

Programmatic Agreement
between
the New York State Historic Preservation Office and
Lower Manhattan Development Corporation regarding the
Reconstruction of the Allen and Pike Street Malls Project
New York County, New York City, New York

Agreement, dated as of _____, 2010 (“Effective Date”), of the New York State Historic Preservation Office (“SHPO”) and Lower Manhattan Development Corporation (“LMDC”) (“Signatories”).

WHEREAS, LMDC, as the recipient of U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant program funds, is responsible pursuant to 42 U.S.C. § 5304(g) for conducting environmental reviews of projects receiving federal funds in accordance with 24 CFR Part 58 and other applicable laws and regulations; and

WHEREAS, LMDC has agreed to allocate a portion of such funds to the City of New York (“City”), acting through the New York City Department of Parks and Recreation (“Parks”), for Reconstruction of the Allen and Pike Street Malls in Lower Manhattan (the “Project”) pursuant to a grant subrecipient agreement dated as of July 1, 2006, which requires the City to comply with 24 CFR Part 58 and other applicable legal requirements relating to the Project as a condition to receiving any LMDC/HUD funds for project construction; and

WHEREAS, reconstruction of six median malls on Allen Street between Delancey and Hester Streets and on Pike Street between Madison and South Streets have been designed and are initially being funded (“Phase I”) and the remaining median malls on Allen and Pike Streets between Hester and Madison Streets are expected to be designed and funded in a future phase of the Project (“Phase II”); and

WHEREAS, LMDC has defined the Project’s area of potential effect (APE) for archeology as the Project site, including twelve existing center malls on Allen and Pike Streets between Delancey and South Streets in Lower Manhattan; and

WHEREAS, LMDC has defined the Project’s area of potential effect (APE) for architectural resources as the Project site, including twelve existing center malls on Allen and Pike Streets between Delancey and South Streets in Lower Manhattan, and the area within 90 feet of the Project site; and

WHEREAS, LMDC has completed the environmental review for the Project and concluded that the Project would not have significant environmental impact on the human environment or significant adverse environmental impacts; and

WHEREAS, the median mall between Division and Canal Streets is located within the Lower East Side Historic District, which is listed on the State and National Registers of Historic Places (“Historic District”); and

WHEREAS, the Project is not anticipated to have any adverse effect on historic architectural properties; and

WHEREAS, the Phase 1A archeological study for the Project identifies areas within the Project site that may be sensitive for historic-period archeological resources at certain depths (“Phase 1A Study”); and

WHEREAS, the effects of the Project on historic-period archeological resources at certain locations cannot be fully determined prior to the start of construction of the Project; and

WHEREAS, the Signatories desire to set forth a procedure to ensure that construction of the Project does not result in any adverse effects on historic-period archeological resources or, if adverse effects can not be avoided, measures will be taken to minimize and mitigate those adverse effects; and

WHEREAS, SHPO is serving as a consulting party in the Section 106 process and is a signatory to this Agreement; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) and New York City Department of Transportation are serving as consulting parties in the Section 106 process; and

WHEREAS, LMDC has provided notice of the Section 106 process to Native American tribes and other potentially interested persons and the public; and

WHEREAS, LMDC invited the Advisory Council on Historic Preservation to become a signatory to this Agreement; and

NOW, THEREFORE, the Signatories hereby agree that the Project will be implemented in accordance with the following stipulations of this Agreement entered into pursuant to 36 CFR § 800.14(b) in order to take into account the effects of the Project on archeological historic properties.

STIPULATIONS

LMDC AND SHPO AGREE THAT THE FOLLOWING STEPS WILL BE UNDERTAKEN IN CONNECTION WITH THE PROJECT.

I. DEFINITIONS

The terms in this Agreement will have the meaning provided by the Section 106 regulations, 36 CFR Part 800.

II. MONITORING

A. Prior to the start of construction of the Project, and again prior to the start of Phase II, if construction is to proceed on Phase II, LMDC and Parks will consult with SHPO to determine whether (a) the Project would impact sensitive locations or depths and (b) if so, whether it would be appropriate to prepare a brief archeological monitoring plan (“Archeological Monitoring Plan”) or limited archeological testing plan (“Archeological Testing Plan”), which they will submit to SHPO and the LPC for review. The Archeological Monitoring Plan or Archeological Testing Plan will set forth procedures for Parks to implement archeological monitoring or testing, as applicable, of sensitive areas (previously identified in the Phase 1A Study) during construction. Either plan will also include a protocol for unanticipated discoveries during construction of archeological deposits or features and human remains throughout the Project site (“Unanticipated Discoveries Plan”). SHPO will have 30 days to submit comments and recommendations to LMDC and Parks with respect to the adequacy of the plans. Separate plans will be developed for Phases I and II of the Project, with the plan for Phase II being submitted to SHPO and the LPC only if construction is to proceed on that later phase. If construction is to proceed on Phase II, the final project plan will be reviewed by a professional archeologist to determine if the proposed work could affect potential archaeological resources. All parties recognize that stopping construction may have extraordinary costs. They will therefore make every effort to implement the Archeological Monitoring Plan, Archeological Testing Plan or Unanticipated Discoveries Plan expeditiously in circumstances requiring their use.

B. In accordance with the Archeological Monitoring Plan or Archeological Testing Plan, LMDC and Parks will prepare a brief Technical Report, summarizing the results of monitoring or testing and will submit it to SHPO and LPC for review.

C. A portion of Phase II of the project, if it proceeds, will be within the Lower East Side Historic District. If construction is to proceed on Phase II, the Phase II design will be submitted to SHPO for review, including architectural review, prior to Phase II construction.

III. PROFESSIONAL STANDARDS

LMDC and Parks will ensure that all archeological monitoring or testing conducted pursuant to this Agreement are carried out by or under the direct supervision of a person or persons meeting at a minimum the Secretary of Interior's Professional Qualifications Standards. LMDC and Parks will also ensure that all final archeological reports are consistent with the New York Archeological Council's *Standards for Cultural Resource Investigations and the Curation of Archeological Collections in New York State* and the *Landmarks Preservation Commission's Guidelines for Archeological Work in New York City* (2002).

V. TERMINATION, AMENDMENTS AND SIGNATURES

A. This Agreement will expire if its stipulations are not carried out within five years from the date of its execution. This Agreement will terminate upon completion of construction and the obligations set forth in this Agreement. LMDC's duties will terminate at such time as LMDC notifies SHPO in writing that the Project has been completed or, alternatively, cancelled.

B. Amendments as negotiated by the Signatories will be effective only when in writing and upon the written approval of all Signatories to this Agreement.

C. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument. Faxed signatures will be treated as originals.

D. In addition to the process set forth in Section V(A) above, any party to this Agreement may terminate its participation by providing 30 days' written notice to the other parties provided that the parties consult during the period prior to termination to seek agreement or amendments or other actions that would avoid termination and to clarify the procedure for future review of any outstanding activities subject to this Agreement. In the event of such termination, LMDC will either prepare and execute a new programmatic agreement for the Project pursuant to 36 CFR § 800.14(b) or request and consider comments from the ACHP consistent with 36 CFR § 800.7.

VI. NOTICES AND CONSULTING

For purposes of notices and consultation pursuant to this Agreement, the following addresses and contact information should be used for the following agencies:

SHPO: Office of Parks, Recreation and Historic Preservation
Peebles Island State Park
P.O. Box 189
Waterford, NY 12188
Attention: Douglas Mackey, Archaeologist

LMDC: Lower Manhattan Development Corporation
1 Liberty Plaza, 20th Floor
New York, NY 10006
Attention: Irene Chang-Cimino, General Counsel

PARKS: New York City Department of Parks and Recreation
Olmsted Center, Flushing Meadows Park
117-02 Roosevelt Avenue
Flushing, NY 11368
Attention: Lawrence Mauro, Manager

LPC: New York City Landmarks Preservation Commission
1 Centre Street, 9th Floor
New York, NY 10007
Attention: Amanda Sutphin, Archaeologist

EXECUTION AND IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT EVIDENCES THAT LMDC HAS SATISFIED ITS SECTION 106 RESPONSIBILITIES FOR THE PROJECT.

As signatories:

LOWER MANHATTAN DEVELOPMENT CORPORATION

By: _____ Date: _____

Name: _____

Title: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Name: _____

Title: _____