

Programmatic Agreement
among
Federal Highway Administration, New York State Historic Preservation Office,
Lower Manhattan Development Corporation, New York State Department of
Transportation, New York City Department of Design and Construction
regarding
East River Waterfront Access Project at Peck Slip
and
Peck Slip Reconstruction Project (PINX759.18)
New York County, New York City, New York

Agreement, dated as of September 15, 2009 (“Effective Date”), of the Federal Highway Administration (“FHWA”), New York State Historic Preservation Office (“SHPO”), Lower Manhattan Development Corporation (“LMDC”), the New York State Department of Transportation (“NYSDOT”) and the New York City Department of Design and Construction (NYCDDC”) (“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 improvements to the median of Peck Slip in Lower Manhattan (the “Peck Slip 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 Peck Slip Project as a condition to receiving any LMDC/HUD funds for project construction; and

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

WHEREAS, the NYCDDC is the recipient of funding from the Federal Highway Administration for the emergency reconstruction of Peck Slip, including Beekman Street, Front Street, Water Street, and Peck Slip (“Peck Slip Reconstruction Project PIN X759.18”); and

WHEREAS, although the Peck Slip Project and Peck Slip Reconstruction Project PIN X759.18 are separate projects and have independent utility, the Signatories are coordinating with SHPO the necessary reviews for the Peck Slip Project and Peck Slip Reconstruction Project PIN X759.18 pursuant to Section 106 of the National Historic

Preservation Act (“Section 106”) (figures depicting the project areas are attached, see Exhibits 1 and 2); and

WHEREAS, the Peck Slip Project and Peck Slip Reconstruction Project PIN X759.18 are located within the South Street Seaport Historic District, listed on the State and National Register of Historic Places, and New York City’s South Street Seaport Historic District and Extension (“Historic Districts”); and

WHEREAS, the projects will not have any adverse effect on historic architectural properties; and

WHEREAS, the Phase 1A archeological study for the projects identifies areas within both the Peck Slip Project Site and Street Reconstruction Project Site that may be sensitive for archeological historic properties at certain depths (“Phase 1A Study”); and

WHEREAS, the effects of the Peck Slip Project and Street Reconstruction Project PIN X759.18 on archeological historic properties at certain locations cannot be fully determined prior to the start of construction of the projects; and

WHEREAS, the Signatories desire to set forth a procedure to assure that construction of the projects does not result in any adverse effects on historic properties or, if adverse effects can not be avoided, measures will be taken to minimize and mitigate those adverse effects; and

WHEREAS, LMDC, NYSDOT, SHPO, NYCDDC and FHWA are serving as consulting parties in the Section 106 process and are signatories to this Agreement; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) has served as a consulting party 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 Peck Slip Project and Peck Slip Reconstruction Project PIN X759.18 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 projects on archeological historic properties.

STIPULATIONS

FHWA, LMDC, NYCDDC, NYSDOT, AND SHPO AGREE THAT THE FOLLOWING STEPS WILL BE UNDERTAKEN IN CONNECTION WITH THE PROJECTS AND THAT FHWA WILL INCLUDE THE OBLIGATIONS SET FORTH IN THIS AGREEMENT AS PART OF ITS RECORD OF DECISION AND AS A CONDITION OF FHWA'S APPROVAL OF ANY GRANT ISSUED FOR CONSTRUCTION OF THE PROJECT, TO ENSURE THAT THESE MEASURES ARE IMPLEMENTED AS PART OF THE COMPLIANCE WITH THE SECTION 106 PROCESS AND THE SUBSEQUENT PLANNING, DESIGN, AND CONSTRUCTION OF ANY APPROVED PROJECT ALTERNATIVE.

I. DEFINITIONS

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

II. ARCHEOLOGICAL RESOURCES

- A. The Phase 1A Study identified areas and depths of archeological sensitivity within the Peck Slip Project and Peck Slip Reconstruction Project PIN X759.18.

- B. NYCDDC will complete an addendum to the Phase 1A Study for Beekman Street between Front Street and South Street, which will be reconstructed as part of the Street Reconstruction Project but that was not included in the Phase 1A Study.

- C. Prior to completion of plans for archeological monitoring for the Street Reconstruction Project and prior to commencement of construction of the Street Reconstruction Project, NYCDDC will ensure that an archaeologist completes a Technical Memo evaluating the archeological sensitivity of Peck Slip between Pearl Street and South Street, Water Street between Beekman Street and Dover Street, Front Street between Peck Slip and Dover Street, and Beekman Street between Front Street and South Street. This document would serve as an addendum to the information presented in the Phase 1A Study. NYCDDC will submit the Technical Memo to SHPO, LPC, NYSDOT, and FHWA.

III. MONITORING

- A. Peck Slip Project
 - 1. Prior to the start of construction of the Peck Slip Project, LMDC and Parks will consult with SHPO to determine whether (a) the Peck Slip Project would impact sensitive locations and (b) if so, whether it would be appropriate to prepare an 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/or human remains throughout the Peck Slip 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. 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.

2. 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.

B. Peck Slip Reconstruction Project PIN X759.18

1. Prior to the start of construction of the Peck Slip Reconstruction Project PIN X759.18, NYCDDC will consult with SHPO to determine whether (a) the Peck Slip Reconstruction Project PIN X759.18 would impact sensitive locations and (b) if so, whether it would be appropriate to prepare an archeological monitoring plan (“Archeological Monitoring Plan”) or limited archeological testing plan (Archeological Testing Plan”), which they will submit to SHPO, LPC, and NYSDOT for review. The Archeological Monitoring Plan or Archeological Testing Plan will set forth procedures for 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/or human remains throughout the Street Reconstruction Project Site (“Unanticipated Discoveries Plan”). SHPO will have 30 days to submit comments and recommendations to NYSDOT and NYCDDC with respect to the adequacy of the plans. 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.
2. In accordance with the Archeological Monitoring Plan or Archeological Testing Plan, NYCDDC will prepare a brief Technical Report, summarizing the results of the archeological monitoring or testing and will submit it to SHPO, LPC and NYSDOT for review.

IV. PROFESSIONAL STANDARDS

LMDC and NYCDDC will ensure that all archeological research, testing, analysis, and plans 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 NYCDDC 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 terminate upon completion of construction and the obligations set forth in this Agreement. LMDC or NYCDDC's respective duties will terminate at such time as LMDC or NYCDDC notifies the other Signatories in writing that their respective projects have been completed or, alternatively, terminated.

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.

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

NYSDOT: New York State Department of Transportation
21 South End Avenue
New York, NY 10280
Attention: Joseph T. Brown, P.E.

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

NYCDOT: New York City Department of Transportation
40 Worth Street, 10th Floor
New York, NY 10013
Attention: Lower Manhattan Borough Commissioner

NYCDDC: New York City Department of Design and Construction
30-30 Thompson Avenue
Long Island City, NY 11101
Attention: Eric McFarlane

PARKS: New York City Department of Parks and Recreation
Olmsted Center, Flushing Meadows Park
117-02 Roosevelt Avenue
Flushing, New York 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

FHWA: Federal Highway Administration
Leo W. O'Brien Federal Building
Albany, NY 12207
Attention: Jeffrey W. Kolb, P.E.

ACHP : Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania NW, Suite 803
Washington, DC 20004
Attention: Charlene Vaughn, Assistant Director

EXECUTION AND IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT EVIDENCES THAT LMDC AND FHWA HAVE SATISFIED THEIR SECTION 106 RESPONSIBILITIES FOR THE PROJECTS.

As signatories:

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

By: Joseph T. Brown Date: 8/13/09

Name: Joseph T. Brown

Title: Route 9A Project Director

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____

Name: _____

Title: _____

NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION

By: _____ Date: _____

Name: _____

Title: _____

LOWER MANHATTAN DEVELOPMENT CORPORATION

By: _____ Date: _____

Name: _____

Title: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Name: _____

Title: _____

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As signatories:

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Name: _____

Title: _____

FEDERAL HIGHWAY ADMINISTRATION

By: *David M. Hart* Date: *9/15/2009*

Name: *DAVID M. HART*

Title: *SENIOR OPERATIONS ENGINEER*

NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION

By: _____ Date: _____

Name: _____

Title: _____

LOWER MANHATTAN DEVELOPMENT CORPORATION

By: _____ Date: _____

Name: _____

Title: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Name: _____

Title: _____

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As signatories:

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Name: _____

Title: _____


FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____

Name: _____

Title: _____

NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION

By:  Date: 4.9.2009

Name: ERIC C. MACFARLANE, P.E.

Title: Deputy Commissioner

LOWER MANHATTAN DEVELOPMENT CORPORATION

By: _____ Date: _____

Name: _____

Title: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Name: _____

Title: _____

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As signatories:

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By: _____ Date: _____

Name: _____

Title: _____

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____

Name: _____

Title: _____

NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION

By: _____ Date: _____

Name: _____

Title: _____

LOWER MANHATTAN DEVELOPMENT CORPORATION

By: David Emil Date: 4/13/09

Name: David Emil

Title: President

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Name: _____

Title: _____

EXECUTION AND IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT EVIDENCES THAT LMDC AND FHWA HAVE SATISFIED THEIR SECTION 106 RESPONSIBILITIES FOR THE PROJECTS.

As signatories:

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Name: _____

Title: _____

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____

Name: _____

Title: _____

NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION

By: _____ Date: _____

Name: _____

Title: _____

LOWER MANHATTAN DEVELOPMENT CORPORATION

By: _____ Date: _____

Name: _____

Title: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: Ruth L. Pierpont Date: 6/26/09

Name: Ruth L. Pierpont

Title: DSHPO