

**PROGRAMMATIC AGREEMENT
FOR SPECIFIED
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS
ADMINISTERED BY THE CITY OF ROANOKE, VIRGINIA**

WHEREAS, the City of Roanoke (City), Commonwealth of Virginia, now administers or may administer its programs receiving federal assistance from the U.S. Department of Housing and Urban Development through the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), and Emergency Shelter Grant (ESG) programs in accordance with Title I of the Housing and Community Development Act of 1974, as amended, Title II of the Cranston-Gonzales National Affordable Housing Act, as amended, and Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act; and

WHEREAS, projects using funds from the above HUD programs have the potential to affect properties listed in or eligible for listing in the National Register of Historic Places and, therefore, require compliance with Section 106 of the National Historic Preservation Act (16 USC 470f) and its implementing regulation (36 CFR Part 800); 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 Officer and the Advisory Council on Historic Preservation 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 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 City has determined that the administration of its programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places, and has consulted with the Virginia State Historic Preservation Officer (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, the City's Architectural Review Board and the Roanoke Valley Preservation Foundation have participated in the consultation and have been invited to concur in this Agreement; and

WHEREAS, the definitions given in Appendix 1 are applicable throughout 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 will employ a staff person that meets 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 staff person will review all undertakings covered under this Agreement, and monitor project work. The staff person will be responsible for the identification, evaluation and treatment of historic resources involving the expenditure of federal assistance from HUD.

B. APPLICABILITY OF AGREEMENT

1. This agreement is applicable to City projects involving the above-listed HUD programs having the potential to affect any buildings, structures, streetscapes and open spaces located within the historic districts that are depicted on the map in Appendix 4.
2. The historic districts depicted on the map in Appendix 4 include: Roanoke City Market Historic District and Extension, Roanoke Warehouse Historic District, Southwest Historic District, N & W Railway Company Historic District, Roanoke Downtown Historic District, and Grandin Road Commercial Historic District, which are listed in the National Register of Historic Places and the Virginia Landmarks Register.
3. In addition, the historic districts depicted on the map in Appendix 4 also include: the Gainsboro Historic District, the Henry Street Historic District, the Riverland Historic District, and Southeast Neighborhood Historic District, districts, which have been determined eligible for inclusion in the National Register of Historic Places.

C. EXCLUSIONS

1. Whenever HUD program funds are used outside of the districts identified in stipulation 2, no consultation with SHPO is required, unless a site, building, structure or object has been determined to be individually eligible for the National Register of Historic Places and is therefore subject to the terms of this Agreement.
2. If the City's review finds that the proposed HUD funded activity within the historic districts identified in Stipulation B or affecting individually eligible historic properties has minimal potential to affect historic properties, as defined in Appendix 2, no review under Section

106 is required.

3. The City may proceed with projects without additional consultation with the SPHO on ground disturbing activities, provided:

- a. The City has consulted with the SHPO's Data Sharing System (DSS) and found no recorded archeological site considered potentially eligible or determined eligible is present; and
- b. The City has consulted with DSS and found no map-predicted historic period archeological site may be present.

4. The City may proceed without any archeological consultation for the following conditions:

- 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.

5. The City will maintain records of all such activities, including the property address, photographs of the property, a site map of the property, a description of the proposed activity, and a determination that the project is excluded from further Section 106 review.

D. REHABILITATION

1. The City will review any rehabilitation using HUD funds. The rehabilitation of historic properties shall be carried out in a manner that is compatible with the historic and architectural qualities of the affected property or properties and consistent with the recommended approaches to rehabilitation set forth in *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (1995). The City shall submit designs and specifications for any rehabilitation project within the identified districts or affecting an individually eligible historic property to the SHPO and in a format approved by the SHPO for review and approval.

2. If the rehabilitation of a historic property to which this Agreement applies is to be presented to the SHPO in application for Federal and/or Virginia historic rehabilitation tax credits, certification of Part 3 of the tax credit application by the SHPO and/or the National Park Service shall be considered the SHPO's concurrence that the work meets *The Secretary of the*

Interior's Standards for the Treatment of Historic Properties (1995) for the purposes of Section 106 compliance. Such projects shall be reviewed by the City according to Stipulation D.1. The City shall provide notification to the SHPO that rehabilitation designs and specifications shall be submitted to the SHPO in the form of a historic rehabilitation tax credit programs application, to be prepared in the format approved by the SHPO and the National Park Service. The City may propose to the SHPO a conditional No Adverse Effect finding for the rehabilitation, conditioned upon certification of Part 3 of the Federal and/or Virginia historic rehabilitation tax credits application. If the rehabilitation project does not proceed to Part 3 certification, the City shall consult with the SHPO according to Stipulation D.1.

E. NEW CONSTRUCTION

1. Proposals for new construction and additions within a historic district, or adjacent to a property individually eligible for listing or individually listed in the National Register of Historic Places will be developed in accordance with the "Guidelines for New Additions to Historic Buildings," which are contained in *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (1995). Proposals will be reviewed by the City to ensure that the project design is compatible with historic properties in terms of scale, massing, siting, color and materials and responsive to the guidelines set forth in the Standards.
2. Preliminary plans will be developed in consultation with the SHPO. Final plans and specifications will be forwarded to the SHPO for review and approval. The SHPO will respond to the submission within thirty (30) days of its receipt of these materials. Following receipt of the SHPO's approval, the City will proceed with construction in accordance with the approved plans and specifications.

F. DEMOLITION

1. When demolition of a property within the historic districts identified in Stipulation B, or of any individually eligible historic property on or eligible for the National Register of Historic Places is funded by the CDBG program 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 800.12 (b and c). The determination of what constitutes a public safety hazard will be guided by the local building code.
2. If the City determines 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 800.5 (e).
3. If the City believes a proposed demolition may constitute an adverse effect on historic property, the City will provide the SHPO a location map, photographs, and a description of the

property, the reasons for demolition, a summary of the alternatives considered including supporting data, 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. These measures shall include, but not be limited to, preparation of intensive-level documentation according to SHPO guidelines in place at the time the documentation is prepared. The documentation materials shall be subject to SHPO review and approval. The SHPO will review and comment on the proposed mitigation plan within thirty (30) days of its receipt.

G. OTHER TREATMENTS

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

H. ARCHAEOLOGY

1. For HUD-funded activities involving ground-disturbing activities that are **not** listed in Stipulation C, the City will submit a completed Project Review Application Form to the SPHO for its review and comment.
2. Should the City determine, in consultation with the SPHO, that further archeological identification is needed, the City shall prepare and implement a program to identify and evaluate the proposed archeological site.
3. Should the City, as a result of its survey efforts, determine that an eligible archeological 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.
4. 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. 2000), 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).

I. 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. 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.

J. 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.

K. UNANTICIPATED DISCOVERIES

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

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 44 738-9), 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.

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 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.

L. 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 3.

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 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.

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.

M. PUBLIC PARTICIPATION AND CONSULTATION

1. The City 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 public notice shall also advise that any of the projects may have potential effects upon properties included in or eligible for inclusion in the National Register of Historic Places. 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.

N. DISPUTE RESOLUTION

Should any party to this Agreement object in writing to the City regarding any action

carried out or proposed with respect to the undertaking or implementation of this Agreement, the City shall consult with the objecting party to resolve the objection. If after initiating such consultation the City determines that the objection cannot be resolved through consultation, the City shall forward all documentation relevant to the objection to the ACHP, including the City'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:

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

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

3. The City 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 City's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

4. 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 undertaking on historic properties be raised by a member of the public, the City 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.

O. 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 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 800.3 through 800.6 with regard to individual undertakings covered by this Agreement

P. DURATION OF THE AGREEMENT

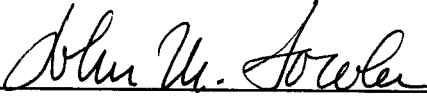
This Agreement will continue in full force and effect until five years after the date of the last signature. At any time in the sixth-month period prior to such date, the City may request the SHPO and the ACHP to consider an extension or modification of this Agreement. No extension or modification will 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.

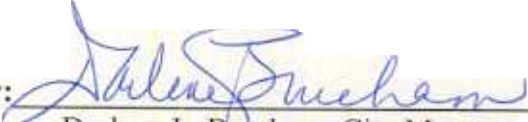
Q. DUPLICATE COPIES

This Agreement may be executed in any number of duplicate copies, each of which shall be deemed an original.

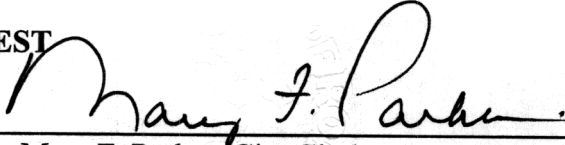
ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 10/15/04
John M. Fowler, Executive Director

CITY OF ROANOKE

By:  Date: 8-19-04
Darlene L. Burcham, City Manager


ATTEST

By:  Date: 08-20-04
Mary F. Parker, City Clerk

VIRGINIA STATE HISTORIC PRESERVATION OFFICE

By:  Date: 8-24-04
Kathleen S. Kilpatrick, Virginia State Historic
Preservation Officer

APPROVED AS TO FORM

By:  Date: 8/9/04
William M. Hackworth, City Attorney
Steven J. Tallei

APPROVED AS TO EXECUTION

By: _____ Date: _____
William M. Hackworth, City Attorney

ARCHITECTURE REVIEW BOARD, CITY OF ROANOKE

By: *Anne S. Beckett* Date: *Aug. 10th, 2004*
Anne S. Beckett, Agent

ROANOKE VALLEY PRESERVATION FOUNDATION

By: *Alison S. Blanton* Date: *August 13, 2004*
Alison S. Blanton, President

APPENDIX 1 DEFINITIONS

AREA OF POTENTIAL EFFECTS – The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist there. This always includes the actual site of the undertaking, and may also include other areas where the undertaking will cause changes in land use, traffic patterns, or other aspects that could affect historic properties.

ACTIVITY – Work to be performed as an undertaking, specifically defined as one or more of the following:

- ***Acquisition.*** The purchase of a property all or in part with federal funds that will trigger all subsequent activities as undertakings.
- ***Demolition.*** The removal of the majority of an existing building's structure to either the foundation or to property grade.
- ***Home Repair.*** Repairs to an occupied housing unit less than \$25,000 in value.
- ***New Construction.*** The construction of a new building on a vacant lot or site currently occupied by a building. New construction does not attempt to directly replicate buildings that stood on the site and/or incorporate the original building footprint.
- ***Rehabilitation.*** The re-use of an existing historic property that will maintain the majority of the historic features of a building, including such elements: framing, roof structure, doors and door openings, windows and window openings, partitions, trim, chimneys, mantels, and doors in a manner consistent with *The Secretary of the Interior's Standards for Rehabilitation* (1995).
- ***Renovation.*** Any alteration or addition to a non-historic structure or the alteration or addition to a historic structure that does not meet *The Secretary of the Interior's Standards for Rehabilitation* (1995).
- ***Reconstruction.*** The construction of a new building that replaces a demolished building, follows the majority of the original building footprint, and rebuilds the majority of distinguishing features of the building; or the retention of a minority of an existing building's features (such as the façade and foundation) and incorporating these features into a new structure.

CERTIFIED LOCAL GOVERNMENT – A local government whose historic preservation program has been certified pursuant to Section 101 (c)(1) of NHPA.

CONCURRENCE – A response form from the SHPO, in which the SHPO agrees with the determination of the City.

EFFECT – A determination by the City and SHPO as to the extent an undertaking will impact a historic property or historic properties. It will include one of the following:

- ***No Effect on Historic Properties.*** There are no historic properties that will be directly or indirectly impacted by the undertaking.
- ***No Adverse Effect on Historic Properties.*** The undertaking impacts a historic property or properties in such a way that the historic character is left intact.
- ***Adverse Effect on Historic Properties.*** The undertaking changes the historic property or properties in such a way that the character of the property is diminished. Demolition of a historic property will constitute an adverse effect. Other activities may or may not constitute an adverse effect depending on their impact on historic properties, a historic property, or historic features.

FEASIBLE – The degree to which a historic property or historic property feature can be successfully preserved. Whether or not something is feasible is essential in the consideration of an adverse effect and application of *The Secretary of the Interior’s Standards for the Treatment of Historic Properties* (1995). One or more of the following elements shall be documented and shall be given reasonable consideration by the City and SHPO in determining whether or not something is feasible:

- The physical condition of a building or building elements;
- The project scope or design constraints; the significance and integrity of the building or building elements;
- The location and setting of the historic property, or economic constraints including rehabilitation costs and market value for resale of a completed project.

FISCAL YEAR – The year beginning July 1st and ending June 30th.

HISTORIC PRESERVATION WORK – Architectural and archaeological identification, evaluation or significance and mitigation effect.

HISTORIC PROPERTY – Any property that falls in one or more of the following categories:

- It is a contributing property in a *historic area eligible for listing* in the National Register of Historic Places.
- It is a contributing property in a *historic district listed* in the National Register of Historic Places.
- It is *individually eligible* for listing or is *individually listed* in the National Register of Historic Places.

INVENTORY – The on-going inventory of historic resources maintained and prepared by the City according to *The Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716). The inventory documents National Register of Historic Places-listed and eligible historic resources throughout the City.

NON-HISTORIC PROPERTY – Any property that falls in one or more of the following categories:

- Is a *non-contributing property* located in a historic area that is either eligible for listing in the National Register of Historic Places, or is located in a historic district that is listed in the National Register of Historic Places.
- Is not *individually listed on or eligible for listing* on the National Register of Historic Places.

OBJECTION – A disagreement by the SHPO or a member of the Public with a determination made by the City on its determination of effect, conditions, or mitigation measures.

MITIGATION – Action to minimize, ameliorate, or compensate for the degradation and/or loss of those characteristics of a property that make it eligible for the National Register.

NATIONAL HISTORIC LANDMARK – A historic property that the Secretary of the Interior has designated a National Historic Landmark.

NATIONAL REGISTER – The National Register of Historic Places maintained by the Secretary of the Interior.

NATIONAL REGISTER CRITERIA FOR EVALUATION – The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association. The criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60). These criteria are used by the City, SHPO, and Keeper of the National Register to evaluate properties (other than areas of the National Park System and National Historic Landmarks) for the National Register. These criteria are worded in a manner to provide for a wide diversity of resources. The following are the actual National Register Criteria for Evaluation.

Criterion A: Properties that are associated with events that have made a significant contribution to the broad patterns of our history;

Criterion B: Properties that are associated with the lives of persons significant in our past;

Criterion C: Properties that embody the distinctive characteristics of a type, period, or method of construction that represent work of a master, or that possess high artistic value, or that represent a significant and distinguishable entity whose components may lack individual distinction;

Criterion D: Properties that have yielded, or may be likely to yield, information important in prehistory or history.

Criteria consideration: Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have

been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties shall qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- (a) a religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- (b) a building or structure removed from its original location by which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- (c) a birthplace or grave of a historical figure of outstanding importance if there is not other appropriate site or building directly associated with his productive life; or
- (d) a cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- (e) a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- (f) a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or
- (g) a property achieving significance within the past 50 years if it is of exceptional importance.

NOTICE OF ADVERSE EFFECT – A letter or form submitted by the SHPO staff specifying how a project will need to be amended in order to avoid an adverse effect or changes identified as necessary during the course of construction. The amendment request must be approved by the City for the work to proceed.

NOTICE TO PROCEED – A letter to a Subrecipient stating the Section 106 process is complete and the project can proceed.

SECRETARY – The Secretary of the Interior.

SUBRECIPIENT – any for-profit or non-profit Community Development Corporation or developer, or City agency who receives Title I funds through the City of Roanoke and is under contract to the City to carry out certain activities within targeted areas.

STATE HISTORIC PRESERVATION OFFICER – The official appointed or designated pursuant to Section 101 (b)(1) of the Act to administer the State Historic Preservation program or a representative designated to act for the State Historic Preservation Officer. For purposes of this Agreement, the State Historic Preservation Officer shall refer to the Director and staff of the Virginia Department of Historic Resources.

SURVEY – The process by which historic properties are documented according to the Standards of the SHPO.

UNDERTAKING – A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

APPENDIX 2 ACTIVITIES EXCLUDED FROM SHPO REVIEW

The following activities have limited potential to affect historic properties and therefore review by the SHPO is not required. All work must meet *The Secretary of the Interior's Standards for the Treatment of Historic Properties* and be consistent with the National Park Service's *Preservation Briefs* series.

Glossary

In-kind replacement: The term in-kind replacement is defined as installation of a new element to replace an historic element (i.e. over 50 years old) that is either missing or too deteriorated to repair that exactly matches the original element in all respects, including design, material, dimensions, configuration and detailing. Repair of an original element should always be the preferred alternative. In-kind replacement should be considered only if repair is not an option.

Preservation Briefs: To meet the Standards, work carried out on historic properties must be done according to the Preservation Briefs, a series of leaflets compiled by the National Park Service, which provide technical information about working on historic properties. They can be found on the Internet at <http://www.cr.nps.gov/hps/tps/briefs/presbhom.htm>, where they may be downloaded.

Standards: *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Historic Landscapes.* According to the Section 106 regulations, work carried out on historic properties must meet *The Secretary of the Interior's Standards for the Treatment of Historic Properties* to avoid an adverse effect (see the Section 106 regulations, 36 CFR Part 800, section 800.5(a)(2)(ii) – the regulations can be found on the web site of the Advisory Council on Historic Preservation, at www.achp.gov). Please refer to information on meeting the Standards at <http://www2.cr.nps.gov/tps/standguide/index.htm>.

A. GENERAL EXEMPTIONS

1. Projects on residential or non-residential buildings, structures or facilities less than fifty years old that do not meet National Register of Historic Places Criteria Consideration G, for properties that have achieved significance within the past 50 years (see information on the National Register at <http://www.cr.nps.gov/nr/>) and that are not within potentially eligible, previously determined eligible, or National Register-listed historic districts, or immediately adjacent to any potentially historic property.
2. Refinancing or leasing without demolition, rehabilitation or construction.
3. Architectural and engineering fees and other non-construction fees and costs;
4. Rental or purchase of vehicles or other motorized equipment;
5. Rental and installation of scaffolding;
6. Temporary bracing or shoring as part of stabilization provided that it is installed without permanent damage to the building or site.

7. Rehabilitation work to historic properties which is being or has been reviewed by the SHPO under the Federal or State Historic Rehabilitation Tax Credit programs and for which final certification has been received;
8. Grants or loans to participants in any Economic Development program funded by CDBG that may be used for working capital, equipment, furniture, fixtures, and debt refinancing or acquisition of non-historic buildings for reuse. Such activities shall require SHPO review only if such activities may involve changes to buildings, structures, objects, or historic districts that are either listed in or are considered potentially eligible or eligible for inclusion in the National Register;
9. Projects consisting of grants or loans to eligible families or entities to be applied solely to the purchase of residences or businesses;
10. Acquisition of property that is limited to the legal transfer of title with no physical improvements or changes proposed;

B. EXEMPT ACTIVITIES

1. Site Work

- a) Streets, driveways, alleys, and parking areas. Repairs, line painting, resurfacing, and maintenance of existing streets, alleys, sidewalks, and curbs, providing that a change in width, historical surface material, vertical alignment, or drainage will not result. Repair of existing concrete or asphalt surfaces for curbs, gutters, and retaining walls is also exempt;
- b) Site improvements. Maintenance and repair of existing landscape features, including planting, fences, walkways, and statuary (Note: installation or replacement of these features is considered to be new construction and is subject to review). Maintenance, repair, and in-kind replacement of street lights, traffic signals, and traffic signs. Repairs to, or in-kind replacement of walks, driveways, and steps, provided it does not involve the removal of historic materials;
- c) Utilities. Installation, repair, or replacement of gas, sanitary and storm sewer, water, electrical, cable or other underground utilities within existing utility maintenance corridors or within VDOT rights-of-way provided that the applicant has consulted the SHPO's Data Sharing System (DSS) and found that no recorded archaeological sites are present within or directly adjacent to the project's Area of Potential Effect. In the event of unanticipated archeological discoveries, DHR shall be contacted immediately;
- d) Park and playground equipment. Repair or comparable replacement of existing park and playground equipment, excluding buildings; and
- f) Temporary structures. Installation of temporary construction-related structures (not to be in place for more than two years) including scaffolding, barriers, screening, fences, protective walkways, signage, office trailers or restrooms.

2. Exterior Rehabilitation

- a) Foundations. Below-grade repair of brick or stone foundations and repairs to all other types of foundations. Underpinning of the front façade shall be accomplished by

- setting the underpinning material at least 2 inches behind the outer face of the piers.
- b) Windows and doors. Repair of windows and doors, including caulking and weather stripping of existing window or door frames, and installation of new clear glass in existing sashes or doors, including retrofitting for double and triple glazing, and replacement of glazing putty. Installation of exterior storm windows and doors, provided they conform to the shape and size of the historic windows and doors, and that the meeting rails of storm windows coincide with that of existing sash, and that their installation will not permanently damage historic elements. Installation of door or window locks or electronic security apparatus. If historic door locks are present, they can be disabled but should not be removed.
 - c) Walls and Siding. Repair of wall or siding material or in-kind replacement of deteriorated siding or trim.
 - d) Paint.
 1. Removal of exterior paint by non-destructive means, limited to hand scraping, low pressure water wash (less than 200 p.s.i.), or paint-removal chemicals, provided that the removal method is consistent with the provisions of 24 CFR Part 35, "Lead-Based Poisoning Prevention in Certain Residential Structures," including §35.140, "Prohibited methods of paint removal."
 2. All lead paint abatement done in accordance with Chapter 18 of HUD's *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, "Lead Hazard Control and Historic Preservation" and carried out in accordance with *Preservation Brief #37: Appropriate Methods for Reducing Lead Paint Hazards in Historic Housing*.
 3. Application of exterior paint to previously painted surfaces when no historic decorative paint schemes, such as graining, stenciling, marbling, etc., are to be covered.
 - e) Porches. Repair or in-kind replacement of existing porch elements, such as columns, flooring, floor joists, ceilings, railing, balusters and balustrades, and lattice.
 - f) Roofing. Repair or in-kind replacement of roof cladding and sheeting, flashing, gutters, soffits, and downspouts with no change in roof pitch or configuration. Repair or re-framing of structural roof elements as required to improve the drainage and durability of the roof as long as the appearance of the roof lines visible from the front elevation and from other prominent, visible points (for example, the exposed side façade on a corner lot) is not affected. New installation of gutters and down spouts, as long as this does not damage historic materials or require removal of historic features.
 - g) Wheelchair ramps. Repair of existing wheelchair ramps, unless the ramps are to be replaced or substantially modified. Installation of new wheelchair ramps, when the following considerations apply:
 - 1) The ramp will not be a permanent addition to the property;
 - 2) No historic fabric will be permanently damaged in the installation or use of the ramp; and

- 3) Every reasonable effort will be made to construct and finish the ramp in a manner that will result in a minimal amount of visual and physical impact on the property, through design considerations, use of materials, and painting wooden ramps whenever possible.
- h) **Repointing.** Repair or repointing of chimneys or other masonry features with the design, size, shape, materials, and repointing to match the original in color, texture, and tooling, and, for historic properties, following the recommended approaches in *Preservation Brief No. 2: Repointing Mortar Joints in Historic Brick Buildings*.
- i) **Signs and Awnings.** Repair or in-kind replacement of existing signs or awnings.
- j) **Mechanical systems.** Placement and installation of exterior HVAC mechanical units and vents not on the front elevation that will not permanently damage historic fabric.
- k) **Basement bulkhead doors.** Replacement or repair of basement bulkhead doors and installation of basement bulkhead doors not on the front elevation.
- l) **Lighting.** Repair or in-kind replacement of existing exterior light fixtures.
- m) **Mothballing.** Securing or mothballing a property by boarding over window and door openings, making temporary roof repairs, and/or ventilating the building. For historic buildings, mothballing procedures should follow *Preservation Brief No. 31: Mothballing Historic Buildings*.

3 Interior Rehabilitation

- a) **Mechanical systems.** Installation, replacement or repair of plumbing, HVAC systems and units, electrical wiring and fire protection systems, provided no structural alterations or damage to historic material are involved. Included are restroom improvements for handicapped access, provided the work is contained within the existing restroom walls. For historic properties, work must be done according to the preservation briefs and there should be no intrusion into the primary spaces of the building.
- b) **Interior surfaces.** Repair or in-kind replacement of interior surface treatment, such as floors, walls, ceilings, plaster and woodwork. If covering historic features, such as wood floors, then carpet or sheet goods (linoleum or vinyl) shall be installed in a reversible manner, either through tacking or with an underlayment so historic floors shall not be irreversibly damaged.
- c) **Paint.** Application of interior paint provided no historic decorative treatments are covered. Lead paint abatement done in accordance with Chapter 18 of HUD's *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, "Lead Hazard Control and Historic Preservation" and carried out in accordance with *Preservation Brief #37: Appropriate Methods for Reducing Lead Paint Hazards in Historic Housing*.
- d) **Kitchens.** Repair or replacement of kitchen cabinets, counters, and appliances – provided the work is contained in the existing kitchen and significant historic fabric will not be damaged or removed.
- e) **Bathrooms.** Replacement of bathroom facilities and fixtures – provided the work is contained within the existing bathroom and will not involve damage to significant historic fabric.

- f) Insulation. Installation of non-spray insulation in ceilings and attic spaces.
- g) Basement. Installation or repair of concrete basement floor in an existing basement provided no historic materials are damaged or concealed.
- h) Radon abatement. Provided the treatment to prevent the entry of radon gas into the building is through the basement floor and does not damage or conceal any historic material.
- i) Asbestos removal. Provided it does not involve removal or alteration of significant historic elements.

APPENDIX 3
VIRGINIA LAWS AND REGULATIONS GOVERNING
THE TREATMENT OF HUMAN REMAINS

Virginia Antiquities Act, Section 10.1-2305 of the Code of Virginia

§ 10.1-2305. Permit required for the archaeological excavation of human remains.

A. It shall be unlawful for any person to conduct any type of archaeological field investigation involving the removal of human skeletal remains or associated artifacts from any unmarked human burial regardless of age of an archaeological site and regardless of ownership without first receiving a permit from the Director.

B. Where unmarked burials are not part of a legally chartered cemetery, archaeological excavation of such burials pursuant to a permit from the Director shall be exempt from the requirements of §§57-38.1 and 57-39. However, such exemption shall not apply in the case of human burials within formally chartered cemeteries that have been abandoned.

C. The Department shall be considered an interested party in court proceedings considering the abandonment of legally constituted cemeteries or family graveyards with historic significance. A permit from the Director is required if archaeological investigations are undertaken as a part of a court-approved removal of a cemetery.

D. The Board shall promulgate regulations implementing this section that provide for appropriate public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the scientific quality of the research conducted on the remains, and the appropriate disposition of the remains upon completion of the research. The Department may carry out such excavations and research without a permit, provided that it has complied with the substantive requirements of the regulations promulgated pursuant to this section.

E. Any interested party may appeal the Director's decision to issue a permit or to act directly to excavate human remains to the local circuit court. Such appeal must be filed within fourteen days of the Director's decision.

(1989, c. 656.)

Final Regulations Adopted by the Virginia Board of Historic Resources and Published in the Virginia Register of July 15, 1991

17VAC5-20-30. General provisions.

Any person conducting any field investigation involving the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site shall first obtain a permit from the director.

1. No field investigation involving the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site shall be conducted without a permit.
2. In cases where a field investigation may reasonably be anticipated to involve the excavation and removal of human remains or associated artifacts, the person conducting such investigation may obtain a permit prior to the actual discovery of human burials.
3. In any case where human remains are encountered in a field investigation without having received a permit, all work on the burial or burials shall cease until a permit has been obtained.
4. No field investigation involving the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site shall be performed except under the supervision and control of an archaeologist meeting the qualifications stated in 17VAC5-20-40.
5. Any human remains removed in the course of field investigations shall be examined by a skeletal biologist or other specialist meeting the qualifications stated in 17VAC5-20-40.
6. Any approved field investigation shall include an interim progress report summarizing the field portion of the permitted investigation within 60 days of completion of the removal of all human remains and associated artifacts. Reports indicating progress on analysis and report preparation shall be submitted to the department at 90-day intervals until the final report and disposition are accomplished.
7. The applicant shall make the site and laboratory available to the department for purposes of monitoring progress and compliance with this chapter as requested by the department.
8. A copy of the final report including the analysis of materials removed from the burial shall be delivered to the director according to the timetable described in the application.
9. Documentation of final disposition as required by the permit shall be delivered to the department within 15 days of such disposition.
10. Work conducted under a permit will not be considered complete until all reports and documentation have been submitted to and reviewed by the department to meet all conditions cited in this chapter or specified as part of an approved permit.

Failure to complete the conditions of the permit within the permitted time limit may result in revocation of the permit and constitute grounds for denial of future applications.

11. The applicant may apply for an extension or change to the conditions of the permit, including changes in research design, principal personnel or disposition, for good cause. Granting such an extension or alteration will be at the discretion of the director, after consultation with interested parties.

Statutory Authority: §§10.1-2202 and 10.1-2300 et seq. of the Code of Virginia.

Historical Notes: Derived from VR390-01-02 §3, eff. August 14, 1991.

APPENDIX 4 HISTORIC DISTRICTS MAP

Roanoke, Virginia Historic Districts that are listed in the National Register of Historic Places and the Virginia Landmarks Register include: the Roanoke City Market Historic District and Extension, the Roanoke Warehouse Historic District, the Southwest Historic District, the N & W Railway Company Historic District, the Roanoke Downtown Historic District, and the Grandin Road Commercial Historic District.

Roanoke, Virginia Historic Districts that have been determined eligible for inclusion in the National Register of Historic Places include: the Gainsboro Historic District, the Henry Street Historic District, the Riverland Historic District, and the Southeast Neighborhood Historic District.