

## 2005 PROGRAMMATIC AGREEMENT

**WHEREAS**, the CITY OF NIAGARA FALLS, NEW YORK ("NIAGARA FALLS") administers grant programs funded by a Community Development Block Grant from the Department of Housing and Urban Development (HUD) in accordance with the provisions of the Housing and Community Development Acts of 1974 and 1977, and,

**WHEREAS**, NIAGARA FALLS has determined that the program may have an effect upon properties included in or eligible for the National Register of Historic Places and has consulted with the New York State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic Preservation ("Council") and pursuant to the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C.470f)

**NOW, THEREFORE**, NIAGARA FALLS, the SHPO and the Council agree that the program shall be administered in accordance with the following stipulations for FY 2005 to satisfy the NIAGARA FALLS' Section 106 responsibilities for all individual undertakings of the program.

### STIPULATIONS

This Agreement applies to all activities funded in whole or in part with Community Development Block Grant funds, including those activities that may be planned or undertaken by a sub-grantee. For such activities, NIAGARA FALLS will ensure that the following measures are carried out.

#### **Archeology and Ground-disturbing Activities:**

1. Unless otherwise exempted by Stipulation VII below, all projects with a ground-disturbing component will be submitted for SHPO review. NIAGARA FALLS will provide to the SHPO:
  - a) USGS map locating the project;
  - b) photos of the area, including any building(s) on or adjacent to the project site, if any; these will be numbered and keyed to the site plan below to identify the location and view depicted; NIAGARA FALLS will document all elevations or building faces and will provide a street address for any structures documented;
  - c) site plan showing all existing buildings and all subsequent new construction and related site work;
  - d) project narrative;
  - e) if available, information on any previous ground disturbance, including:
    - i) nature and date of disturbance;
    - ii) map indicating the depth and location of previous disturbance activities.
  
2. The SHPO will respond in accordance with Stipulation IX.

3. If warranted, archeological survey of the affected area will be carried out in consultation with the SHPO. If archeological resources are found which meet the National Register Criteria (36 CFR Section 60.6), whenever feasible, they will be avoided or preserved in place. When this is not feasible, NIAGARA FALLS will consult with the SHPO and a treatment consistent with the Council's Handbook, "Treatment of Archeological Properties" and approved by the SHPO will be developed and implemented.

## II. Demolition:

- 1 All demolition projects, or projects with a demolition component, will be submitted for SHPO review. NIAGARA FALLS will provide to the SHPO:
  - a) city-scale map locating the project;
  - b) SHPO Building Structure Inventory Form ("Blue Form") and photos for subject building(s), all elevations or building faces; these will be numbered and keyed to the site plan below to identify the location and view depicted;
  - c) SHPO Building Structure Inventory Form ("Blue Form") and photos for surrounding/adjacent buildings (if any); these will be numbered and keyed to the site plan below to identify the location and view depicted;
  - d) site plan showing all existing buildings and all subsequent new construction and related site work;
  - e) project narrative, including description of any subsequent development proposed for the site.
- 2 The SHPO will respond in accordance with Stipulation IX.
- 3 Archeology issues will be handled in accordance with Stipulation

## III. New Construction and Additions:

- 1 All projects with a new construction or addition component will be reviewed by the SHPO. NIAGARA FALLS will provide to the SHPO:
  - a) city-scale map locating the project;
  - b) SHPO Building Structure Inventory Form ("Blue Form") and photos of subject building(s), if any: all elevations or building faces; these will be numbered and keyed to the site plan below to identify the location and view depicted;
  - c) SHPO Building Structure Inventory Form ("Blue Form") and photos of surrounding/adjacent buildings, if any; these will be numbered and keyed to the site plan below to identify the location and view depicted;
  - d) project narrative;
  - e) site plan showing all existing and new buildings, additions, parking areas and related site work;
  - f) elevation drawings annotated to describe the materials and finishes proposed for all new structures;
  - f) if available, information on any previous ground disturbance, including:
    - i) nature and date of disturbance;
    - ii) map indicating the depth and location of previous disturbance activities.
- 2 The SHPO will respond in accordance with Stipulation IX.

- 3 Archeology issues will be handled in accordance with Stipulation

**IV. Work at Properties Less than 50 years:**

- 1 This Stipulation applies to work at properties less than 50 years as determined by Building Department records, by consultation with historians meeting the National Park Service's 36 CFR 61 qualifications, or by consultation with the SHPO.
- 2 Where the work scope consists entirely of interior work, and/or exterior work that is limited to repairs or replacement in kind, with no demolition and no new construction, NIAGARA FALLS may proceed without SHPO review. *Changing existing materials---rather than repairing them or replacing them to match---is not replacement in kind.*
- 3 Where the work scope exceeds exterior repair or replacement in kind and the subject property is not substantially contiguous to (either beside or across the street from) a property more than 50 years old, NIAGARA FALLS may proceed without SHPO.
4. Where the work scope exceeds exterior repair or replacement in kind and the property is substantially contiguous to (either beside or across the street from) a property more than 50 years old, NIAGARA FALLS will consult with the SHPO to discuss the proposed work scope, assess the potential for impacting nearby historic properties, and determine whether the undertaking must be reviewed under this PA. Consultation via e-mail is encouraged to provide a written record for NIAGARA FALLS' environmental records.

Where review is not warranted, the SHPO will e-mail confirmation to the NIAGARA FALLS' representative; where review is required, the SHPO will e-mail a list of the materials that should be provided to initiate review.

**V. Work at or Near Properties More than 50 years old:**

- 1 This Stipulation applies to work at *or near* properties more than 50 years old, as determined by Building Department records, by consultation with historians meeting the National Park Service's 36 CFR 61 qualifications, or by consultation with the SHPO. Where the interior and exterior work scope consists entirely of repairs or limited replacement in kind with no demolition, no new construction, no floor plan changes and no window replacement (see Stipulation VII below for a list of covered work items or categorical exclusions), NIAGARA FALLS may proceed without SHPO review.
2. Where the work scope includes demolition, new construction, floor plan changes or window replacement, removal of existing materials and the installation of non-matching materials, or otherwise exceeds the list of covered work items or categorical exclusions in Stipulation VII below, NIAGARA FALLS will provide to the SHPO:
  - a) all materials specified in Stipulation IV (including those materials requested in Stipulations I, II and III if the proposal includes ground-disturbing activities, demolition, or new construction or additions.

If the SHPO has already determined the property eligible for listing in the National Register, NIAGARA FALLS may move directly to the Project Effect Evaluation by providing the materials specified in Stipulation VI below for SHPO review.

3. The replacement of windows in buildings more than 50 years old must always be submitted for SHPO review. For these projects NIAGARA FALLS will provide to the SHPO:
  - a) photographs conclusively documenting deterioration beyond repair for all windows to be replaced;
  - b) information about the proposed new units, their material and their appearance (for example, 6-over-6 units).
4. The SHPO will respond in accordance with Stipulation IX.
5. Archeology issues will be handled in accordance with Stipulation

**VI. Project Effect Evaluation:**

- 1 For those properties listed in the National Register of Historic Places, and those properties determined by the SHPO to be *eligible* for listing in the National Register, either individually or as part of a district, NIAGARA FALLS will provide to the SHPO:
  - a) existing-condition floor plans (or sketch plans) to serve as a photo key (see "b" below);
  - b) existing-condition interior photos, numbered and keyed to the plan above with arrows to identify the location and view depicted;
  - c) rehabilitation drawings, if plan changes or additions are proposed;
  - d) elevation drawings, annotated to describe the proposed materials and finishes, if new construction or additions are proposed;
  - e) specifications for any masonry cleaning or repointing (see Stipulation VII below for a list of categorical exclusions and recommended masonry treatments);
  - f) photographs documenting deterioration beyond repair for any non-metal or non-vinyl windows the NIAGARA FALLS proposes to remove or replace;
  - g) information about the material and appearance of any replacement windows proposed;
  - h) proposed site plan describing all demolition, new construction and site improvements.
2. The SHPO will respond in accordance with Stipulation IX.
3. Archeology issues will be handled in accordance with Stipulation

**VII. Work Items that Require No SHPO Consultation:**

Attachment A to this Programmatic Agreement is a list of activities and work items not requiring SHPO consultation, regardless of the subject property's age.

**VIII. Responsibilities of NIAGARA FALLS:**

NIAGARA FALLS agrees to comply with the Stipulations of this agreement, to consult with the SHPO where appropriate in accordance with their provisions (and to require the same of its sub-grantees), and to the extent practicable, to ensure that all work at National Register-listed or -eligible properties conforms with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the corollary Guidelines for the Treatment of Cultural Landscapes.

2. For all activities requiring SHPO consultation, the City agrees to initiate and conclude the consultation before beginning or permitting any work, including preparatory removals or sitework.
3. For all activities *not* requiring SHPO consultation, documentation including before and after photographs and work specifications of undertakings involving the following work items will be retained and made available to the SHPO, the Council or HUD upon request.
4. Each year NIAGARA FALLS will notify the public of NIAGARA FALLS' current CDBG programs, and make available for public inspection documentation of NIAGARA FALLS' programs. Included in this documentation will be general information on the CDBG programs, information on the types of activities undertaken with CDBG funds, information on identified historic properties which might be affected by these activities, the amount of CDBG funds available in the current program year, and how interested persons can receive further information on programs.

**IX. Responsibilities of the New York SHPO:**

The New York SHPO will review all NIAGARA FALLS submissions or documentation and may:

- a) request additional information and/or provide recommendations;
  - b) provide a project effect finding that concludes the process;
  - c) provide a project effect finding that requires continued consultation with the SHPO;
  - d) establish conditions for project approval which may require continued consultation with the SHPO and may require that NIAGARA FALLS agree in writing to meet the conditions and/or provide revised project materials (for example, plans and specifications) incorporating the SHPO's conditions.
2. Consultation will be concluded when the SHPO has issued a finding of No Effect, No Adverse Effect, or No Adverse Effect with Conditions or, for undertakings whose effects are adverse, when mitigation measures have been developed and a project-specific Memorandum of Agreement has been executed by the SHPO and NIAGARA FALLS.

**X. Terms of this Agreement**

1. The Council and the SHPO may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. NIAGARA FALLS will cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities.
2. This Programmatic Agreement will continue in force for the duration of FY 2005 grant funding. Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800 to consider such amendment.
3. Any party to this Programmatic Agreement may terminate it by providing thirty (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. In the event of termination, NIAGARA FALLS will comply with 36 CFR 800 with regard to individual undertakings covered by this Programmatic Agreement.
4. In the event NIAGARA FALLS does not carry out the terms of the Programmatic Agreement, NIAGARA FALLS will comply with 36 CFR 800 with regard to individual undertakings covered by this Programmatic Agreement.

**XI. Execution**

Execution and implementation of this Programmatic Agreement evidences that NIAGARA FALLS has satisfied its Section 106 responsibilities for all individual undertakings of the program for FY2005.

City of Niagara Falls, New York:

By: Vincenzo V. Anello  
VINCENZO V. ANELLO, MAYOR

Date: 1-19-05

Attest: Carol A. Bronner  
City Clerk

Advisory Council on Historic Preservation:

John M. Fowler  
JOHN M. FOWLER, EXECUTIVE DIRECTOR

Date: 3/17/05

New York State Historic Preservation Office:

Bernadette Castro  
BERNADETTE CASTRO,  
STATE HISTORIC PRESERVATION OFFICER

Date: 2/6/05

## ATTACHMENT A: Work Items that Require no SHPO Consultation

Undertakings consisting *entirely* of the categorically excluded work items below may be carried out without SHPO review; all others must be submitted for SHPO review. For projects not requiring SHPO review, NIAGARA FALLS agrees to retain documentation, including before and after photographs and work specifications of undertakings involving the following work items, and make that materials available to the SHPO or the Advisory Council upon request.

### Program Activities

1. Purchase of equipment where no physical change is required for its installation;
2. Public service programs;
3. Community Development administration;
4. Relocation assistance.

### Sitework

1. Resurfacing of roads where no change in width, in curb location, in surface material, in depth of roadbed, in vertical alignment (that is, height or crown of the road surface) or in drainage is to occur;
2. Repair/replacement of underground utility lines within *existing* trench;
3. Repair/replacement of *existing* curbing or sidewalks in kind, in the same location, with no removal of trees and no damage to tree root systems;
4. Repair/replacement of *existing* septic systems, storm drainage or fuel storage where significant site features, such as mature trees and their root systems, are not impacted.

### Exterior Work

1. In kind roof repairs (that is, same material and appearance) and replacement of asphalt roofing material;
2. In kind repair/replacement of gutters and downspouts using colors complementing building facades;
3. Window and door repair using in kind materials and matching original details exactly, including replacement of isolated wooden members, glazing and hardware, and replacement or addition of window screens. Replacement of entire sash or frame at properties more than 50 years old must be reviewed by the SHPO under Stipulation V.3 of this Programmatic Agreement;
4. In kind replacement of missing or broken glass at windows and doors;
5. *Minor* wood repairs of clapboard, structural elements, and isolated trim sections provided new material matches original exactly in material and detail;
6. *Minor* porch repair using in kind materials including jacking of porch and replacement in kind of deteriorated framing members and flooring;
7. In kind *minor* repairs of wheelchair ramps;
8. In kind repair of concrete floors in cellars, garages and service areas;
9. In kind repair of concrete block foundations, *minor* repairs to parged foundations to match existing, and repointing in kind of all foundations where new mortar matches original in color, texture, hardness, joint width and profile.

For buildings more than 50 years old please note: the use of silicone sealers or other coatings is specifically *excluded*; the use of sandblasting or any other masonry cleaning techniques is *specifically* excluded and all such work must be reviewed by the SHPO; all masonry repointing work is *specifically* excluded and all such work must be reviewed by the SHPO; new parging on non-concrete block foundations must also be reviewed by the SHPO;

10. Exterior painting with traditional color schemes, or complementary colors, using oil base or

latex paint on previously painted surfaces provided that: appropriate surface preparation is undertaken, including washing, scraping, and sanding (sandblasting is *specifically* prohibited), and priming of all exposed areas with oil base primer; and painting is undertaken only when temperature is at least 50 degrees F;

11. Caulking and weatherstripping.
12. In kind repair/replacement of signs.

### Windows

13. Double-glazing of existing sash, including the replacement of original, non-decorative glazing by modifying existing sash to receive double glazing, providing original sash can withstand additional weight;
14. New wood exterior storm windows provided:
  - a) the storms completely fill the window opening without spacers or panels;
  - b) the storm's mullions and meeting rails match those of prime window; and
  - c) the storm's color matches that of prime sash and trim.
15. New aluminum exterior storm windows provided:
  - a) they meet the conditions in 13 a-c above;
  - b) the finish is baked enamel;
  - c) the units are flush mounted and do not protrude beyond face of window trim.

### Interior Work

16. *Minor* structural repairs including in kind repair/replacement of deteriorated floors, or floor and ceiling framing members;
17. *Minor* patching of flat, non-decorated (smooth) interior ceilings and walls in kind.
18. Replacement of flat, non-decorated interior walls and ceilings with sheetrock when existing conditions are irreparable, providing the new surface lies in the same plane as the original;
19. Interior painting/staining with materials matching original paint/stain finish and texture;
20. In kind repair, replacement, or upgrading of HVAC, plumbing and electrical systems (exterior alterations and the installation of additional ducts outside of basement, attic, or other concealed spaces is *specifically* excluded and must be reviewed by the SHPO);
21. Installation of adequate lighting where required in kitchens, bathrooms, or public areas where installation will not damage or obscure architectural details;
22. Installation/repair/replacement of smoke alarms;
23. Repair/replacement of locksets;
24. Caulking and weatherstripping;
25. Attic and basement ceiling insulation when a vapor barrier of two coats of vapor barrier paint are applied to the warm side of ceiling or cavity, and adequate ventilation is provided on the cold side;
26. Wrapping of heating pipes and ducts in basements, attics, and crawl spaces.