

**PROGRAMMATIC AGREEMENT
AMONG
THE CITY OF ALLENTOWN,
PENNSYLVANIA AND
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
REGARDING HISTORIC PROPERTIES AFFECTED BY USE OF FUNDING
FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 58 PROGRAMS**

WHEREAS, the City of Allentown, 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 September 29, 2003 (and as may be amended) including but not limited to the following Programs (as specified in 24 CFR Part 58.1):

- Community Development Block Grant Program (CDBG)
- Emergency Solutions Grant Program (ESG)
- HUD Healthy Homes Program
- HOME Investment Partnerships Program (HOME)
- Supportive Housing Program (SHP) and its predecessors
- Shelter Plus Care Program
- Special Projects Appropriated Under an Appropriations Act for HUD
- Section 8 Project Based Assistance Program including Single Room Occupancy
- FHA Multifamily Housing Finance Agency Pilot Program
- Economic Development Initiatives

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 has been designated a Certified Local Government under Section 101(a)(c) of the National Historic Preservation Act as amended and its implementing regulations found at 36 CFR Part 61; and as such has qualified staff which possess the professional expertise necessary to evaluate properties which may be significant in the fields of architecture, history and/or archaeology; this staff meets the appropriate qualifications set forth in 36 CFR Part 61 and is knowledgeable in work relevant to the City; and

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

WHEREAS, the City, in coordination with the Pennsylvania State Historic Preservation Office (SHPO), will create a work plan for a Historic Resources Survey (Survey Plan) within five years of execution of this Agreement that is designed to identify and update cultural resources surveys in those areas where there are active or planned projects; and

WHEREAS, the City and HUD have determined that the implementation of covered HUD Programs during program years 2016-2021 may affect properties listed 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 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 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 will ensure that all historic preservation work pursuant to the Agreement is carried out by or under the direct supervision of a person(s) who meets The Secretary of the Interior's Professional Qualifications Standards published in 36 CFR Part 61 (hereinafter referred to as Certified Staff).
- B. The City will notify the SHPO in writing annually of the 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 will 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 will consult to develop alternative administrative procedures for implementing this Agreement.

II. CONSULTATION WITH INDIAN TRIBES

When the City administers Programs, or serves as the responsible entity for grant recipients under Programs, that are funded by HUD and for which HUD provides for the City to assume HUD's environmental review responsibility, the City will follow the procedures outlined in 24 CFR Part 58 and HUD Notice CPD-12-006.

III. REVIEW PROCESS

- A. The City will ensure that City Program Staff, community development corporations, registered community organizations, other 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, will 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 will 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. AREA OF POTENTIAL EFFECTS

- A. The Area of Potential Effects (APE) for undertakings covered by this Agreement will be limited to the legal lot lines of a property

when the Program activity consists exclusively of rehabilitating a property's interior or exterior features except when the project is located in a National Register-listed or eligible historic district.

- B. The APE for general construction and installation of infrastructure, when the project is located in a National Register-listed or eligible historic district, will be as follows:
 - 1. Water, sewer, and any other utility lines; the APE will be the trunk of the water, sewer and other utility lines.
 - 2. Curb cuts for disability access; the actual curb cut area under construction will be the APE.
 - 3. Pavements; the APE will be the pavement structure and pavement base.
 - 4. For all other infrastructure improvements the APE will be analogous in purpose, structure, and location to the APE for those improvements listed in subsections 1 through 3 above.
- C. In all other cases, Certified Staff will determine and document the APE, in accordance with 36 CFR Part 800.16(d).

V. IDENTIFICATION AND EVALUATION

City Program Staff and/or HUD Program fund recipients will submit review requests 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. Certified Staff will also review all existing information on any property within an undertaking's APE, as required by 36 CFR Part 800.4, to determine if such properties may be historic properties and assess the potential for effects to historic properties.

- A. Certified Staff will consult the National Register listings for the City using the SHPO's Cultural Resources Geographic Information System (CRGIS), as well as building and block files, survey forms, maps and database maintained by the City. For properties that may be affected by an undertaking and have not previously been evaluated for National Register eligibility, Certified Staff will use the National Register Criteria to determine if the property is eligible either individually or as part of a historic district. If district potential has not been previously investigated, the Certified Staff will

consider the potential for a district. The Certified Staff will also consider whether the property is clearly eligible under National Register Criterion Consideration G, and is therefore a property achieving significance within the past 50 years because it is of exceptional importance. The City is not required to submit such determinations individually to the SHPO for review but will submit a list of such properties annually as part of the documentation required pursuant to Stipulation XIV (Monitoring and Documentation).

- B. Certified Staff will forward initial findings, within 30 days, to the responsible City Program Staff to advise City Program Staff as to the potential effect of undertakings on historic resources. If City Program Staff objects to initial findings, the Certified Staff will consult with the SHPO and, as appropriate, the Keeper of the National Register in accordance with Stipulation V.E through V.I (Identification and Evaluation) 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 will be on file with Certified Staff. A copy of these determinations will also be maintained in each individual project/activity file by relevant City Program Staff.
- D. If the Certified Staff determines that a Program activity will have no effect on any historic properties, it will document the basis for that determination and the activity may proceed as planned. These determinations will be on file with Certified Staff. A copy of these determinations will also be maintained in each individual project/activity file by relevant City Program 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 will 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 will 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.

VI. UNDERTAKINGS NOT REQUIRING REVIEW BY THE SHPO OR THE ACHP

The following undertakings, which have limited potential to affect historic properties, do not require review by SHPO, federally recognized tribes or ACHP and no signatory is required by this Agreement to determine the National Register eligibility of properties affected by these undertakings. These undertakings will be determined by Certified Staff.

- A. Undertakings whose effects are limited to properties that are less than fifty (50) years old, unless the affected properties could meet Criterion Consideration G.
- B. Undertakings limited exclusively to interior portions of single-family residential properties where the proposed work will not be visible from the property's exterior, unless a building is individually listed or considered eligible for individual listing in the National Register.
- C. Undertakings limited exclusively to the activities listed in Appendix 1 of this Agreement.
- D. Documentation concerning these determinations will be maintained in each individual project file by relevant City, sub-recipient or Non-Governmental Grant Recipient program management staff. Files will be made available for review by Certified Staff, or the SHPO, in accordance with Stipulation XIV (Monitoring and Documentation) of this Agreement.

VII. 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 resources within a National Register-listed or eligible historic district will be treated as follows. The City will be responsible for assuring compliance with the following stipulations.

A. Rehabilitation

Rehabilitation of historic properties which include activities other than those in Stipulation VI (Undertakings Not Requiring Review by the SHPO or the ACHP) will be undertaken in the following manner:

1. Activities will be carried out following the recommended approaches in the *Secretary of the Interior's Standards for Rehabilitation*.
 - a. Certified Staff will review project scopes of work, plans, and 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 will 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 City Program Staff will 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 will 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 VIII (Resolution of Adverse Effects) prior to taking any action on the project. If a Standard Mitigation Measures Agreement (SMMA) is developed and executed by the City and the SHPO, and if

no other provision of the Agreement requires the City to take further steps with respect to the undertaking, the Certified Staff will document the actions taken in the manner prescribed by Stipulation V.C (Identification and Evaluation) and may authorize the undertaking to proceed without further review.

3. When the proposed rehabilitation does not conform to the *Standards*, and it has been determined that a SMMA is not applicable to the undertaking in accordance with Stipulation VIII.C (Resolution of Adverse Effects) criteria, the Certified Staff will consult with the SHPO and other consulting parties regarding alternatives to avoid, minimize, or mitigate the adverse effects. The Certified Staff will 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 City 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 VIII (Resolution of Adverse Effects) of this Agreement.
 - g. Any relevant comments received from consulting parties and/or the public.

4. If a property owner submits a Federal Rehabilitation Investment Tax Credit Part 2 Historic Preservation Certification Application to the National Park Service (NPS), the review required by the certification process will supersede the review outlined in Stipulation VII.A. If the

undertaking receives Part 2 Certification from NPS without conditions, it will be deemed to conform to the *Standards* and will require no further review under this Agreement. If the undertaking is certified with conditions, the City will require that the undertaking be changed in accordance with the conditions before granting any discretionary approval. If the undertaking is changed in accordance with the conditions, no further review under this Agreement will be required. The Certified Staff will document the successful completion of the Part 2 Certification Process and may authorize the undertaking to proceed.

B. Additions and New Construction

1. Certified Staff will ensure that additions to historic buildings or contributing buildings within historic districts will adhere to the *Standards* and be consistent with Guidelines in National Park Service Preservation Brief #14: *New Exterior Additions to Historic Buildings: Preservation Concerns*.
2. The Certified Staff will review appropriate project documents, including preliminary and final plans, to determine conformance of the undertaking to the design requirements set forth in Stipulation VII.B.1.
3. If the *Standards* cannot be met, or if the proposed action could have an adverse effect on properties listed in or eligible for the National Register, then prior to taking any action, the Certified Staff will follow the procedures set forth in Stipulation VII.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, chair lifts, and elevators will not be located on primary elevations of historic buildings and will not result in the removal of significant historic or architectural features or materials.

3. Preliminary and final plans and specifications for handicapped accessibility projects will be developed and approved in accordance with the procedures set forth in Stipulation VII.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 will follow the procedures set forth in Stipulation VII.A.2 and 3 of this Agreement.

D. Site Improvements and Public Improvements

1. Site improvements and public improvements within, or adjacent to, listed or eligible historic districts, including, but not limited to, installation or repair of streets/curbs/sidewalks, landscaping, street lighting, and street furniture, and water/sewer/utility lines, will 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 in Stipulation VII.A.1 of this Agreement.
3. If the project involves emergency repairs to existing site and public 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 will follow the procedures set forth in Stipulation VII.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 will consult with Certified Staff to explore alternatives to minimize alteration of significant historic features. Evaluation of abatement and reduction activities will be based upon the *Standards*, HUD's *Chapter 18: Lead-Based Paint and Historic Preservation* found in *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (2012 Edition)

(<http://portal.hud.gov/hudportal/documents/huddoc?id=lbph-20.pdf>) , and National Park Service Preservation Brief #37: *Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*.

2. Preliminary and final plans will be developed in accordance with the procedures set forth in Stipulation VII.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 VII.A.2 and 3 of this Agreement.

F. Archaeological Resources

1. All archaeological investigations will be carried out in accordance with the *Secretary of the Interior's Standards for the Conduct of Archaeological Surveys*.
2. The following types of ground-disturbing activities have the potential to affect archaeological resources:
 - a. Ground-disturbing site preparation, such as grading or excavation, in connection with property relocation or new construction.
 - b. Footing and foundation work occurring more than two feet from any existing footings or foundations, including soils improvement/densification techniques.
 - c. Installation of underground utilities such as sewer and water lines, storm drains, electrical, gas or leach lines and septic tanks, except where installation is restricted to areas previously disturbed by installation of these utilities.
 - d. Installation of underground irrigation or sprinkler systems, except where installation is restricted to areas previously disturbed by such systems.
 - e. Landscaping, tree and vegetation plantings.
 - f. Excavations required for drainage improvements.
 - g. Excavations required for geotechnical and soils percolation purposes.

demolitions in its project files and submit copies of documentation to the SHPO as part of the annual report. 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 will forward documentation to the SHPO via email clearly marked Emergency Demolition, 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 will include, if time permits:
 - a. A copy of the official order citing the condition and mandating the demolition (made in accordance with local building codes);
 - b. An assessment of the historic property's current condition supplemented by photographs;
 - c. Documentation regarding the property's eligibility;
 - d. A site location map;
 - e. The date by which the emergency conditions must be abated; and
 - f. The comments of Certified Staff.

A copy of this documentation will be maintained by the Certified Staff and City 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 will be included in the project file and the files of Certified Staff. If the SHPO objects to an Emergency Demolition request, the undertaking will be submitted to the ACHP in accordance with 36 CFR Part 800.

3. Non-Emergency Demolition. Demolition of any historic property will be reviewed on a case-by-case basis with the SHPO and ACHP in accordance with 36 CFR Part 800. Documentation to be submitted to the SHPO will include:

- a. An explanation of the need for demolition, including documentation of any building code violations and an independent structural analysis of the property (if demolition of the property is required in whole or in part due to lack of structural integrity as determined by a certified engineer);
- b. Documentation regarding the property's eligibility (individually or as contributing to a historic district);
- c. A site location map;
- d. Written statement and photographs showing the condition of the property and significant architectural features;
- e. Discussion of future plans for the site;
- f. The comments of Certified Staff including finding of adverse effect;
- g. Documentation of measures taken to solicit comments from the public and other consulting parties and comments received; and
- h. A proposed mitigation plan.

The City Program Staff will 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.

VIII. RESOLUTION OF ADVERSE EFFECTS

A. Standard Mitigation Measures Agreements

1. If the Certified Staff or SHPO determine that a non-demolition project meets the Criteria of Adverse Effect set forth in 36 CFR Part 800.5, it will 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 2 or if the consultation process set forth in 36 CFR Part 800.6 should be initiated. The Certified Staff will 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. Also include high-resolution digital color photographs of each existing elevation and any significant architectural features or elements.
 - ii. For new construction, include an explanation of why plans and specifications cannot be developed to meet the *Standards*. Also include high-resolution digital photographs of the historic property, historic district, or adjacent historic properties which will be adversely affected by the project.
 - c. Comments and recommendations from the Certified Staff.
 - d. An analysis of alternatives that were considered, including those that avoid or minimize effects to historic properties.
 - e. The proposed Standard Mitigation Plan for the historic properties, prepared in accordance with Appendix 2, "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 the SMMA must be clearly specified.
 4. A copy of the fully executed SMMA will 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 will 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 VIII.A.1-4 of this Agreement.

B. Comprehensive Mitigation for Redevelopment Plans

For projects involving large comprehensive redevelopments that have the potential to have an adverse effect on historic properties (such as 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, 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 VII.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 a CMP must be clearly specified in the SMMA.
3. A copy of the fully executed SMMA will be maintained and distributed by the Certified Staff in accordance with Stipulation VIII.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 will 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 will provide access to project files and sites. These reports will be integrated into the annual report referenced in Stipulation XIV (Monitoring and Documentation) 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 will be reviewed on a case-by-case basis in accordance with Stipulations VI and VII.A of this Agreement.

C. Situations Where SMMA(s) Are Not Applicable

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

1. The Certified Staff or SHPO determine that Appendix 2 Stipulations do not apply.
2. The Certified Staff and SHPO cannot agree on a Plan in accordance with Stipulation VIII.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 archaeological resources will be adversely affected.
6. The undertaking will affect a National Historic Landmark (NHL).

IX. COORDINATION WITH OTHER FEDERAL AGENCIES

- A. Other Federal agencies providing permits, licensing, or 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 will 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 will 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 Rehabilitation Investment Tax Credit review by the SHPO and NPS, the Certified Staff will consult with the relevant City staff and SHPO staff to discuss coordination of compliance requirements.

X. REVIEW OF CHANGES TO APPROVED UNDERTAKINGS

- A. The City will notify the SHPO upon discovery if:
 - 1. Previously approved scopes of work, plans or specifications for an undertaking are changed so that:
 - a. The undertaking is no longer exempt from review pursuant to Stipulation VI (Undertakings Not Requiring Review by the SHPO or the ACHP), and
 - b. The nature of the change is such that the terms of this Agreement require the City to consult with the SHPO about the modified undertaking; or
 - 2. Amendments to previously executed SMMA's are proposed.
- B. If such changes or amendments are proposed and not otherwise precluded by other Stipulations in this Agreement, the City and the SHPO will comply with the provisions of Stipulation VII (Treatment of Historic or Contributing Properties) or VIII (Resolution of Adverse Effects) in making any changes or amendments to the undertaking or to any SMMA.

XI. POST REVIEW DISCOVERIES/DISCOVERY AND TREATMENT OF HUMAN REMAINS

- A. If any unanticipated effects to historic properties are encountered during the implementation of an undertaking, the City will comply with 36 CFR 800.13 by consulting with the SHPO, interested Consulting Parties, and if applicable, identified federally recognized tribes that attach religious and/or cultural significance to the affected property; and by developing and implementing actions with the concurrence of the City, the SHPO and the ACHP and if applicable, federally recognized tribes.

- B. The treatment and disposition of any inadvertently discovered human remains, graves or grave-associated artifact within an APE will be managed in a manner consistent with NAGPRA and its implementing regulations (36 CFR 10) and, where applicable, the ACHP's February 23, 2007 Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects. Treatment will also follow the SHPO's Policy on Treatment of Human Remains (BHP 2008).

XII. EMERGENCY SITUATIONS

Should an emergency situation occur which represents an imminent threat to public health or safety, or creates a hazardous condition, or in the event of a Presidentially declared disaster, the City will immediately notify the SHPO and the ACHP of the condition which has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the SHPO or the ACHP desire to provide technical assistance to the City, they will submit comments within seven (7) calendar days from notification, if the nature of the emergency or hazardous condition allows for such coordination.

XIII. 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 will consult with the SHPO to resolve the objections. If the City determines that the objections cannot be resolved, the Certified Staff will request the recommendation of the ACHP. The ACHP will provide its recommendation within 45 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 City 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.

XIV. 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 properties 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 properties. The City, unless it has already done so, will submit a copy of the public notification procedures to the ACHP. Public notification and involvement procedures will 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, and seek public comment and input. 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 properties 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 properties 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 Certified Staff will be available, as appropriate, for any public hearings, City Council meetings, Planning Commission meetings, Community Group meetings, etc., planned to discuss Program activities determined to have a potential effect on National Register-listed or eligible historic properties.
- C. The City will 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 will 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.

XV. PUBLIC OBJECTIONS

- A. In those cases when a public objection to a finding pursuant to this Agreement is received by the City, Certified Staff will notify the SHPO immediately of the objection and then proceed to consider the objection and consult, as needed, with the objecting party and the SHPO, to resolve the issue.
- B. When the Certified Staff is unable to resolve the objection to the satisfaction of the objecting party, the Certified Staff will forward all

relevant documentation to the ACHP, as appropriate. The City, in reaching a final decision regarding the dispute, will take any ACHP comment provided into account.

XVI. MONITORING AND DOCUMENTATION

- A. The SHPO and ACHP may monitor or review activities carried out pursuant to this Agreement, and the ACHP will review any activities, if requested. The City will cooperate with the SHPO and the ACHP in carrying out these monitoring and review activities by making all relevant non-privileged files available for inspection, upon reasonable notice from the SHPO and ACHP.

- B. Certified Staff will 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. The report will include the project names, project addresses, description of work completed, and any determinations of eligibility and project effects made by Certified Staff. The first report will be submitted by the City on or before September 30, 2017, and subsequent reports on or before January 31 following the end of each calendar year thereafter. The signatories to this Agreement will review this information to determine what, if any, amendments are necessary.

The City will ensure that the annual report is made available for public inspection, that potentially interested members of the public are made aware of its availability, and that interested members of the public are invited to provide comments to the SHPO as well as the City.

The SHPO will review the annual report and provide comments to the City.

At the request of any party to this agreement, the City will ensure that a meeting or meetings are held to facilitate review and comment or to resolve questions.

- C. Certified Staff will maintain records documenting its Section 106 review and approval procedures in accordance with this Agreement. Records maintained will include, but not be limited to, eligibility determinations, survey forms, maps, electronic files, and project files. Project files will contain, but are not limited to, project site photographs, work write-ups and plans, approval letters, memoranda, meeting minutes and correspondence.

- D. The City Program Staff will 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.
- E. 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.

XVII. TECHNICAL ASSISTANCE AND EDUCATIONAL ACTIVITIES

- A. The SHPO's staff will 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. This will include meetings of SHPO National Register staff and Certified Staff to review any changes to documentation standards, relevant historic context, and approaches to application of National Register criteria and levels of integrity.
- B. The Certified Staff will 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 will be construed as meaning that the City and/or its Certified Staff cannot request the advice or assistance of the SHPO at any time.

XVIII. 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.

XIX. AMENDMENT/RENEWAL

The Agreement will become effective on the date of the last signing and will continue in force through December 31, 2021. At the request of any of the parties, this Agreement may be reviewed for possible modification or termination at any time in accordance with 36 CFR 800.14. Any amendment or addendum will 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 24 CFR Part 58 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 Stipulations of this Agreement.

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

Date

Date

MAYOR, CITY OF ALLENTOWN

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 willow pitch roof repair/replacement (willow 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 existing 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 existing 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 lead paint abatement activities that are considered retention, repair or maintenance of historic features.

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.
- 3. Maintenance and repair of existing features, including landscape features, within existing parks and playgrounds, 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 – that require less than four (4) inches of ground disturbance.
- 5. Repair or replacement of fencing or retaining walls when the work is done in-kind to match closely the existing material and form and when there is no disturbance of soils that have not been previously disturbed.

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 in existing buried utility 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

STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The City, in cooperation with the Certified Staff and SHPO, may develop and execute an Agreement that includes one or more of the following Standard Mitigation Measures, as may be modified to a particular activity, with the concurrence of both parties, for undertakings determined to have an adverse effect on National Register-listed or eligible historic properties. The ACHP will not be a party to these Agreements. However, the Certified Staff must submit a copy of each signed Agreement to the relevant City Program Staff, SHPO, and the ACHP within 30 days after it is signed by the SHPO and City.

1. Preservation Public Outreach Efforts

- a. To encourage greater understanding and appreciation of history and heritage within the community, the City will develop appropriate public outreach efforts, in consultation with the SHPO and interested parties. Such efforts may include any activity to engage or educate the community and general public, such as websites, brochures, booklets, films, informational kiosks, lesson plans, exhibits, presentations, commemorative markers or plaques, and workshops or classes.

2. Rehabilitation

- a. The City will ensure that the treatment of historic properties, which the SHPO or Certified Staff has determined does not meet the *Standards*, or SHPO-approved design guidelines, is carried out in accordance with treatments agreed to by the SHPO or Certified Staff and are incorporated in the final plans and specifications. The final plans and specifications will be approved by the SHPO or Certified Staff.
- b. The City will ensure that the design of new buildings, or additions, which the SHPO or Certified Staff has determined does not meet the *Standards*, or SHPO-approved design guidelines, is carried out in accordance with the final plans and specifications reviewed and approved by the SHPO or Certified Staff.

3. Comprehensive Mitigation Plans (CMP)

- a. The City, in cooperation with the Certified Staff and SHPO, may develop a Comprehensive Mitigation Plan to cover a range of activities consistent with formally approved planned area-wide or neighborhood-based redevelopment strategies for distressed neighborhoods. Such redevelopment strategies may be deemed appropriate to facilitate the implementation of activities in an Empowerment Zone, urban renewal area, or other targeted redevelopment areas. These Comprehensive Mitigation Plans (CMP) will be implemented in accordance with the procedures, standards, design guidelines, documentation and reporting requirements governing the implementation of area-wide activities outlined in the SMMA.

4. Architectural Salvage

- a. The City, in consultation with the SHPO or Certified Staff, will identify appropriate non-profit organizations with sufficient staff and space to receive salvaged architectural features. The City will ensure that any architectural features identified for salvage are properly removed prior to initiation of activities and shall ensure that the salvaged features are securely delivered to the organization.

5. Recordation

- a. The City will ensure that the historic property is recorded prior to its alteration in accordance with Historic American Buildings Survey (HABS) standards or a SHPO-approved Recordation Plan. At minimum, this Plan will establish recordation methods and standards. The SHPO will identify appropriate archive locations for the deposit of recordation materials and the City will be responsible for submitting required documentation to identified archive locations. The Certified Staff and SHPO may mutually agree to waive the recordation requirement in situations where the integrity of a building has been compromised or other representative samples of an architectural type have been previously recorded.

6. Historic Properties Surveys or Reports

- a. The City, in consultation with the SHPO, will prepare or contract for the preparation of a survey or report to document the appearance and condition of historic buildings, structures, districts, and landscapes in the community. The type and level of documentation will be based on the needs of the community and the nature of the historic properties affected by the project. Examples of historic

property surveys and reports appropriate for mitigation might include historic preservation plans, National Register nominations, management plans, historic structures reports, feasibility studies, architectural surveys, and condition reports.

7. Marketing of Buildings or Structures

- a. The City, in consultation with the Certified Staff and SHPO, will develop plans to stabilize the historic building(s) prior to marketing efforts to ensure that the buildings are in suitable condition for rehabilitation or relocation. The City will prepare a marketing package for the properties for distribution to potential buyers, with both the package and the distribution list subject to the approval of the SHPO. When feasible, the building or structure will be transferred with preservation covenants or restrictions to ensure preservation of the property's character-defining features.

8. Research and Data Recovery Plans for Archaeological Resources

- a. The City, in consultation with the Certified Staff and SHPO, will develop research and data recovery plans for significant archaeological sites in cooperation with the SHPO.