

MEMORANDUM OF AGREEMENT
between the CITY OF WILMINGTON and the
DELAWARE STATE HISTORIC PRESERVATION OFFICER
regarding the JOSEPH AND EDWARD TATNALL HOUSES
Wilmington, New Castle County, Delaware
Pursuant to 36 CFR 800.6

WHEREAS, the City of Wilmington (City) proposes to provide US Department of Housing and Urban Development (HUD) HOME funding for the rehabilitation of the Joseph and Edward Tatnall Houses (project name, Lafayette Court) and associated site improvements; and

WHEREAS, the City has agreed to undertake the environmental review responsibilities for HUD for funding provided through the Economic Development Initiative (EDI) for the rehabilitation of the Joseph and Edward Tatnall Houses (project name, Lafayette Court) and associated site improvements; and

WHEREAS, in consultation with the Delaware State Historic Preservation Officer (SHPO), the City has determined the Project's Area of Potential Effects (APE), as defined in the Documentation of Adverse Effect for the Project, dated November 5, 2004; and

WHEREAS, the City has determined that the project will have an adverse effect upon the Joseph and Edward Tatnall Houses, 1803 and 1805 North Market Street, respectively, which are contributing properties in the Brandywine Village Historic District, a district listed on the National Register of Historic Places, as well as associated archaeological deposits which have been determined eligible for listing in the National Register of Historic Places; and

WHEREAS, the City has consulted with the SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the City has afforded the public an opportunity to comment on the effects of the Project on historic properties as outlined in the Documentation of Adverse Effect;

NOW, THEREFORE, the City and the SHPO agree that the project shall be implemented in accordance with the following stipulations in order to take into account its effects on historic properties.

STIPULATIONS

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

1. Review of Rehabilitation Plans

Prior to initiation of rehabilitation on the properties, the SHPO will review and approve the site plan and construction plans for the project. The review will be completed within 30 days of receipt of the plans. The City will consult with the SHPO during the development of these plans to ensure that the new construction is compatible with the historic and architectural qualities of the Brandywine Village Historic District in terms of scale, massing, color, and materials, and is responsive to the recommended approaches for rehabilitation set forth in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1990). Subsequent changes to the exterior during the construction period would be submitted for review and approval as well.

2. Archaeology

In consultation with the SHPO, the City will develop a data recovery plan for the archaeological deposits in the rear yards of the Joseph and Edward Tatnall Houses (Site 7NC-B-62). The City shall ensure that the data recovery plan meets the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37) and the DE SHPO's *Guidelines for Architectural and Archaeological Surveys in Delaware*, and takes into account the Council's guidance *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites, May 18, 1999*. The SHPO will have 30 days to review and comment on the proposed data recovery plan.

The City will ensure that all necessary on-site data recovery work has been completed prior to the commencement of construction in the site areas. The City shall provide the draft data recovery report to the SHPO for review and comment. All final reports shall meet the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48 FR 4473437).

The City shall ensure that all records and materials resulting from the archaeological investigation will be curated in accordance with 36 CFR Part 79 and the curation guidelines developed by Delaware State Museums. These records and materials shall be curated at Delaware State Museums, or their designee, following the policies of the institution.

3. Public Involvement

Within one year of the execution of this MOA, the City, in consultation with the SHPO and the Wilmington Senior Center, will develop a plan for informing the public of the history of the project area, using information derived from archaeological studies conducted for the project. Materials and methods used to distribute this information may include, but are not necessarily limited to: booklets, pamphlets, or displays in the community. In the case of written material, the City shall distribute the materials developed, at a minimum, to local community organizations and libraries.

4. Unanticipated Discovery

In the event that previously unidentified archaeological resources are discovered during construction, the City shall instruct the Wilmington Senior Center to have their contractor cease construction in the immediate area where the discovery occurred, and to notify the City. The City shall then proceed with consultation under 36 CFR 800.13(b)(3), by notifying the SHPO within 48 hours of learning of the discovery. The SHPO shall respond within 48 hours of the notification, and the City shall take into account their recommendations regarding the National Register eligibility of the resources and proposed actions for addressing the discovery. The City shall then assure that agreed upon actions are carried out. The steps in this Stipulation are understood to pertain only to that part of the project area in which the discovery occurred. Construction may continue in those parts of the project area that are not affected by the discovery.

5. Administrative Conditions

A. Non-compliance and Amendment

If any of the signatories to this Agreement believe that the terms cannot be adhered to, or that an amendment to the terms must be made, that signatory shall immediately consult with the other signatories to develop amendments. The process of amending the Agreement shall be the same as was exercised in creating it. If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation 5.B. will be followed.

Failure to fulfill the terms of this Agreement require that the City consult in accordance with 36 CFR 800.6(c)(8). If the City cannot fulfill the terms of this Agreement, it shall not take or sanction any action or make an irreversible commitment that would result in an adverse effect with respect to eligible or listed properties covered by the Agreement until the consultation process has been completed.

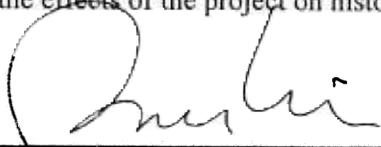
B. Dispute Resolution

If, at any time during the implementation of the measures stipulated in this Memorandum of Agreement, a dispute should arise as to any measure or its manner of implementation, the parties to this Agreement will consult to resolve the dispute. If no resolution is achieved, the City will request the comments of the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR 800.7.

C. Duration of Agreement

This Agreement shall expire if its terms and conditions are not carried out within two (2) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Execution of this Memorandum of Agreement by the City and the SHPO, the subsequent filing of this Agreement with the Council, and implementation of its terms, is evidence that the City has taken into account the effects of the project on historic properties



City of Wilmington
Robert L. Weir, Director
Department of Real Estate and Housing

12.07.04

(date)



Daniel R. Griffith
Delaware State Historic Preservation Officer

12/9/2004

(date)