

**PROGRAMMATIC AGREEMENT  
BETWEEN THE CITY OF YORK,  
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FOR U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT-FUNDED PROGRAMS  
ADMINISTERED BY THE CITY OF YORK, PENNSYLVANIA**

**WHEREAS**, the City of York, Pennsylvania (hereafter known as "City"), now, or may in the future, administer the U.S. Department of Housing and Urban Development (hereafter known as "HUD") Programs, or serve as the responsible entity for a grant recipient under current or future HUD Programs, which are funded by HUD under statutes that authorize HUD to provide for assumption of environmental responsibilities by units of general local government, in accordance with HUD's Environmental Review Procedures, 24 CFR Part 58, which were published in the Federal Register on April 30, 1996, as may be amended from time to time, which may include, among others, HUD's Community Development Block Grant Program, HOME Investment Partnerships Program, Supportive Housing Program, and Special Projects Appropriated Under an Appropriations Act for HUD; and

**WHEREAS**, the City will assist HUD with the administration of HUD's Section 106 compliance responsibilities for programs funded under statutes that do not authorize HUD to provide for assumption of environmental responsibilities by a responsible entity; and

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

**WHEREAS**, the City of York designates Historic York, Inc., a nonprofit organization dedicated to the recognition and rehabilitation of York County architecture, as the initial certified staff under this Programmatic Agreement (hereafter known as "Agreement") and Historic York, Inc. has participated in the consultation process and is invited to concur in this Agreement; and

**WHEREAS**, the City has determined that the implementation of these programs during program years 2005 through 2010 may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places, and has consulted with the Pennsylvania State Historic Preservation Officer (hereafter known as "SHPO") and the Advisory Council on Historic Preservation (hereafter known as "ACHP"), pursuant to 36 CFR 800.14(b) of the regulations governing the implementation of Section 106 of NHPA;

**NOW THEREFORE**, HUD, the City, the SHPO, and the ACHP agree that projects assisted with funds from these programs shall be implemented in accordance with the following Stipulations in order to take into account the effect of projects 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 Qualification Standards published in Appendix A, 36 CFR Part 61.
- B. The City will notify the SHPO annually of the staff person(s) or consultants the City intends to designate to administer this Agreement. The SHPO will evaluate the designee's training and experience and advise the City if they are qualified to make determinations of eligibility, assess, effect, and apply the Standards (hereafter known as "Certified Staff"). The City's designee must be reported to the SHPO.
- C. The City will notify the SHPO of any proposed staffing changes or vacancies. If the City does not have Certified Staff in place or if the SHPO determines that a City staff person or consultant is not qualified to carry out the review, the City and the SHPO shall consult to develop alternative administrative procedures for implementing the Agreement.

### 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 City will notify, by letter, the Tribal Leaders on the list of Indian Tribes provided by the SHPO. The City will ask the Tribal leaders if they are interested in participating in the City's Section 106 review process in accordance with 36 CFR Part 800.3(f). Indian Tribes that respond in the affirmative, providing a demonstrated interest, will be consulted in the same manor as the SHPO, as described in this Agreement.

### III. Identification and Evaluation

- A. The City, in accordance with 36 CFR 800.4 (b) and (c) has identified and evaluated historic properties that may be eligible for listing in the National Register which are included in the York City Historic Survey. The Historic District map is included as Attachment A. The City has contracted with Historic York, Inc., to undertake a systematic review of the historic districts and update, a contract that may be renewed and extended over the next several years to cover identification and evaluation of other properties outside the districts that may be eligible for listing in the National Register.
- B. The City's Certified Staff will evaluate properties over 50 years old that have not been previously evaluated against National Register criteria. Those properties and districts determined eligible for listing in the National Register by the City's Certified Staff will be treated as National Register-eligible properties under the terms of this Agreement.

- C. Documentation on National Register-eligible properties identified in Stipulations II. A. and B. above will include maps, photographs, a statement of significance and a physical description. In the case of potential National Register-eligible historic district, the documentation will include a list of each property in the potential historic district by address and a notation of whether the property is contributing or non-contributing to the historic district.
- D. In the event that the City is unable to make a determination on whether a property is eligible for listing in the National Register and/or a contributing element to an historic district, the City will forward all documentation to the SHPO for evaluation.
- E. If the SHPO's opinion is not rendered within 30 days of receipt of the submission of adequate documentation (BHP Resource Form), the City will assume that the SHPO is in agreement with the City's determination concerning eligibility.
- F. If the City and the SHPO disagree about whether the property meets National Register criteria or the ACHP or the Secretary of the Interior so requests, the City will request a formal Determination of Eligibility from the Keeper of the National Register in accordance with 36 CFR Section 800.4(c)(2).
- G. The City will keep a written record of the consultation process with the SHPO and Keeper of the National Register.
- H. If the City determines that no historic properties are involved in a Program activity, the City will document the basis for that determination and include a copy in the individual project files.

#### IV. Activities Not Requiring Review

The following proposed undertakings, which have limited potential to affect historic properties, may be approved by the Certified Staff without further consultation with the Pennsylvania SHPO or ACHP when the rehabilitation is limited solely to such activities.

##### A. Rehabilitation

##### 1. Exterior

- a. Caulking, weather-stripping, re-glazing, scraping and/or repainting.
- b. Flat or shallow pitch roof repair/replacement (shallow pitch is understood to have a rise-to-run ratio equal to or less than 3" to 12").
- c. Window repair and/or replacement - in-kind is understood to mean new windows that duplicate the material, dimensions, design, detailing, and operation of the historic windows.
  - (1). Repair, scrape, repainting of existing windows.
  - (2). In-kind replacement of window sash, glass and hardware, including jam tracks.
  - (3). In-kind replacement of damaged and non-operable transoms.
- d. Storm windows and doors - provided that they conform to the shape and size of the 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 feature/items will duplicate the material, dimensions and detailing of the original:
  - (1). Porches - railings, posts/columns, brackets, cornices, steps, flooring and other decorative treatments.
  - (2). Roofs.
  - (3). Siding.
  - (4). Exterior architectural details and features.
  - (5). Cellar/bulkhead doors.
  - (6). Doors.
  - (7). Gutters and downspouts.
- f. Masonry repair using materials, mortar composition, color, joint profile, and width that match the historic materials.
- g. Rebuilding of wheelchair ramps.
- h. In-kind repair or replacement of non-historic features.

## 2. Interior

- a. Plumbing rehabilitation/replacement - includes pipes and fixtures when no structural alteration is involved.
- b. HVAC system rehabilitation/replacement - 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. Interior surface treatments (floors, walls, ceilings, decorative plaster, woodwork) - provided the work is limited to repainting, in-kind patching, caulking, refinishing, repapering or laying carpet, or vinyl floor materials.
- e. Interior feature treatments including, but not limited to doors, moldings, fireplaces, and mantels provided the work is limited to in-kind repair, caulking, patching, repainting and refinishing.
- f. Insulation provided that it is restricted to ceilings and attic spaces.
- g. Restroom improvements for handicapped access - provided that work is contained within the existing restroom.
- h. Repairs to or pouring of concrete cellar floor, in an existing cellar.  
Repair or replacement of non-historical interior partitions.

## B. Site Improvements

- 1. In-kind repair or replacement of sidewalks, curbing, driveways, and ramps.
- 2. In-kind repair or replacement of site improvements including, but not limited to fences, retaining walls, and landscaping.

3. Line painting, maintenance, repair, resurfacing, or reconstruction of roads where no change in width, surfaces, or vertical alignment of drainage is to occur.
4. Repair to or replacement of water, gas, storm, and sewer lines if it occurs in the original trench. Disturbance to either side of the original trench will require consultation with the SHPO.
5. Repair and replacement of park and recreational equipment, with little or no change in location, type, material, or size.
6. Landscaping work limited to maintenance of or replacement of existing plants, shrubs, trees, etc.  
Repair and replacement of fencing when the work is done to match closely the existing material and form

C. Other

1. Mortgage refinancing - this is understood to mean that no change in use will occur.  
Acquisition - this is understood to mean that any future rehabilitation activities using HUD Program funds covered by this Agreement will be subject to Section 106 review.

V. Treatment of Historic or Contributing Properties

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

A. Rehabilitation

1. The City shall proceed with rehabilitation of properties that are not listed in, nominated or eligible for listing in the National Register, or those that are not adjacent to or located in historic districts that are National Register-listed or eligible for National Register listing.
2. Rehabilitation of historic or contributing properties will be done in accordance with the recommended approaches in The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (hereafter known as "Standards").
3. If an original architectural element has been previously replaced or removed or otherwise modified, the treatment of these elements will not have to replicate the original elements; however, reasonable efforts will be made to develop treatment plans that preserve the overall character of the property.
4. Pre-project documentation including work write-up's, bid documents, architectural plans and photographs, will be prepared by the City staff with

responsibility for the project and in consultation with the Certified Staff, as evidence of the City's application of the Standards.

5. Certified Staff will review the rehabilitation plans and issue a Letter of Approval verifying that the project will have no effect or no adverse effect, by virtue of meeting the Standards.
6. The documentation of each project will be retained by Certified Staff as part of the permanent project files and may be reviewed by the SHPO upon request, or as part of the annual report.
7. If the Standards cannot be met, or if the contemplated action could have an adverse effect on properties listed in or eligible for listing in the National Register, then prior to taking any action, the City will consult with the SHPO and initiate the procedures set forth in 36 CFR 800.6.
  - a. In those instances where the Standards cannot be met, and the City needs to consult with the SHPO, the following documentation shall be provided by the City to the SHPO: current photographs and a site location map on a U.S.G.S. map; a conditions assessment; an analysis of the alternatives; a cost analysis of the alternatives; and, the proposed mitigation measures.
  - b. The SHPO shall provide written comments within 30 days following receipt of documentation.
  - c. If the SHPO, find(s) the effect to be adverse, the City will proceed according to 36 CFR 800.6.
  - d. If no response is received within 30 days, the City will assume the SHPO agree(s) with the determination and notify the ACHP, in accordance with 36 CFR 800.6 and initiate procedures leading to the development of a Memorandum of Agreement to mitigate the Adverse Effects.

## B. New Construction and Additions

1. New construction that will be assisted with Program funds and located within an historic district or adjacent to historic properties included in or eligible for listing in the National Register will be designed to adhere to the guidelines for new construction contained in the Standards and be responsive to the overall character of the historic property in terms of height, scale, massing, set-backs, color, materials, and detailing. Preliminary plans will be sent to the Certified Staff for review and approval. Once the Certified Staff determines that the plans are compatible with the Historic Property, they will be sent to the SHPO for review unless alternative design guidelines are approved by the SHPO.

The SHPO will respond in writing to the City within 30 days of receipt of the preliminary plans. If there is no response within 30 days, the City will assume that the SHPO finds the plans in conformance with the Standards and may proceed. Prior to initiating construction activities, the City will contact the SHPO if written notification is not received. The final design will be consistent with preliminary approved plans, and modified to address any recommendations by the SHPO.

2. The design of infill construction on vacant parcels within historic districts or on parcels where historic properties have been demolished by the City under the terms of this Agreement and previous Agreements, shall adhere to the Standards and will be developed in consultation with the SHPO. Such designs will be submitted to the SHPO on a case-by-case basis or for a specific block or a target area where a prototype design(s) is proposed. The City shall inform the SHPO of program needs, budget constraints, and other mitigating measures related to the redevelopment project. Once the SHPO has approved a prototype(s) for an area, Certified Staff may review and approve subsequent new construction projects based upon prototype(s) developed for a block or target area.
3. Additions to historic buildings or contributing buildings within historic districts shall adhere to the Standards and be consistent with guidelines in National Park Service Preservation Brief #14, "New Exterior additions to Historic Buildings: Preservation Concerns." Plans for such additions must be reviewed and approved by the Certified Staff to ensure consistency with the Standards and guidelines.
4. If the Standards cannot be met, or if the contemplated action could have an adverse effect on properties eligible for listing in the National Register, then prior to taking any action, the City will consult with the SHPO and initiate the procedures set forth in 36 CFR 800.6 and as noted in Stipulation V. A. 7., above.
  - a. In those instances where the Standards cannot be met, and the City needs to consult with the SHPO, the following documentation shall be provided by the City to the SHPO: current photographs and a site location map on a U.S.G.S. map; a conditions assessment; an analysis of the alternatives; a cost analysis of the alternatives; and, the proposed mitigation measures.
  - b. The SHPO shall provide written comments within 30 days following receipt of documentation.

C. Handicapped Accessibility

- 1 The City will explore alternative methods for handicapped accessibility to historic buildings consistent with the Secretary of the Interior's Standards, National Park Service Preservation Brief No. 32 "Making Historic Properties Accessible", and the U.S. Department of the Interior's report Access to Historic Buildings for the Disabled: Suggestions for Planning and Implementation.
2. To the extent feasible, handicapped accessibility features (i.e. ramps and elevators) will not be located on primary elevations of historic buildings and will not result in the removal of significant historic or architectural features or materials. Final plans and specifications for handicapped accessibility projects will be reviewed and approved by the Certified Staff if the projects meet the guidelines. If the Standards cannot be met or if the project should have an adverse effect on a historic property, then prior to taking any action, the City will consult with the Pennsylvania SHPO and initiate the procedures set forth in 36 CFR part 800.6 and as noted in Stipulation V.A.(7)., above, before proceeding.

D. Site Improvements and Public Improvements

1. Site improvements and public improvements involving or adjacent to historic properties or within historic districts including sidewalk improvements, repaving of streets, installation of landscaping, street lighting, and street furniture must adhere to the Standards and will be designed to ensure that character defining elements of historic properties are preserved through repair or replacement in-kind. Any new materials or features introduced in a historic district will be responsive to the character of that district.
2. Final plans and specifications for site and public improvement projects will be reviewed and approved by the Certified Staff. If the Standards cannot be met or if the project could have an adverse effect on historic properties, then prior to taking any action, the City will consult with the Pennsylvania SHPO and initiate the procedures set forth in 36 CFR 800.6 and as noted in Stipulation V.A.(7)., above.

E. Property Disposition.

1. When disposing of historic or contributing properties acquired with HUD funds, which are listed in the National Register, eligible for listing in the National Register, or adjacent to a National Register-listed or eligible historic district, the City will consult with the Certified Staff to develop preservation covenants or conditions for inclusion in the transfer documents, to ensure preservation of the property's significant historic features and or no adverse effect on surrounding historic properties.



2. The City will submit proposed restrictions or conditions to the SHPO for approval, allowing 30 days from the SHPO's date of receipt for comments prior to the execution of the transfer document.
3. If the City and the SHPO cannot agree on acceptable restrictions or conditions, the City shall consult with the ACHP, in accordance with 36 CFR Part 800.6(b)(1)(v).

#### VI. Lead Paint Abatement/Hazard Reduction

- A. When it is determined that a property listed in or eligible for listing in the National Register, or a property located within a National Register District, must be decontaminated of lead paint hazards, the City will consult with its Certified Staff to explore alternatives to minimize alteration of significant historic features. Evaluation of abatement and reduction activities shall be based upon the Standards, HUD's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, and the National Park Service's Preservation Brief No. 37: "Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing."
- B. Treatment plans shall be reviewed and approved by Certified Staff.
- C. When it is determined that the proposed abatement or reduction plan does not adhere to the Standards, the City will consult with the SHPO and request the ACHP's comments in accordance with procedures set forth in 36 CFR 800.6 and as noted in Stipulation V.A.(7)., above.

#### VII. Demolition

- A. Demolition of non-historic or non-contributing buildings. The City may proceed with the demolition of non-historic properties or non-contributing buildings in historic districts without further review by the SHPO. The City must retain documentation of all such demolitions in its project files. With the exception of emergency demolitions, no demolition may proceed until the Certified Staff has issued a Letter of Approval. Future development activities on cleared parcels within or adjacent to historic districts will be reviewed by Certified Staff in accordance with Stipulation V. B. above.
- B. 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 the health and safety of residents, the City will forward documentation to the SHPO via overnight mail and notification of its intent to apply the emergency review procedure by facsimile with a request for comments within seven (7) business days, as per procedures outlined in 36 CFR 800.12. The documentation will include a copy of the order requiring demolition (declared by a local government's chief executive officer or legislative body), photographs of the property illustrating the emergency condition, a BHP Resource form or other

documentation regarding the property's eligibility and map location (U.S.G.S. and/or City map). The SHPO will notify the City in writing of its approval and any required mitigation measures (e.g.) recordation, additional photographic documentation, architectural salvage, etc.). A copy of this documentation shall be maintained by the City in the project file for the subject emergency demolition action.

C. Non-emergency demolition. Demolition of properties listed in or eligible for listing in the National Register or within a district listed in or eligible for listing in the National Register, will be reviewed on a case-by-case basis with the SHPO. The City will submit the following documentation to the SHPO for review and initiate the procedures set forth in 36 CFR 800.5 and as noted in Stipulation V.A.(7)., above.

1. Map location (U.S.G.S. quadrangle maps and City maps) and description of the property for demolition.
2. Reasons for demolition, including documentation of any building code violations, and an explanation why rehabilitation is neither prudent nor feasible.
3. Black and White Photographic evidence and written description of the deteriorated condition of the building to be demolished.
4. Black and White Photographs of each elevation and any significant architectural elements that might exist.
5. Black and White photographs of the affected streetscape and surrounding areas.

#### VIII. Archaeological Resources

If any ground disturbing activities are anticipated or planned as part of an undertaking covered by the Agreement, the City will consult with the SHPO to determine if the project area contains known archaeological resources or that a high probability of archaeological resources may be present. When archaeological resources are found that meet the National Register Criteria of Eligibility they will be avoided or preserved in place whenever feasible. When it is determined infeasible to avoid archaeological resources in place, the City will consult with the SHPO to develop a treatment plan consistent with the ACHP's handbook, Treatment of Archaeological Resources and the SHPO Guidelines for Archaeological Investigations (1991). The City will implement the plan following approval from the SHPO.

#### IX. Post-review Discoveries

When historic properties are discovered during the implementation of an undertaking, the Certified Staff shall determine actions that can be taken to resolve adverse effects, and notify the SHPO within 48 hours of the discovery. The notification shall describe the actions proposed to resolve the adverse effects. The SHPO shall respond within five (5) days of the

notification. The City shall take into account their recommendations and carry out appropriate actions. The City shall provide the SHPO and ACHP with a report of the actions when they are completed.

X. Project Coordination

The Certified Staff will ensure that the staff within the Department of Community Development, affected citizen groups and local preservationists are aware of the Agreement and any associated written guidance that is available. The Certified Staff will ensure that all sub-recipients of HUD funding in the City are aware of the Agreement, its requirements, and the need to complete the Section 106 review prior to the initiation of project activities.

XI. Technical Assistance

- A. The SHPO staff will provide periodic training in the application of the Standards and in the administration of this Agreement for City personnel (e.g. preservation staff, managers, rehabilitation inspectors) as requested by the City.
- B. The City may develop guidance documents with the SHPO to assist City staff in complying with the terms of this Agreement.

Monitoring

- A. The City shall retain documentation, including work write-ups and before and after photographs, for all activities carried out pursuant to the Agreement. Files will be retained for a minimum of three (3) years.
- B. An annual report, including the addresses of properties included in Program activities and a description of the work completed at historic properties, shall be sent to the SHPO for review and comment. Supporting documentation will be available to the SHPO upon written request.
- C. From time to time, the SHPO will review files for the activities to verify that the terms of the agreement are being properly implemented.
- D. Nothing in this Agreement shall be construed as meaning that the City cannot request the advice or assistance of the SHPO at any time.

Dispute Resolution

- A. Should the SHPO object within thirty (30) days to any plans or specifications provided pursuant to this Agreement, the City shall consult with the SHPO to resolve the objections. If the City determines that the objection cannot be resolved, the City shall request recommendation of the ACHP. The ACHP shall provide its recommendations within 30 days following receipt of adequate documentation.

- B. Any ACHP recommendation provided in response to such a request will be taken into account by the City in accordance with 36 CFR 800.6(c)(2) 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.

#### Public Participation and Involvement

- A. Each year the City will encourage public comment regarding the impact of the City's current HUD-funded activities on historic properties, and make available for public inspection documentation on the City's HUD-funded activities. Included in this documentation will be general information on the type(s) of activities undertaken with HUD funds; information on identified historic properties that might be affected by these activities; the amount of Program funds available in the current Program year; and how interested persons can receive further information on the Program activities. The City may accomplish public notification by incorporating information concerning potential effects on historic resources into the City procedures for complying with public participation requirements set forth in 24 CFR Part 58 provided pertinent information regarding historic preservation issues has been developed by the City.
- B. The City's Department of Building and Planning, Community Development Division's Annual Consolidated Plan for HUD-funded Programs shall include, at a minimum, a summary of the Section 106 process and a description of this Agreement and its requirements. Department of Building and Planning staff and Certified Staff shall ensure that information regarding this Agreement and the Section 106 process is included in periodic newsletters and other notices for public distribution.
- C. The Certified Staff will be available, as appropriate, for any public hearings, City Board of Commissioners, Planning Commission, Historical Commission and Historical Architectural Review Board, and Community Group meetings planned to discuss Program activities determined to have a potential effect on National Register-listed or eligible properties.
- D. The City shall notify the Certified Staff of any public interest, concerning a preservation issue, in any Program activity covered under the terms of this Agreement. The Certified Staff shall consider any preservation-related comments from parties identified as interested, either by the City or Certified Staff itself, concerning specific Program activities, as it implements the Stipulations of this Agreement.

#### Public Objections

- A. In those cases where a public objection is received by the City, Certified Staff will review the objection to determine the basis of the objection and consult with the objecting party, as appropriate, in order to resolve the issue.

- B. Where the Certified Staff is unable to resolve the objection to the satisfaction of the objecting party and the City, the City will consult with the SHPO.

XVI. 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.

XVII. Renewal

This Programmatic Memorandum of Agreement will continue in force through and including December 31, 2009. At the end of calendar year 2008, it will be reviewed by the City and the Pennsylvania SHPO for possible modifications, termination, or extension.

Execution and implementation of this Agreement is evidence that the City has afforded the ACHP an opportunity to comment on its Programs and their effects on historic properties, that the City has taken into account the effects of its undertakings on historic properties, and that the City has satisfied its Section 106 responsibilities for all individual undertakings of the Programs.