

**PROGRAMMATIC AGREEMENT BETWEEN THE CITY OF
NEW HAVEN, CONNECTICUT AND THE CONNECTICUT
STATE HISTORIC PRESERVATION OFFICE FOR THE
ADMINISTRATION OF THE CITY OF NEW HAVEN,
CONNECTICUT'S HUD-ASSISTED PROGRAMS.**

WHEREAS, the City of New Haven staff administers Department of Housing and Urban Development (hereinafter "HUD") funded programs (hereinafter "Programs") including the Entitlement Community Development Block Grant, HOME Investment Partnership, and Healthy Homes and Lead Hazard Control on behalf of the City of New Haven, Connecticut (hereinafter "City") with funds allocated by the Department of Housing and Urban Development (hereinafter "HUD"); and

WHEREAS, by virtue of the age and significance of many neighborhoods, districts, and housing units eligible for HUD-assisted programs in New Haven, Connecticut, the implementation of said programs by the City may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter "National Register") pursuant to Section 800.13 of the regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (hereinafter "Section 106"); and

WHEREAS, pursuant to 24 CFR Part 58, HUD has delegated the responsibility for compliance with the requirements of NEPA and Section 106 to the City; and

WHEREAS, in response to the principles set forth in the Advisory Council on Historic Preservation's (hereinafter "Council") Policy Statement on Affordable Housing and Historic Preservation (effective date 11/09/2006) (hereinafter "Policy Statement"), the Connecticut State Historic Preservation Office (hereinafter "the SHPO") and the Council have determined that the City can more effectively carry out their Section 106 review responsibilities for program activities if a programmatic agreement is used to simplify and streamline the administrative process, and identify program activities which can be exempted from Section 106 review because they have no effect on historic properties; and

WHEREAS, measures taken under this Agreement, while satisfying the requirements of Section 106 for purposes of the programs covered herein, do not automatically meet the requirements set forth in *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (hereinafter "the Standards") for purposes of the Federal or State Rehabilitation Tax Incentive Programs or other programs not specifically included in this Agreement.

NOW, THEREFORE, the City and the SHPO agree to enter into a Programmatic Agreement (hereinafter "Agreement" which shall direct the administration of the HUD-assisted programs in accordance with the following stipulations in order to take into account the effects on historic properties and to satisfy the City's Section 106 responsibilities for all such individual undertakings of said programs.

STIPULATIONS

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

I. ADMINISTRATION OF THE PROGRAMMATIC AGREEMENT

- (A) The City will consult and work with a Preservation Professional (or the SHPO, should the services of a Preservation Professional be unobtainable or infeasible), having the qualifications outlined in Appendix A on all projects that do not qualify as an exempt activity as outlined in Stipulation II and are fifty (50) years old or older, and/or located in a National Register Historic District or is a National Register Historic Property and/or eligible for listing on the National Register of Historic Places as determined by SHPO or the Preservation Professional. The Preservation Professional (or the SHPO, should the services of a Preservation Professional be unobtainable or infeasible) will be consulted by the City if and when the City is unsure if the proposed scope of work qualifies as an exempt activity.

- (B) The City will maintain site specific environmental reviews for all properties rehabilitated through its programs and maintain program activity records for reporting purposes. Prior to implementation of this Agreement, the City and the Preservation Professional shall meet with the SHPO. The SHPO shall also be notified if and when the Preservation Professional is replaced and be provided with credentials and opportunity to evaluate personnel responsible for implementing this Agreement.

- (C) Each year, the City will notify the public of its current grant programs, and make available for public inspection documentation on the programs. Included in this documentation will be information on the type(s) of activities undertaken with program funds during the prior year and activities projected for the current year; information on identified historic properties, and/or areas where historic properties may be present which might be affected by these activities; the amount of program funds available in the current program year; and how interested persons can receive further information on the program and advise the City and the SHPO, of any concerns they may have about programs' effects on historic properties. The City will document compliance with this provision as part of its annual report as specified in Stipulation XI below.

II. EXEMPT ACTIVITIES

No review of properties is required if program activities are restricted solely to those listed due to their limited potential to affect historical properties:

- (A) Properties less than fifty (50) years old;

- (B) Rehabilitation work to historic properties which are subject to review by the SHPO for the Federal or State Rehabilitation Incentive Programs;

- (C) Community Reinvestment activities limited solely to the following:
 - (1) Projects consisting of grants or loans to eligible families or entities to be applied solely to the purchase of residences or businesses which are secured as needed to avoid neglect, deterioration, vandalism or other harm;

 - (2) Interior rehabilitation of housing units fifty (50) years of age or older which are listed in the National Register as contributing resources, or eligible for listing as

contributing resources in the National Register, and/or changes in floor plans that do not affect or change the appearance of the exterior, when the planned activities involve only interior spaces and other exempt activities, and a reasonable effort is made to conduct all interior and exterior alterations in accordance with guidance with the Secretary of the Interior's *Standards for the Treatment of Historic Places*.

- (3) Repair, replacement, or installation of the following systems provided that such work does not affect or change the exterior appearance of street facing elevations of the property and has only minor effect on all other elevations:
 - a. Electrical supply, switch/outlets, and fixtures;
 - b. Plumbing supply, drainage, and fixtures;
 - c. HVAC systems;
 - d. Smoke, CO, alarms, security lighting or other safety devices;
 - e. Electrical or mechanical ventilation systems;
 - f. Kitchens, bathrooms, and utility room repairs and/or improvements
 - g. Temporary ADA ramps
- (4) Repainting of exterior surfaces provided that destructive surface preparation treatments, including sandblasting, are not used;
- (5) Weatherization or energy conservation activities which do not affect the exterior appearance including:
 - a. Attic insulation if using batt, rigid board, or loose blown-in insulation;
 - b. Caulking and weather-stripping of doors and windows in a manner which does not harm or obscure historic windows or trim and that follows the *Standards*;
 - c. Storm windows or doors, and wooden screen doors which do not harm or obscure historic windows or trim;
 - d. Underpinning and ventilation of crawlspaces provided that underpinning of the front elevation shall be accomplished by setting the underpinning material at least 2 inches behind the outer face of piers;
- (6) Lead based Paint Abatement or "Management in Place" activities carried out in accordance with *Preservation Brief #37: Appropriate Methods for Reducing Lead Paint Hazards in Historic Housing*;
- (7) Roofing materials either removed and replaced or encapsulated with new roofing materials which should match as closely as possible the scale, texture and coloration of the historic material;
- (8) Repairs to or replacement of deteriorated roof materials with in-kind materials, except for highly visible roofs with historically significant visual characteristics;
- (9) Repair or re-framing of structural roof materials as required to improve the drainage and durability of the roof so long as the appearance of the roof lines visible from the front elevation are not affected';
- (10) Repair, replacement, or installation of gutters and down spouts provided they are in-kind;
- (11) Installation of door and/or window locks and/or electronic security apparatus;
- (12) Repair or re-pointing of chimneys, brick or other masonry features which are visible from the front elevation with design, materials and pointing to match

original. When repairs are made, the work shall follow the recommended approaches in *Preservation Brief #2; Re pointing Mortar Joints in Historic Brick Buildings*;

- (13) Repair of foundations and structural materials in a manner that is compatible with the scale and historic character of the district;
- (14) Repair of front porches, ceilings, awnings, floors, rails, columns, cornices and other trim details with limited replacement in-kind not to exceed 25% of the historic fabric.
- (15) Repair of windows with limited replacement in-kind not to exceed 25% of the historic fabric. Acceptable work includes reglazing, weatherizing, sash repair, pane replacement and painting.
- (16) Repair of doors with limited replacement in-kind not to exceed 25% of the historic fabric. Acceptable work includes new locks, kick plate addition or replacement in-kind, weatherization and painting.
- (17) Repair of siding with limited replacement in-kind not to exceed 25% of the historic fabric. Acceptable work includes paint removal and repainting, patching, replacement in-kind of exterior clapboards and/or shingles.
- (18) Maintenance, repair, or replacement in place of paving or line painting of streets, sidewalks and curbs, not including historic pavements and curb materials such as cobblestone, limestone, or brick, except when replaced in kind.

III. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

If the City and the Preservation Professional determine that the Program activities are not exempt activities as listed in Stipulation II, then the following steps shall be taken within thirty (30) days:

- (A) The Preservation Professional shall identify if the subject property or other properties within the area of potential effects are fifty (50) years old or older and evaluate each for eligibility in the National Register of Historic Places. In making this determination, the Preservation Professional shall consult previous surveys of historic properties and/or districts, if any, apply the applicability of the National Register criteria of eligibility to the properties, and consider any public input provided as part of the requirements of Stipulation VIII of this agreement. The Preservation Professional shall refer to NPS Bulletin 15, "How to Apply the National Register Criteria for Evaluation."
- (B) After making a finding of potential eligibility or non-eligibility, the City's Preservation Professional will share the finding with the SHPO for their concurrence with the City's determination of National Register eligibility. Submitted material shall include documentation regarding the history and architectural style of the properties and the application of the National register criteria;
- (C) At a minimum, the Preservation Professional shall maintain a file on the identification and National Register evaluation of each subject property and on other properties within the area of potential effects. The file shall include the following data used in the determination:

- (1) Location map of the structure or neighborhood and photographs showing the condition of the exterior of the structure and neighboring structures.
 - (2) Historic Building Survey Finding, evaluation of the property against the four register criteria, and any public comment provided in accordance with Stipulation VIII regarding the historic value of the structure.
 - (3) Discussion of whether the structure is potentially eligible on its own, as part of a District, or not eligible.
- (D) Properties which are determined to be contributing resources to a National Register listed or eligible historic district by the Preservation Professional and the SHPO shall be subject to further review pursuant to Stipulation I of this Agreement.
- (E) If the Preservation Professional and the SHPO determine that the subject property does not meet the National Register criteria, then the Preservation Professional may submit a letter to the City indicating that there is No Historic Property Affected. If the subject property is adjacent to a National Register site or district, then the Preservation Professional may submit a letter to the City indicating that there is No Adverse Effect.
- If the extant property is a non-contributing property in either a National Register listed or eligible historic district, and will be replaced with a new unit, the Preservation Professional shall review the plans and specifications in accordance with Stipulation V(B)(1).
- (F) If the City and the SHPO disagree on eligibility, the City will seek a formal determination of eligibility from the Keeper of the National Register Pursuant to 36 CFR Part 63.

IV. EMERGENCY DEMOLITION

When Program funding is used for the emergency demolition of a building, which demolition is required to eliminate an imminent threat to the health and safety of residents as identified by local or county building inspectors, fire department officials, or other local officials, pursuant to Connecticut State Building Code Section 115 and 116, and is in imminent danger of collapse, the City shall adhere to the following procedures:

- (A) The City shall give the SHPO five (5) business days to review the property in question, if the nature of the emergency allows. In such cases, the following information shall be forwarded to the SHPO by the City:
 - (1) Identification of the property involved;
 - (2) A clear statement about the nature (structural condition, threat to adjacent properties, etc.) of the emergency;
 - (3) Photographs which clearly depict the emergency conditions; and
 - (4) The maximum time-frame allowed by local officials to address the emergency.
- (B) The City shall ensure that any mitigation measures recommended by the SHPO are implemented, if feasible.
- (C) The Preservation Professional shall maintain records in accordance with Stipulation XI of

this Agreement regarding the emergency undertaking and shall make records available to the public.

V. TREATMENT OF HISTORIC PROPERTIES

If the property is a contributing resource which is either listed in the National Register or is eligible for listing in the National Register (or a lot within such a listed or eligible district), prior to the initiation of any work, the City shall request the Preservation Professional's review of the proposed work. The Preservation Professional shall review work proposals and specifications submitted for all proposed activities not listed as exempt in Stipulation II for their effects to historic properties as follows:

(A) Rehabilitation

Whenever the City is planning to do rehabilitation that is not an exempt activity, prior to the initiation of rehabilitation activities, the Preservation Professional shall review work proposals and specifications to determine the effects of the proposed activities to historic properties.

(B) New Construction

Whenever the City is planning to do reconstruction, in-fill construction, new construction, or additions to existing buildings in a National Register or National Register eligible historic district, the Preservation Professional shall:

- (1) Review work proposals to ensure that all work is compatible with the architecture of the historic district or adjacent historic buildings in setback, size, scale, massing, design, color, features, and materials; and is in keeping with the recommended approaches for new construction set forth in the *Standards* and input received through the required public notification process as outlined in Stipulation VIII; and
- (2) Oversee the development of preliminary design plans. Final plans and specifications will be submitted to the Preservation Professional for review and comment prior to the initiation of construction activities.

(C) The City shall take into account the comments and recommendations made by the Preservation Professional for both rehabilitation that is not an exempt activity and new construction activities in accordance with one of the following findings:

- (1) The Preservation Professional may issue a finding of No Adverse Effect under one of the following conditions:
 - (a) Properties which are transferred, leased, or sold with adequate restrictions or conditions, i.e. facade easements, security deeds, lease agreements, to ensure preservation of the property's significant historic features;
 - (b) Properties which will be rehabilitated in accordance with the *Standards* to the demonstrated and documented extent possible and practical. (Houses rehabilitated using the *Standards* meet the intent of this Agreement by definition), with the following exceptions, which must be submitted to SHPO for a Determination of Effect:
 - (1) Windows in which greater than 25% of historic fabric is proposed to be replaced,
 - (2) Siding in which greater than 25% of historic fabric is proposed to be replaced, and

- (3) Front entry doors in which greater than 25% of historic fabric is proposed to be replaced,
- (2) If, in the judgment of the Preservation Professional, activities initially planned by the City do not avoid an Adverse Effect but can be reasonably modified to avoid an Adverse Effect, the Preservation Professional may issue a Conditional No Adverse Effect finding indicating all required modifications. Once the City has addressed the required modifications, the Preservation Professional may issue a No Adverse Effect finding that permits the City to proceed with the revised activity.
- (3) The Preservation Professional may issue a finding of Adverse Effect under the following circumstances:
 - (a) Projects where the Preservation Professional and the City agree that the proposed activities planned do not meet the intent of the *Standards* to avoid the Adverse Effect, cannot be reasonably modified to meet the intent of the *Standards* as stated in Stipulation V(C)(1)(b) to avoid the Adverse Effect, and the Preservation Professional and the City agree that the proposed activities are the most feasible solution;
 - (b) Projects where there is a disagreement about whether the proposed activities meet the intent of the *Standards* to avoid the Adverse Effect;

In the case of Adverse Effect, the Preservation Professional shall issue an Adverse Effect notice to the City. Such a notice will require the City to submit the work write-ups or plans and specifications to the SHPO for their review and consultation to resolve the adverse effect, either through avoidance, minimization, and/or mitigation, pursuant to 36 CFR Part 800.6

If the City and the SHPO agree upon how Adverse Effects to historic properties will be mitigated, the City will enter into a mitigation agreement with the SHPO. The City may submit this mitigation agreement for concurrent review at the time it provides the documentation for a finding of adverse effect.

If the City and the SHPO cannot come to an agreement on how the Adverse Effects should be mitigated, or if the project will adversely affect a National Historic Landmark, or if human remains are present within the area of potential effects, the Preservation Professional shall notify the Advisory Council on Historic Preservation and initiate consultation as set forth at 36 CFR Part 800.7 and 800.10. The City shall consider any views concerning such effects which have been provided by consulting parties and the public, in accordance with CFR36 800.6(a)(4).

VI. TREATMENT OF ARCHEOLOGICAL SITES

The City shall notify the SHPO when Program funded ground-disturbing activities within areas not characterized by previous ground disturbances and to include extensive excavation, such as for new footing and foundations or installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines, and septic tanks, are proposed as part of an undertaking and shall comply with the following requirements:

- (A) The City shall request the SHPO's opinion regarding the potential effect of such activities on archaeological properties prior to initiation of project activities. If the SHPO determines that there is a high probability for the presence of significant archaeological sites or cultural remains within the project area, following the review of background

information provided by the City or a review of state surveys, the City shall contract a qualified archaeologist to conduct archaeological surveys. The City shall forward the scope of work for the archeological survey to the SHPO for review and comment.

- (B) If the City and the SHPO determine that there is the potential for archeological properties listed on or eligible for listing on the National Register to be affected by the undertaking, the SHPO shall advise the City of the appropriate treatment for the archeological properties. If the City cannot avoid the archeological properties or preserve them in-situ, the City shall develop a data recovery plan that is consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37)* and take into account the Council's publication "Treatment of Archeological Properties" and subsequent revisions made by the Council and appropriate state guidelines. The State Recipient shall submit treatment plans to the SHPO for review and comment and shall ensure that the approved plan is implemented by qualified archeologists.

VII. DISCOVERY

If previously unidentified historic properties, including archaeological sites, are discovered during project rehabilitation or construction, the City shall immediately stop all project activities. The City shall immediately contact the Preservation Professional concerning the discovery who shall then be requested to follow procedures outlined in Stipulations V and VI of this Agreement.

VIII. PUBLIC NOTIFICATION REGARDING REHABILITATION ACTIVITIES

- (A) The City, in consultation with the Preservation Professional shall determine the public interest in planned rehabilitation or new construction activities which may affect potentially historic properties or districts by informing the public about potentially historic properties while meeting its public participation requirements as set forth in the regulations for the programs and in complying with 24 CFR Part 58. The City shall notify the Preservation Professional of the public interest in any project activities covered under the terms of this Agreement.
- (B) At a minimum, the public meetings shall include a discussion of the planned rehabilitation activities overall effect to historic properties with emphasis on the following issues, as applicable:
- (1) The significance of the National Register districts;
 - (2) A description of the financial assistance offered to affected property owners;
 - (3) A discussion about the Federal and State Rehabilitation Tax Incentive Programs;
 - (4) Local historic codes and standards;
 - (5) The relative costs of preservation versus rehabilitation;
 - (6) The priority given to front facing facades;
 - (7) Treatment and/or replacement of windows and doors;
 - (8) Treatment and/or replacement of siding;

- (9) Treatment of interior spaces;
 - (10) Treatment of foundations;
 - (11) Roofing materials;
 - (12) New construction, reconstruction, or in-fill construction standards
 - (13) Mitigation of adverse effects;
- (C) At any time during the implementation of the measures stipulated in the Agreement, should the public raise an objection pertaining to the treatment of an historic property, the City shall notify the Preservation Professional and take the objection into account. When requested by the objector, the City and the Preservation Professional shall consult with the SHPO to resolve the objection. The City is not required to cease work while objections are being reviewed.
- (D) The City shall record all comments received at any public meetings, in writing, or by phone, which records shall become part of the Environmental Review Record (See Stipulation XI).

IX. RESOLUTION OF ADVERSE EFFECTS

- (A) As described in Stipulation V, activities which the Preservation Professional determines will have Adverse Effects to historic properties will require the City to submit the project to the SHPO for their review;
- (B) If the City and the SHPO agree upon how Adverse Effects to historic properties will be mitigated, the City will enter into a mitigation agreement with the SHPO. The City may submit this mitigation agreement for concurrent review at the time it provides the documentation for a finding of adverse effect as outlined in Stipulation V.
- (C) If the City and the SHPO cannot come to an agreement on how the Adverse Effects should be mitigated, or if the project will adversely affect a National Historic Landmark, or if human remains are present within the area of potential effects, the Preservation Professional shall notify the Advisory Council on Historic Preservation and initiate consultation as set forth at 36 CFR Part 800.7 and 800.10. The City shall consider any views concerning such effects which have been provided by consulting parties and the public, in accordance with CFR36 800.6(a)(4)

X. DISPUTE RESOLUTION

Should the SHPO object within thirty (30) days to any plans and specifications provided to it for review, or actions proposed pursuant to this Agreement, the City shall consult with the SHPO to resolve the objection. If the City determines that the objection cannot be resolved, the City shall request the further comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800.6(b). If the SHPO fails to respond within 30 business days of receipt of a request for review of a finding or determination, the City may proceed to the next step in the process based upon its (the City's) finding.

Any Advisory Council on Historic Preservation comment provided in response to such a request will be taken into account by the City in accordance with 36 CFR Part 800.6(c)(2) with reference only to the subject of the dispute. The City's responsibility to carry out all other actions under this Agreement that are not subject of the dispute will remain unchanged.

XI. MONITORING AND REPORTING

(A) SHPO review of Programmatic Agreement

- (1) After this agreement has been in effect for one (1) year, the SHPO, in consultation with the City, shall review the terms of the Agreement to determine whether the review responsibilities are appropriate.
- (2) After this Agreement has been in effect for five (5) years, the SHPO, in consultation with the City, shall comprehensively review the Agreement to determine if said document shall remain in effect. If it is determined by either party that this Agreement shall be terminated, said termination shall follow the process in Stipulation XIV. A comprehensive review for said purpose shall be conducted every five (5) years thereafter.

(B) Reporting

The City shall provide the SHPO with a report that summarizes activities carried out under the terms of this agreement six (6) months from the date of execution and again one (1) year from the date of execution. Thereafter, the City shall provide the SHPO with an annual report. Reports shall include the following:

- Address
- Exempt or non-exempt work (if exempt, skip all following items except Proposed Scope of work)
- Listing Status
- Priority of Resource
- Current conditions, including photos
- Recommendation for status (if not listed)
- Proposed scope of work, note whether scope was modified based upon Professional's findings
- Recommendation of effect

(C) Monitoring

The SHPO may monitor as needed any activities carried out pursuant to this Agreement, and the City and Preservation Professional shall cooperate with the SHPO should it request to monitor or review project files or visit project sites.

XII. RECORD KEEPING

The City shall maintain records of all activities undertaken pursuant to this Agreement which shall become part of the Environmental Review Record for the project including:

- (A) All records related to the selection of the Preservation Professional which clearly documents adherence to the Professional Qualification (36 CFR 61) or Recommended Qualifications (Appendix A);

- (B) All records indicating the compliance of each property with the Exempt Activities at Stipulation II;
- (C) All records of correspondence and finding letters provided by the Preservation Professional to the City;
- (D) All records indicating further consultations with SHPO and/or the Advisory Council;
- (E) All records of public comments received during public hearings and written or telephonic comments received from the public at all other times;

XIII. AMENDMENTS

Amendments to this agreement shall be made in the following manner:

- (A) Any party to this Agreement may request that it be amended or modified, whereupon the City, the SHPO, and the Council will consult in accordance with 36 CFR 800.13 to consider such revisions;
- (B) Any resulting amendments or addenda shall be developed and executed among the City, the SHPO, and Council in the same manner as the original Agreement.

XIV. DURATION AND TERMINATION

This Agreement will have an initial five (5) year duration beginning on the date of the last signatory. Upon expiration of the initial five (5) year term, this Agreement may be automatically renewed for up to five (5) consecutive one (1) year terms. Either party may terminate this Agreement by providing 30 days written notice and explanation of reasons for termination.

XV. FAILURE TO COMPLY WITH THIS AGREEMENT

In the event that the City does not carry out the terms of the Agreement, the City shall comply with 36 CFR Section 800.4 through 800.6 with regard to each individual HUD project for which it has received funding.

XVI. EXECUTION AND IMPLEMENTATION

Execution and implementation of this Programmatic Agreement evidences that the City has satisfied its Section 106 responsibilities for all HUD-assisted undertakings.

City of New Haven, Connecticut

Mayor

Date

State Historic Preservation Office

State Historic Preservation Officer

Date

APPENDIX A -- Recommended Qualifications for Historic Preservationist

SHPO recommends that City of New Haven Official meet the professional qualifications of Architectural Historian, as outlined in the *Secretary of the Interior's Historic Preservation Professional Qualification Standards and Guidelines*, part of the larger *Secretary of the Interior's Standards and Guidance for Archeology and Historic Preservation*, of which the statutory authority for the Secretary's development of these can be found in Sections 101(g), 101(h), 101(i), and 101(j)(2)(A) of the *National Historic Preservation Act*, as amended.

SHPO shall, at its discretion, approve an individual who does not meet these qualifications, but whose education and/or professional experience demonstrates extensive knowledge of the subject matter.