

**PROGRAMMATIC AGREEMENT
BETWEEN
THE CITY OF CUMBERLAND, MARYLAND**

**THE MARYLAND STATE HISTORIC PRESERVATION OFFICE
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
FOR REVIEW OF
COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS**

WHEREAS, The City of Cumberland, Maryland (City) expends funds for housing rehabilitation, infrastructure improvements, economic development and public service projects financed in part by Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974; and

WHEREAS, the City, as the authorized administering agency of federal Housing and Community Development projects, assumes HUD's environmental review responsibilities in accordance with HUD's Environmental Review Procedures, 24 CFR Part 58; and

WHEREAS, the City also assumes responsibility for compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470, for use of CDBG funds; and

WHEREAS, the City maintains staff within its Department of Community Development who meet *The Secretary of the Interior's Professional Qualifications Standards*, 36 CFR Part 61, and who perform Section 106 reviews for the City; and

WHEREAS, the City has determined that the administration of said funds may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places, and has consulted with the Maryland Historical Trust/Maryland State Historic Preservation Office (MD 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. 470 f); and

WHEREAS, the City, in consultation with the MD SHPO, has determined that certain types of CDBG projects typically have no effect or no adverse effect upon historic properties included in or eligible for inclusion in the National Register of Historic Places/Maryland Register of Historic Properties (National Register/Maryland Register); and

WHEREAS, the MD SHPO agrees that fulfillment of the terms of this Agreement will generally satisfy the requirements of Article 83B, Sections 5-617 and 5-618 of the Annotated Code of Maryland for any state agency which provides any form of licensing, permitting, or financing directly related to a City CDBG-funded project;

NOW, THEREFORE, the City, the MD SHPO, and the ACHP agree that these projects will be administered in accordance with the following stipulations in order to satisfy the Section 106 responsibilities for all individual undertakings that are or may be a part of said projects.

STIPULATIONS

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

I. IDENTIFICATION OF HISTORIC PROPERTIES

The City will evaluate the potential historic significance of all properties that are at least fifty years of age in the manner described below. The MD SHPO does not require documentation or identification for properties less than fifty years old that are not within eligible or listed historic districts.

- A. City Evaluations of Historic Significance For purposes of this Agreement, and for all properties not already included within National Register/Maryland Register-listed districts, the City will utilize the most current information available from the MD SHPO regarding National Register/Maryland Register-eligible districts and will assume that individual properties within those districts are contributing elements which do not require further evaluation by the MD SHPO. The City will follow the MD SHPO's *General Guidelines for Compliance-Generated Determinations of Eligibility* in deciding whether to produce a DOE Form or a Short Form in cases where any undertaking has the potential to affect a property that is suspected to be non-contributing to an eligible district, or for any district or individual property that has not already been formally evaluated by the MD SHPO.
- B. Determinations of Eligibility and Short Forms
- 1) the City will ensure that all DOEs and Short Forms meet the requirements set forth in the MD SHPO's *General Guidelines for Compliance-Generated Determinations of Eligibility*.
 - 2) labeling of photographs, slides, and negatives, when applicable, will follow the standards described in the MD SHPO's *Standards and Guidelines for Architectural and Historical Investigations in Maryland*.
 - 3) the City will complete all DOEs and Short Forms and submit them to the MD SHPO for 30-day review and comment.
- C. Determination of Ineligibility No further review will be required in those cases where the City and the MD SHPO agree that a property is ineligible for the National Register/Maryland Register.
- D. Determination of Eligibility The City will review work write-ups for the proposed project in accordance with Stipulation II of this Agreement for all properties that

the City and the MD SHPO agree are eligible for inclusion in the National Register/Maryland Register.

- E. Disagreement In any case where there is a disagreement between the City and the MD SHPO regarding the eligibility of properties, the City will request the opinion of the Keeper of the National Register in accordance with 36 CFR Part 63 or applicable National Park Service regulations and guidelines.
- F. MD SHPO Review Time Frames The MD SHPO will provide written comments on DOEs and Short Forms within 30 days after receipt of an adequately documented request for review. If the MD SHPO does not respond within 30 days, the City may assume the MD SHPO concurs with the City's determination of eligibility or ineligibility for purposes of this Agreement only. If the MD SHPO determines that the any documentation is incomplete, the MD SHPO will advise the City of any additional information required. The time permitted for review will not include the time from the date of the MD SHPO's request for additional information to the date of receipt by the MD SHPO of the additional information submitted by the City.

II. PROJECT REVIEW

The City will complete project review for properties that are listed in or eligible for the National Register/Maryland Register, either individually or as contributing resources to historic districts, in the following manner:

1. Project Types

- A. Projects will not adversely affect historic properties if completed in accordance with the *Standards*. Therefore, the following project activities will be reviewed by the City for Section 106 and Article 83B, Sections 5-617 and 5-618 purposes and documented in accordance with Stipulation II(3) without further review by MD SHPO, provided:
 - 1) the City bases reviews upon information adequate to assess projects' effects on historic properties;
 - 2) the City bases decisions on the guidelines, standards and regulations identified in Appendix A;
 - 3) the City finds that the undertaking will have no effect or no adverse effect upon historic properties.
- B. Projects limited to the following activities, which have low potential to adversely affect significant features of historic properties, are exempt from review and comment by the MD SHPO and will be reviewed internally by the City. All items

exempted from MD SHPO review are conditioned upon their meeting the *Standards*.

- 1) Exterior The signatories of this Agreement have determined that the following activities will either have no effect or no adverse effect on historic properties and that they warrant no MD SHPO review.
 - (a) caulking, weather stripping and re-glazing of windows;
 - (b) installation of storm windows;
 - (c) in-kind replacement of window sashes and other window components when the existing window fabric is deteriorated beyond repair;
 - (d) gutters and downspout replacement;
 - (e) cleaning of masonry;
 - (f) repainting masonry;
 - (g) repairing, repointing, or reconstructing exterior masonry;
 - (h) repainting of exterior surfaces;
 - (i) repair or in-kind replacement of porch ceilings, steps, doors, railings and cornices on principal and secondary elevations when existing historic fabric is deteriorated beyond repair;
 - (j) lead remediation actions limited to wet scraping, painting and in-kind replacement of lead contaminated historic fabric;
 - (k) replacement of roof surfaces and placement of skylights on roof surfaces when those roof surfaces are not visible from the street;
 - (l) installation of accessibility structures (e.g. wheelchair ramps, etc.) provided they are approved by the City; do not modify structural characteristic of a property and are designed in a manner which minimizes their visual effect and damage to historic fabric;
 - (m) installation of signs on commercial buildings;
 - (n) rehabilitation of storefronts;
 - (o) in-kind sidewalk replacement; and
 - (p) installation of street signage, lighting and furniture.

- 2) Interior The signatories of this Agreement have determined that the following activities will either have no effect or no adverse effect on historic properties and that they warrant no MD SHPO review.
 - (a) plumbing system rehabilitation/replacement, including pipes and fixtures in both bathrooms and kitchens;
 - (b) heating and cooling systems rehabilitation/replacement, including furnaces pipes, radiators, duct work and all other HVAC equipment which does not require significant alteration/destruction of historic fabric or introduce highly visible, non-historic elements;
 - (c) rehabilitation/replacement of electrical wiring;
 - (d) bathroom improvements for handicap access, provided that all work is concealed within the existing bathroom;
 - (e) interior surface (e.g., floors, walls, ceilings, woodwork) treatments, provided that the work is limited to repainting, refinishing, repapering or laying carpet or other flooring material; and
 - (f) installation of insulation, provided it is restricted to ceilings and attic spaces or result in substantial damage to historic fabric.
- 3) Other Activities The signatories of this Agreement have determined that the following activities will either have no effect or no adverse effect on historic properties and that they warrant no MD SHPO review.
 - (a) acquisition or mortgage assistance when rehabilitation or construction is not anticipated as a result of, or in conjunction with, the proceeds of City assistance;
 - (b) repairs to public infrastructure and non-building related public facilities (e.g. parks, streets, underground pipes etc.) that do not disturb previously undisturbed ground;
 - (c) administration of federal and state funded projects;
 - (d) rehabilitation and demolition of properties less than 50 years old;
 - (e) any project that has been reviewed by the Maryland Historical Trust's Historic Preservation Tax Credit Program and received an approved Part II application.

- C. Prior to taking any action, the City will consult with the MD SHPO in accordance with Stipulation II(2) if any of the following circumstances occur:
- 1) the City is uncertain whether a proposed project conforms to the *Standards*;
 - 2) the City believes the *Standards* cannot be met;
 - 3) any project proposes demolition of an eligible or potentially eligible property;
 - 4) The City suspects that a proposed project may have the potential to affect significant archeological resources; and/or
 - 5) The City prefers to have the MD SHPO review a project for any reason.
- D. The MD SHPO may elect to review any project covered under this Agreement at any time and, if requested, the City will provide complete project documentation to the MD SHPO pursuant to Stipulation II(2).

2. Review Process

The City will afford the MD SHPO the opportunity to review and comment in the manner described below unless the proposed project is exempted from review under the Stipulation II(1) of this Agreement.

- A. Request for MD SHPO Review The City will submit all applicable project documentation to the MD SHPO for review including:
- 1) photographs of the property or properties;
 - 2) location map;
 - 3) work write-up; and
 - 4) information regarding eligibility.
- B. Review Time Frames The MD SHPO will provide written comments on a project within 30 days after receipt of an adequately documented request for review. If the MD SHPO does not provide comments within 30 days, the City may assume the MD SHPO concurs with the City's determination of effect. If the MD SHPO determines that the project information is incomplete, the MD SHPO will advise the City of any additional information required. The time permitted for review will not include the time from the date of the MD SHPO's request for additional information to the date of receipt by the MD SHPO of the additional information submitted by the City.

- C. MD SHPO Comments The MD SHPO comments may include recommendations for modifying a proposed project's plans to be consistent with the *Standards*, a determination that a proposed project constitutes no adverse effect, that a proposed project constitutes an adverse effect or any other recommendations which the MD SHPO believes are necessary to complete the Section 106 review of a proposed project.
- D. Incorporation of Comments Upon receipt of comments from the MD SHPO, the City will evaluate the comments and provide a written response to the MD SHPO as soon as possible. The Section 106 review of the project will remain incomplete until the MD SHPO receives comments from the City. If the City agrees with the MD SHPO comments, they will be incorporated into the project. If the City disagrees with any MD SHPO comments, determines that any recommended modifications cannot be made or continues to believe that the proposed project will constitute an adverse effort pursuant to 36 CFR 800, the City will comply with Stipulation II(2)(E) or Stipulation VII of this Agreement, as appropriate.
- E. Adverse Effects For undertakings which the MD SHPO and the City agree will constitute an adverse effect on historic properties, the City will consult with the MD SHPO in accordance with 36 CFR Part 800.5 to resolve the adverse effect.

3. Documentation

- A. No Effects The City will retain documentation in the project file, consisting of clear photographs before and after the work is completed which are labeled with the date, property address, and a brief description of what is depicted.
- B. No Adverse Effects The City will retain documentation in the project file including the write-up and clear photographs labeled with the date and property address and which show conditions before and after the work is completed as evidence of the application of the *Standards*.

4. Monitoring

- A. Monitoring The City will retain documentation for annual monitoring purposes for at least one year after this Agreement has expired. The MD SHPO may request to review this documentation at any time. On an annual basis, the City will:
 - (1) submit to the MD SHPO the address of each historic property to which the exemptions outlined in Stipulation II of this Agreement have been applied using the chart in Attachment A or an equivalent document;
 - (2) permit the MD SHPO to review and inspect the documentation and sites of projects to verify adherence to the terms of this Agreement; and

(3) schedule a meeting with the MD SHPO to examine the projects reviewed under this Agreement.

- B. Privacy. Nothing in this Agreement will require the disclosure by the City of personal or financial information concerning owners, developers, tenants, or other persons, non-official papers, or other information not required by the MD SHPO to perform properly its authorized functions.

III. PUBLIC INVOLVEMENT

Each year the City, following the citizen participation plan required by HUD, will notify the public of the City's current CDBG funded projects and make documentation available for public inspection. Included in this documentation will be general information on the type(s) of activities undertaken, information on identified historic properties that might be affected by these activities, the amount of funds available, or expected to be available in the current program year, and how interested persons can receive further information and/or comment on the projects.

IV. PUBLIC OBJECTION

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the City will notify the MD SHPO of the objection, take the objection into account and consult, as needed, with the objecting party and the MD SHPO to resolve the objection. If the objection cannot be resolved, the City will comply with Stipulation VII of this Agreement.

V. AMENDMENT

Any party to this Agreement may request that it be amended, whereupon the parties will consult pursuant to 36 CFR 800.6(c)(7). No modification will be effective unless the City and the MD SHPO have agreed to it in writing.

VI. TERMINATION

- A. If any party to this Agreement should determine that the terms of this Agreement cannot be carried out or that the terms are not being appropriately carried out, the objecting party may terminate the Agreement by providing thirty (30) days notice to the other party, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

In the event that this Agreement is terminated, the City will comply with 36 CFR Part 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

VII. DISPUTE RESOLUTION

Should any party to this Agreement object within thirty (30) days to any plans, specifications, or other actions proposed pursuant to this Agreement, the objecting party will consult with the other party to resolve the objection. If any party determines that the objection cannot be resolved, the City will request the further comments of the ACHP pursuant to 36 CFR 800.5(c)(3). Any ACHP comment provided in response to such a request will be taken in account by the City in accordance with 36 CFR 800.5(c)(3) with reference only to the subject of the dispute; the City's responsibility to ensure that all other actions under this Agreement that are not the subject of the dispute will remain unchanged.

VIII. DURATION

This Agreement will continue in full force and effect for five (5) years from the date of the last signature on this Agreement. At any time in the six-month period prior to that date, the parties will consult to consider an extension or amendment of the Agreement. No extension or amendment will be effective unless all parties to the Agreement have agreed to it in writing


Execution and implementation of the terms of this Programmatic Agreement provide evidence that the City has taken into account the effects of its CDBG-funded undertakings on historic properties and that it has provided the Advisory Council on Historic Preservation an opportunity to comment.

CITY OF CUMBERLAND, MARYLAND




Jeffery E. Repp, City Administrator 12-14-05
Date

MARYLAND STATE HISTORIC PRESERVATION OFFICER



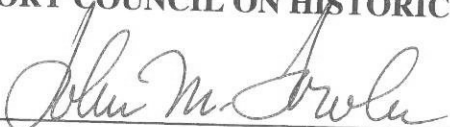
J. Rodney Little 1-30-06
Date
Director/State Historic Preservation Officer
Maryland Historical Trust

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



H. Jack Price 12/19/05
Date
City Solicitor

ADVISORY COUNCIL ON HISTORIC PRESERVATION



John M. Fowler, Executive Director 2/12/08
Date

APPENDIX A

I. DEFINITIONS

For purposes of this Agreement, each of the following terms will have the meaning specified for such term and, in addition, the meaning defined in 36 CFR 800.16:

- A. Agreement means this Programmatic Agreement.
- B. Days mean calendar days.
- C. DOE means Determination of Eligibility as defined in the MD SHPO's *General Guidelines for Compliance-Generated Determinations of Eligibility*.
- D. Historic District means a district that has been formally determined eligible for listing in the National Register of Historic Places/Maryland Register of Historic Properties by the MD SHPO and/or has been formally listed in the National Register/Maryland Register.
- E. Historic Property means an individual property included in or eligible for inclusion in the National Register/Maryland Register or a contributing property within an historic district included in or eligible for inclusion in the National Register/Maryland Register. The historic property may be a single family residential property by itself, one or more properties in a series of residential dwelling structures, one or more structures involved in a multi-family project or non residential property.
- F. In-Kind means identical in size, shape, material, texture and composition.
- G. Maryland Register means the Maryland Register of Historic Properties as maintained by the Maryland Historical Trust.
- H. National Register means the National Register of Historic Places as maintained by the Secretary of the Interior.
- I. Principal Elevation(s) means the street-facing façade or façades.
- J. Project means any program or activity receiving federal or state financing, licensing, permitting for acquisition, rehabilitation, construction or implementation.
- K. Short Form means a form used to formally document that a property is either not individually eligible for listing in the National Register/Maryland Register or that it

does not contribute to an eligible historic district as defined in the MD SHPO's *General Guidelines for Compliance-Generated Determinations of Eligibility*.

- L. Standards means *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.
- M. Survey District means a potentially eligible district that has been surveyed by the MD SHPO, but not formally evaluated for eligibility in the National Register/Maryland Register.
- N. Work Write-Up means a detailed description of architectural, structural, mechanical, electrical and/or other work-related items such as plans, site plans, photographs or elevations necessary to adequately describe the full scope of the project.

II. PURPOSE AND APPLICABILITY

- A. This Agreement sets forth the process by which the City will meet its responsibilities under Section 106 of the NHPA for projects funded by HUD's CDBG program.
- B. Unless otherwise specified in writing, the Maryland Historical Trust agrees that fulfillment of the terms of this Agreement will satisfy the requirements of Article 83B, Sections 5-617 and 5-618 of the Annotated Code of Maryland for any state agency which provides any form of licensing, permitting, or financing directly related to a City CDBG-funded project.

III. GUIDELINES, STANDARDS AND REGULATIONS

Guidelines, standards and regulations relevant to this PA and its purposes include:

- 1) 36 CFR Part 68: *The Secretary of the Interior's Standards for the Treatment of Historic Properties* including Section 68.3 (b) *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*;
- 2) *General Guidelines for Compliance-Generated Determinations of Eligibility (DOEs)* (Maryland Historical Trust 2002);
- 3) 36 CFR Part 800: *Protection of Historic Properties* (2004);
- 4) *Standards and Guidelines for Architectural and Historical Investigations in Maryland* (Maryland Historical Trust 2000); and
- 5) All applicable *Preservation Briefs* created by the National Park Service.