

**Programmatic Agreement
for specified
U.S. Department of Housing and Urban Development Programs
Administered by the City of Lynchburg, Virginia**

WHEREAS, the City of Lynchburg, Virginia (City), now administers or may administer its programs receiving federal assistance from the U. S. Department of Housing and Urban Development (HUD) in accordance with Title 1 of the Housing and Community Development Act of 1974, as amended; Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended; and Section 1011 of Title X of the Housing and Community Development Act of 1992; including but not limited to the Community Development Block Grant (CDBG), HOME Program, and Lead-based Paint Hazard Control Grant; and

WHEREAS, the City has determined that the administration of these programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (National Register), and has consulted with the SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14 of the regulations governing the implementation of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, in response to the principles set forth in the Advisory Council on Historic Preservation's Policy Statement on Affordable Housing and Historic Preservation (Policy Statement), the City, the Virginia State Historic Preservation Office (SHPO) and the ACHP have determined that the City can more effectively carry out its Section 106 review responsibilities for HUD program activities if a Programmatic Agreement is used to streamline the administrative process, identify activities which can be exempted from Section 106 review because they are likely to have "No Adverse Effect" on historic properties, and permit greater flexibility when addressing historic properties which have special physical or financial feasibility problems; and

WHEREAS, the principles set forth in the ACHP's Policy Statement on Affordable Housing and Historic Preservation (Policy Statement) are incorporated herein and will be taken into consideration by all parties when carrying out the stipulations of this Programmatic Agreement; and

WHEREAS, the Historic Preservation Commission (HPC), a body created and maintained by City Ordinance (Historic District Ordinance – Appendix 1), provides professional expertise in identification of significant historic resources, and in review of private undertakings affecting these resources; and

WHEREAS, the City has been designated a Certified Local Government (CLG) by the National Park Service and the SHPO participates in this Program; and

WHEREAS, the professional qualifications, knowledge of the City's resources, and understanding of *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995)* (*Secretary's Standards*) by the members of the HPC provide the mandatory expertise for the City's continued CLG status; and

WHEREAS, the Lynchburg Historical Foundation (LHF), and Historic Districts Coalition Group have been invited to comment on this Agreement; and

WHEREAS, the HPC has participated in the consultation and has been invited to concur in this Agreement; and

WHEREAS, the City has provided notification to the ACHP per 36 CFR Part 800.6(a) (1) and the ACHP has elected to participate in this Agreement.

WHEREAS, the City has provided notification to the Virginia Council on Indians per 36 CFR Part 800.3 (f) (2) and the Virginia Council on Indians has elected to participate in this Agreement; and

WHEREAS, the City has provided notification to the Monacan Indian Nation per 36 CFR Part 800.14 (f) and the Monacan Indian Nation has elected to participate in this Agreement.

NOW, THEREFORE, the City, the SHPO, and the ACHP agree that the programs shall be administered in accordance with the following stipulations to satisfy the City's Section 106 responsibilities for all individual undertakings of the programs.

STIPULATIONS

The City will ensure that the following measures are carried out:

A. Historic Preservation Professional

The City through its HPC and CLG Program, will meet the qualifications set forth in *The Secretary of the Interior's Professional Qualification Standards* (44 FR 44738-9) for architecture, historic architecture or architectural history. The HPC through its staff person will review all undertakings covered under this Agreement, and monitor project work. The duties of the HPC will include the identification, evaluation and treatment of historic resources associated with the expenditure of federal assistance from HUD.

B. Coordination of Review

1. The City shall consult the maps in Appendix A to determine if the project is located within or adjacent to an historic district listed on the National Register of Historic Places, within or adjacent to an area that has been determined eligible for listing on the National Register, or in the vicinity of a property individually listed in or eligible for the National Register.
2. The City will consider both architectural resources and archaeological resources in its review. The review process for architectural resources is presented in Stipulations C through F. The review process for archaeological resources is presented in Stipulation H.
3. If the undertaking is not located within or adjacent to a listed district, eligible historic area or within the vicinity of an individually eligible or listed property, the City shall note, in their project files, that no historic districts or structures will be affected by the undertaking. The

City will then proceed to consider potential effects on archaeological resources as per Stipulation H.

4. If the undertaking is located within or adjacent to a listed district, eligible historic area, or in the vicinity of an individually listed or eligible property or recorded archaeological site, the City shall consult the list of excluded activities in Appendix 2 entitled "*HUD Funded Activities Exempt from Section 106 Review*" to determine if the project requires additional review for potential effects to historic structures. If the City's review finds that the proposed undertaking has minimal potential to affect historic districts or structures, as defined in Appendix 2, and if no archaeological resources will be affected, as defined in Stipulation H.1, no consultation with the SHPO is required. The City will maintain files on all undertakings it identifies as exempt activities. Such files will include, at a minimum: the property address, photographs of the property, a site map of the property, a description of the proposed undertaking, and a determination that the project is exempt and will result in "no adverse effect."
5. If the undertaking is not exempt from review as described in Appendix 2 and stipulation H.1, the City shall submit to the SHPO for review the necessary information as described in Stipulations C through F with a completed Project Review Application Form.
6. If the undertaking involves cumulative ground disturbance of more than one (1) acre of land or is in the immediate vicinity of a recorded archaeological site, the City shall consult with the SHPO pursuant to Stipulation H.2 through 5.

C. Rehabilitation

1. Rehabilitation on any historic property identified pursuant to Stipulation B.1 will be carried out in accordance with the recommended approaches in the *Secretary's Standards* and the *Residential Historic Districts Design Guidelines: Building on the History of Lynchburg* (Appendix 3) and *Commercial Historic Districts Design Guidelines for Downtown Lynchburg* (Appendix 4).
2. Each rehabilitation project involving a historic property will be submitted to the HPC for review and comments. A review record, including recorded and written documentation of comments, decisions, recommendations, conditions, and follow-up actions, will be maintained for each case reviewed by the HPC. Documentation of the projects, including work write-ups, the review record, before and after photographs and maps identifying project locations shall be retained as part of individual project files within the permanent record.
3. Where individual rehabilitation projects are determined by the HPC to be consistent with the *Secretary's Standards*, and the *Residential Historic Districts Design Guidelines: Building on the History of Lynchburg* or the *Commercial Historic Districts Design Guidelines for Downtown Lynchburg* the City will provide to the SHPO a completed Project Review Application Form, to include photographs, map, and address of the subject property, along with a completed Standards checklist form, the comments of the HPC, and its finding of "No Adverse Effect" for concurrence.
4. Since the HPC will only conduct reviews on exterior rehabilitation work, the City will submit all rehabilitation projects that include interior work to the SHPO for review per the process outlined above. If exterior work on the same project will be reviewed by the HPC,

submission to the SHPO will occur after HPC review and include HPC comments on the exterior work.

5. If the Standards cannot be met, the City will submit to the SHPO a completed Project Review Application Form, to include photographs, map, and address of the subject property, along with a completed Standards checklist form, a detailed description of why the Standards cannot be met, the comments of the HPC and the modification that is proposed.

D. New Construction

1. For activities involving new construction the City will consult with the SHPO, per Stipulation H, on the potential impact to archaeological resources.
2. Proposals for new constructions within a Historic District or adjacent to a National Register property will be developed in accordance with the Guidelines for New Construction contained in the *Secretary's Standards* and applicable sections of the City's Design Guidelines. Proposals will be reviewed by the City, through its established procedures for permits, approvals and inspections, and by the HPC, through its review process, to ensure that the project design is compatible with historic properties in terms of scale, massing, color and materials and responsive to the guidelines set forth in the *Secretary's Standards*.
3. Preliminary plans will be developed in consultation with the HPC. Final plans and specifications will be forwarded to the SHPO for review and approval. The City will proceed with construction in accordance with the approved plans and specifications.

E. Demolition

1. Demolition of properties not located within a listed or eligible district and not individually eligible may proceed without further review.
2. When demolition of a property listed in or eligible for the National Register is carried out under this Agreement and is required to eliminate a public safety hazard, the City will notify the SHPO and ACHP and adhere to the procedures outlined in 36 CFR Part 800.12 (b and c). The local building code will guide the determination of what constitutes a public safety hazard.
3. If the City and HPC determine that a demolition of a historic property will have no adverse effect due to the loss of integrity of the property, the City shall submit background documentation including photographs and a location map to the SHPO for review and comment. If the SHPO concurs with the City's determination, demolition may proceed after the City has complied with all conditions required by the SHPO. If the SHPO does not concur with the City's determination, the City will request the ACHP's comments pursuant to 36 CFR Part 800.5 (e).
4. If either the HPC or the City believes a proposed demolition may constitute an adverse effect on an historic property, the City will provide the SHPO a location map, photographs, and a description of the property, the reasons for demolition, and a summary of the alternatives considered including adequate background documentation to demonstrate that rehabilitation is not economically or structurally feasible, and the views of the public. The City will also include measures it proposes to take in order to mitigate the adverse effect of demolition. All mitigation measures shall include, but are not limited to, intensive level documentation in accordance with the current SHPO standards. The SHPO will review and

comment within 30 days of receipt. The City will notify the ACHP and request its comments in accordance with 36 CFR Part 800.

F. DISPOSITION

The City shall ensure that in disposing of properties acquired with HUD funds there will be adequate restrictions or conditions in the transfer documents to ensure development of the property will comply with the terms of this agreement.

G. Other Treatments

The City shall ensure that treatments other than rehabilitation, new construction, and demolition are conducted in a manner consistent with the recommended approaches set forth in *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (1995).

H. Mitigation

1. Should any undertaking result in an adverse effect that cannot be avoided, the City shall consult with the SHPO to determine the appropriate mitigation.
2. The City shall identify possible consulting parties and ensure that they are provided with an opportunity to comment on the adverse effect and the proposed mitigation.

I. Archaeology

1. The City may proceed without archaeological consultation for projects involving ground-disturbing activities provided that the City has consulted the SHPO's Data Sharing System (DSS) and found that no recorded or map-predicted historic period archeological site considered potentially eligible or determined eligible is present and one or more of the following conditions apply:
 - a. 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.;
 - b. Any demolition, rehabilitation or renovation of buildings less than 100 years old;
 - c. Any excavation for the repair or replacement of building footings, foundations or retaining walls of buildings less than 100 years old; and
 - d. 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.
 - e. If any project does not involve ground disturbing activities, an archaeological consultation with the SHPO will not be required.

2. Any HUD-funded projects involving ground-disturbing activities not otherwise exempted under Stipulation H.1 and Appendix 2 will be submitted to the SHPO for review and comment through the completion of a Project Review Application Form.
3. Should the City determine, in consultation with the SHPO, that further archaeological identification is needed; the City shall prepare and implement a program to identify and evaluate archaeological resources.
4. Should the City, as a result of its survey efforts, determine that an eligible archaeological site will be affected; a plan for avoidance, protection, or recovery of data will be submitted to the SHPO for review and approval. The City will address the concerns of the SHPO, if any, in a final report, and implement the plan.
5. All archaeological 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. 2001), 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).

J. Professional Qualifications

1. All archeological work will be conducted by or under the direct supervision of a qualified archeologist who meets, at a minimum, the qualifications set forth in the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-9).
2. Work concerning historic structures and districts will be carried out by or under the supervision of a qualified architectural historian or historians who meets, at a minimum the qualifications set forth in the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-9).

K. National Historic Landmarks

Should any undertaking covered by this Agreement affect a National Historic Landmark (NHL), the City shall comply with 36 CFR Part 800.10.

L. 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 city may assume concurrence with its findings.

M. Monitoring

1. The City shall maintain individual project files for each undertaking reviewed under the terms of this Agreement. Each file shall include copies of all correspondence between the

City, the SHPO, the ACHP, and the Subrecipient and any comments provided by the HPC. The files shall also include copies of photographs and the location map for each undertaking reviewed. Copies of all other applicable documentation submitted to the SHPO and the ACHP shall be included in the files.

2. Upon request, the City will provide all related documentation for all HUD-funded undertakings to the ACHP, HUD, or the SHPO for periodic review and comment as to the adequacy of the documentation. The City shall cooperate with the ACHP, HUD, and the SHPO in carrying out their monitoring and review responsibilities.
3. The City will maintain files on all undertakings it identifies as consisting of exempt activities. Such files will include, at a minimum: the property address, photographs of the property, a site map of the property, a description of the proposed undertaking, and a determination that the project is exempt.

N. Unanticipated Discoveries

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

1. In the event that a previously unidentified archeological resource is discovered during ground disturbing activities, the City shall immediately notify 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 City and the SHPO, or an archeologist meeting *The Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), immediately will inspect the work site and determine the area and the nature of the affected archeological 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 City in consultation with the SHPO will determine the National Register eligibility of the resource.
2. The City will consult with the SHPO to determine the National Register eligibility of the previously unidentified resource. The SHPO will respond within two (2) business days of receipt of the documentation. The documentation may be submitted electronically. Potentially eligible historic properties will be evaluated using the National Register criteria in accordance with 36 CFR 800.4(c). If the City determines that the resource meets the National Register Criteria for Evaluation (36 CFR Part 60.6), the City shall ensure compliance with Section 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 City may assume concurrence and implement the plan. Work in the affected area shall not proceed until both 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.

O. Human Remains

1. 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 5.

2. In the event that the human remains encountered are likely to be of Native American origin, whether prehistoric or historic, the City will immediately notify the Virginia Council on Indians (VCI) and the Monacan Indian Nation. The treatment of Native American human remains and associated funerary objects will be determined in consultation with the VCI and the Monacan Indian Nation. All reasonable efforts will be made to avoid disturbing Native American gravesites and associated artifacts. To the extent possible, the City will ensure that the 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 public.
3. The City 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 the Monacan Indian Nation as required by the regulations stated above.

P. Public Involvement

1. The HPC will encourage public comment regarding the impact of proposed projects on historic properties at all of its regular meetings, and shall give public notice announcing the date, time, location, and agenda of such meetings. The City will also distribute said notices directly to concerned individuals and organizations.
2. In conjunction with its National Environmental Policy Act (NEPA) compliance, the City will annually advertise the Section 106 review activity covered by this Agreement and invite public comment.

Q. Dispute Resolution

Should the any party to this agreement within the time periods set forward in this Agreement, object in writing to any plans or specifications submitted pursuant to this Agreement, or should any party object in writing regarding the manner in which the measures stipulated in this Agreement are being implemented, the City shall consult with the SHPO to resolve the objection. If the City determines that the objection cannot be resolved, the City shall request the further comments of the ACHP pursuant to 36 CFR Part 800.5 (e).

If at any time during implementation of the measures stipulated in this Agreement should an objection pertaining to this agreement be raised by a member of the public, the City shall notify all 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 resolve the objection.

R. Amendment and Termination

1. 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.
2. If the City 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 City, the SHPO, or the ACHP may propose to the other parties that it be terminated.

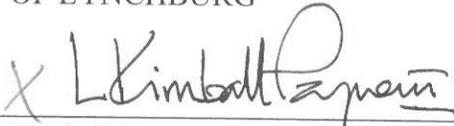
3. Termination shall include the submission of any outstanding documentation on any work done up to and including the date of termination.
4. A party proposing to terminate this Agreement shall so notify all parties to the Agreement, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.
5. Should such consultation fail and the Agreement be terminated, the City shall comply with 36 CFR Parts 800.3 through 800.6 with regard to individual undertakings covered by this Agreement.

S. 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 City may request the SHPO and the ACHP 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 City and HUD have satisfied their Section 106 responsibilities for all individual undertakings subject to the review of this Agreement.

CITY OF LYNCHBURG

BY: X 
L. Kimball Payne, City Manager

DATE: 1/5/2006

HISTORIC PRESERVATION COMMISSION

BY: 
Henry Devening, Chairman

DATE 1/10/06

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

BY: 
Kathleen Kilpatrick, State Historic Preservation Officer

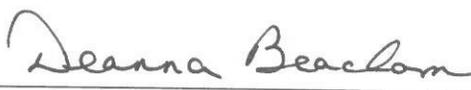
DATE: 2/3/06

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: 
John M. Fowler, Executive Director

DATE: 4/7/06

VIRGINIA COUNCIL ON INDIANS

BY: 
Deanna ~~Beachman~~, Program Specialist
BEACHAM

DATE: 1/20/06

MONACAN INDIAN NATION

BY: 
Kenneth Branham, Chief

DATE: 1-31-06

ATTACHMENT A (MAPS)

The following individual properties, districts, and areas are listed on or eligible for listing on the National Register.

1. Daniel's Hill Historic District
2. Garland Hill Historic District
3. Lower Basin Historic District
4. Federal Hill Historic District
5. Diamond Hill Historic District
6. Court House Hill Historic District (2)
7. Rivermont Historic District (Overall & 3 parts)
8. College Hill (Surveyed-Potential)
9. Diamond Hill South (Grace Street Corridor) (Surveyed-Potential)
10. Fort Hill (Potential)

Appendix 1: City of Lynchburg Historic District Ordinance

Appendix 2: Activities Excluded from SHPO Review

Appendix 3: Residential Historic Districts Design Guidelines: Building on the History of Lynchburg

Appendix 4: Commercial Historic Districts Design Guidelines for Downtown Lynchburg

Appendix 5: Virginia Laws and Regulations Governing the Treatment of Human Remains