

PROGRAMMATIC AGREEMENT
BETWEEN
THE COUNTY OF HENRY
AND
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE RIVERSIDE DRIVE NEIGHBORHOOD MULTI-YEAR
IMPROVEMENT PROJECT

WHEREAS, the County of Henry, Virginia (County) has applied for and shall receive a Community Development Block Grant (CDBG) to address housing needs and minor infrastructure improvements; 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, DHCD has been invited and has participated in consultation towards this Agreement; and

WHEREAS, CDBG funds will be used for the Riverside Drive Neighborhood Multi-Year Improvement Project, which consists of the rehabilitation of twenty-three home, acquisition, replacement of water and sewer laterals, demolition and clearance of two mobile homes, pedestrian safety improvements, and public park improvements (Undertaking); and

WHEREAS, the County, in consultation with the Virginia Department of Historic Resources, which serves as the Virginia State Historic Preservation Office (SHPO), has established that the Undertaking's Area of Potential Effects (APE), shown in Appendix 1, includes portions of the Bassett Historic District (Historic District), which is eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, the County has determined in consultation with the SHPO that the Undertaking may affect historic properties within the eligible Historic District, per 36 CFR Part 800.5(a) of the regulations implementing Section 106 of the NHPA; and

WHEREAS, the SHPO and the County have agreed, per 36 CFR Part 800.3(g), to compress the steps of the Section 106 process in order to expedite consultation; and

WHEREAS, the County has provided notification to the Advisory Council on Historic Preservation (ACHP) per 36 CFR Part 800.6(a)(1); and the ACHP has elected not/to participate in consultation; and

WHEREAS, PURSUANT TO 36 CFR Part 800.3(f), the County has invited the Bassett Historical Society to participate in consultation; and they have declined; and

WHEREAS, the definitions given in Appendix 2 are applicable throughout this Agreement.

NOW, THEREFORE, the County and the 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 County shall ensure that the following stipulations are met:

I. Guiding Principles

A. In consultation with the SHPO the County shall attempt to meet, when feasible, the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (Appendix 3) for all projects related to this Undertaking that affect a contributing property within the Historic District.

B. The County shall ensure, when feasible, that all CDBG-funded new construction, within the Historic District is compatible with the historic character of the Historic District.

C. The County and the SHPO in order to streamline the Section 106 review process shall emphasize the treatment of exteriors that contribute to the property's potential eligibility for the National Register; may exempt categories of routine activities; and may develop treatment and design protocols for rehabilitation and new construction.

II. Coordination of Review

A. When the County identifies a property that will be affected by the Undertaking, the County shall submit the following documentation to the SHPO for review and comment. If the County disagrees with the SHPO's comments, consultation shall continue until an agreement is reached. If an agreement cannot be reached, consultation shall continue pursuant to Stipulation X, Dispute Resolution.

1. A Project Review Application Form (Appendix 4).
2. A copy of the map in Appendix 1 showing the precise location of the property.
3. Photographs, digital or print, of the building(s)' exterior(s) from the front, back and sides. For new construction projects, photographs of the site and neighboring streetscape.
4. A determination of whether the property contributes to the Historic District as defined by the boundaries on the map (Appendix 1).

B. If any portion of the Undertaking shall result in a cumulative ground disturbance of one (1) acre or greater, the County shall consult with the SHPO and other consulting parties per Stipulation V.

C. If the County determines that a property does not contribute to the eligible Historic District, then the County may proceed with rehabilitation activities on that property but shall continue to consult with the SHPO, per Stipulation II (D), on any new construction at that location.

D. If the County determines that a property contributes to the eligible Historic District, then it must be treated as an historic property for the purposes of Section 106, and the County shall assess the effects of the Undertaking on that property. The County 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. Materials specification, if applicable.
 - d. Description and photos of architectural features to be repaired or replaced.
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 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 proposed footprint of new construction.

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

1. All documentation prepared pursuant to Stipulation II (A).
2. All necessary documentation prepared pursuant to Stipulation II (D).
3. A determination of whether the proposed treatment meets the Standards or detailed statement as to why the Standards cannot be met. A Standards Checklist form shall be completed for all new construction and rehabilitation projects (Appendix 5).
4. A Finding of Effect (No Adverse Effect or Adverse Effect) based on an application of the Standards and the guidance in 36 CFR Part 800.5.

III. Mitigation

A. If adverse effects are identified during the course of the project, the County shall consult with the SHPO, and other consulting parties, as applicable, to consider possible ways to avoid or minimize the adverse effects. The County shall provide the opportunity for the interested public to express their views on the proposed mitigation measures pursuant to Stipulation IX (B). If the effects cannot be avoided the County shall consult with the SHPO, and any 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 SHPO for review and comment before construction or demolition begins.

B. All mitigation documentation prepared pursuant to this Agreement shall be prepared by a professional in the appropriate discipline who meets the *Secretary of the Interior's Professional Qualification Standards* (36 CFR Part 61).

IV. 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 County 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 County shall, to the extent possible, document the building and notify the SHPO as soon as possible.

V. Archaeology

A. The County may proceed without archaeological consultation with the SHPO for the following ground-disturbing activities:

1. Any individual activity requiring less than one acre of ground disturbance. The area of potential effect for individual activities shall include all land-disturbing actions associated with site preparation, construction, associated access roads, temporary construction easements, equipment storage areas, staging areas, below ground utilities, etc.
2. 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 within existing archaeological sites or not otherwise exempted under Stipulation V (A), above, shall be submitted to the SHPO, for review and comment through the completion of a Project Review Application Form (Appendix 4).

C. Should the County determine, in consultation with the SHPO, that further archaeological identification is needed; the SHPO shall recommend a program to identify and evaluate archaeological resources.

D. Should the County, as a result of survey efforts and in consultation with the SHPO, determine that an eligible archaeological site will be affected; a plan for its avoidance, protection, or recovery of data will be submitted to the SHPO for review and comment. The County shall consider all comments received in preparing the final treatment plan and shall then implement the plan.

E. All archaeological studies, resulting from this Agreement including data recovery plan(s), shall be performed by an archaeologist meeting the *Secretary of the Interior's Professional Qualifications Standards* (36 CFR Part 61) and in accordance with *The Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 FR 44734-37), 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, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999, updated July 26, 2002), and *Section 106 Archaeology Guidance* (June 2007), or subsequent revisions to these documents.

VI. Review of Documentation

The SHPO and other consulting parties agree to review documentation submitted pursuant to this Agreement within thirty (30) days after confirmed receipt of complete documentation. If no response is received within thirty (30) days, the County may assume SHPO concurrence with its findings. If the SHPO or other consulting party fails to comment, the Town may assume the non-responding party has no comments. The Town shall take into consideration all comments received within the review period and then proceed to the next step in the process.

VII. Post Review Discoveries

The County shall ensure that construction documents contain the following provisions for the treatment of unexpected discoveries:

A. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities, the County shall immediately notify the SHPO. All construction work involving subsurface disturbance shall be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. The County and an archaeologist, meeting *The Secretary of the Interior's Professional Qualifications Standards* (36 CFR Part 61), immediately will 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) business days of the original notification of discovery, the County, in consultation with the SHPO, shall determine the National Register eligibility of the resource.

B. Potentially eligible historic properties shall be evaluated using the National Register Criteria for Evaluation in accordance with 36 CFR Part 800.4(c). If the County determines that the resource meets the National Register Criteria for Evaluation (36 CFR Part 60.6), the County shall ensure compliance with 36 CFR Part 800.13(b)(3) of the ACHP's Regulations. The SHPO and other consulting parties agree to provide comments on any treatment plan submitted within two (2) business days of receipt. If the SHPO or other consulting party fails to comment, the County may assume the non-responding party has no comments. The Town shall take into consideration all comments received within the review period and then implement the final plan. Work in the affected area shall not proceed until the development of an appropriate treatment plan; or the determination is made that the located resource is not eligible for inclusion on the National Register.

VIII. Human Remains

The County shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. The Town shall treat all human remains and associated funerary artifacts in a manner consistent with the ACHP "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (February 23, 2007; <https://www.achp.gov/docs/ahrpolicy0207.pdf>).

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 County shall immediately notify the Virginia Council on Indians (VCI) and the following Federally recognized Tribes which may have cultural interests in ancestral homelands in Virginia: Catawba Nation, Cherokee Nation, Eastern Band of Cherokee Indians, Shawnee Tribe, Eastern Shawnee Tribe of Oklahoma, and Tuscarora Nation of New York. The treatment of Native American human remains and associated funerary objects will be determined in consultation with the VCI and appropriate Tribal leaders. All reasonable efforts will be made to avoid disturbing Native American gravesites and associated artifacts. To the extent possible, the County shall 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 County 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 and appropriate Tribal leaders as required by the regulations stated above.

IX. Public Participation

A. The County shall 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. When a finding of adverse effect is made, the County shall solicit public comment regarding the Undertaking's effects on historic properties and the proposed mitigation measures and shall provide copies of those comments to the SHPO.

X. Dispute Resolution

A. Should any party to this Agreement object in writing to the County regarding any action carried out or proposed with respect to the Undertaking or implementation of this Agreement, the County shall consult with the objecting party to resolve the objection. If after initiating such consultation the County determines that the objection cannot be resolved through consultation, the County shall forward all documentation relevant to the objection to the ACHP, including the County'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 County that the ACHP concurs in the County's proposed response to the objection, whereupon the agency will respond to the objection accordingly;
2. Provide the County with recommendations, which the County shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify the County 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 County 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 County may assume the ACHP's concurrence in its proposed response to the objection.

The County 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 County'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 an objection pertaining to this Agreement or the effect of any individual project on historic properties be raised by a member of the public, the County 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.

XI. Amendment and Termination

A. Any signatory to this Agreement may request that it be amended, whereupon the signatories shall consult in accordance with 36 CFR Part 800. to consider such an amendment. All signatories to this Agreement must agree to the proposed amendment in accordance with 36 CFR800.6(c)(7). The amendment will be effective on the date a copy signed by all the signatories is filed with the ACHP.

B. If the County determines that it cannot implement the terms of this Agreement, or if the SHPO determines that the Agreement is not being properly implemented the County or the SHPO 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 County shall comply with 36 CFR Parts 800.3 through 800.6 with regard to the individual projects covered by this Agreement.

XII. Duration of the Agreement

This Agreement shall continue in full force and effect until five (5) years after the date of the last signature. At any time in the sixth-month period prior to such date, the County may request the SHPO to consider an extension or modification of this Agreement. No extension or modification shall be effective unless the signatories 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 County and the Federal and State agencies have satisfied their Section 106 responsibilities for all individual projects subject to the review of this Agreement.

SIGNATORIES

By:  Date: 1/7/08
County of Henry, Virginia

By:  Date: 1/14/08
Kathleen S. Kilpatrick, Director, Virginia Department of Historic Resources
and Virginia State Historic Preservation Officer