recipient: The unit of general government (UGG) receiving the grant or loan, or if the grant recipient is not a UGG, then the UGG that has been designated the responsible entity for compliance with HUD's Environmental Review Procedures regulations, as set forth at 24 CFR Part 58.

HUD-FUNDED LEAD-BASED PAINT HAZARD CONTROL PROGRAM GUIDE: LEAD-BASED PAINT IN LOW-INCOME HISTORIC HOUSING

TIER I: (Retention/Repair/Maintenance)

Treatment in this tier focuses on stabilization and removal of flaking lead-based paint. Abatement/hazard reduction does not involve the extensive replacement or removal of historic elements.

Building Exterior

Primary Walls: Remove flaking paint (wet sand, chemical heat strip) and repaint.

Primary Windows Sash: Wet sand or strip historic sash to remove to friction areas and repaint, or replace sash with new to match the visual components of the historic sash. Multiple pane configuration (2/2, 6/6) should be replicated with true window muntins; a snap-in grid to simulate historic windows is not appropriate. Substitute materials, including metal and vinyl, may be used if they closely replicate the historic sash. (In many cases there is additional flexibility in the replacement of windows on side and rear elevations not visible from the street.)

Primary Window/Door Frames: Retain in place, repair, remove flaking paint and repaint, use jamb liners, if appropriate, at friction surfaces.

Cornice, Decorative Moldings, Porches: Repair as required, remove flaking paint and repaint. Porch decks that have been painted may be encapsulated for new surface.

Original Front Door: Strip and remove paint from friction surfaces, or use jamb liners. If original door contains extensive glass and cannot be made physically secure, store door on property, or replace glass with wooden panel, or replace door with one that matches the panel and detail configuration appropriate to the architectural period of house. (Two panel door with glass to two panel wooden door).

Building Interior

Vestibule: Repair, wet sand and repaint walls, trim, and other elements; retain tile or marble floor or wainscot finishes; retain transoms although they may be made inoperable. Repair historic elements as required.

Front Staircase and Risers: Wet sand and repaint railings, replace broken balusters with matching ones. Treads and risers may be covered

with an appropriate rigid underlayment with carpeting or a washable surface such as vinyl tile and rubber stair treads.

Front Parlor/Living Room: Repair damaged plaster, repaint walls with encapsulant paint if necessary or regular paint if permissible. Retain all decorative elements such as mantels, built-in cupboards, etc.

Front Window/Door Casings/Parlor Doors: Wet sand or strip paint as required for wood trim for windows, parlor doors, and the door casings. If there are pocket doors, retain in place, or retract into pockets and make inoperable. Repaint wooden elements with regular paint or special encapsulant paints.

HUD-FUNDED LEAD-BASED PAINT HAZARD CONTROL PROGRAM GUIDE: LEAD-BASED PAINT IN LOW-INCOME HISTORIC HOUSING

TIER II: (Substantial Repair/Replacement)

Treatments in this tier require more extensive repair and, in some cases, replacement of historic elements with in-kind or closely matching materials. Proposals for substantial replacement shall be based upon existing conditions and analysis of cost estimates for alternative treatments.

Building Exterior

Primary Walls: Substantial repairs, repainting or replacement of materials, such as wooden siding, should closely match the historic configuration. Based upon the level of deterioration of the wood siding, it may be appropriate to install aluminum or vinyl siding on a historic property. The installation of these substitute materials shall be undertaken when 1) the use of replacement wood siding is not technically or economically feasible; 2) appropriate measures have been taken to identify and correct existing moisture problems and appropriate vapor barriers are installed along with the siding; 3) the substitute materials match the width, texture, and configuration of the historic wood siding; and 4) decorative wood features such as window and door surrounds, cornices, brackets, and entablatures are maintained to the extent feasible (See NPS Briefs #3 and 8).

Primary Windows Sash: Wet sand or strip historic sash to remove to friction areas and repaint, or replace sash with new to match the visual components of the historic sash. Multiple pane configuration (2/2, 6/6) should be replicated with true window muntins; a snap-in grid to simulate historic windows is not appropriate. Substitute materials including metal and vinyl may be used if they closely replicate the historic sash. In many cases, there is additional flexibility in dealing with replacement windows on the side and rear elevations.

Primary Window/Door Frames: Replacement should match existing frames and trim and should be compatible with the architectural period of the historic district. Stabilize paint and repaint with regular or encapsulant paint. Use jamb liners when appropriate.

Cornice, Decorative Moldings, Porches: Replacement of deteriorated elements, such as the cornice, porch columns, or porch railings should closely match original features. Painted porch decks may be covered or replaced with a new surface.

Original Front Doors: Replacement doors should closely match existing or be compatible with architectural period of historic district (i.e. Victorian). Doors designed to reflect another period of time (Colonial, Modern, etc.) should not be used.

Building Interior

Vestibule: Removal of deteriorated decorative elements (tile wainscot, marble flooring, wood trim) should be identified. Patch existing plaster walls or replace with drywall if necessary and replace trim work in-kind, as appropriate.

Front Staircase: Replacement of damaged banister and railing should be closely matched or be of residential design, either with turned balusters or with simple square ones.

Front Parlor/Living Room: Repair damaged plaster, repaint walls with encapsulant paint, if necessary, or regular paint, if permissible. Retain all decorative elements such as mantels, built-in cupboards, etc.

Front Window/Door Casings/Parlor Doors: Wet sand or strip paint as required for wood trim for windows, parlor doors, and the door casings. If there are pocket doors, retain in place, or retract into pockets and make inoperable. Repaint wooden elements with regular paint or special encapsulant paints.