

**Programmatic Agreement**  
**between**  
**New York State Historic Preservation Office and**  
**Lower Manhattan Development Corporation regarding**  
**Improvements to Catherine, Montgomery and Rutgers Slips**  
**New York County, New York City, New York**

Agreement, dated as of March 9, 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 improvements to Catherine Slip, Montgomery Slip and Rutgers Slip 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, 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 a significant adverse environmental impacts; and

WHEREAS, Catherine Slip is located within the Two Bridges Historic District, which is listed on the State and National Registers of Historic Places ("Historic District"); and

WHEREAS, the Project will not 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 archeological historic properties at certain depths ("Phase 1A Study"); and

WHEREAS, the effects of the Project on archeological historic properties 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 properties 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 have served 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, 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. 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.

### 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 terminate upon completion of construction and the obligations set forth in this Agreement. LMDC's duties will terminate at such time as LMDC notifies the other Signatories 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: General Counsel

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

**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: D. R. I. Date: 4/14/10

Name: DAVID EMIL

Title: PRESIDENT

**NEW YORK STATE HISTORIC PRESERVATION OFFICER**

By: Ruth L. Pierpont Date: 3/9/10

Name: Ruth L. Pierpont

Title: DSHPO