

PROGRAMMATIC AGREEMENT

among

THE DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
and
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
for the
SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
in the
COMMONWEALTH OF PENNSYLVANIA

WHEREAS, the Department of Community & Economic Development (DCED), administers the Small Cities Community Development Block Grant (CDBG) Program on behalf of the U.S. Department of Housing and Urban Development (HUD) in the Commonwealth of Pennsylvania; and,

WHEREAS, DCED allocates Small Cities CDBG funds, including Neighborhood Stabilization Program funds, to non-entitlement communities Municipalities (see Attachment A) annually on a competitive basis and special appropriations covered by 24 CFR Part 58 for undertakings which meet the statutory and regulatory definition of undertaking as set forth in 16 U.S.C.470w(7) and 36 CFR Part 800.2(c)(o); and,

WHEREAS, for the purpose of this Programmatic Agreement, the Commonwealth's Small Cities CDBG Program encompasses activities such as affordable housing construction and rehabilitation, commercial rehabilitation, infrastructure, road and bridge repair and replacement, and compliance with the American Disabilities Act (ADA); and,

WHEREAS, DCED has determined that the administration of the Small Cities CDBG Program may have an effect upon properties listed in or eligible for listing in the National Register of Historic Places (National Register) and has consulted with the Pennsylvania State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Section 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act [16 U.S.C. 470(f)]; and,

WHEREAS, pursuant to 24 CFR Part 58, HUD has delegated compliance responsibility for the requirements of Section 106 of the National Historic Preservation Act and the National Environmental Policy Act (NEPA) to DCED for the Small Cities CDBG Program and other non-delegated HUD Programs when DCED so agrees; and,

WHEREAS, pursuant to 24 CFR Part 58, DCED requires Municipalities awarded Small Cities CDBG funds to comply with NEPA and Section 106 as a condition of their grant; and,

WHEREAS, the PA DCED which administers the HOME Investment Partnership (HOME) Program in the Commonwealth on behalf of general local governments and other recipients with funds allocated by HUD, may become a signatory to this Programmatic Agreement provided that it agrees to implement the provisions set forth in this Agreement; and,

WHEREAS, in response to the principles set forth in the Council's *Policy Statement on Affordable Housing and Preservation June 1995* ("*Policy Statement*", as revised in 2006, DCED, the Pennsylvania SHPO and the Council have determined that DCED and the Municipalities can more effectively carry out their Section 106 responsibilities for the Small Cities CDBG Program activities if a Programmatic Agreement is executed to streamline and expedite administrative reviews by exempting categories of undertakings from review and delegating reviews to the Pennsylvania SHPO and DCED; and,

WHEREAS, DCED will employ or contract with qualified professionals to assist in the implementation of the terms of this Programmatic Agreement and to monitor Municipalities compliance; and,

WHEREAS, DCED will adhere to the terms of this Programmatic Agreement for Small Cities CDBG Program activities funded between 2009 and 2014.

NOW, THEREFORE, DCED, and the Pennsylvania SHPO, agree that the Commonwealth's Small Cities CDBG Program shall be administered in accordance with the following stipulations to satisfy the Municipalities Section 106 responsibilities for individual undertaking of the program.

STIPULATIONS

DCED shall ensure that the following measures are carried out.

I. ADMINISTRATION OF THE PA

A. Qualified Personnel

1. DCED shall employ or contract with qualified Preservation Professional(s) who meets the Secretary

of Interior's Professional Qualification Standards set forth in 36 CFR Part 61 (Preservation Qualifications). The Preservation Professional shall coordinate all Section 106 reviews undertaken by the Municipalities pursuant to the terms of this Programmatic Agreement.

- a. DCED's Preservation Professional(s) shall receive periodic training from the Pennsylvania SHPO regarding the evaluation of historic properties and the application of the *Secretary of the Interior's Standards for Treatment of Historic Properties (Standards)*, and is encouraged to attend workshops and other training related to these topics presented by the National Park Service, National Trust for Historic Preservation, Advisory Council on Historic Preservation or other entities.
 - b. DCED shall ensure that the DCED Preservation Professional(s) have attended or will attend within 6 months of hire the Council's courses *Introduction to Federal Projects and Historic Preservation Law* and *Preparing Agreement Documents*.
 - c. The Preservation Professional(s) hired or contracted by DCED shall be experienced in the disciplines by which they are assigned responsibilities under the terms of this Programmatic Agreement, i.e. architect or architectural historian for identification and evaluation of standing structures and the review of rehabilitation work write-ups, plans and specifications, and archaeologists for conducting archaeological assessments and development of treatment plans.
 - d. DCED shall notify the Pennsylvania SHPO annually in writing of the Preservation Professional(s) employed or under contract with DCED. If DCED fails to employ or contract with Preservation Professionals, DCED shall notify the Pennsylvania SHPO and Council immediately to determine whether alternate administrative procedures should be developed. If DCED, the Pennsylvania SHPO and Council cannot agree to alternate administrative procedures, the Programmatic Agreement may be terminated in accordance with Stipulation XVI.
2. Municipalities receiving Small Cities CDBG funds from DCED are **encouraged** to hire or contract with

Preservation Professional(s) to assist them in complying with the terms of this Programmatic Agreement.

- a. Should a Municipality determine that it cannot secure the services of Preservation Professional(s), DCED's Preservation Professional may assist the Municipality in complying with the terms of this Agreement.

B. Coordination of Reviews

1. DCED shall forward a copy of the Commonwealth's HUD approved Consolidated Plan Document and subsequent amendments, to the Pennsylvania SHPO and the Council so that they will be aware of DCED's strategy for allocating Small Cities CDBG funds to Municipalities.
2. Small Cities CDBG Program activities that are determined to be undertakings, with the exception of those listed in Attachment B, are subject to the terms of this Programmatic Agreement. **Undertakings are generally projects and programs receiving federal assistance, continuing projects, and future phases of federally-assisted programs which have the potential to affect cultural resources.**
3. DCED shall encourage Municipalities to initiate the review process set forth in this Agreement **early in project planning** to avoid actions which may compromise the Municipality's ability to complete the requirements of Section 106.
 - a. If Municipalities have received Small Cities CDBG funds to continue an undertaking that was previously **privately** funded, DCED shall require the Municipality to coordinate with DCED's Preservation Professional(s) and the Pennsylvania SHPO to determine whether Section 110(k) (Attachment C), of National Historic Preservation Act (NHPA) applies or what should be taken to avoid unintended and irreversible adverse effects on historic properties.
 - b. DCED shall consult with the Council to resolve all undertakings which are being reviewed to determine the applicability of Section 110(k).

4. The DCED Preservation Professional(s), in consultation with the Pennsylvania SHPO, shall develop and use review forms for exempt activities, National Register identification and evaluation, and treatment and mitigation plans to assist the Municipalities in coordinating Section 106 reviews. DCED shall submit copies of all forms to the Pennsylvania SHPO and Council for review and approval.
5. DCED's Preservation Professional(s) shall receive all documentation prepared by the Municipalities regarding exempt activities, identification and evaluation of historic properties, treatment of historic properties, and development of standard mitigation measures, prior to submission to Pennsylvania SHPO when applicable. The Municipality shall not forward documentation to the Pennsylvania SHPO for review and comment until it has been reviewed by DCED's Preservation Professional(s). Should DCED's Preservation Professional(s) recommend changes to the Municipality's submission, the Municipality shall incorporate the changes into the document prior to forwarding it to the Pennsylvania SHPO for review.
6. The Pennsylvania SHPO shall respond directly to the Municipality, and copy DCED, within thirty (30) days following receipt of complete documentation.
 - a. If the Pennsylvania SHPO fails to comment on a submission or request additional documentation within thirty (30) days, the Municipality may assume that the Pennsylvania SHPO concurs with its determination.
 - b. The Municipality shall advise DCED's Preservation Professional(s) of the lack of response from the Pennsylvania SHPO and the steps it will take to complete the Section 106 review. DCED may approve the Municipality's proposal or recommend alternate measures, including submission of the undertaking to the Council for review and comment.
7. DCED will retain individual project files for each Small Cities CDBG undertaking reviewed pursuant to the terms of this agreement. Project files will include undertakings determined to be exempt by the Municipality; review forms submitted by the Municipalities; letters of comment from DCED's Preservation Professional(s) and the Pennsylvania SHPO, Standard Mitigation Agreements or MOAs which

evidence that the Municipality has satisfactorily complied with the terms of this Agreement; before and after photographs of historic properties affected by undertakings which were determined by DCED's Preservation Professional(s) and the Pennsylvania SHPO to adhere to the **Standards**; and the date the project was completed. DCED shall retain the documentation for a minimum of three years, and make it available to the Pennsylvania SHPO or Council for review upon written request to DCED.

8. The Pennsylvania SHPO shall conduct periodic on-site monitoring visits to Municipalities to ensure compliance with plans and specifications, treatment plans, Standard Mitigation Agreements and MOAs executed pursuant to this Programmatic Agreement. DCED shall be notified in advance of such visits by the Pennsylvania SHPO.
9. DECD shall not release Small Cities CDBG funds or finalize loan documents with the Municipality until DCED's Preservation Professional(s) have certified that the Municipality has **satisfactorily** complied with the terms of this Programmatic Agreement **prior** to the initiation of project activities.

II. Consultation with Indian Tribes

To make a reasonable and good faith effort to identify historic properties of religious and cultural significance to Indian tribes, the DCED Historic Preservation Professional will notify by letter, the Tribal Leaders on the list of Indian Tribes provided by the SHPO of projects with the potential to affect such resources. For these projects with the potential to affect Native American resources, tribal leaders will be invited to participate in the Section 106 review process in agreement with 36 CFR Part 800.3(f). Any tribes that respond to the invitation to participate and provide a demonstrated interest will be consulted as described in this Agreement.

III. EXEMPT ACTIVITIES

Municipalities are not required to complete Section 106 reviews for undertakings that are **limited solely** to those activities listed in Attachment B as they have limited potential to alter character defining qualities of properties listed on or eligible for listing on the National Register.

IV. IDENTIFICATION AND EVALUATION

If the Municipality determines that the undertaking for which it has received Small Cities CDBG funds involves a property that is 50 years or older and that the planned activities exceed or do not include those listed in Attachment B, the following steps shall be taken. DCED and the Municipality may also be required to consider the National Register eligibility of properties less than 50 years old when an undertaking involves local landmarks or properties previously designated as exceptionally historically or architecturally significant by the Pennsylvania SHPO.

- A. The Municipality shall consult the PHMC maintained Cultural Geographic Information Services (CRGIS) database publically accessible via the PHMC webpage (www.phmc.state.pa.us) and the Pennsylvania Planning Board Historic Zones and municipal zoning office for locally recognized historic districts to determine if the undertaking may affect properties listed in or eligible for listing in the National Register.
- B. The Municipality will submit complete documentation for each project or activity to the DCED Preservation Professional(s) for review, including maps, site plans, current photographs of buildings and sites, historical narratives, buildings condition assessments, ground disturbance details and archaeological surveys, which:
 1. clarify the area of potential effect for the undertaking;

2. identifies properties within the area of potential effect that are listed in the National Register or previously determined eligible by the Keeper or the Pennsylvania SHPO; and
 3. identifies properties within the area of potential effect that appear to meet the National Register criteria of eligibility.
- C. The Municipality shall use the services of its Preservation Professional(s), or consult with DCED's Preservation Professional(s), to complete the Historic Resource Survey form when required. The Preservation Professional(s) shall contact the Pennsylvania SHPO, as appropriate, to determine whether the project area has been previously surveyed as part of another Federally-assisted, licensed or permitted undertaking.
- D. The Pennsylvania SHPO shall review the Municipality's Historic Resource Survey form and concur or object to it's findings within 30-days following receipt of adequate documentation.
1. If DCED's Preservation Professional(s) have assisted the Municipality in completing the Historic Resource Survey form, they shall indicate such on the form.
 - a. If DCED and the Municipality disagree with the findings of the Pennsylvania SHPO, or the Pennsylvania SHPO or Council so request, the Municipality shall obtain a formal determination of eligibility from the Keeper of the National Register.
- E. Should the Pennsylvania SHPO agree with the Municipality, or DCED's Preservation Professional(s) when acting on behalf of the Municipality, that no historic properties are located within the undertakings area of potential effect or that a property 50 years or older is not eligible or make a determination on behalf of the Municipality, a finding of *No Historic Properties* shall be noted on the identification and evaluation form. The Municipality will have completed its Section 106 review responsibilities with this finding.
- F. If the Pennsylvania SHPO agrees with the Municipality or DCED's Preservation Professional(s) that a property is eligible, the Municipality shall comply with Stipulations IV and V, as appropriate.

- G. DCED may assist the Pennsylvania SHPO in completing a phased comprehensive survey of Municipalities, when so requested.

V. TREATMENT OF HISTORIC PROPERTIES

*Prior to the initiation of project activities and to the submission of projects to the Pennsylvania SHPO, the Municipality shall forward non-exempt undertakings involving historic properties to DCED's Preservation Professional(s) for review and approval. The Municipality shall not forward documentation to the Pennsylvania SHPO for review and comment until DCED's Preservation Professional(s) has reviewed it for adequacy. DCED's Preservation Professional(s) will indicate on the HUD environmental review form for each undertaking the date that the treatment plan was approved, a **fully signed** Standard Mitigation Agreement received, or a Memorandum of Agreement executed.*

A. Rehabilitation

1. The Municipality shall ensure that all rehabilitation projects not listed as exempt in Attachment B adhere to the recommended approaches in the **Standards**, to the extent feasible.
 - a. The Municipality shall forward work write-ups or plans and specifications evidencing adherence to the **Standards** to the DCED Preservation Professional(s) for review and approval. Within thirty (30) days following receipt of documentation, the DCED Preservation Professional will advise the Municipality whether the rehabilitation project meets the **Standards**.
 - b. If the DCED Preservation Professional(s) outlines modifications to the work write-up or plans and specifications that must be made for the rehabilitation to adhere to the **Standards**, the Municipality must resubmit modified documents to the DCED Preservation Professional(s) for review before an approval is granted.
2. Should the DCED Preservation Professional(s) determine that the work write-up or plans and specifications for the rehabilitation project do not adhere to the **Standards**, and the Municipality determines that there are no feasible alternatives due to economic, structural, market or programmatic conditions, the

Municipality shall consult with the Pennsylvania SHPO to determine whether or not Standard Mitigation Agreement may be developed in accordance with Stipulation VII.

B. ADA Compliance

1. The Municipality shall develop plans and specifications for handicapped accessibility projects in a manner that is compatible with the architectural character of the historic building or historic district and adheres to the recommended approaches in the **Standards** and National Park Service Preservation Brief No 32, to the extent feasible.
 - a. The Municipality shall locate handicapped ramps, elevator towers and chair lifts on secondary elevations, when feasible. If the Municipality must locate handicapped accessibility openings on the primary elevation, every effort will be made to use existing building openings.
2. The Municipality shall consult with DCED's Preservation Professional(s) during the design of handicapped entrances. Final plans and specifications shall be submitted to the DCED Preservation Professional(s) for review and approval. Within thirty (30) days following adequate documentation, the DCED Preservation Professional shall forward a letter of approval to the Municipality or recommend modifications to make the handicapped accessibility project adhere to the **Standards**.
 - a. The Municipality shall incorporate any modifications recommended by the DCED Preservation Professional or Pennsylvania SHPO into revised plans. DCED's Preservation Professional(s) shall verify that recommended modifications have been properly incorporated into revised documents before granting an approval.
3. Should the DCED Preservation Professional and the Pennsylvania SHPO determine that the handicapped accessibility project does not adhere to the **Standards** or would otherwise adversely affect historic properties, and the Municipality concludes that there are no feasible alternatives to complying with the requirements of ADA, the Municipality shall consult with the Pennsylvania SHPO to determine whether or not

a Standard Mitigation Agreement may be developed in accordance with Stipulation VII.

C. Demolition

1. Emergency .

Should the Mayor of a Municipality determine that a property listed in or eligible for listing in the National Register is an "imminent threat to health or safety" as verified by structural evaluation by local authorities such as the municipal engineer or zoning/code compliance officer, or the State Civil Defense certifies that structural damage, fire damage, hurricanes, floods, earthquakes, etc. require the immediate demolition of the property, the Municipality shall notify the DCED Preservation Professional who will present the documentation to the Pennsylvania SHPO immediately. The Pennsylvania SHPO shall notify the Municipality, and copy DCED Preservation Professional(s), within 5 days of receipt of documentation of its concurrence with, or objection to, the emergency, if the nature of the emergency allows such reviews.

- a. If the Pennsylvania SHPO concurs that an emergency situation exists, it will advise the Municipality of mitigation measures that should be implemented, i.e. photographic recordation or salvage, prior to demolition.
- b. If the PA SHPO concludes that it has not received adequate documentation to establish that an emergency exists, the Municipality shall consult with the PA SHPO to determine whether or not a Standard Mitigation Agreement may be developed in accordance with Stipulation VII for the proposed demolition. If the Municipality believes that the exigency of the situation does not allow time to develop a Standard Mitigation Measures Agreement, the Municipality may notify Council and request the Council's comments in accordance with 36 CFR Section 800.12.

2. Non-Emergency

- a. The Municipality shall notify DCED's Preservation Professional(s) in writing of its intent to demolish non-historic buildings and non-contributing buildings within historic districts listed in or eligible for listing in the National Register. DCED Preservation Professional(s) shall advise the Municipality within fifteen (15)

days whether or not the documentation is complete.

- (1) If the DCED Preservation Professional(s) approves the demolition of non-historic or non-contributing buildings within historic districts, the Municipality may proceed with demolition. The Municipality will be required to forward plans and specifications for **future** new construction or landscaping on cleared parcels within historic districts or those located adjacent to historic buildings to the DCED Preservation Professional for review and approval **prior to the initiation of construction activities**. The DCED Preservation Professional(s) will review the plans and specifications to determine whether they adhere to the *Standards*.
 - (2) If the DCED Preservation Professional(s) or the Pennsylvania SHPO objects to the proposed demolition because the building is eligible for listing in the National Register or a contributing building within a historic district, the Municipality shall consult with the Pennsylvania SHPO as set forth in Stipulation IV.C.2.b
- b. As part of the review of non-emergency demolition of historic properties, the Municipality and DCED's Preservation Professional(s) shall consult with the Pennsylvania SHPO to explore alternatives and to develop mitigation plans. The Municipality or DCED's Preservation Professional(s) will submit the following documentation to the Pennsylvania SHPO for review:
- (1) Location and description of the property proposed for demolition.
 - (2) Reasons for the demolition, including references to any building code violations and structural problems, and an explanation why rehabilitation or other action is not prudent or feasible.
 - (3) Photographs of each elevation and details of deteriorated areas.
 - (4) Comparison of the cost of rehabilitation versus the cost of property acquisition and demolition and related expenses.

- (5) An analysis of other alternatives considered by the Municipality.
 - (6) The views of interested parties, if any.
- c. The DCED Preservation Professional(s) will respond to the Municipality's request within 30 days following receipt of adequate documentation to provide notification of the SHPO finding of effect.
- (1) If the Pennsylvania SHPO agrees to the proposed demolition, the Pennsylvania SHPO may recommend a Standard Mitigation Agreement in accordance with Stipulation VII.
 - (2) If the Pennsylvania SHPO objects to the proposed demolition, the Pennsylvania SHPO may recommend alternatives to demolition. Should the Municipality conclude that the alternative proposed by the Pennsylvania SHPO is infeasible, the Municipality shall notify the Council and consult in accordance with 36 CFR Section 800.5(e).
- d. The Municipality **shall not** initiate demolition activities on historic properties until DCED's Preservation Professional(s) has received a **fully signed** Standard Mitigation Agreement or an **executed** Memorandum of Agreement among the Municipality, Pennsylvania SHPO, and Council.

D. Infrastructure Improvements

1. The Municipality shall develop plans and specifications for all infrastructure improvement projects, including lighting, street furniture, landscaping, and sidewalks and pavers, not exempted in Stipulation II., in a manner that is responsive to the architectural character of historic districts or adjacent historic properties and adheres to the recommended approaches in the **Standards**, to the extent feasible.
- a. The Municipality shall forward plans and specifications evidencing adherence to the **Standards** to the DCED Preservation Professional(s) for reviews and approval. Within 30-days following receipt of documentation, the DCED Preservation Professional(s) will advise the

Municipality whether it approves the undertaking as meeting the *Standards*.

- b. If the DCED Preservation Professional(s) outlines modifications to the work write-up or plans and specifications that must be made for the infrastructure improvements to adhere to the *Standards*, the Municipality must resubmit modified documents to the DCED Preservation Professional(s) for review and approval.
2. Should the DCED Preservation Professional(s) or the Pennsylvania SHPO object to the proposed infrastructure improvement project because it does not adhere to the *Standards* or would otherwise adversely affect historic properties, the Municipality shall consult with the Pennsylvania SHPO to determine whether or not a Standard Mitigation Agreement may be developed in accordance with Stipulation VIII.

E. Roads and Bridges

1. The Municipality shall develop plans and specifications for the rehabilitation or replacement of roads which extend beyond the existing right-of-way in a manner that adheres to the recommended approaches in the standards, to the extent feasible. The Municipality shall take into account character defining features of the historic district or adjacent historic properties in designing roads and bridge projects.
 - a. The Municipality shall forward plans and specifications evidencing adherence to the standards to the DCED Preservation Professional(s) for review. Within 30 days following receipt of documentation, the DCED Preservation Professional(s) will advise the Municipality whether it approves the rehabilitations as meeting the standards.
 - b. If the DCED Preservation Professional(s) recommends modifications to the plans and specifications that must be made for the road or bridge project to adhere to the standards, the Municipality must resubmit modified documents to the DCED Preservation Professional(s) for review and approval.

2. Should the DCED Preservation Professional(s) determine that the work write-up or plans and specifications for the road or bridge project does not adhere to the standards or would otherwise adversely affect historic properties, and the Municipality concludes that there are no feasible alternatives, the Municipality shall consult with the P.A. SHPO to determine whether or not a standard Mitigation Agreement may be developed in accordance with Stipulation VII.

VI. TREATMENT OF ARCHAEOLOGICAL SITES

A. Previously Disturbed Sites

1. The Municipality will not be required to conduct archaeological assessments for new construction, demolition, infrastructure, and road and bridge projects at project sites which have been substantially disturbed by previous projects so long as the depth and the extent of new disturbances does not exceed the depth and the extent of previous disturbance. Any decision by the Municipality that a survey is not warranted due to prior disturbance shall be documented by the Municipality and reviewed by the DCED's Preservation Professional(s). These findings will be submitted to the Pennsylvania SHPO for review and approval within 30 days.
2. Should the Pennsylvania SHPO object to the Municipality's findings, the Municipality shall comply with Stipulation V.B. or forward the documentation to the Council for review in accordance with Stipulation X.

B. Undisturbed Project Sites

1. The Municipality will be required to conduct archaeological assessments for new construction, demolition, infrastructure, and road and bridge projects at sites which have not been substantially disturbed by previous projects so long as the depth and the extent of new disturbance does not exceed the depth and the extent of previous disturbance. Any decision by the Municipality that a survey is not warranted due to prior disturbance shall be documented by the Municipality and reviewed by the DCED's Preservation Professional(s). These findings

will be submitted to the Pennsylvania SHPO for review and approval within 30 days. At the SHPO's direction, the DCED Historic Preservation Profession will contact appropriate Indian Tribes to notify them of projects that have the potential to affect Native American archaeological resources and invite their participation in the 106 process.

- a. Sites which may contain intact archaeological deposits and other historic archaeological features will be avoided through project design or redesign approved by DCED's Preservation Professional(s) and the PA SHPO.
 - b. Any ground disturbing activities associated with an undertaking, including excavation for footings and foundations and installation of utilities, will be done in such a manner as to minimize disturbance to previously undeveloped portions of the parcel, and qualified archaeologists will be on site to monitor construction activities when determined necessary by the Pennsylvania SHPO.
2. When the Municipality proposes any undertakings where in-place preservation is not possible, the Municipality or DCED's Preservation Professional(s) will evaluate the potential for impacts on archaeological resources. Local archives and other available sources will be consulted to determine the history and sequence of prior development for each parcel under question. The Municipality, in coordination with DCED's Preservation Professional(s) shall submit documentation on the project site to the Pennsylvania SHPO, and request an opinion as to the need for an archaeological survey.
- a. If, after reviewing the documentation submitted, the Pennsylvania SHPO determines that there exists a high probability, based upon existing documentation, for archaeological resources, the Municipality shall undertake an archaeological survey of the affected project area, consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation Projects (Archaeological Standards)*, in consultation with the Pennsylvania SHPO.
 - b. If resources identified during the survey are determined eligible for the National Register, they will be avoided preserved in place whenever feasible. When preservation in place is

infeasible, the Pennsylvania SHPO will be consulted and a treatment plan, including data recovery plan, consistent with the Council's handbook, *Treatment of Archaeological Properties*, and the *Archaeological Standards*, will be developed, in coordination with DCED's Preservation Professional(s), and submitted to the Pennsylvania SHPO for review and approval.

(1) The Pennsylvania SHPO will determine whether to approve the treatment plan or to consult with the Municipality to determine whether or not a Standard Mitigation Agreement should be developed in accordance with Stipulation VII.

c. Upon approval of the treatment plan by the Pennsylvania SHPO or development of a Standard Mitigation Agreement, DCED's Preservation Professional(s) shall ensure that the Municipality implements the treatment or mitigation plan.

3. If the Municipality, in consultation with DCED's Preservation Professional(s), determines that it cannot agree to the recommended treatment plan or Standard Mitigation Agreement proposed by the Pennsylvania SHPO for eligible archaeological resources, the Municipality shall notify the Council and initiate consultation in accordance with 36 CFR Part 800.5(e).

C. Human remains

1. In the event that the Municipality discovers human remains while implementing a data recovery plan or carrying out ground disturbance activities as part of an undertaking, the Municipality will suspend all work in the area where human remains are located and notify DCED's Preservation Professional(s), the Pennsylvania SHPO, and Council. The Municipality, in consultation with the Pennsylvania SHPO, shall develop a plan that adheres to *The Council's Policy Statement on Human Remains* regarding the disinterment analysis, and reburial of human remains and associated funerary objects.

2. The Municipality shall notify the Council and initiate consultation in accordance with 36 CFR Section 800.5(e).

D. Curation

1. DCED's Preservation Professional(s) shall ensure that the Municipality makes available all records resulting from data recovery of eligible archaeological properties for curation by institutions approved in accordance with 36 CFR Part 79 and by the Pennsylvania SHPO.

VII. TRANSFER, LEASE OR SALE OF HISTORIC PROPERTIES

- A. Prior to the transfer, lease, or sale of historic properties acquired by a Municipality with HUD HOME or Small Cities CDBG funds, the Municipality will develop preservation covenants or restrictions, in coordination with DCED's Preservation Professional(s), which require the preservation and maintenance of the historic property in accordance with the **Standards**.
 1. The Municipality shall submit the proposed preservation covenants or restrictions for the transfer, lease, or sale of the historic property to the Pennsylvania SHPO for review and approval. Within, thirty (30) days following receipt of documentation, the Pennsylvania SHPO will advise the Municipality whether it approves the language of the preservation covenant or restriction.
 2. If the Pennsylvania SHPO recommends changes to the language of the preservation covenants or restrictions, the Municipality must resubmit a revised preservation covenant or restriction to the Pennsylvania SHPO for review before approval is granted.
 3. The Municipality will ensure that the language of the preservation covenant or restriction approved by the Pennsylvania SHPO is included in transfer deeds, leases, or other legal instruments.
- B. Should the Pennsylvania SHPO determine that the proposed preservation covenants or restrictions will not result in the preservation or maintenance of the property in accordance with the **Standards**, or will otherwise adversely affect to historic properties, the Municipality shall consult with the Pennsylvania SHPO to determine whether or not a Standard Mitigation Agreement may be developed in accordance with Stipulation VII.

VIII. RESOLUTION OF ADVERSE EFFECTS

- A. When DCED or the Pennsylvania SHPO determines during their review of treatment plans outlined in Stipulation IV that the undertaking proposed by the Municipality does not meet the **Standards** or would otherwise adversely affect historic properties, the Municipality shall consult with the Pennsylvania SHPO to determine whether use of the Standard Mitigation Measures outlined in Attachment D is appropriate or whether a Memorandum of Agreement should be executed with the Council in accordance with 36 CFR Section 800.5(e).
1. If the Pennsylvania SHPO and Municipality agree to develop a Standard Mitigation Agreement, it will be limited to the provisions outlined in Attachment D. Either party may draft the agreement, however; both the Pennsylvania SHPO and Municipality must sign the Agreement and submit a copy to DCED. **No further review of the undertaking is required by the Council.**
 2. If the Municipality objects to the terms of the Standard Mitigation Agreement, the Municipality shall notify DCED and the Council, and initiate the consultation process in 36 CFR Section 800.5(e). The Municipality shall forward all pertinent background documentation as outlined 36 CFR Section 800.8(b) and (c) to the Council with such notification.
- B. The Municipality and Pennsylvania SHPO **shall not** execute Standard Mitigation Agreements when one or more of the following circumstances exist.
1. The Municipality, in consultation with DCED's Preservation Professional(s), determines that the Standard Mitigation Agreement does not apply to an undertaking.
 2. The Municipality **objects** to the Standard Mitigation Agreement proposed by the Pennsylvania SHPO.
 3. The Pennsylvania SHPO and the Municipality fail to reach agreement within sixty (60) days.
 4. The undertaking will adversely affect a National Historic Landmark.
 5. There is widespread public interest.
 6. Litigation is pending regarding the undertaking.
 7. Human remains are present within the area of potential effect.

IX. DISCOVERY

If previously unidentified historic properties, including archaeological properties, are discovered during project construction, the Municipality will stop that portion of the project immediately. The Municipality will immediately consult with DCED's Preservation Professional(s) and the Pennsylvania SHPO to develop a plan to evaluate the eligibility of properties and to develop an appropriate treatment or mitigation plan in accordance with Stipulation IV and V. The Pennsylvania SHPO shall provide written comments to the Municipality within 30-days or less. The Municipality will implement treatment or mitigation plans once approved by the Pennsylvania SHPO.

X. PUBLIC PARTICIPATION

- A. Each year DCED will notify the public of Municipalities that have received Small City CDBG funds for undertakings subject to Section 106 reviews. As part of their environmental review, the Municipality shall make available for public inspection documentation about the Municipality's Small Cities CDBG funded projects or programs and information regarding the identification and evaluation of historic properties and the proposed treatment of those properties.
1. The Municipality shall forward to DCED's Preservation Professional(s) any comments received by Municipality from the public expressing concerns regarding the identification and evaluation of historic properties or the proposed treatment or mitigation plans proposed for affected properties.
 2. DCED's Preservation Professional(s) will ensure that the Municipality responds to all public comments and forwards a copy of their response to the Pennsylvania SHPO. When appropriate, the Pennsylvania SHPO and Council may participate in the resolution of public objections.

XI. DISPUTE RESOLUTION

- A. Should the Pennsylvania SHPO object within thirty (30) days to any documents or actions as set fourth in this Agreement, the Municipality, and as appropriate DCED's Preservation Professional(s), shall consult with the Pennsylvania SHPO to resolve the objection. If Municipality determines that the objection cannot be resolved, the Municipality shall request the recommendations of the Council. The Council shall respond

within 30-days following receipt of pertinent documentation.

- B. Any Council recommendation provided in response to such a request will be taken into account by the Municipality and DCED in accordance with 36 CFR Part 800.6(c)(2) with reference only to the subject of the dispute; the Municipality's responsibility to carry out all actions under this Agreement that are not subjects of the dispute will remain unchanged.

XII. COORDINATION WITH OTHER HUD OR FEDERAL PROGRAMS

In the event that the Municipality receives additional funding from HUD or other Federal agencies to assist with an undertaking receiving Small Cities CDBG funds, HUD or the Federal agency may satisfy their Section 106 compliance responsibilities by accepting and complying with the terms of this Programmatic Agreement. The Municipality will consult with DCED prior to formalizing such arrangements. HUD or the Federal agency shall notify the Pennsylvania SHPO and the Council in writing of its intent to comply with the requirements of Section 106 by coordinating with the Municipality and complying with the terms of this Agreement.

XIII. REPORTING AND MONITORING

- A. DCED will maintain all paper Section 106 environmental review files for a period of 7 years after creation in the DCED file room where they will be subject to review by the PA SHPO upon request. The DCED Preservation Professional(s) will also create and maintain files electronically on the PHMC ER Database which can be queried to provide reports on reviews undertaken as part of this Programmatic Agreement.
1. Municipalities shall provide to the DCED Preservation Professional an annual report of the location and type of exempt activities carried out pursuant to this Programmatic Agreement. Municipalities are also subject to monitoring by DCED CDBG Grant Managers or the DCED Preservation Professional(s) to assure compliance.
 2. DCED and the Pennsylvania SHPO will meet annually to discuss the effectiveness of the Programmatic Agreement and suggest any desired changes and to provide clear communication between the two agencies.
 3. The DCED Preservation Professional(s) will participate in the staff meetings of both DCED and the PA SHPO for

full integration into both programs and enhanced communication of program goals.

XIV. TRAINING

- A. DCED, in coordination with the Pennsylvania SHPO, shall conduct an annual training program for Municipalities to review the requirements of this Programmatic Agreement and to provide technical assistance to Municipalities in identifying and evaluating historic properties and developing treatment plans and Standard Mitigation Agreements.
- B. DCED shall develop guidance that will assist Municipalities and project applicants and sponsors in complying with the terms of this Programmatic Agreement. All guidance documents shall be submitted to the Pennsylvania SHPO for review and comment prior to their distribution.

XV. EFFECTIVE DATE

This Programmatic Agreement shall take effect on the date it is signed by DCED, and the Pennsylvania SHPO. A copy of the fully executed agreement shall be filed with the Advisory Council on Historic Preservation as required by Section 106 of the National Historic Preservation Act. The Agreement will remain in effect through December 31, 2013.

XVI. AMENDMENTS

- A. Any party to this Programmatic Agreement may request an amendment or addendum to the Agreement, whereupon DCED, the Pennsylvania SHPO and the Council will consult in accordance with 36 CFR Section 800.13 to consider such revisions.
- B. Any resulting amendments or addenda shall be developed and executed among DCED; the Pennsylvania SHPO, and the Council in the same manner as the original Programmatic Agreement.

XVII. TERMINATION

Any party to this Programmatic Agreement may terminate the Agreement by providing sixty (60) calendar 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.

XVIII. Renewal

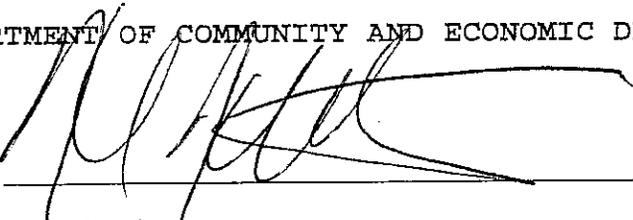
This Programmatic Memorandum of Agreement will continue in force through and including December 31, 2013. At the end of calendar year 2012, it will be reviewed by DCED and the PA SHPO for possible modifications, termination, or extension.

XIX. FAILURE TO COMPLY

In the event that DCED fails to ensure that the Municipalities carry out the terms of this Programmatic Agreement, the Municipalities will comply with the Council's regulations with regard to each individual Small Cities CDBG project or program funded by DCED.

EXECUTION and IMPLEMENTATION of this Programmatic Agreement evidences that DCED has satisfied its Section 106 responsibilities for all individual undertakings funded through the Small Cities CDBG Program.

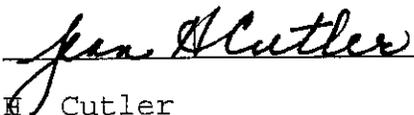
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

By: 

Date: 1-12-09

Kenneth Klothen,
DCED Deputy Secretary for Community Affairs & Development

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: 

Date: 1-27-09

Jean E. Cutler
Deputy SHPO, Pennsylvania Historic & Museum Commission