

**Programmatic Agreement
Among
The City of Asheville
And
North Carolina State Historic Preservation Officer
For the Community Development Block Grant and HOME Programs
FY 2005-06 through FY 2010-2011
Asheville, North Carolina, Buncombe County**

WHEREAS, in accordance with the provisions of the Housing and Community Development Act of 1974, as amended (CDBG), and the HOME Investment Partnership Program Act (HOME), the City of Asheville (City) proposes to administer projects and act as the Responsible Entity for acquisition, rehabilitation, demolition, new construction, and infrastructure improvements throughout its Buncombe County jurisdiction for the 2005-2006 through the 2010-2011 fiscal years; and

WHEREAS, the City has determined that the implementation of the individual undertakings of these programs may have an effect upon properties and districts that are listed in or may be eligible for listing in the National Register of Historic Places (National Register) as defined in 36 CFR Part 800, the regulations of the Advisory Council on Historic Preservation (Council) for implementing Section 106 of the National Historic Preservation Act, as amended (16 U.S.C.470f); and

WHEREAS, the City and North Carolina State Historic Preservation Officer (SHPO) have consulted in the development of this Programmatic Agreement; and

WHEREAS, the City has been designated a Certified Local Government pursuant to the National Historic Preservation Act of 1980(PL 96-151) and the corresponding regulations (36 CFR Parts 61.5 and 61.7);

NOW, THEREFORE, the City and SHPO agree that administration and implementation of the CDBG and HOME Programs by the City for fiscal years 2005-2006 through 2010-2011, in accordance with the following stipulations, will provide measures adequate to avoid or satisfactorily mitigate any adverse effect on historic properties.

STIPULATIONS

The City will ensure that the following measures are implemented:

I. Qualifications of City Staff

The City shall ensure that it employs a Historic Resources Commission Director (HRCDD) who, at a minimum, meets the *Secretary of Interior's Professional Qualification Standards* (48 CFR Part 738.9) for Architectural History or Historic Architecture.

The current HRCDD is Stacy Merten. Should she, or any subsequent HRCDD, leave that position, the City will notify the SHPO in writing that the position is vacant. Until a qualified candidate is employed to fill the HRCDD position, all CDBG and HOME program activities shall be individually reviewed by the SHPO.

II. Identification of Historic Properties

A. To determine if a property is historic, the City's HRCD will:

1. Develop and maintain and up-to-date a set of maps that shows all National Register and State Study-listed properties as well as all the areas within the City's jurisdiction that have been comprehensively surveyed and evaluated in terms of National Register eligibility.
2. Consult the maps, stipulated above, and the SHPO's most recent roster of properties that are listed in or have been determined eligible for listing in the National Register or are on the North Carolina State Study List for potential nomination to the National Register. A property is considered historic, if it is on the roster or shown on the maps as National Register or State Study-listed.
3. If the property is not on the roster or Study List and is over fifty (50) years old, or if a property is less than fifty years old, but appears to meet the exception criteria for listing in the National Register, the City's HRCD will submit a map, photographs, and brief history of the property (if known) to the SHPO for a Determination of Eligibility, unless the property is shown on the maps as previously surveyed and evaluated as not eligible.

- B. If the City does not concur in the SHPO's eligibility finding, the property will be submitted to the Keeper of the National Register for a formal Determination of Eligibility in accordance with the Council's regulations at 36 CFR Part 800.4(c)(2).

III. Exempt Activities

The following CDBG and HOME Program undertakings, involving historic properties, have limited potential to affect historic properties and are exempt from the terms of this agreement when approved by the City's HRCD.

A. Projects in public areas; including, but not limited to:

1. In-kind maintenance or replacement of existing sidewalks, curbing, handicapped curb cuts, streetlights, signs, traffic lights, transportation shelters, street furniture or utility lines.
2. New installation of sidewalks, curbing, and handicapped curb cuts, streetlights, signs, traffic lights, transportation shelters, street furniture or utility lines.
3. Resurfacing or re-stripping of roadways and parking areas.
4. Maintenance, replacement or improvement of existing waterline, sewer line, or storm-water infrastructure where ground disturbance is replaced in-kind.

B. Rehabilitation

1. Exterior

- a. Caulking, weather-stripping, reglazing.
- b. Installation or replacement of gutters and downspouts.

- c. Storm windows provided they conform to the shape and size of the historic windows and the meeting rail coincides with that of the existing sash. Color shall match trim; unfinished aluminum is not acceptable.
- d. In-kind replacement - this is understood to mean that the new features/items will duplicate the material, dimension and detailing of the original:
 - 1) Porches, including railings, posts/columns, brackets, cornices, steps, and flooring
 - 2) Roofs
 - 3) Siding
 - 4) Exterior architectural details and features
 - 5) Windows, including the frame, panes, and sash.
- e. Rebuilding of existing wheelchair ramps and the installation of temporary handicap ramp.
- f. Painting except for previously unpainted masonry.
- g. Clean and seal treatments.

2. Interior

- a. Plumbing rehabilitation/replacement, including pipes and fixtures in either the bathroom or kitchen.
 - b. Heating system rehabilitation/replacement/cleaning including furnaces, pipes, radiators, or other heating units.
 - c. Electrical wiring, switches, and receptacles.
 - d. Restroom improvements for handicapped access provided work is contained within the existing restroom.
 - e. Interior surface (floors, walls, ceilings, woodwork) treatments provided the work is restricted to repainting, refinishing, repapering, or laying carpet or linoleum.
 - f. Insulation provided it is restricted to ceilings, attic, and crawl spaces.
 - g. Repair of or pouring of, concrete basement floor.
- C. Acquisition of properties when there is written assurance by the City that the properties will be secured and protected from the elements pending their disposal or reuse pursuant to 36 CFR Part 800. Securing the properties should, at a minimum, take into consideration the recommendations of the National Park Service contained in *Preservation of Briefs #31, Mothballing Historic Buildings*, and include implementation of appropriate measures.

IV. Rehabilitation and New Construction

- A. Exterior alteration or addition projects, for which the City's Historic Resource Commission issues a Certificate of Appropriateness, will have no adverse effect upon a historic property or district, and no further review is required.
- B. All other rehabilitation and new construction activities, which may have an effect on historic properties or are located within a historic district, will be determined to have no adverse effect if the activities meet the *Secretary of the Interior's Guidelines and Standards for Rehabilitation and New Construction (Standards)* (Appendix A).

1. To determine if a project meets the *Standards*, the City's Community Development staff will submit the following documentation to the HRCDC for review and comment:
 - a. Brief project description.
 - b. Location map and photographs of exterior elevation of the property.
 - c. Work write-up keyed to site and floor plans.
2. The HRCDC will respond within fifteen (15) working days of receipt of adequate information. Using the HRCDC's comments and recommendations the City's Community Development staff will revise the plans to meet the *Standards*.
- C. If the *Standards* cannot be met, the HRCDC will submit the proposed undertaking to the North Carolina SHPO for review. If the SHPO determines the undertaking will result in an adverse effect, the City will comply with Stipulation V. A. below.

V. Adverse Effects

- A. If the *Standards* cannot be met and the proposed undertaking will result in an adverse effect upon a historic property, prior to taking any action, the City will notify and consult with the SHPO in accordance with 36 CFR Part 800.5 of the Council's regulations.
- B. Demolition
 1. Where demolition of a contributing property is needed to eliminate a significant public safety hazard, the regulations outlined in 36 CFR Part 800.12 will be followed. Whether a demolition is needed to eliminate a significant public safety hazard shall be pursuant to the local building code.
 2. The City may proceed with the demolition of properties that are not included in the City's historical surveys or are listed as noncontributing to a historical district, provide there will be no adverse effect on other adjacent historic properties and/or districts.
 3. Demolition of any properties that are individually listed or which are classified as contributing buildings located within historical districts that are listed or which have been determine eligible for listing on the National Register will be reviewed on a case-by-case basis with the SHPO. The City's Community Development program staff or HRCDC will submit the following documentation to the SHPO for review:
 - a. Location (including a map) and description of the property proposed for demolition.
 - b. Reasons for the demolition, including documentation of any building code violations, and an explanation of why rehabilitation is neither prudent nor feasible.
 - c. Photographic evidence and written description of the deteriorated condition of the building to be demolished.

- d. Analysis of the demolition on the related historic district (if any.)
4. The SHPO will review the documentation submitted and, within thirty (30) days of receipt of adequate documentation, concur or object in writing to the proposed demolition, and forward an informational copy to the Advisory Council. If the SHPO finds that demolition will have an adverse effect, the City will proceed in accordance with 36 CFR Part 800.5(d).

VI. Archaeology

- A. Prior to any new ground-disturbing activities, the City shall notify the SHPO and request its opinion of the potential existence of any significant archaeological resources. The City will send the SHPO the following information to initiate the consultation process:
 1. A map locating the proposed activity.
 2. Information regarding the nature, depth, and date of the disturbance.
- B. If the SHPO determines that the potential for significant archaeological resources exists, the City will carry out an archaeological survey of the affected area in consultation with the SHPO. If archaeological resources are found that meet the National Register criteria, they will be avoided or preserved in place whenever feasible. When it is not feasible, the SHPO will be consulted and treatment consistent with the Council's handbook on archaeology and approved by the SHPO will be developed and implemented.

VII. Project Documentation and Recordkeeping

- A. To provide monitoring and oversight, the City will:
 1. Maintain, in individual project files, copies of all case documentation, including, before and after photographs, work write-ups, and the HRCDC's comments for nonexempt undertakings.
 2. Maintain copies of Certificates of Appropriateness for which a determination of no adverse effect was made pursuant to stipulation IV(A) above.
 3. Provide information to the SHPO on elements of the CDBG and HOME programs which will not be implemented within the project years covered by this Programmatic Agreement, but which may affect historic properties in future years. At the end of each program year, provide a summary report to the SHPO and the City of Asheville Historic Resource Commission summarizing actions taken to comply with the terms of this Agreement.
 4. Upon written request provide the SHPO and the Council with specific case documents.
- B. The SHPO may monitor any activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. The City will cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities.

VIII. Dispute Resolution

Should the SHPO object within thirty (30) days to any proposed undertakings pursuant to this Agreement; the City shall consult with the SHPO to resolve the objection. If the City or SHPO determines that the objection cannot be resolved, the City shall request the further comments of the Council pursuant to 36 CFR Part 800.7 (c). Any Council comment provided in response to such a request will be taken into account by the City. The City's responsibility to carry out all actions under this Agreement that is not the subjects of the dispute will remain unchanged.

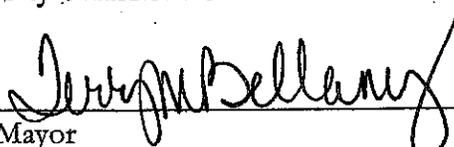
IX. Agreement Modification and Termination

- A. This Programmatic Agreement will continue in full force and effect until July 30, 2011. At anytime in the six-month period prior to the date, the City may request in writing that the North Carolina SHPO review the City's program and consider an extension or modification to this Programmatic Agreement. No extension or modification will be effective unless all parties to the Programmatic Agreement have agreed to it in writing.
- B. Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.6 (c) (7) to consider such amendment.
- C. 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 of termination, the City will comply with 36 CFR Parts 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

Execution and implementation of this Programmatic Agreement evidences that the City has afforded the Council a reasonable opportunity to comment on the CDGB and HOME Programs for fiscal years 2005-2006 through 2010-2011 and that the City has taken into account effects of the Programs on historic properties.

Agreed:

City of Asheville



Mayor Date 4/11/06

State Historic Preservation Officer



Date 3/16/06

Filed by:

Advisory Council on Historic Preservation

Executive Director

Date