

**SECTION 106 PROGRAMMATIC AGREEMENT**

**AMONG**

**THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,**

**THE CITY OF NEW YORK DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT,**

**AND**

**THE NEW YORK CITY HOUSING AUTHORITY**

**REGARDING**

**NEW YORK CITY HOUSING AUTHORITY PROGRAMS AND  
ACTIVITIES FUNDED BY THE UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT**

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2018-048894

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## PREAMBLE

**WHEREAS**, the United States Department of Housing and Urban Development (hereinafter “**HUD**”) provides grant funding through the Capital Fund Grant Program, Operating Fund, HOPE VI, Rental Assistance Demonstration, and other HUD grant programs to the New York City Housing Authority (hereinafter “**NYCHA**”); and

**WHEREAS**, NYCHA proposes to commit HUD funds provided through these grant programs to Undertakings such as repair, rehabilitation, construction, demolition, acquisition, financing, and disposition of NYCHA’s public housing developments, and management of their operations; and

**WHEREAS**, pursuant to 24 CFR Part 58- “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities”, the City of New York (“**NYC**”) Department of Housing Preservation and Development (hereinafter “**HPD**”) assumes environmental review responsibility for these HUD-assisted Undertakings and as such must ensure NYCHA’s compliance with the National Historic Preservation Act (hereinafter “**NHPA**”), 54 U.S.C. § 300101, and its implementing regulations for the “Protection of Historic Properties” at 36 CFR Part 800 (hereinafter “**Section 106**”) as part of its environmental review responsibilities; and

**WHEREAS**, NYCHA and the New York State Historic Preservation Officer (hereinafter “**SHPO**”) has performed a Historic Resources Survey and the SHPO determined that thirty-seven (37) NYCHA properties are listed or eligible for listing in the National Register of Historic Places (hereinafter “**NYCHA Historic Properties**”), identified in Appendix A- “NYCHA National Register Listed and Eligible Properties”; and

**WHEREAS**, HPD has consulted with the NYC Landmarks Preservation Commission (hereinafter “**LPC**”) regarding the effects of this Programmatic Agreement (hereinafter “**PA**”) on NYCHA landmark properties, and has invited the LPC to sign this PA as a concurring party; and

**WHEREAS**, on August 24, 2017 a public notice was placed on the HPD website notifying and inviting the public to participate in the development of this PA to which HPD did not receive responses; and

**WHEREAS**, on January 12, 2018 representatives from the LPC, the Municipal Art Society of New York, the Historic Districts Council, and DOCOMOMO U.S- New York/Tri-State participated on a conference call with HPD, SHPO and NYCHA to provide comments and feedback on this PA; and

**WHEREAS**, HPD invited Tribal Historic Preservation Officers (hereinafter “**THPO**”) from Stockbridge-Munsee Mohican Tribal Historic Preservation New York Office, the Shinnecock Indian Nation Tribal Office, Delaware Tribe Historic Preservation Representative, and the Delaware Nation to consult on the development of this PA and did not receive comments; and

HPD-NYCHA- NY SHPO Section 106 Programmatic Agreement

**WHEREAS**, HPD notified the Advisory Council on Historic Preservation (hereinafter “**ACHP**”) of the development of this PA and the ACHP has elected not to participate in the consultation process; and

**WHEREAS**, NYCHA and its Responsible Entity, HPD, have determined that some HUD-assisted Undertakings may have an effect on these thirty-seven (37) NYCHA historic properties and has consulted with the SHPO pursuant to Section 106;

**NOW, THEREFORE**, NYCHA, HPD, the SHPO, and LPC agree that these HUD-assisted Undertakings shall be implemented in accordance with the stipulations provided in this PA in order to take into account the effect of these Undertakings on NYCHA’s historic resources.

The Parties acknowledge and agree that the recitals included in the Preamble above are incorporated by reference herein, and any obligation, term, condition, representation, or warranty set forth therein shall be binding on the Parties, as applicable.

## STIPULATIONS

NYCHA, under the oversight of its Responsible Entity, HPD, shall ensure that the following measures are carried out to satisfy NYCHA's Section 106 responsibilities for all applicable HUD- assisted Undertakings.

### I. General

#### A. Purpose

This PA establishes procedures that NYCHA and HPD shall implement to fulfill its Section 106 responsibilities as outlined under 24 CFR Part 58- "Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities". The PA streamlines the Section 106 review process of the NHPA and reduces case by case consultation with the SHPO for every proposed HUD-assisted Undertaking or Undertakings occurring at HUD-assisted sites.

#### B. Applicability

1. This PA applies to NYCHA's HUD-funded programs, initiatives, assistance, actions or decisions subject to the environmental review procedures outlined in 24 CFR Part 58 that require compliance with Section 106. Applicable programs include, but are not limited to, the Capital Fund Grant Program, Operating Fund, HOPE VI, Section 18, and the Rental Assistance Demonstration ("**RAD**") program.
2. Disaster recovery Undertakings funded by the Federal Emergency Management Agency ("**FEMA**") are not covered by this Programmatic Agreement. These FEMA-funded disaster recovery Undertakings are covered under a separate statewide Programmatic Agreement.
3. This Programmatic Agreement does not supersede permitting or regulatory procedures for any local landmarks or historic districts.

### II. Definitions

#### A. Adverse Effect

An adverse effect means an Undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the

Undertaking that may occur later in time, be farther removed in distance or be cumulative. [36 CFR 800.5 (a) (1)]

B. Contiguous/Adjacent

NYCHA must consider whether there could be adverse effects within a 400-foot radius from project site for potential visual impact, and 90-foot radius from a project site for potential physical impact. This is based on the NYC Environmental Quality Review Technical Manual (2014) (“**CEQR**”) and the NYC Department of Buildings (“**DOB**”) Technical Policy and Procedure Notice (“**TPPN**”) #10/88

C. Days

Any reference to “days” within this Agreement refers to calendar days.

D. Demolition

Demolition refers to any partial, full demolition, and/or removal of any building or structure.

E. Emergency Undertaking

An Emergency Undertaking is any Undertaking that is as an essential and immediate response to a natural disaster or emergency declared by the President, a tribal government, the Governor of the State, New York City’s chief executive officer or legislative body; or in response to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by the appropriate authority. Such Emergency Undertakings are those that will be implemented within thirty (30) days after the disaster or emergency has been formally declared.

F. Historic Artwork

Any NYCHA-owned artistic property at least 50 years of age including figurative or abstract sculptures (free-standing or bas relief), designed playground equipment, monuments, fountains, environmental design (such as outdoor seating), and murals (painted or mosaic) that are historically related to and located within a NYCHA development (interior or exterior). This includes Federal WPA art projects and other artwork, found at both NYCHA Historic Properties and NYCHA Non-Historic Properties. A list of NYCHA Historic Artwork as of 2017 may be found in Appendix C of this PA.

G. NYCHA Historic Property

Any NYCHA development included in, or eligible for inclusion in, the National Register of Historic Places. A list of NYCHA Historic Properties identified as of 2017 may be found in Appendix A of this PA. This list may be updated as

properties are re-evaluated for eligibility upon reaching 50 years of age. See Section VI. A and C.

H. NYCHA Non-Historic Property

Any NYCHA development not included in, or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior. If a property is not listed in Appendix A of this PA, it has been determined that it is non-historic.

I. In-Kind Repair

In-Kind Repair means an action to restore the mechanical, structural, or aesthetic function of an element of an historic resource using materials and methods compatible with the original nature and function of that element.

J. In-Kind Replacement

In-Kind Replacement means the removal of any element and the insertion of a new element with the same material matching the same design, form, dimension, color and texture as that being replaced.

K. New Construction/Addition

Any new, permanent construction or addition erected on NYCHA Historic Properties, and/or new, permanent construction or addition attached to a building located on a NYCHA Historic Property.

L. Responsible Entity

For public housing agencies [this is] the unit of general local government within which the project is located that exercises land use responsibility. HPD serves as NYCHA's Responsible Entity for the HUD programs subject to 24 CFR Part 58, with the exception of Community Development Block Grants.

M. Significant Ground Disturbance

This means ground disturbance greater than eighteen (18) inches below an existing surface.

N. Undertaking

This means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency (e.g. HUD), including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a federal permit, license, or approval.

### **III. Activities Requiring Consultation with SHPO**

NYCHA shall consult with SHPO in the manner described in Stipulation VIII of this PA for the following Undertakings:

#### **A. NYCHA Historic Properties**

All Undertakings that will occur at a NYCHA Historic property require consultation with SHPO, with the exception of Undertakings that are limited solely to activities in Appendix B of this PA.

#### **B. NYCHA Non-Historic Properties**

While consultation with SHPO is not required for the majority of projects occurring at Non-Historic Properties, consultation is required for Undertakings involving any of the following activities:

1. New construction
2. Demolition of buildings and/or structures (other than roof top communications equipment). This only applies to NYCHA properties that are at least fifty years of age.
3. Any other Significant Ground-Disturbing activities (work in or around any known and unknown archaeological site).
4. Work in, on or around, or associated with, existing Historic Artwork.

### **IV. Activities Exempt from SHPO Consultation**

Undertakings that meet the criteria listed under this Stipulation IV and/or Appendix B- "Activities Exempt from Review by SHPO" will not require submission to SHPO for consultation. However, approval from the LPC may be required for historic properties with NYC landmark status.

Determinations of whether an Undertaking is exempt or requires SHPO consultation must be made by, or under the supervision of a NYCHA and/ or HPD personnel who is authorized to make this determination and meet the qualifications stated in section VII. Personnel determining whether an Undertaking is exempt shall take into account the following criteria:

#### **A. NYCHA Historic Properties**

If an Undertaking will occur at a NYCHA Historic Property but the activities of the Undertaking are limited solely to the exempt activities listed in Appendix B of this PA, consultation with SHPO is not required. Consultation is required for all other activities.



B. Non-Historic NYCHA Properties

Undertakings occurring at sites not listed in Appendix A of this PA (NYCHA Historic Properties) do not require consultation with SHPO **unless** the Undertaking involves activities outlined above in Stipulation III.B.

V. **Archaeological Resources**

- A. Prior to performing activities involving significant ground disturbance (except for the activities and criteria listed as exempt in Appendix B- NYCHA Activities Exempt from Review by the New York State Historic Preservation Officer), NYCHA shall consult with the SHPO and LPC to determine if the area of Ground Disturbance has the potential to contain significant archaeological resources.
- B. If the affected area is deemed to have high archaeological potential by the SHPO and/or LPC, NYCHA shall retain the services of a qualified archaeologist to perform an archaeological survey of the affected site. The archaeologist must meet the *National Park Service's Professional Qualification Standards for Archaeology*. The scope of services to be performed shall be developed by the archaeologist in consultation with the SHPO. NYCHA shall submit a report detailing findings of the survey to the SHPO and LPC for review,

VI. **Responsibilities**

A. New York City Housing Authority

1. NYCHA agrees to comply with the stipulations of this agreement, to consult with the SHPO where required in accordance with their provisions, and to the extent practicable, to ensure that all work performed at NYCHA Historic Properties conforms with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (hereinafter "**the Standards**").
2. For all activities requiring consultation, NYCHA agrees to initiate and conclude the review process before beginning or permitting any work.
3. NYCHA shall report to SHPO and HPD on an annual basis all Undertakings that require compliance with Section 106 but were exempted from consultation based on stipulations within this Agreement.
4. At the five-year point of this PA, NYCHA shall provide current images to the SHPO of those properties not currently on the NYCHA Historic Property List (Appendix A) that have reached 50 years of age so that the SHPO may re-evaluate these properties for eligibility. The list in Appendix A-NYCHA National Register Listed/Eligible & LPC Properties, shall be amended should any new properties be determined eligible.

5. NYCHA shall update Appendix C- NYCHA List of Identified Historic Artwork on an annual basis as artistic works reach 50 years of age; and shall provide a copy of the revised list to SHPO annually.

B. NYC Department of Housing Preservation and Development

1. HPD, as NYCHA's Responsible Entity, shall ensure that the Section 106 process, as stipulated within this Agreement, is completed prior to the approval of a release, or request for release of funds for HUD assisted Undertakings as stipulated within this PA.
2. HPD shall make available for public inspection NYCHA's Environmental Review Records which includes documentation of Section 106 compliance and information on the types of activities undertaken with HUD assistance at NYCHA historic properties.

C. New York State Historic Preservation Officer

1. The New York SHPO shall review all of NYCHA's project submissions or documentation and shall either:
  - a. Request additional information and/or provide recommendations;
  - b. Provide a project effect finding to complete the review process;
  - c. Provide a project effect finding that requires continued consultation with the SHPO;
  - d. Establish conditions for project approval which may require continued consultation with the SHPO or require that NYCHA agree in writing to meet specified conditions and/or provide revised project materials (e.g. revised plans and specifications) which incorporate the SHPO's conditions.
2. Five years from the execution of this PA, the SHPO shall re-evaluate NYCHA properties not currently included on the NYCHA Historic Property List (Appendix A) that have reached 50 years of age to determine if any meet the National Register criteria. Eligibility determinations shall be prepared should any of these properties be determined eligible for the National Register. Any new determinations of National Register eligibility shall be shared with the consulting parties.

D. NYC Landmarks Preservation Commission

1. LPC shall review NYCHA Undertakings that have the potential to adversely affect an LPC designated property, or one calendared for designation and notify NYCHA if an LPC property may be affected by the Undertaking and will require an LPC permit.

2. Five years from the execution of this PA, NYCHA shall provide current images to LPC of those properties not currently on the NYCHA Historic Property list (Appendix A) that have reached 30 years of age so that the LPC may re-evaluate these properties for eligibility. The list in Appendix A-NYCHA National Register listed/eligible & LPC properties shall be amended should any new properties be determined LPC eligible. Any new determinations of LPC eligibility shall be shared with the consulting parties.

## VII. Qualifications of Personnel

NYCHA and HPD shall ensure that all activities, reviews, and determinations carried out pursuant to this agreement are implemented by or under the supervision of a person(s) qualified in accordance with *The Secretary of the Interior's Professional Qualifications Standards* at 36 CFR Part 61. NYCHA's Deputy Director of Design or other qualified designee may supervise and/or authorize staff in the implementation of this PA.

## VIII. Section 106 Review Process

NYCHA shall afford the SHPO the opportunity to review Undertakings that do not meet the exempt criteria set forth in Stipulation IV, comment and issue findings in the manner described below.

### A. Requesting SHPO Review

NYCHA shall submit the following project documentation to the SHPO for review:

1. Scope of work
2. Current photographs of the affected property/properties, facilitie(s), structure(s) or object(s)
3. Property location
4. Site plans and/or drawings

If the SHPO determines that the project information/documentation is incomplete, the SHPO shall advise NYCHA of any additional information that is required within 30 days of submission as outlined in VIII. B.

### B. SHPO Review Timeframes

The SHPO shall provide written comments or request for more information on a project within thirty (30) days after receipt of a request for consultation. If SHPO does not provide written comments within the mandated 30-day period, HPD/NYCHA can assume SHPO's concurrence that an Undertaking will have no adverse effect and proceed with the Undertaking.

C. SHPO's Comments

The SHPO's comments may include recommendations for modifying a proposed project's plans to be consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* ("Standards"); a determination that a proposed project constitutes no adverse effect; that a - proposed project constitutes an adverse effect, or any other recommendations that the SHPO believes are necessary to complete Section 106 Review of a proposed project.

D. Incorporation of Comments

Upon receipt of comments from the SHPO, NYCHA shall evaluate the comments and provide a written response to the SHPO within 30 days, unless the SHPO's finding is "No Adverse Effect", in which case a written response to the SHPO is not required.

E. Section 106 Review Process for LPC Designated Properties

Additionally, when NYCHA is required to submit an Undertaking for Section 106 review to the SHPO, as outlined in Section VIII. A of this Agreement NYCHA must also contemporaneously consult with the LPC on Undertakings that have the potential to adversely affect an LPC property.

1. NYCHA will submit the documents that it provided to SHPO to LPC so that LPC may notify NYCHA as to whether an LPC property may be affected by the Undertaking and will require an LPC permit.
2. LPC will review NYCHA Undertakings that have the potential to adversely affect an LPC designated property, or one calendared for designation.
3. LPC understands that if it does not respond to NYCHA's submittal of Undertakings to them within the timeframe outlined in Section VIII, Part B, "SHPO Review Timeframes", NYCHA will assume that none of the Undertakings are subject to LPC review and permitting and will proceed with the Undertaking.

F. Resolution of Adverse Effects

1. For Undertakings that the SHPO and NYCHA agree will constitute an adverse effect on historic properties, NYCHA shall continue consultation with the SHPO in accordance with 36 CFR Part 800.6 to resolve the adverse effect.
2. If after consulting to resolve adverse effects, the SHPO or NYCHA determines that further consultation will not be productive either party shall follow the applicable procedures as outlined in 36 CFR Part 800.7.
3. If after consulting to resolve adverse effects LPC, SHPO and NYCHA do not

agree, if permit issuance is required, LPC will make the final determination based on permit issuance approval.

## **IX. Expedited Reviews**

- A. NYCHA Undertakings that do not meet the definition of an Emergency Undertaking as outlined above but require urgent action may be submitted to SHPO along with an email requesting expedited review. Upon request from HPD or NYCHA, SHPO shall make a good faith effort to expedite its review of these Undertakings.
- B. NYCHA Undertakings that do not meet the definition of an Emergency Undertaking as outlined above and are LPC designated or calendared for designation, but require urgent action, may be submitted to LPC along with an email requesting expedited review. Upon request from HPD or NYCHA, LPC shall make a good faith effort to expedite its review of these Undertakings.

## **X. Post Review Discoveries/Unanticipated Effects**

If during an Undertaking additional historic properties, structures or objects are discovered, or unanticipated effects on historic properties are found NYCHA shall cease the work until it can be evaluated in accordance with 36 C.F.R Part 800.13 (b) and immediately notify the SHPO. NYCHA shall follow SHPO's protocol for post review/unanticipated discoveries as outlined in Appendix E of this Agreement.

## **XI. Discovery of Human Remains**

If human remains are encountered during an Undertaking or archaeological investigation, local law enforcement and the New York City Chief Medical Examiner must be notified immediately. The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) has developed a Human Remains Discovery Protocol. The treatment of any human remains encountered during an Undertaking will be guided by this protocol outlined in Appendix D- "New York State Office of Parks, Recreation and Historic Preservation Human Remains Discovery Protocol".

## **XII. Duration/ Effective Dates**

This agreement shall continue in full force and effect for ten (10) years from the date of the last signature on this Agreement. No extension of the term will be effective unless all parties to the Agreement have agreed to it in writing.

## **XIII. Documentation and Recordkeeping**

NYCHA and HPD shall maintain documentation of all Undertakings that have

been reviewed by SHPO or exempted from review pursuant to this Agreement. These documents shall be maintained for seven (7) years

#### **XIV. Monitoring and Reporting**

Each year, following the date that this PA is executed, until it expires or is terminated, NYCHA shall provide all signatories to this PA with a summary report. The report shall include:

- A. Overview of PA effectiveness and suggested improvements.
- B. A list of exempted projects in which no further consultation was required
- C. Any problems encountered disputes or objections in the efforts to carry out the terms of the PA.
- D. Names and qualifications of those persons supporting the cultural resource professions as required in section VII.
- E. Any post-review discoveries.
- F. Any Memorandum of Agreements executed.

#### **XV. Dispute Resolution**

Should any signatory to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the objecting party shall consult with the other parties to resolve the objection. If any party determines that the objection cannot be resolved, HPD in consultation with NYCHA shall request comments of the Advisory Council on Historic Preservation ("ACHP") pursuant to 36 CFR 800.5 (c)(3) as follows:

- A. Forward all documentation relevant to the dispute, including proposed resolution(s), to the ACHP. The ACHP shall provide HPD and NYCHA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, HPD in consultation with NYCHA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. NYCHA will then proceed according to HPD's final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, HPD may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, HPD shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.

- C. Notwithstanding the foregoing in this Article XV, If after consulting to resolve adverse effects in accordance with Article VIII of this Agreement, LPC, SHPO and NYCHA do not agree, if permit issuance is required, LPC will make the final determination based on permit issuance approval.

SHPO, NYCHA and HPD's responsibility to carry out all other actions subject to the terms of this Agreement that are not subject of the dispute remain unchanged.

## **XVI. Amendments**

Any party to this Agreement may request that it be amended, whereupon the parties will consult pursuant to 36 CFR 800.6(c) (7). No modification shall be effective unless HPD, NYCHA, and SHPO have agreed to it in writing. The amendment will become effective on the date a copy is signed by all signatories.

Additionally, two years after execution of this Agreement the parties shall review program performance to determine effectiveness of the agreement and shall consult to consider amendment of the Agreement.

## **XVII. Emergency Undertakings**

This Programmatic Agreement will follow procedures for handling Emergency Undertakings as outlined in 36 CFR Part 800.12.

## **XVIII. Public Involvement and Outreach**

- A. HPD shall notify the public of the nature and scope of proposed HUD-assisted Undertakings that may have an adverse affect and/or new construction within historic properties and/or sites, and provide a reasonable opportunity for members of the public to express their views on these Undertakings.
- B. Additionally, HPD shall inform the public of the existence of this PA and plans for meeting the stipulations outlined in the PA. Copies of this agreement and relevant documentation prepared pursuant to the terms of this PA shall be made available for public inspection via Environmental Review Records and online publication on HPD's website.
- C. If at any time during the implementation of the measures stipulated in this Agreement, should an objection to any measure or its implementation be raised by a member of the public, HPD shall take the objection into account and consult as needed with NYCHA and the SHPO to resolve the objection.

## **XIX. Technical Assistance**

Nothing in this Agreement shall be construed to mean that NYCHA or HPD cannot request advice, counsel, or assistance from the SHPO at any given time on any project.

**XX. Termination**

Any party to this Programmatic Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

In the event that this Agreement is terminated, NYCHA and its Responsible Entity, HPD, shall comply with 36 CFR Part 800 with regard to individual Undertakings covered by this Agreement.

**XXI. Failure to Comply with Agreement**

In the event that NYCHA or HPD fails to carry out the terms of this Agreement, NYCHA and HPD shall comply with the Section 106 Process as outlined in 36 CFR 800 for any Undertaking covered by this Agreement.

**XXII. Execution and Implementation**

Executing and implementation of the terms of this Programmatic Agreement provides evidence that NYCHA has and will take into account the effects of its Undertakings on historic properties and that it has provided and will provide the State Historic Preservation Officer an opportunity to comment.



**SIGNATORIES**

**New York City Department of Housing Preservation and Development**



Molly Park  
Deputy Commissioner

9/18/18

Date

**The New York City Housing Authority**



Deborah Goddard  
Executive Vice President, Capital Projects Division

8/22/18

Date

**New York State Office of Parks, Recreation and Historic Preservation**



R. Daniel Mackay  
Deputy Commissioner

9/30/2018

Date

**Concurring Parties**

**New York City Landmarks Preservation Commission**

FRIEDERICK BLAND

Print name:  
Print title: Vice Chair



Date

9.13.2018

-End of Programmatic Agreement-

APPROVED AS TO FORM  
WORKING CORPORATION COUNSEL  
8/15/2018



**APPENDIX A**  
**NYCHA National Register Listed/Eligible Properties &**  
**NYCHA NYC Landmark Properties**

As of March 2018

<b>Borough</b>	<b>Property</b>	<b>SHPO Determination</b>	<b>LPC Designation</b>
<b><i>Brooklyn</i></b>			
	Albany I and II	NR eligible	N/A
	Bayview Houses	NR eligible	N/A
	Boulevard Houses	NR eligible	N/A
	Brownsville Houses	NR eligible	N/A
	Ingersoll Houses	entire complex NR eligible	N/A
	Marcus Garvey Group A	NR eligible	N/A
	Marlboro Houses	NR eligible	N/A
	Pennsylvania Ave-Wortman Ave	NR eligible	N/A
	Red Hook Houses	NR eligible	N/A
	Whitman Houses	entire complex NR eligible	N/A
	Williamsburg Houses	NR eligible	Individual Landmark
<b><i>Bronx</i></b>			
	Boston Road Plaza	NR eligible	N/A
	Bronx River Houses	NR eligible	N/A
	Clason Point Gardens	NR eligible	N/A
	Davidson Houses	NR eligible	N/A
	Eastchester Gardens	NR eligible	N/A
	Gun Hill Houses	NR eligible	N/A
	Sedgwick Houses	NR eligible	N/A
<b><i>Manhattan</i></b>			
	Amsterdam Houses	NR eligible	N/A
	Baruch Houses	NR eligible	N/A
	Carver Houses	NR eligible	N/A
	Douglas Rehabs (241 West 101st St, 229 and 251 West 103rd St, 244 West 104th St)	NR eligible	LPC Riverside West End Historic District II
	East River Houses	NR eligible	N/A
	First Houses	NR listed	Individual Landmark
	Harlem River Houses	NR listed	N/A

<b>Borough</b>	<b>Property</b>	<b>SHPO Determination</b>	<b>LPC Designation</b>
<b><i>Manhattan</i></b> (Continued)			
	Jacob Riis I and II	NR eligible	N/A
	King Towers	NR eligible	N/A
	Randolph Houses	NR listed	N/A
	Smith Houses	NR eligible	N/A
	Taft Rehabs	NR listed	N/A
	Vladeck Houses and Vladeck II	NR listed	N/A
	Wise Rehab	NR eligible (54 West 94th St)	Upper West Side/Central Park West Historic District
	W.S.U.R.A. Brownstones (47 West 89th St, 15 and 38 West 90th St, 22 and 64 West 91st St)	NR eligible	Upper West Side/Central Park West Historic District
<b><i>Queens</i></b>			
	Forest Hills Co-Op	NR eligible	N/A
	Queensbridge North & South	entire complex NR eligible	N/A
	South Jamaica I	NR eligible	N/A
<b><i>Staten Island</i></b>			N/A
	Berry Houses	NR eligible	N/A
<b>Division for Historic Preservation</b>			
P.O. Box 189, Waterford, New York 12188-0189 • (518) 237-8643 • <a href="http://www.nysparks.com">www.nysparks.com</a>			

**APPENDIX B**  
**NYCHA Activities Exempt from Review by the**  
**New York State Historic Preservation Officer (“SHPO”)**

The following Undertakings have no or limited potential to affect NYCHA's historic properties and do not require further review or consultation with the SHPO. LPC designated properties require LPC approval and issuance of an LPC permit for the NYCHA activities indicated below.

For purposes of this agreement, the term “in-kind repair” means an action to restore the mechanical, structural or aesthetic function of an element of an historic resource using materials and methods compatible with the original function of that element. “In-kind replacement” means the removal of any element and the insertion of a new element with the same material matching the same design, form, dimension, color and texture as that being replaced.

1. Site Work

- a. Streets, driveways, sidewalks, and alleys- Repair and restriping of existing concrete or asphalt surfaces provided that no changes are made in width, surface, vertical alignment, or drainage.
- b. Parking Areas- Repair and restriping of existing parking lots, provided that no changes are made in width, surface or vertical alignment. Parking layout changes to accommodate upgrades to meet ADA requirements, including adding curb cuts and associated signage.
- c. Park and playground equipment- In-kind repair or in-kind replacement of existing non-original park and playground equipment, excluding buildings, with minimal ground disturbance (i.e. ground disturbance that is less than eighteen (18) inches below the existing surface).
- d. Basketball courts and other paved recreational areas- Repair and repaving of existing concrete or asphalt surfaces provided that no changes are made in width, surface, vertical alignment, or drainage.
- e. Curbs, gutters, sidewalks, retaining walls- Repair of existing concrete or asphalt surfaces or in-kind replacement of brick, rock, or stone materials for curbs, gutters, sidewalks, and retaining walls, including adding curb cuts in conformance with NYC Department of Transportation and LPC historic district guidelines.
- f. Site improvements -Repair or in-kind repair/replacement of site improvements, including, but not limited to fences, landscaping, and steps provided that no changes are made in alignment/configuration.
- g. Temporary structures- Installation of temporary construction-related structures (with minimal ground disturbance no greater than eighteen (18) inches below the existing ground surface) including scaffolding, barriers, screening, fences, protective walkways,

signage, office trailers or restrooms.

- h. Generators- Temporary installation of generators, and permanent installation of generators that are placed inside existing buildings or that occupy an area under fifty (50) square feet behind the building they serve, provided that there is minimal ground disturbance no greater than eighteen (18) inches below the existing ground surface
- i. Non-historic retaining walls, driveways, curbs and gutters, and parking areas; Removal and installation of these site elements; and repair in-kind using like materials, techniques and design of historic retaining walls driveways, curbs and gutters, and parking areas. New ground disturbance must be no deeper than existing disturbance.
- j. Brick or stone sidewalks and alleys- In-kind repair or in-kind replacement of brick or stone sidewalks and alleys. New ground disturbance must be no deeper than existing disturbance
- k. Masonry steps- Maintenance, in-kind repair or in-kind replacement of masonry steps not attached to any building. New ground disturbance must be no deeper than existing disturbance
- l. Landscaping- Installation of landscaping when no grading is required and when excavation of holes for new individual plantings is no more than eighteen (18) inches deep or for replacement of individual plantings the ground disturbance must be no deeper than the existing disturbance.
- m. Temporary barriers- Installation of temporary, reversible barriers such as fencing and construction of pedestrian tunnels and sidewalk bridges. New ground disturbance must be no deeper than eighteen (18) inches or existing disturbance, whichever is less.

## 2. Lighting

- a. Exterior lighting upgrades. - Installation of lighting fixtures and lighting upgrades to improve illumination throughout development open spaces such as at walkways, building entrances, play areas, sports courts, parking lots, maintenance areas, etc. Lighting fixture upgrades include cobra heads, floodlights, pedestrian post top lights, wall packs, etc.

**LPC Sites:** Any exterior lighting fixture that is located on an LPC designated property, or is individually designated as a LPC landmark requires an LPC permit.

- b. Repair or replacement of existing exterior lighting fixtures. This includes

non-historic lamp posts, recreational area lighting such as flood lights, canopy lighting and any other site lighting. Re-wiring and re-lamping.

3. Exterior Building Rehabilitation

- a. NYC Local Law 11 work- Inspection and repair of building facades for any unsafe conditions. Repairs include “stitching” new matching brick into the existing brick facades, repairs to or in-kind replacement of window lintels and sills, and repairs to existing expansion joints.
- b. Sidewalk sheds/scaffolding- Installation of scaffolding/sidewalk sheds.
- c. Roof work- Maintenance, in-kind repair or in-kind replacement of roof cladding and sheeting, flashing, gutters, soffits, and downspouts with no change in roof pitch or configuration. Installation of new roofing or reflective roof coatings on a flat-roofed building with a parapet, such that the roofing material is not visible from any public right-of-way.

**LPC Sites:** Flat, built up asphalt roofs do not require an LPC permit. Any other type of roof maintenance requires an LPC permit.

- d. Solar Panels- New installations that are not visible or will be minimally visible (defined as a level of visibility of one foot above parapets or roofline).
- e. Masonry parapets- In-kind repair and/or in-kind replacement of masonry parapets
- f. Roof tanks- Repair and replacement of roof tank vessels only, excludes tank screening.
- g. Exterior maintenance and repair made with in-kind materials that do not affect the external appearance and building fabric, including but not limited to the following:
  - (1) Repointing of mortar joints- Use of mortar similar in composition, joint profile, color, and texture. The mortar used in the tuck pointing shall be no harder than the existing mortar and brickwork.
  - (2) Floor and Ceiling Joists- Repair and in-kind replacement of floor joists, and ceiling joists
  - (3) Removal of exterior paint or graffiti- Use of non-destructive means, limited to hand scraping, low-pressure water wash of less than 500 psi, heat plates, hot air guns, chemical paint removal, provided that the removal is consistent with provisions in 24 CFR Part 35, “Lead-based Poisoning Prevention in Certain Residential Structures,” and National Park Service Brief #37- Appropriate Methods for Reducing

Lead-Paint Hazards in Historic Housing.

- (4) Exterior painting- Application of exterior paint to previously painted masonry.
- (5) Lead-based paint ("LBP") abatement- All LBP abatement that does not involve removal or alteration of exterior features and/or window fenestration.
- (6) Canopies- In-kind repair of entrance canopies.
- (7) Window repair- Including caulking and weather stripping of existing window frames, installation of new clear glass in existing sashes, and replacement of glazing.

**LPC Sites:** Removal of exterior paint requires an LPC permit. Application of exterior paint to previously painted masonry does not require an LPC permit if the color matches exactly. An LPC permit is required for all window repairs including those described above.

- h. Accessibility improvements and ramps- Maintenance, in-kind repair, or in-kind replacement of handicapped accessible improvements such as wheelchair ramps and Graded ground paths that provide access to a building, repair of existing ramps, and installation of temporary ramps that do not irreversibly impact entrance areas.
- i. Non-historic window replacement- Replacement with new windows sized to fit the original window openings. A non-historic window shall mean any window that is not original to the initial date of construction of the building.

**LPC Sites:** An LPC permit is required for non-historic window replacement.

- j. Foundations- Below-grade repair of brick or stone foundations that may include appropriate application of weatherproofing or sealers, and repairs to all other types of foundations.

**LPC Sites:** An LPC permit is required for below-grade repair of brick or stone foundations that may include appropriate application of weatherproofing or sealers, and repairs to all other types of foundations.

- k. Mothballing- Securing or "mothballing" a property by boarding over window and door openings, making temporary roof repairs, and/or ventilating the building in accordance with the National Park Service's Preservation Brief 31, *Mothballing Historic Structures*.

4. Interior Rehabilitation

All interior work is exempt except for:

- a. Proposed changes affecting the historic circulation plan (lobbies, corridors, stair and elevator cores).
- b. Proposed changes affecting the exterior appearance of the buildings (for example, partitions or dropped ceilings in front of windows).
- c. Work proposed for community centers and other common non-residential buildings within the residential complex.

5. Security and Fire Safety Systems

- a. Closed Circuit Television Cameras ("CCTV"): Replacement or installation of CCTV equipment, security cameras and conduits.
- b. Security enhancements at entrance areas, such as Layered Access Control Systems ("LAC").
- b. Fire safety system work- Upgrade of fire alarm systems, fire suppression systems, etc.

6. Utilities and Mechanical, Electrical and Plumbing Systems

- a. Underground Utility Lines. Repair or replacement of existing water, sewer, natural gas, electric, or telecommunication lines if it occurs within the same horizontal and vertical dimensions within existing ground disturbance, or within eighteen (18) inches of the existing ground surface.
- b. Above-Ground Utilities. Repair or replacement of existing wires, anchors, cross arms, and other miscellaneous hardware on existing overhead lines; not including pole replacement or installation outside of city limits.
- c. Boiler replacements/repairs
- d. Garbage Disposal- Exterior/interior compactor replacements or repairs and bulk crusher replacement and installations.
- e. Electrical work (includes information technology)
- f. Plumbing system Includes repairs and rehabilitation
- g. HVAC- Includes heating and cooling system repairs or replacement, including pipes, radiators, duct work and all other HVAC equipment that does not require significant alteration/destruction of historic fabric



or introduce highly visible, non-historic elements such as chases and conduits and associated enclosures. Placement and installation of exterior HVAC mechanical units and vents not on the main entrance elevation.

7. Hazard Mitigation and Abatement/Emergency Repairs

**Note:** The NYS Disaster Recovery Programmatic Agreement covers FEMA-funded disaster recovery Undertakings. These exempt activities apply only to non-FEMA-funded Undertakings

- a. Temporary stabilization that causes no permanent damage to the building or site, including installation of temporary bracing, shoring, and tarps.
- b. Emergency repair of masonry cracks and/or failing masonry elements.
- c. Emergency repair of concrete cracks and/or failing concrete elements.
- d. Emergency repair of falling plaster or other building elements that pose an immediate and imminent health and safety hazard.
- e. Asbestos Abatement- Removal of asbestos containing materials (ACM), e.g. floor tile, plaster, insulation, glazing putty, roofing and flashing mastic.
- f. Lead abatement- All lead-based paint abatement that does not involve removal or alteration of exterior features and/or windows.

8. Other Activities

- a. Rehabilitation of properties less than 50 years old (with the exception of National Register listed/eligible sites).
- b. Architectural and engineering fees
- c. Purchase and acquisition of real property
- d. Leasing, without demolition, repair, rehabilitation, or construction.

**APPENDIX C**  
**List of Identified Historic NYCHA Artwork**  
 As of December 2017

#	Development Name	Borough	Type	Artist	Year Installed	Description
1	KINGSBOROUGH	BROOKLYN	sculpture	Richmond Barthé		Image of men taking various poses in profile view, stylized similarly to an Egyptian aesthetic.
2	RED HOOK EAST	BROOKLYN	mural	Marian Greenwood	ca. 1940	Painted mural in the style of social realism, depicting community building
3	WILLIAMSBURG	BROOKLYN	mural	Ilya Bolotowsky	ca. 1937	Abstract mural painting, on canvas. Restored in 1990's; ensconced at Brooklyn Museum. Ilya Bolotowsky's Williamsburg mural was, in his words, "designed to improve proportions in a very shallow day room." He achieved this with a light-colored background against which vibrantly colored geometric and biomorphic shapes hover in the air in tension with one another. The horizontal emphasis, punctuated by strong diagonals, suggests an expansive space not limited by the actual proportions of the room.
4	WILLIAMSBURG	BROOKLYN	mural	Paul Kelpé	ca. 1937	Abstract mural painting, on canvas. Restored in 1990's; ensconced at Brooklyn Museum. Paul Kelpé's Williamsburg murals were conceived as entirely non-objective compositions. However, they reveal a distinctly different approach to abstraction. Kelpé is unique for his strikingly unusual color combinations, his decorative patterning of selected fields of color, and his sculptural forms suggesting axial rotation.
5	WILLIAMSBURG	BROOKLYN	mural	Paul Kelpé	ca. 1937	Abstract mural painting, on canvas. Restored in 1990's; ensconced at Brooklyn Museum. Paul Kelpé's Williamsburg murals were conceived as entirely nonobjective compositions. However, they reveal a distinctly different approach to abstraction. Kelpé is unique for his strikingly unusual color combinations, his decorative patterning of selected fields of color, and his sculptural forms suggesting axial rotation.
6	WILLIAMSBURG	BROOKLYN	mural	Albert Swinden	ca. 1937	Abstract mural painting, on canvas. Restored in 1990's; ensconced at Brooklyn Museum. This abstract mural painting features balanced and disciplined composition of rectangular shapes punctuated by occasional biomorphic forms. Swinden seldom wrote about his art, but his brief essay "On Simplification," published in the 1938 American Abstract Artists Yearbook, provides a succinct comment on the aesthetic concerns embodied in this mural. "We are moved not only by particular, or individual forms," he wrote, "but by the relationships between the particular forms and their significance as a unity."
7	WILLIAMSBURG	BROOKLYN	mural	Balcomb Greene	ca. 1937	Abstract mural painting, on canvas. Restored in 1990's; ensconced at Brooklyn Museum.

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#	Development Name	Borough	Type	Artist	Year Installed	Description
8	CARVER	MANHATTAN	Sculpture 1	Robert Amendola	1965	The bronze sculpture depicts George Washington Carver as a boy sitting on a rock. Carver was a famous American botanist and inventor born into slavery in the mid 1960s. (His exact birthdate is unknown and he died on January 5, 1943.) He was known for his promotion of alternative crops to cotton such as sweet potatoes and peanuts, which allowed soil to recover from the nutrient depleting cotton crop. He taught agriculture at the Tuskegee Institute in Alabama. His work was significant because it created solutions for how, mainly black, farmers could get out of debt.
9	CARVER	MANHATTAN	Sculpture 2	Joseph Kiselewski	1956	Bronze on marble base of bears.
10	CARVER	MANHATTAN	Fountain with Sculptures 1	Joseph Kiselewski		The Vincent Astor Foundation Amphitheater at Carver Houses is decorated with fountains and frog sculptures.
11	CARVER	MANHATTAN	Fountain with Sculptures 2			A play fountain decorated with seal sculptures
12	EAST RIVER	MANHATTAN	Decorative terra cotta medallions and other details.	Voorhees, Gmelin and Walker	1941	Decorative terra cotta medallions and other details.
13	FIRST HOUSES	MANHATTAN	Dog	Hugo Robus	1936	Cast Stone of a dog. Originally was painted. First Houses was the first public housing development built in the United States. It was built by the Work Progress Administration in 1935 and landmarked by the New York City Landmarks Preservation Foundation in 1989.
14	FIRST HOUSES	MANHATTAN	Bear	Bernard Walsh or Edna Guck	1936	Cast Stone of a bear. Originally was painted. First Houses was the first public housing development built in the United States. It was built by the Work Progress Administration in 1935 and landmarked by the New York City Landmarks Preservation Foundation in 1989.
15	FIRST HOUSES	MANHATTAN	Seal	Adolf Wolff	1936	Cast Stone of a seal. Originally was painted. Likely made with the same mold as the one used to make three seals at Vladeck Houses. First Houses was the first public housing development built in the United States. It was built by the Work Progress Administration in 1935 and landmarked by the New York City Landmarks Preservation Foundation in 1989.
16	FIRST HOUSES	MANHATTAN	Four Trojan horses: all cast stone approx. 2' high	Artist Unknown	1936	Four Trojan horses: all cast stone, approximately 2-feet tall. First Houses was the first public housing development built in the United States. It was built by the Work Progress Administration in 1935 and landmarked by the New York City Landmarks Preservation Foundation in 1989.

#	Development Name	Borough	Type	Artist	Year Installed	Description
	FIRST HOUSES	MANHATTAN	Sculptural Reliefs in Masonry Walls: All Cast Stone Rondelles, 17" diameter			Cast stone rondelles, affixed to masonry walls of building, 17- inch in diameter -- depicting different animals and birds, as noted below. First Houses was the first public housing development built in the United States. It was built by the Work Progress Administration in 1935 and landmarked by the New York City Landmarks Preservation Foundation in 1989.
17	FIRST HOUSES	MANHATTAN	Doves	Gino Ficini	1936	" "
18	FIRST HOUSES	MANHATTAN	Cat	Gino Ficini	1936	" "
19	FIRST HOUSES	MANHATTAN	Rabbit	Gino Ficini	1936	" "
20	FIRST HOUSES	MANHATTAN	Bear	Gino Ficini	1936	" "
21	FIRST HOUSES	MANHATTAN	Turkey	Gino Ficini	1936	" "
22	FIRST HOUSES	MANHATTAN	Duck	George Girolami	1936	" "
23	FIRST HOUSES	MANHATTAN	Fox	Fortunato Duci	1936	" "
24	FIRST HOUSES	MANHATTAN	Goats (2 different rondelles)	Muriel Brennecke	1936	" "
25	FIRST HOUSES	MANHATTAN	Planters	Unknown		Three, octagonally shaped, concrete planters, dating from the 1970's.
26	HARLEM RIVER	MANHATTAN	Sculpture 1	Heinz Warneke assisted by T. Barbarossa, R. Barthé and F. Steinberger	1937	Cast stone sculpture, incorporated into the facade, of a man kneeling.
27	HARLEM RIVER	MANHATTAN	Sculpture 2	Heinz Warneke assisted by T. Barbarossa, R. Barthé and F. Steinberger	1937	Cast stone sculpture of a woman.
28	HARLEM RIVER	MANHATTAN	Sculpture 3	Heinz Warneke assisted by T. Barbarossa, R. Barthé and	1938	Bronze sculpture of two bears playing.
29	JOHNSON	MANHATTAN	Sculpture 1	Richmond Barthé	1947	"Father and Son"- Bronze sculpture depicting a man with child on his shoulder. Original sculpture also included a dog on the figure's' left-hand side. Reference material: <a href="https://books.google.com/books?id=Xh7afWYQzAgC&amp;pg=PA123&amp;ots=3tRdWB8jid&amp;dq=richmond%20barthe%20%2B%20johnson%20houses&amp;pg=PA123#v=onepage&amp;q=richmond%20barthe%20+%20johnson%20houses&amp;f=false">https://books.google.com/books?id=Xh7afWYQzAgC&amp;pg=PA123&amp;ots=3tRdWB8jid&amp;dq=richmond%20barthe%20%2B%20johnson%20houses&amp;pg=PA123#v=onepage&amp;q=richmond%20barthe%20+%20johnson%20houses&amp;f=false</a>
30	JOHNSON	MANHATTAN	Sculpture 2	Oronzio Maldarelli	1947	Bronze Sculpture depicting two girls dancing with a ball.
31	JOHNSON	MANHATTAN	sculpture	Unknown		Two concrete elephants

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#	Development Name	Borough	Type	Artist	Year Installed	Description
32	JOHNSON	MANHATTAN	sculpture	Unknown		Four concrete columns with a decorative overhang
33	LINCOLN	MANHATTAN	Sculpture	Charles Keck	1949	Bronze sculpture depicting a portrait of Abraham Lincoln with a child.
34	RIIS	MANHATTAN	Sculptures	William Tarr	1966	Concrete, Brutalist-style "Totems", tall sculptures on pedestals which serve as an homage to Jacob A. Riis. The pedestals double as planters.
35	SMITH	MANHATTAN	Sculpture	Hera	1989	"Orbital Connector" was dedicated in the gardens of Smith Houses on June 26, 1989. It indicates the route of a circle connecting New York, China, and the Caribbean, three places of origin well represented at the Governor Alfred E.
36	VLADECK	MANHATTAN	Cast Stone Play Sculptures: Three "Seals"	Possibly by Adolf Wolff	c. 1940	Cast cement play sculptures of three seals.
37	WISE TOWERS	MANHATTAN	concrete mural	Costantino Nivola	1964	Abstract mural painted in cement and sand in Nivola's signature style.
38	WISE TOWERS	MANHATTAN	Sculpture 1	Costantino Nivola	1964	Abstract concrete sculptures in various geometric forms consistent with the signature sculptural style for which Nivola is known.
39	WISE TOWERS	MANHATTAN	Sculpture 2	Costantino Nivola	1964	" "
40	WISE TOWERS	MANHATTAN	Sculpture 3	Costantino Nivola	1964	" "
41	WISE TOWERS	MANHATTAN	Sculpture 4	Costantino Nivola	1964	Group of concrete horses, stylized according to Nivola's typical horse depictions.
42	QUEENSBRIDGE NORTH	QUEENS	Sculpture		1939	Frieze on façade, above doorway
43	QUEENSBRIDGE NORTH	QUEENS	Mural	Philip Guston/WPA	1939	This mural highlights themes of work, recreation, and family life in a muted color palette.

## APPENDIX D

### Human Remains Discovery Protocol

#### New York State Office of Parks, Recreation and Historic Preservation Human Remains Discovery Protocol (October 2016)

In the event that human remains are encountered during construction or archaeological investigations, the New York State Historic Preservation Officer (SHPO) recommends that the following protocol be implemented:

- Human remains must be treated with the utmost dignity and respect at all times. Should human remains or *suspected* human remains be encountered, work in the general area of the discovery will stop immediately and the location will be secured and protected from damage and disturbance.
- Notify local law enforcement and the New York City Chief Medical Examiner's Office immediately.
- If skeletal remains are identified and the archaeologist is not able to conclusively determine whether they are human, the remains and any associated materials must be left in place. A qualified forensic anthropologist, bio archaeologist or physical anthropologist will assess the remains *in situ* to help determine if they are human.
- No skeletal remains or associated materials will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
- The SHPO, the appropriate Indian Nations, the involved state and federal agencies, the coroner, and local law enforcement will be notified immediately. Requirements of the coroner and local law enforcement will be adhered to. A qualified forensic anthropologist, bioarchaeologist or physical anthropologist will assess the remains *in situ* to help determine if the remains are Native American or non-Native American.
- If human remains are determined to be Native American, they will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred option of the SHPO and the Indian Nations. The involved agency will consult SHPO and the appropriate Indian Nations to develop a plan of action that is consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) guidance. Photographs of Native American human remains and associated funerary objects should not be taken without consulting with the involved Indian Nations.
- If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred option

of the SHPO. Consultation with the SHPO and other appropriate parties will be required to determine a plan of action.

- To protect human remains from possible damage, the SHPO recommends that burial information not be released to the public

## APPENDIX E

### Unanticipated Discoveries Protocol

#### Unanticipated Discoveries Protocol for the New York City Housing Authority

To assist HPD and NYCHA in meeting the requirements of Section 106 of the National Historic Preservation Act as defined in the Advisory Council on Historic Preservation (Council) regulations “Protection of Historic Properties” (36 CFR Part 800), HPD and NYCHA will implement the following Unanticipated Discovery Protocol should new or additional historic properties [cultural resources] be found after construction has begun on [PROJECT NAME]. This protocol has been developed through reference to the regulations embodied in “Protection of Historic Properties” issued by the Council (revised August 2004, [www.achp.gov/regs-rev04.pdf](http://www.achp.gov/regs-rev04.pdf)) and consultation with the New York State Historic Preservation Officer (SHPO) [New York Office of Parks, Recreation, and Historic Preservation (OPRHP)].

Termed “unanticipated discovery” or “post-review discovery,” the identification of new or additional historic properties [cultural resources] during implementation of an Undertaking can occur in the case of projects that involve excavation or ground-disturbing activities. This Protocol will be implemented by NYCHA if previously undiscovered archaeological resources and/or human remains are identified. Archaeological resources include man-made objects (pre-contact and historic period artifacts such as stone tools, pottery, glass, nails, bones, etc.) and features (e.g. stone or brick walls or pavements, pits, fireplaces, other evidence of burning, or other remnants of human activity).

Environmental inspectors and construction contractors and subcontractors will receive training regarding the identification and preliminary treatment of unanticipated discoveries and their responsibilities for protecting discoveries and initiating implementation of the Protocol. Training will occur as part of the pre-construction on-site training program for foremen, company inspectors, and construction supervisors and will be given by a qualified cultural resource specialist. During construction, the Environmental Inspectors (EI) will be responsible for advising construction contractor personnel on the procedure to follow in the event that an unanticipated discovery is made. The EI will advise all operators of equipment involved in grading, stripping, or trenching activities to stop work immediately if they observe any indications of the presence of cultural materials, contact the EI as soon as possible, comply with the unanticipated discovery procedures (outlined below), and treat human remains with dignity and respect (see Human Remains Discovery Protocol).

#### Procedure When Cultural Materials Are Observed

The following measures will be implemented should an unanticipated historic property / cultural resource discovery be made by an inspector, a contractor, or subcontractor during construction of the proposed Undertaking:

- 1) Construction activities within the immediate area of an unanticipated discovery will be halted (“immediate area” is a context-specific measure, however 30 to 50



feet is generally adequate, although special attention should be given to the possible extension of a new find beyond this buffer zone), and the discovery protected from further disturbance;

- 2) NYCHA will notify by telephone HPD and SHPO / OPRHP and, local law enforcement and the Office of the Chief Examiner (the latter parties will be notified only in case of a finding of human remains). These notifications will take place within 24 hours of an unanticipated discovery;
- 3) HPD and SHPO / OPRHP instructions concerning an unanticipated discovery resulting from the notification as described above will be followed and may require, archaeological work be performed on the unanticipated discovery location to stabilize deposits, protect deposits from scavengers or looters, and to collect readily available samples (e.g. for radiocarbon dating) which may help pinpoint the age of deposits; and
- 4) NYCHA will further consult HPD and SHPO / OPRHP to determine and implement any additional measures necessary subsequent to the initial archaeological work. This may involve further archaeological study or consultation with Native American nations or other parties with established cultural affiliation. Construction activities will remain halted until HPD and SHPO / OPRHP indicate to NYCHA that it may proceed in the area of a specified unanticipated discovery.

In the case of an unanticipated discovery of human remains, NYCHA will follow all relevant state and federal law and recommendations regarding treatment of human remains. NYCHA recognizes the importance of providing careful and respectful treatment of human remains recovered as an unanticipated discovery or as part of an archaeological investigation. In the event of an unanticipated discovery of human remains, NYCHA will notify local law enforcement and the New York City Chief Medical Examiner and follow the *Human Remains Discovery Protocol* developed by the NY OPRHP.