

**PROGRAMMATIC AGREEMENT  
BETWEEN  
THE TOWN OF CULPEPER  
AND  
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE  
REGARDING THE  
COMMERCE-HILL STREETS NEIGHBORHOOD IMPROVEMENT PROJECT**

**WHEREAS**, the Town of Culpeper, Virginia (Town) has applied for and will receive a Community Development Block Grant (CDBG) to address critical housing needs and the improvement of infrastructure; and

**WHEREAS**, Congress amended the Housing and Community Development Act of 1974 (HCD Act) in 1981 to give each State the opportunity to administer CDBG funds for non-entitlement areas, and

**WHEREAS**, in the Commonwealth of Virginia the Department of Housing and Community Development (DHCD) administers CDBG funds from the U.S. Department of Housing and Urban Development (HUD) under the HCD Act; and

**WHEREAS**, pursuant to 24 CFR Part 58, states administering the CDBG program have the responsibility of ensuring that recipient communities comply with applicable State and Federal laws and requirements, including the National Historic Preservation Act (16 U.S.C. 470f) (NHPA) and, therefore, the Virginia Department of Housing and Community Development has been invited and has participated in consultation towards this Agreement; and

**WHEREAS**, the Town of Culpeper Architectural Review Board, a body created and maintained by Town ordinance (Sec. 27-126 through 27-155) provides professional expertise and understanding of The Secretary of the Interior's Standards for Rehabilitation (Standards) in identification of significant historic resources and in review of private undertakings affecting these resources; and

**WHEREAS**, CDBG funds will be used for the Commerce-Hill Streets Neighborhood Improvement Project which consists of housing rehabilitation and infrastructure improvements including the repair, replacement and/or installation of curb and gutter, sidewalks, and storm drainage (Undertaking); and

**WHEREAS**, the Town, in consultation with the Virginia Department of Historic Resources, which serves as the State Historic Preservation Office (SHPO) in Virginia, has established the Undertaking's Area of Potential Effect (APE), shown in Appendix 2, which is adjacent to and includes a portion of the Town of Culpeper National Register District (Historic District), which is listed in the National Register of Historic Places; and

**WHEREAS**, the Town has determined, in consultation with the SHPO, that the Undertaking may result in a Potential Effect on historic properties located in the Historic District, per 36 CFR Part 800.5(a) of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, the SHPO and the Town have agreed, per 36 CFR Part 800(g), to compress the steps of the Section 106 process in order to expedite consultation; and

**WHEREAS**, the Town has established by ordinance a local preservation district per SCC18.85.040, and the Architectural Review Board (ARB) per SCC18.85.030, which has the power to issue or deny a 'Finding of Architectural Compatibility' for contributing and non-contributing structures within the designated historic district and for individually designated historic properties; and

**WHEREAS**, the Culpeper Town Council, in consultation with the ARB, have adopted the Historic District Handbook and Design Guidelines; and

**WHEREAS**, pursuant to 36 CFR Part 800.14(b)(2)(i), the Town has invited the ARB to participate in consultation in developing this Agreement and to sign as a concurring party; and

**WHEREAS**, the Town has invited the Advisory Council on Historic Preservation (ACHP) to participate in this Agreement and they have declined; and

**WHEREAS**, the definitions given in Appendix 1 are applicable throughout this Agreement.

**NOW, THEREFORE**, the Town and SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the Undertaking's effects on historic properties.

## **STIPULATIONS**

The Town will ensure that the following stipulations are met:

### **I. Guiding Principles**

A. In consultation with the ARB and the SHPO, the Town shall attempt to meet, when feasible, the Secretary of the Interior's *Standards for Rehabilitation* (Standards) (Appendix 3) for all housing rehabilitation projects related to this Undertaking that effect historic properties.

B. The Town shall ensure, when feasible, that all CDBG funded construction that affects historic properties is compatible with the historic architectural character of the Historic District.

C. When economic or design constraints preclude application of the Standards, the Town shall apply the Historic District Design Guidelines adopted by the Town Council.

D. In accordance with the ACHP's Policy Statement on Affordable Housing, the Town, the SHPO and other consulting parties, in order to streamline the Section 106 review process shall emphasize the treatment of exteriors and significant interior features and spaces that contribute to the property's eligibility for the National Register, may exempt categories of routine activities, and may develop treatment and design protocols for rehabilitation and infill or new construction.

## II. Coordination of Review

A. The Town has determined that the entire project area falls within the APE and contributes to the Historic District. All properties over fifty (50) years old will be treated as historic properties for the purposes of Section 106 and the effects of the Undertaking on that property must be assessed.

B. When the Town identifies a property that will be impacted by the Undertaking, the Town shall prepare the following information.

1. A Project Review Application Form (Appendix 4).
2. A copy of the map in Appendix 2 showing the precise location of the property.
3. Photographs, digital or print, of the structure from the front, back and sides. For new construction projects, photographs of the site and the neighboring streetscape.
4. A determination of whether the property is a contributing or non-contributing structure to the Historic District, as defined by the map in Appendix 2.

C. Plans and specifications shall be submitted to the ARB in accordance with local ordinance governing review and approval within the designated historic district.

D. If the Town determines that a property to be affected by the Undertaking is considered "non-contributing" then the Town may proceed with rehabilitation and demolition activities on that property without consultation with the SHPO. The Town will consult with the SHPO on any new construction endeavors at that location per Stipulation II (D).

E. For all rehabilitation and demolition projects on properties considered contributing to the Historic District and all new construction within the Historic District carried out under this Agreement, the Town shall submit to the SHPO for review and comment the following information.

Those properties located within the locally designated District shall be submitted to the ARB first and then the SHPO. Properties located outside of the locally designated District will be submitted directly to the SHPO for review. The Town shall prepare the following information based on the type of activity anticipated.

### 1. Rehabilitation

- a. Detailed scope of work.
- b. Plans and drawings, if applicable.
- c. Material specifications, if applicable.
- d. Description and photos of exterior architectural features to be repaired or replaced and, as applicable, significant interior features or spaces that contribute to the property's eligibility for the National Register.

### 2. Demolition

- a. An explanation of the reasons for demolition.

- b. Any code enforcement documents that support the necessity of demolition, if applicable.
  - c. A structural evaluation and documentation of the building that supports the necessity of demolition, if applicable.
  - d. Adequate background documentation to demonstrate that rehabilitation is not economically or structurally feasible or that retention of the property would jeopardize the implementation of an affordable housing project.
3. New Construction
- a. Identification of the lot proposed for new construction, including street address and map.
  - b. Plans for exterior elevations.
  - c. Exterior materials specifications.
  - d. Site plan, including the boundaries of the lot and adjacent lots and the proposed footprint of the new construction.
4. A determination of whether the proposed treatment meets the Standards or a detailed statement as to why the Standards cannot be met. A Standards Checklist form should be completed for all new construction and rehabilitation projects (Appendix 5).
5. The comments of the ARB, where applicable.
6. A Finding of Effect (No Adverse Effect or Adverse Effect) based on an application of the Standards.

### **III. Mitigation**

A. If adverse effects are identified during the course of the project, the Town shall consult with the ARB and the SHPO and other consulting parties, as applicable, about possible ways to avoid or minimize the adverse effects. If the effect(s) cannot be avoided the Town shall consult with the ARB, the SHPO and other consulting parties about appropriate mitigation which shall be determined based on the degree of the adverse effect and the level of significance of the resource. The agreed upon mitigation shall be submitted to the ARB as applicable, and the SHPO for review and approval before construction or demolition begins.

B. All mitigation documentation prepared pursuant to this agreement shall be prepared by an Architectural Historian meeting the *Secretary of the Interior's Professional Qualification Standards* (36 CFR Part 61).

### **VII. Emergency Situations**

Should a building collapse, be largely destroyed by fire, be substantially damaged by a storm and/or be on the verge of collapse, the Town may, per 36 CFR Part 800.12, declare an Emergency Situation and, acting in the interest of public health and safety, propose demolition of a historic property. Upon issuance of the order, the Town will, to the extent possible, document the building and notify the ARB, as applicable, and the SHPO as soon as possible.

## VIII. Archaeology

A. The Town may proceed **without** archeological consultation for projects involving ground-disturbing activities provided that one or more of the following conditions apply:

1. Any new construction less than one acre in extent. The area of potential effect as defined for the purposes of this Agreement shall include all land-disturbing actions associated with the proposed construction, as for example, the footprint of construction, access roads, including temporary access roads, temporary construction easements, equipment storage areas, staging areas, below ground utilities, etc.;
2. Any demolition, rehabilitation or renovation of buildings less than 100 years old;
3. Any excavation for the repair or replacement of building footings, foundations or retaining walls of buildings less than 100 years old; and
4. The installation of utilities, such as sewer, storm, electrical, gas, steam, compressed air, leach lines, and septic tanks in road rights-of-way, existing utility corridors, or other areas previously disturbed by these activities.

B. Any projects involving ground-disturbing activities not otherwise exempted under Stipulation VIII (A), above, will be submitted to the ARB as applicable, and the SHPO for review and comment through the completion of a Project Review Application Form.

C. Should the Town determine, in consultation with the ARB as applicable, and the SPHO that further archeological identification is needed, the Town shall prepare and implement a program to identify and evaluate archeological resources.

D. Should the Town, as a result of its survey efforts, determine that an eligible archeological site will be affected, a plan for its avoidance, protection, or recovery of data will be submitted to the ARB, the SHPO and other consulting parties for review and approval. The Town will consider all comments received in preparing the final treatment plan and will then implement the plan.

E. All archeological studies, resulting from this Agreement including data recovery plan(s), shall be consistent with *The Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 FR 4434-37), and the SHPO's *Guidelines for Conducting Cultural Resource Survey in Virginia: Additional Guidance for the Implementation of the Federal Standards Entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44742, September 29, 1983) (1999, rev. 2003), and shall take into account the ACHP's publications, *Consulting About Archeology Under Section 106* (1990) and *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999).

## IX. Review of Documentation

The SHPO agrees to review documentation submitted pursuant to this Agreement within thirty (30) days after confirmed receipt. If no response is received within thirty (30) days, the Town

may assume concurrence with its findings.

## **X. Post-Review Discoveries**

The Town shall ensure that construction documents contain the following provisions for the treatment of post-review discoveries:

A. In the event that a previously unidentified archaeological resource, as defined in Stipulation X (B) below, is discovered during ground-disturbing activities, the Town shall immediately notify the ARB, as applicable, and the SHPO. All construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. The Town and an archaeologist meeting *The Secretary of the Interior's Professional Qualifications Standards* (48 FR 44 738-9) will immediately inspect the work site and determine the area and the nature of the affected archaeological property. Construction work may then continue in the project area outside the site area. Within two (2) working days of the original notification of discovery, the Town in consultation with the SHPO will determine the National Register eligibility of the resource.

B. For purposes of Stipulation X, an 'archaeological resource' warranting review and comment by DHR is any subsurface feature, such as a structural foundation, trash pit, or other obvious anomaly distinguished by a change in soil color, texture or composition, or a discrete concentration of artifacts (twenty or more) which is consistent in age and function and represents a single occupation or series of associated occupations.

C. Potentially eligible historic properties will be evaluated using the National Register Criteria for Evaluation in accordance with 36 CFR Part 800.4(c). If the Town, in consultation with the SHPO, determines that the resource meets the National Register Criteria for Evaluation (36 CFR Part 60.6), the Town shall ensure compliance with Part 800.13(b)(3) of the ACHP's Regulations. The SHPO shall provide comments on any treatment plan submitted within two (2) business days of receipt. If the SHPO fails to comment, the Town may assume concurrence and implement the plan. Work in the affected area shall not proceed until either the development and implementation of an appropriate treatment plan; or the determination is made that the located resource is not eligible for inclusion on the National Register.

## **XI. Human Remains**

A. Human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in the manner consistent with the provisions of the *Virginia Antiquities Act*, Section 10.1-2305 of the *Code of Virginia*, and with the final regulations adopted by the Virginia Board of Historic Resources and published in the Virginia Register of July 15, 1991. Copies of the above-listed law and regulations are included as Appendix 6.

B. In the event that the human remains encountered are likely to be of Native American origin, whether prehistoric or historic, the Town will immediately notify the Virginia Council on Indians (VCI). The treatment of Native American human remains and associated funerary objects will be determined in consultation with the VCI. All reasonable efforts will be made to avoid

disturbing Native American gravesites and associated artifacts. To the extent possible, the Town will ensure that the general public is excluded from viewing any Native American gravesites and associated artifacts. No photographs of any Native American gravesites and/or associated funerary objects will be released to the press or to the general public.

C. The Town may obtain a permit from the SHPO for the removal of human remains in accordance with the regulations stated above. In reviewing a permit involving removal of Native American human remains, the SHPO will notify and consult with the VCI as required by the regulations stated above.

## **XII. Public Participation**

A. The Town will afford the interested public an opportunity to comment in accordance with the public participation plan approved by DHCD as part of the CDBG grant process.

B. In the event of an Adverse Effect finding, the Town shall solicit public comment regarding the proposed impact to historic properties and provide copies of those comments to the SHPO.

## **XIII. Dispute Resolution**

A. Should any party to this Agreement object in writing to the Town regarding any action carried out or proposed with respect to the Undertaking or implementation of this Agreement, the Town shall consult with the objecting party to resolve the objection. If after initiating such consultation the Town determines that the objection cannot be resolved through consultation, the Town shall forward all documentation relevant to the objection to the Advisory Council for Historic Preservation (ACHP), including the Town's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options

1. Advise the Town that the ACHP concurs in the Town's proposed response to the objection, whereupon the agency will respond to the objection accordingly;
2. Provide the Town with recommendations, which the Town shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify the Town that the objection will be referred for comment pursuant to 36 CFR Part 800.7(a)(4), and proceed to refer the objection and comment. The Town shall take the resulting comment into account in accordance with 36 CFR Part 800.7(c)(4) and Section 110(l) of NHPA.

Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Town may assume the ACHP's concurrence in its proposed response to the objection.

The Town shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Town's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

B. At any time during implementation of the measures stipulated in this Agreement, should a written objection pertaining to this Agreement or the effect of any individual undertaking on historic properties be raised by a member of the public, the Town shall notify the parties to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Agreement to resolve the objection.

**XIV. Amendment and Termination**

A. Any party to this Agreement may request that it be amended, whereupon the parties shall consult in accordance with 36 CFR Part 800.13 to consider such an amendment.

B. If the Town determines that it cannot implement the terms of this Agreement, or if the SHPO or ACHP determines that the Agreement is not being properly implemented, the Town, the SHPO or the ACHP may propose to the other parties that it be terminated.

C. Termination shall include the submission of any outstanding documentation on any work done up to and including the date of termination.

D. A party proposing to terminate this Agreement shall so notify all parties to the Agreement, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.

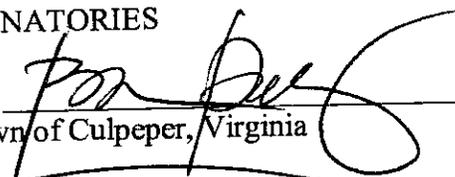
E. Should such consultation fail and the Agreement be terminated, the Town shall comply with 36 CFR Parts 800.3 through 800.6 with regard to individual undertakings covered by this Agreement.

**XV. Duration of the Agreement**

This Agreement will continue in full force and effect until five years after the date of the last signature. At any time in the sixth-month period prior to such date, the Town may request the SHPO to consider an extension or modification of this Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed with it in writing.

Execution of this Programmatic Agreement and implementation of the provisions herein shall be evidence that the Town have satisfied their Section 106 responsibilities for all individual undertakings subject to the review of this Agreement.

**SIGNATORIES**

By:  Date: 5-15-07  
Town of Culpeper, Virginia

By:  Date: 5/23/07

Kathleen S. Kilpatrick, Director and Virginia State Historic Preservation Officer

CONCURRING PARTIES

By:  Date: 5/15/2007  
Architectural Review Board