

PROGRAMMATIC AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO (City) AND THE
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING MISSION BAY SOUTH BLOCK 6 WEST
AFFORDABLE HOUSING DEVELOPMENT,
SAN FRANCISCO, CALIFORNIA

WHEREAS, the Mayor's Office of Housing and Community Development of the City and County of San Francisco (City) has determined that the development (Undertaking) of an affordable housing development at Mission Bay South Block Six, San Francisco CA by Mercy Housing (Consulting Party) may have an effect on yet unidentified subsurface properties; and

WHEREAS, Mercy Housing has been invited to be signatory to this agreement as a Consulting Party; and

WHEREAS, Mercy Housing the Consulting Party, is applying for Section Eight project-based housing vouchers which are subject to regulation by 24 CFR Part 58; and

WHEREAS, the City and County of San Francisco (City) has assumed responsibility for environmental review responsibilities for programs and activities subject to regulation under Part 58; and

WHEREAS, the Director of the Mayor's Office of Housing and Community Development has been designated the Agency Official under Section 106 of the National Historic Preservation Act (NHPA) and the Certifying Officer under Part 58; and

WHEREAS, the City and County of San Francisco (City) has consulted with the California State Historic Preservation Officer (SHPO) pursuant to the January 2007 Programmatic Agreement (Part 58 PA) by and among the City and County of San Francisco, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Historic Properties Affected by Use of Revenue from the Department of Housing and Urban Development Part 58 Programs; and

WHEREAS, pursuant to the PA the City and the SHPO have agreed that resolution of potential adverse effects cannot be resolved through a Standard Mitigation Measures Agreement (SMMA); and

WHEREAS, the City is a Certified Local Government pursuant to Section 101(c)(1) of the NHPA; and

WHEREAS, the City has established the Area of Potential Effects (APE) for the Undertaking as defined at 36 CFR § 800.16 to be limited to the legal lot lines of the property described as Mission Bay South Block 6 West (APN 8711-020), San Francisco, California, County of San Francisco; and

WHEREAS, the Northwest Information Center (NWIC) at Sonoma State University has advised the City that there is a moderate potential of identifying Native American archeological

resources and a moderate potential of identifying historic-period archeological resources in the APE and has recommended a qualified archeologist conduct further archival and field study to identify cultural resources, especially a good-faith effort to identify those buried deposits that may show no signs on the surface; and

WHEREAS, the NWIC has further advised the City that if archeological resources are encountered during construction, that work should be temporarily halted in the vicinity of discovered materials and workers should avoid altering the materials and their context until a qualified professional archeologist has evaluated the situation and provided appropriate recommendations; and

WHEREAS, the San Francisco Planning Department employs staff archeologists (Staff Archeologist) who are appropriately qualified to coordinate the reviews of resources and historic properties as applicable to the resources and historic properties being addressed and who meet the Secretary of the Interior's Professional Qualifications Standards and have the knowledge to assess the resources within an undertaking's APE; and

WHEREAS, the Staff Archeologist has reviewed archival research, and site sensitivity in regards to prehistoric and historical archeological resources; and

WHEREAS, The Mayor's Office of Housing and Community Development has contacted the Native American Heritage Commission, and a search of their Sacred Lands File was negative; and

WHEREAS, pursuant to the Advisory Council on Historic Preservation's (ACHP) Section 106 regulations and the PA for Part 58, the City has conducted outreach and has actively sought and requested the comments and participation of members of the Ohlone/Costanoan Indian tribe; and the members did not respond to requests to engage in such consultation; and

WHEREAS, in accordance with 36 CFR § 800(6)(a)(1), the City has informed the ACHP of its potential adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the City and the SHPO have agreed to the procedures and methodology that the City will use to avoid any adverse effects from the proposed project on buried or submerged historic properties; and

NOW, THEREFORE, the City and the SHPO agree that the Undertaking shall be implemented according to the following stipulations in order to take into account the effects the Undertaking may have on historic properties.

Execution of this PA by the City and the SHPO, and implementation of its terms, evidence that the City has taken into account the effects of the undertaking on historic properties and afforded the ACHP an opportunity to comment. Based on the reasonable assumption that the Undertaking may cause alterations in the character or use of historic properties and in accordance with the requirements of Stipulation XI of the PA (Consideration and Treatment of Archeological

Resources), the following measures shall be undertaken to avoid any adverse effects from the proposed project on buried or submerged historic properties:

STIPULATIONS

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

I. Qualified Archeological Consultant Responsibilities

- A. The City shall ensure that all work carried out pursuant to this Agreement shall be done by or under the direct supervision of historic preservation professionals who meet the Secretary of the Interior's Professional Qualifications Standards for Prehistoric and Historic Archeology.
- B. The Project Developers will retain the services of an Archeological Consultant from the rotational Department Qualified Archeological Consultants List (QACL) maintained by the San Francisco Planning Department;
- C. All work carried out pursuant to this Agreement shall meet the Secretary of the Interior's Standards for Archeology and Historic Preservation (SOI's Standards);
- D. The Archeological Consultant shall undertake such archival research, conduct field studies as deemed necessary by the Staff Archeologist.
- E. The Archeological Consultant shall develop an Archeological Testing Plan.
- F. The Archeological Consultant shall undertake the archeological testing program as specified herein. In addition, the Archeological Consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure.
- G. The Archeological Consultant's work shall be conducted in accordance with this measure at the direction of the Staff Archeologist.
- H. All plans and reports prepared by the Archeological Consultant as specified herein shall be submitted first and directly to the Staff Archeologist for review and comment, and shall be considered draft reports subject to revision until final approval by the Staff Archeologist.

II. Consultation with Descendant Communities

On discovery of an archeological site associated with descendant Native Americans, Overseas Chinese, or other descendant group, an appropriate representative of the descendant group and the Staff Archeologist shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to consult with the Staff Archeologist regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group;

III. Archeological Testing Program

A. The archeological testing program shall be conducted in accordance with the approved Archeological Testing Plan (ATP) as approved by the Staff Archeologist. The ATP will identify the types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing.

B. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historic property using the criteria of the NRHP.

C. At the completion of the archeological testing program, a project archeologist shall submit a written report of the findings to the Staff Archeologist. If based on the archeological testing program the project archeologist finds that significant archeological resources may be present, the Staff Archeologist in consultation with the project archeologist shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the Staff Archeologist. If the Staff Archeologist determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

1. The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or
2. A data recovery program shall be implemented, unless the Staff Archeologist determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

D. Archaeological Data Recovery Program

1. If archeological resources are identified and determined by the Staff Archeologist to be significant under criterion d, an archeological data recovery program shall be conducted in accordance with an archeological data recovery plan (ADRP). The project archeologist, project sponsor, and Staff Archeologist shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The project archeologist shall submit a draft ADRP to the Staff Archeologist. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions.

2. Data recovery, in general, should be limited to archeological properties determined to be significant, following application of all NRHP criteria, as defined above, and portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical;

3. The scope of the ADRP shall include the following elements:
 - a) Field Methods and Procedures. Descriptions of proposed field strategies, procedures, and operations.
 - b) Cataloguing and Laboratory Analysis. Description of selected cataloguing system and artifact analysis procedures.
 - c) Discard and Deaccession Policy. Description of and rationale for field and post-field discard and deaccession policies.
 - d) Interpretive Program. Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.
 - e) Security Measures. Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
 - f) Final Report. Description of proposed report format and distribution of results.
 - g) Curation. Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

IV. Evaluation of Archeological Resources

The City shall use the National Register of Historic Places (NRHP) criteria for evaluating the significance of the archeological properties and their eligibility for listing on the NRHP. The criteria for evaluation are the quality of significance in American history, architecture, archeology, engineering, and culture, and may be present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.

If an archeological resource is encountered that the City determines is eligible for inclusion in the NRHP, the City shall act in accordance with the applicable provisions of the Part 58 PA. The property and eligibility determination will be submitted to the SHPO for review pursuant to the terms of Stipulation V.

If resources are found that the Staff Archeologist determines to meet significance criterion d, and if preservation in place is not feasible, an Archeological Data Recovery Program shall be implemented in accordance with Stipulation XI of the Part 58 PA. If resources are found to meet criteria a and/or b and/or c, then representatives of the appropriate descendant community or the appropriate community member shall be notified immediately upon the determination. Upon

such notification and in consultation with appropriate descendant community representatives, the Staff Archeologist will identify appropriate treatment and will be implemented by the Archeological Consultant and project sponsor. If after fifteen days of notification to the descendant community does not respond to the request for consultation then the appropriate treatment, as approved by the Staff Archeologist, will be implemented by the Archeological Consultant and project sponsor.

V. Archeological Monitoring Program (AMP)

A. If the Staff Archeologist (in consultation with the Archeological Consultant) determines that an archeological monitoring program shall be implemented the archeological monitoring program shall minimally include the following provisions:

1. The Archeological Consultant, project sponsor, and Staff Archeologist shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing.
2. The Staff Archeologist (in consultation with the Archeological Consultant) shall determine what project activities shall be archeologically monitored. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archeological resources and to their depositional context.
3. The Archeological Consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource.
4. Archeological monitor(s) (Monitors) under the supervision of the Archeological Consultant and as approved by the Staff Archeologist shall be present on the project site according to a schedule agreed upon by the archeologist and the Staff Archeologist until the Staff Archeologist has (in consultation with the Archeological Consultant) determined that project construction activities could have no effects on significant archeological deposits.
5. The Monitors shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis.
6. If an intact archeological resource is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The Monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the Monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the Staff Archeologist. The Archeological Consultant shall immediately notify the Staff Archeologist of the encountered archeological deposit. The Archeological Consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the Staff Archeologist.

7. Whether or not significant archeological resources are encountered, the Archeological Consultant shall submit a written report of the findings of the monitoring program to the Staff Archeologist.

VI. Human Remains and Associated or Unassociated Funerary Objects

If human remains are discovered at any time during the implementation of the Undertaking, the agency shall follow the provisions of the Native American Graves Protection and Repatriation Act (25 USC § 3001) and the California Health and Human Safety Code (Human Remains) Section 7050.5 as well as local laws as appropriate. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (PRC Section 5097.98). The project archeologist, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects. The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.

VII. Final Archeological Resources Report

A. The project archeologist shall submit a Draft Final Archeological Resources Report (FARR) to the Staff Archeologist that evaluates the historic significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

B. Once approved by the Staff Archeologist, copies of the FARR shall be distributed as follows: the California Historical Resources Information System, NWIC shall receive one (1) copy and the Staff Archeologist shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the NRHP or the California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the Staff Archeologist may require a different final report content, format, and distribution than that presented above.

VIII. Objections

A. Should any signatory object at any time to the manner in which the terms of this agreement are implemented, the City shall consult with the objecting party(ies) to resolve the objection and inform the other signatories of the objection. If the City determines within fifteen (15) calendar days of receipt that such objection(s) cannot be resolved, the City will forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR § 800.2(b)(2). The City in reaching a final decision regarding the dispute shall take any ACHP comment

provided into account. The City's responsibility to carry out all other actions under this PA that are not the subjects of the disputed will remain unchanged.

B. At any time during implementation of the measures situated in this agreement, should an objection to any such measure or its manner of implementation be raised in writing by a member of the public, the City shall take the objection into account and consult, as needed, with the objecting party and the SHPO, as needed, for a period of time not to exceed fifteen (15) calendar days and inform the other signatories of the objection. If the City is unable to resolve the conflict, the City shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR 800.2(b)(2).

C. If any signatory believes that the terms of this agreement cannot be carried out, or than an amendment to its terms should be made, that signatory shall immediately consult with the other parties to develop amendments pursuant to 36 CFR § 800.6(c)(7) and 800.6(c)(8). If this agreement is not amended as provided for in this stipulation, any signatory may terminate it, whereupon the City shall proceed in accordance with 36 CFR 800.

IX. Duration of the agreement.

This PA is in effect for five (5) years from the date of execution. At any time, the signatories can agree to amend the PA in accordance with the amendment process referenced in Stipulation XII, below.

X. Post-Review Discoveries.

After all archeological work has concluded there is the possibility that unanticipated discovery of archeological deposits and/or features could occur during additional construction efforts. It is possible that such actions could unearth, expose, or disturb subsurface archeological, historical, or Native American resources that were not observable during previous archeological phases. To facilitate compliance with regulatory requirements, project personnel shall be alerted to the possibility of encountering archeological materials and/or human remains during construction, and apprised of the proper procedures to follow in the event that such materials are found in accordance with 36 CFR 800.13(a)(3).

XI. Dispute Resolution:

A. Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, City shall consult with such party to resolve the objection. If the City determines that such objection cannot be resolved, the City will:

1. Forward all documentation relevant to the dispute, including the City's proposed resolution, to the ACHP. The ACHP shall provide the City with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, City shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. City will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period; City may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the City shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.

3. The City's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

XII. AMENDMENTS, NONCOMPLIANCE, AND TERMINATION

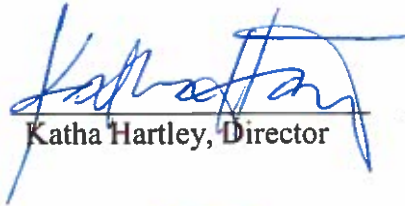
A. If any signatory believes that the terms of this PA cannot be carried out or that an amendment to its terms should be made, that signatory shall immediately consult with the other parties to develop amendments pursuant to 36 CFR § 800.6(c)(7). If this PA is not amended as provided for in this stipulation, any signatory may terminate it, whereupon the City shall proceed in accordance with 36 CFR § 800.6(c)(8).

B. If either the terms of this PA or the Undertaking have not been carried out within five (5) years of the execution of this agreement, the signatories shall reconsider its terms. If signatories agree to amend the PA, they shall proceed in accordance with the amendment process outlined in stipulation XII.A.

Execution and implementation of this agreement evidence that the City has taken into account the effects of the undertaking on historic properties, and the City has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations.

CITY AND COUNTY OF SAN FRANCISCO
MAYOR'S OFFICE OF HOUSING AND
COMMUNITY DEVELOPMENT

By:


Katha Hartley, Director

6/11/18
Date

CALIFORNIA STATE HISTORIC
PRESRVATION OFFICER

By:


Julianne Polanco

6/19/18
Date

Mercy Housing (Consulting Party)

By: Barbara Gualco

Its: Vice President



6-7-18
Date