

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
AND
City of Allentown, Lehigh County

This Intergovernmental Agreement (“Agreement”) is entered into by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Historical and Museum Commission (“PHMC”) and the City of Allentown (“Municipality”) (collectively “the Parties” for the Municipality’s participation in the National Park Service’s (NPS’s) Certified Local Government (CLG) program. In the context of the CLG program, this Agreement is known as the “Certification Agreement.”

WHEREAS, the bureau of PHMC responsible for implementing the programs required by the National Historic Preservation Act is its Pennsylvania State Historic Preservation Office (“SHPO”); and

WHEREAS, according to 36 C.F.R. § 61.2; 54 U.S.C. § 300310, the Municipality meets the National Historic Preservation Act’s (NHPA’s) definition of “local government” as a “general purpose political subdivision of the state;” and

WHEREAS, according to 54 U.S.C. § 302501-302505, the National Historic Preservation Act provides that the SHPO (in conjunction with the NPS) can designate certified local governments (“CLG”), in order for those local governments to review nominations to the National Register of Historic Places (“NRHP”), to qualify for funds (usually in the form of grants) from the NPS’s Historic Preservation Fund (“HPF”), and for other purposes; and

WHEREAS, according to 36 C.F.R. § 61.6, the SHPO issues and NPS approves the "Certified Local Government Program Guidelines and Procedures for Pennsylvania Communities” (“Guidelines”), detailing the specific requirements for obtaining CLG status along with the responsibilities of municipalities as a condition of CLG status; and

WHEREAS, the Municipality desires to attain CLG status and has submitted the required documentation in support of its desire to attain that status; and

WHEREAS, the SHPO has reviewed the Municipality’s request and has determined that the Municipality has met the requirements to obtain CLG status;

NOW THEREFORE, intending to be legally bound hereby, the parties agree as follows:

I. Term.

1. **Effective Date.** This Agreement will be effective on the date of the last required signature and approval of the United States National Park Service ("NPS"). The Agreement will remain in effect until either party seeks to terminate pursuant to the conditions and process described below.
2. **Voluntary Termination by Municipality.** The Municipality may voluntarily terminate this Agreement and CLG status by giving 30 days' notice in writing. The SHPO will forward the request to NPS for concurrence. The SHPO will notify the Municipality of the date of the termination of this Agreement and CLG status in writing within 30 days of notice from NPS.
3. **Termination by the SHPO.** The SHPO may recommend termination of this Agreement to NPS if the Municipality is not satisfactorily fulfilling the performance standards of the Guidelines and has failed to implement sufficient improvement in the performance of the agreement in accordance with the Guidelines. The SHPO will only recommend a termination after providing a notice to the Municipality of the description of the deficiency, a deadline for correcting the deficiency, and the consequences of failing to meet that deadline. If by the deadline, the Municipality has not completed the corrective action to the SHPO's satisfaction, the SHPO will notify the Municipality in writing that the process of terminating its CLG status has begun and will cite specific reasons for the termination. If NPS does not object within 30 working days of receipt of the SHPO's recommendation, the Agreement and the Municipality's CLG status will terminate. Upon receipt of NPS concurrence or following 30 working days, the SHPO will inform the CLG, in writing, of termination.
4. **Termination in the Event of Legislative Change.** In the event that significant changes in applicable federal law, regulations, or program procedures or significant changes in the Guidelines, the SHPO will notify the CLGs in writing concerning the changes and offer to initiate amendment or termination of this agreement as appropriate and in accordance with the relevant procedures.

II. Certified Local Government Responsibilities. The Municipality agrees that during the period in which the Municipality has CLG status, the Municipality will fulfill and assume the following responsibilities.

1. The Municipality will implement and administer a historic preservation program in accordance with the Ongoing Performance Standards included in the Guidelines.
2. The Municipality will maintain, pursuant to NHPA (54 U.S.C. § 300307) and implementing federal implementing law and policy, laws of the Commonwealth of Pennsylvania, and local law, an adequate and qualified historical architectural review board or historic preservation commission composed of professional and lay members who have a demonstrated interest, competence, or knowledge in historic preservation in accordance with the Guidelines.
3. The Municipality will maintain a system for the survey and inventory of "historic properties" (as NHPA defines the term at 54 U.S.C. 300308) pursuant to the Guidelines;
4. The Municipality will provide for adequate public participation in the historic preservation program, including but not limited to, the process of recommending properties for listing in the NRHP, in accordance with applicable federal and state laws and regulations, including the "Sunshine Act," 65 Pa.C.S. § 701-716, and the Guidelines.
5. The Municipality will participate in the NRHP program in Pennsylvania through the review of nominations in accordance with the Guidelines.
6. The Municipality will cooperate fully with the SHPO in periodic program evaluations and program consultation.
7. The Municipality will administer all grants received from the SHPO according to the terms and conditions of the grant agreements and maintain records of administration of funds allocated from the HPF.
8. The Municipality will adhere to all federal requirements for the CLG program and applicable provisions in accordance with the Guidelines.
9. The Municipality will maintain consistent communication with the SHPO, including but not limited to submission of annual reports according to the form and deadlines specified by the SHPO and

identification of a point of contact for the purposes of receiving communication from and interacting with the SHPO.

III. PHMC Responsibilities. The Commonwealth and SHPO will fulfill and assume the following responsibilities.

1. On the effective date of this Agreement, the Commonwealth of Pennsylvania by and through the SHPO, and in conjunction with NPS will confer upon the Municipality CLG status.
2. The SHPO will notify the Municipality of the availability and amount of CLG grants in each round, and provide the Municipality with information on grant requirements, application forms, and selection criteria.
3. The SHPO will provide the Municipality with information about and access to all known technical assistance programs available to CLGs.
4. The SHPO will notify the Municipality of all known pending NRHP nominations in the Municipality and provide the Municipality with the opportunity to comment pursuant to the procedures described in the Guidelines.
5. The SHPO will notify the Municipality of the location of all guidance necessary to fulfill all of its CLG responsibilities (e.g., maintenance of the local inventory).
6. The SHPO will consult with the Municipality concerning changes to the CLG program by either the Federal Government or the SHPO, including revisions to the Guidelines.

IV. Periodic Performance Evaluations

1. The SHPO will, from time to time, conduct a periodic program evaluation (“Evaluation”) to assess whether the Municipality is meeting the ongoing performance standards as described in Exhibit A and determine needs and goals for the future. The Evaluation will be conducted according to the procedures described in the Guidelines and at such times determined by the SHPO.
2. The SHPO will notify the Municipality’s chief elected official(s) and relevant staff contacts in writing at least 10 working days prior to initiating an Evaluation. The notification will describe the specific process to be followed and identify the scheduling needs for various meetings.
3. The Municipality agrees to cooperate fully in the Evaluation, including providing documents and attending meetings.
4. The SHPO will prepare a written report of its findings pursuant to its Evaluation process and will provide a draft to the Municipality for review and comment prior to making the report final.

VI. Amendment and Modifications. No alterations or variations to this Agreement shall be valid unless made in a mutually agreed upon written document signed by the Parties subject to the same legal review by NPS.

VII. Agency. The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

VIII. Notice. Any written notice under this Agreement shall be sufficient if mailed or e-mailed to:

State CLG Coordinator
Pennsylvania Historical and Museum Commission
State Historic Preservation Office
Commonwealth Keystone Building
400 North St.
Harrisburg, PA 17120
Email: erairigh@pa.gov

David Kimmerly
CLG Liaison
City of Allentown
435 Hamilton St.
Allentown, PA 18101
david.kimmerly@allentownpa.gov

IX. Applicable Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Commonwealth of Pennsylvania and the decisions of the Pennsylvania courts in a manner that is consistent with federal law and requirements; e.g., the National Historic Preservation Act (54 U.S.C. 300100 et seq.) and the federal Office of Management and Budget's (OMB's) Guidance for Federal Grants and Agreements (2 CFR 200 et seq.)

X. Disputes. Any dispute arising hereunder shall be submitted to the State Office of General Counsel for final resolution under State law and the NPS for federal requirements. Prior to making a final decision requiring the interpretation of state law, the State Office of General Counsel shall consult the State Historic Preservation Office regarding the state CLG program guidelines and procedures.

XI. Severability. The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth or the United States and the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected.

XII. Standard Terms and Conditions. The Municipality agrees to the Terms and Conditions included in Exhibit B.

XIII. Integration. When fully executed by the Parties, this Agreement shall be the final and complete Agreement between the Parties containing all the terms and conditions agreed on by the Parties. All representations, understandings, promises, and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement, unless specifically accepted by any other term or provision of this Agreement. There are no conditions precedent to the performance of this Agreement, except as expressly set forth in this Agreement.

EXHIBIT A

Certified Local Government Program Ongoing Performance Standards

Ongoing Performance Standards are the expectations and performance metrics CLGs will be expected to meet following certification and will be the criteria for periodic performance evaluations.

A. Demonstrate a commitment to historic preservation as a vital and integral component of community and economic development.

1. Consistently demonstrate through policies, programs, and actions a commitment to historic preservation as a vital and integral component of community and economic development.
2. Give thoughtful consideration to historic resources and preservation policies in the municipality's comprehensive plan.
3. Adopt and implement the International Existing Building Code.

B. Implement and enforce laws, policies, and procedures that advance preservation goals, uphold the public interest, and respect individual rights.

1. The municipality must maintain and enforce a preservation ordinance that meets the minimum requirements described in Chapter III(B)[1] of the CLG Guidelines and Procedures for Pennsylvania Communities.
2. The municipality must adopt design guidelines that illustrate how the review standards and criteria in the ordinance should be applied to designated properties in a manner that will result in granting a COA or other approval as required by the ordinance. These guidelines must be generally consistent with the Secretary of the Interior's Standards for Archaeology and Historic Preservation. The adopted guidelines must be used in evaluating and decision-making about all relevant applications.
 - a. The review board and governing body must review and render decisions on all applications required by its preservation ordinance in a timely fashion, follow published procedures, and allow for adequate public participation. Public participation includes:
 - b. conducting all business in open meetings according to published procedures
 - c. making meeting minutes publicly accessible, and
 - d. following all Federal and State laws relevant to the conduct of official business.
3. Applicants shall be given written notification of decisions or recommendations of the review board or preservation commission. This notification may be in the form of a copy of the recommendation made to or by the local governing body. Detailed written records of all decisions and actions along with meeting minutes of the review board or preservation commission and the governing body, including the reasons for making these decisions, must be kept on file and available for public inspection.

C. Engage the public in historic preservation

1. The review board or preservation commission must meet at least 4 times per year.
2. All meetings of the Board of Historical Architectural Review or historic preservation commission, and governing body, including special meetings, must be publicly announced and be open to the public in accordance with the Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701-716. The agenda must be available to the public for review prior to the meeting.
3. All decisions by the review board or preservation commission, and governing body related to enforcement of local legislation or Certified Local Government responsibilities shall be made in a public forum.

D. Maintain, utilize, and share current information about historic resources in the community.

1. The municipality must maintain and periodically update inventory information for designated historic districts, buildings, sites, objects, and/or structures regulated under the municipality's preservation ordinance. The inventory information must:
 - a. Have been gathered or updated within the past 10 years;
 - b. Contain property-level information that is consistent with the minimum record guidelines established by PA SHPO;
 - c. Be in a format that allows for integrating the information into the databases and file systems maintained by PA SHPO.
2. The municipality must have a program/procedure to carry out a comprehensive reconnaissance-level survey for further identifying historic districts, buildings, sites, objects, and structures within the municipality or have a written plan that describes how such a program will be implemented.
3. All inventory information must be accessible to the public, except for restrictions on the location of archaeological sites when deemed necessary by the PA SHPO or local government.

E. Appropriately maintain historic resources owned by the municipality.

1. The municipality must evaluate and, where applicable, designate municipally-owned properties as historic resources under the provisions of the appropriate preservation ordinances, or have a plan in place for doing so.
2. Municipally-owned properties and projects within established historic districts or properties designated as historic through other ordinances must follow the same established review procedures and guidelines as other properties.

F. Provide adequate human and financial resources to implement historic preservation programs effectively.

1. Ensure that review boards/commissions consistently meet the membership requirements as defined in F(1)(a)(1-3) of the CLG Guidelines and Procedures.
2. Maintain information about the credentials of review board/commission members and make this available to the public and the State Historic Preservation Officer upon request.
3. Fill vacancies on the review board/commission within 90 days.
4. Provide staff support to the review board/commission in the fulfillment of its responsibilities under the ordinance, including the tasks identified in F(1)(b) of the CLG Guidelines and Procedures.
5. Maintain regular communication with PA SHPO via a designated staff point-of-contact.
6. Board/commission members and support staff must participate in at least 4 hours of continuing education and training programs annually.

G. Actively participate in regional, state, and national preservation programs.

1. Submit CLG annual reports by the established deadline.
2. Administer all CLG grants and scholarships according to established guidelines, procedures, and deadlines, including fully expending all funds awarded.
3. Review and comment on at least 75% of all National Register nominations for resources within the municipality annually, following the procedures and requirements described in Section VIII of the CLG Guidelines and Procedures.
4. Satisfactorily perform all other responsibilities delegated by the PA SHPO.

EXHIBIT B

I. Nondiscrimination/Sexual Harassment Clause, as per Management Directive 215.16 (Amended) (and as consistent with applicable federal law and policy):

The Municipality agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any related grant, the Municipality, each subgrantee, or any person acting on behalf of the Municipality or subgrantee shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA), 43 P.S. § 951-963, or applicable Federal Laws including but not limited to the federal *Civil Rights Act of 1964*, 42 U.S.C. 2000e, against any citizen of this Commonwealth or nation who is qualified and available to perform the work to which the employment relates.
2. Neither the Municipality nor any subgrantee nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under or related to the Agreement.
3. Neither the Municipality nor any subgrantee nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under or related to the Agreement.
4. Neither the Municipality nor any subgrantee nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, 43 P.S. § 1101.101-1101.2301, *Pennsylvania Labor Relations Act*, 43 P.S. 211.1-211.13., or *National Labor Relations Act*, 29 U.S.C. 151-169 as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Municipality and each subgrantee shall establish, maintain, a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Municipality and each subgrantee shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subgrantee or supplier who is qualified to perform the work to which the Agreement relates.

7. The Municipality represents and each subgrantee will represent that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Municipality and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, (42 U.S.C. Chapter 21) that have 100 or more employees and employers that have federal government grants or first-tier subgrants and have 50 or more employees. The Municipality and each subgrantee shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
8. The Municipality shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant related to this Agreement so that those provisions applicable to subgrantees will be binding upon each subgrantee.
9. The Municipality's and each subgrantee's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement/grant awarded pursuant to the Agreement. contract through the termination date thereof. Accordingly, the Municipality and each subgrantee shall have an obligation to inform the Commonwealth if, at any time during the term of the Agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. The Commonwealth may cancel or terminate the Agreement and all money due or to become due under a grant related to the Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Municipality or subgrantee in the Contractor/Grantee Responsibility File.

II. Americans with Disabilities Act Clause, as per Management Directive 215.12 (and as consistent with applicable federal law and policy):

1. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. Section 35.101 et seq., the Municipality understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement or related grant activities on the basis of the disability. As a condition of accepting this Agreement, the Municipality agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Section 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Municipality shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any third party against the Commonwealth of Pennsylvania as a result

of the Municipality's failure to comply with the provisions of Subparagraph 1 above.

III. Sovereign Immunity and Commonwealth Held Harmless Provisions:

1. The Municipality shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Municipality and its employees and agents under this Agreement, provided the Commonwealth gives Municipality prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Municipality, the Commonwealth will cooperate with all reasonable requests of Municipality made in the defense of such suits.
2. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Municipality to control the defense and any related settlement negotiations.

IV. Public Information:

This Agreement and all related records are subject to the National Historic Preservation Act at 54 U.S.C. § 307103, and Pennsylvania's Right to Know Law, 62 P.S. §§ 67.101-67.3104. Neither Party shall release any record that would, in the judgment of the Party, be subject to protection under the National Historic Preservation Act or an exemption from disclosure under the Right to Know Law, without first providing notice to the other Party and the National Park Service within five (5) business days of the receipt of the request. The Parties and the National Park Service will discuss appropriate actions to be taken, including release of the requested information or other action, prior to the release of records.

V. Minimum Wage Provision (and as consistent with applicable federal law and policy):

1. **Enhanced Minimum Wage.** Municipality agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Agreement or related grants, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week. If federal funds are used for grant-supported activity federal rules apply
2. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be

published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.

3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968, 43 P.S. § 333.101-333.115;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act, 43 P.S. 165-1- 1655-17, and Davis-Bacon Act, 40 U.S.C. 3141-3148; or
 - d. required to be paid a higher wage under any federal, state, or local policy or ordinance.
4. **Notice.** Municipality shall post these Enhanced Minimum Wage Provisions for the entire period of the Agreement and related grants conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Municipality must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the Agreement, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Municipality shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in accordance with the terms and conditions set forth herein.

EXECUTED BY:

City of Allentown

COMMONWEALTH OF PENNSYLVANIA

Chief Elected Official Signature

Andrea Lowery
State Historic Preservation Officer
Pennsylvania Historical & Museum Commission

Printed Name and Title

Date

Date