

APPENDIX K.7

DRAFT PROGRAMMATIC AGREEMENT

**WORLD TRADE CENTER MEMORIAL AND REDEVELOPMENT PLAN
PROGRAMMATIC AGREEMENT**

Agreement, dated April ____, 2004, among the Advisory Council on Historic Preservation (“ACHP”), the New York State Historic Preservation Officer (“SHPO”) and the Lower Manhattan Development Corporation (“LMDC”) as a recipient of community development block grant assistance from the U.S. Department of Housing and Urban Development (“HUD”).

WHEREAS, LMDC is responsible for planning and conducting environmental and historic reviews for the proposed World Trade Center Memorial and Redevelopment Plan (the “Plan”) for the World Trade Center site (the “WTC Site”) and adjacent areas in New York City as shown on Exhibit A hereto (the WTC Site and such adjacent areas are referred to, collectively, as the “Project Site”); and

WHEREAS, The Port Authority of New York and New Jersey (the “Port Authority”) is the owner of the WTC Site and has certain artifacts from the WTC Site in its custody and control, which it has catalogued and committed to continuing to maintain; and

WHEREAS, the Plan has been developed by LMDC, after extensive public input, to include at its heart a Memorial to honor the victims of September 11, 2001 and February 26, 1993 and commercial, retail, open space and other uses to revitalize Lower Manhattan while providing opportunities through the Memorial design for remembrance of the tragic events of that day; and

WHEREAS, as lead agency under the National Environmental Policy Act (“NEPA”) and the New York State Environmental Quality Review Act (“SEQRA”), LMDC has undertaken a comprehensive environmental review of the Plan, as set forth in LMDC’s Draft Generic Environmental Impact Statement (“DGEIS”) dated January, 2004, which includes an assessment of the potential impacts of the Plan on historic resources both on the Project Site and in an extended Area of Potential Effect (“APE”) surrounding the Project Site; and

WHEREAS, LMDC has, in addition, undertaken a comprehensive review of the potential effects of the Plan on historic resources under Section 106 of the National Historic Preservation Act (“NHPA”) and, as part of that review, has engaged in both (1) a joint review with the Federal Transit Administration (“FTA”) and the Federal Highway Administration (“FHWA”) of the potential eligibility of the WTC Site for listing on the National Register of Historic Places (“National Register”) and (2) an extensive consultation process with approximately 60 consulting parties (identified in Exhibit B hereto) with respect to such eligibility and the potential effects of the Plan on historic properties; and

WHEREAS, after consulting with the SHPO and the consulting parties and taking into account and considering their respective comments on draft determinations of eligibility, LMDC determined, jointly with FTA and FHWA, that the WTC Site is eligible for listing on the National Register for the reasons set forth in a final Coordinated Determination of Eligibility for the WTC Site (“DOE”) dated March ____, 2004, a copy of which is attached as Exhibit C hereto; and

WHEREAS, LMDC has, as part of both its NEPA and Section 106 reviews, consulted with the SHPO and undertaken a comprehensive review of the National Register status of historic properties in the APE; and

WHEREAS, the purpose of this Agreement is to address any unanticipated or as yet unidentified adverse effects on historic resources that may occur as a result of the Plan's implementation, and, in particular, to provide a further opportunity for the SHPO and the consulting parties to comment on plans for the Memorial and the Project Site as they are developed in order to avoid or minimize any potential for adverse effects to any historic resources on the Project Site;

NOW, THEREFORE, LMDC, the ACHP and the SHPO agree that implementation of the undertaking as covered by this Agreement shall proceed in accordance with the following stipulations to avoid, minimize or mitigate any adverse effects and satisfy LMDC's Section 106 responsibilities.

LMDC, in coordination with the Port Authority, will ensure that the following measures are carried out:

1. Project Site Documentation

Prior to the initiation of construction activities that would affect elements of the Project Site that are subject to this Agreement, LMDC will, after consulting with the National Park Service, submit existing documentation of the current appearance of the Project Site to the SHPO, the Historic American Engineering Record (HAER) and Historic American Building Survey (HABS) and/or the New York State Archives, as

appropriate, to ensure that there is a permanent record of existing historic resources on the Project Site.

2. Adherence to the Treatment Plans in the GEIS

LMDC shall ensure that all plans and contracts adhere to the treatment/no adverse effect plans set forth in the relevant portions of Chapter 5, "Historic Resources," and Chapter 21, "Construction," of LMDC's Final Generic Environmental Impact Statement for the Plan (a copy of which has been furnished in electronic form to the ACHP, SHPO and each consulting party) in order to avoid adverse effects to those historic properties within the Project Site and immediately adjacent to the Project Site. Final plans and specifications shall be submitted to the SHPO to verify adherence to the treatment plans. In the event unanticipated adverse effects are identified by the SHPO, or LMDC is notified by the consulting parties of such effects, LMDC shall comply with Stipulation 7 of this Agreement.

3. Design of the Memorial

(a) As part of the development of the plans for the Memorial, LMDC will provide appropriate access by Memorial visitors to (1) portions of the western slurry wall on the WTC Site and (2) truncated box beam column bases outlining portions of the lower "footprints" of the former Twin Towers at the WTC Site (collectively, the "Memorial Access Commitments").

(b) At such time as the Memorial plans have reached a design stage sufficient to permit reasonable review of architectural plans for the Memorial, LMDC will notify the SHPO and the consulting parties and furnish copies of schematic drawings relating to the Memorial Access Commitments and/or illustrative plans (which may include renderings) for the Memorial to the SHPO and any consulting party for review and comment. The

review of the plans shall focus solely on the Memorial Access Commitments. LMDC will consult with the SHPO concerning such plans and subsequently convene a meeting, on no less than 10 days' notice, of the consulting parties for the purpose of affording the consulting parties an opportunity to share their views regarding the adherence of the preliminary plans with the Memorial Access Commitments. LMDC shall consider all such comments in preparing final plans for the Memorial. It is understood, however, that LMDC shall not consider modifications to its proposed activities for any other portion of the Plan.

4. Artifact Review Process

(a) LMDC has committed to, and will, (1) develop a Memorial Center as part of the Plan; (2) establish a Memorial Center Advisory Committee that will assist in the review of suggestions from the consulting parties and other members of the public with respect to the installation or display at the Memorial Center of artifacts removed from the WTC Site; and (3) consult with the Port Authority to assure that the Port Authority safeguards all such artifacts that are in its custody and control, pending the final disposition of such artifacts in accordance with the rights of the respective owners thereof, and thereafter transfers any remaining items to LMDC or its designee for safekeeping or other appropriate disposition. All artifacts to be included in the Memorial shall be evaluated for their significance as part of the National Register eligible WTC Site.

(b) LMDC shall obtain from the Port Authority a copy of a complete inventory listing of all WTC artifacts in the Port Authority's custody and control (which shall be periodically updated if and when additional artifacts come into the Port Authority's custody and control). LMDC will consult with the Port Authority to share the inventory

with the SHPO and each consulting party and provide an opportunity to comment regarding artifacts that may be installed in or displayed at the Memorial Center and their potential significance to the WTC Site. LMDC will share the comments with the Memorial Center Advisory Committee, which shall assist LMDC in considering such comments, along with other relevant considerations (e.g., security, space, curation standards), with respect to the construction and operation of the Memorial Center.

5. Consideration of Impacts to Additional Remnants of The WTC

In preparing plans for the portions of the Plan on the WTC Site that would reasonably be expected to affect any of the Additional Remnants listed on Exhibit D hereto, LMDC and the Port Authority will seek to minimize or mitigate, through reasonable and practicable steps, any potentially adverse effects to such Additional Remnants to the degree consistent with the overall Plan, sound engineering practice and other relevant considerations. At such time as the preliminary design plans permit a reasonable assessment of potential effects to such Additional Remnants, LMDC will furnish relevant preliminary design or illustrative plans and a summary of any proposed mitigation measures to the SHPO and the consulting parties. The SHPO and consulting parties shall be afforded no less than 30 days to submit comments to LMDC and the Port Authority on the adequacy of such plans in minimizing or mitigating any such potential effects. LMDC and, if appropriate, the Port Authority will consider all such comments in developing its final mitigation plans.

6. Treatment of Archeological Resources

Upon completion of the plans for further archaeological investigation and monitoring of the portions of the Project Site which have a high probability of containing archeological resources per preliminary studies, LMDC will provide copies or summaries

of the proposed plans to the SHPO for review and comment. The SHPO shall be afforded no less than 30 days to submit comments or recommendations to LMDC or the Port Authority , as appropriate, with respect to the adequacy of such plans. LMDC and, if appropriate, the Port Authority shall consider all such comments before finalizing the plans, which will address, as appropriate, required surveys, National Register evaluation, monitoring procedures and treatment, including data recovery.

7. Treatment of Unanticipated Adverse Effects or Unknown Historic Properties

(a) If, during project implementation, LMDC, the Port Authority , or any of their contractors discovers or identifies additional historic properties within the Project Site that may be adversely affected, or should there be any unanticipated adverse effects to historic properties, LMDC or the Port Authority shall promptly notify the SHPO and the ACHP and shall develop a treatment or mitigation plan for such property or adverse effect condition and submit it to the ACHP, the SHPO and consulting parties for comment within 15 days. The failure of the ACHP to comment within that time period shall constitute concurrence with the proposed plan. LMDC shall consider comments before finalizing its treatment or mitigation plans.

(b) LMDC and the Port Authority may proceed with all project activities while the treatment or mitigation plan is being developed and reviewed, but shall not take or permit actions that would adversely affect such property during such period.

8. Coordination of Future Federally Funded Activities

In the event that the LMDC applies for other federal assistance to implement this undertaking, the federal funding agency may satisfy its Section 106 responsibilities by agreeing in writing to the terms of this Agreement and notifying the SHPO and ACHP accordingly.

9. Monitoring Activities

During project implementation, LMDC shall submit semi-annual reports to the SHPO and ACHP to summarize measures it has taken to comply with the terms of this Agreement. Reports shall be submitted in January and June of each year during the term of this Agreement or until the project is completed or the requirements of this Agreement are satisfied. The SHPO and the ACHP may monitor project activities carried out pursuant to this Agreement. The LMDC will cooperate with the SHPO and the ACHP in carrying out these monitoring and review responsibilities.

10. Terminating the Agreement

Any signatory to this Agreement may terminate it by providing 30 days' notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination and to clarify the procedures for future review of any outstanding activities subject to this Agreement. In the event of termination, LMDC shall either execute a new programmatic agreement per 36 CFR § 800.14(b) or request and consider the comments of the ACHP per 36 CFR § 800.7.

11. Duration of This Agreement

This Agreement constitutes a Programmatic Agreement as set forth in 36 CFR § 800.14(b) and will continue in full force for ten years following its execution or until such earlier time as it is terminated or the matters that are the subject of this Agreement have been performed in accordance with the provisions hereof.

12. Amendments

Amendments shall be in writing and effective when approved in writing by all the signatories to this Agreement.

EXECUTION AND IMPLEMENTATION of this Agreement evidence that the LMDC has afforded the ACHP a reasonable opportunity to comment on its Plan and that the LMDC has taken into account the effects of the Plan on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

LOWER MANHATTAN DEVELOPMENT CORPORATION

By: _____
Kevin M. Rampe, President

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____

Exhibit A

Project Site

List of Consulting Parties

Coordinated Determination of Eligibility

Additional Remnants on WTC Site

1. Slab and column remnants of below grade parking garage at northwest corner of WTC Site.
2. Portions of former stairway and escalator support at Greenwich and Vesey Streets.
3. Steel column and crossbeam mounted on a concrete pedestal.
4. Visible temporary tie-back caps.
5. Remnants of Hudson & Manhattan Tubes and Terminal.