

PROGRAMMATIC MEMORANDUM OF AGREEMENT  
AMONG THE  
UNITED STATES COAST GUARD, DEPARTMENT OF TRANSPORTATION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND THE  
NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS  
REGARDING OUTGRANTING OF HISTORIC LIGHTHOUSE PROPERTIES

WHEREAS, under Section 110 of the National Historic Preservation Act (NHPA) of 1966 (as amended) the Coast Guard (CG) is obligated to maintain and preserve the historic property it owns or controls, including its historic lighthouse properties;

WHEREAS, Section 111 of the NHPA authorizes Federal agencies to lease historic properties if the agency determines that the lease will adequately ensure the preservation of those properties;

WHEREAS, in 1985, the CG entered into a Programmatic Agreement (PA) with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) which was designed to guide CG leasing of historic lighthouse properties and facilitate CG compliance with the requirements of Section 106 of the NHPA for such leases;

WHEREAS, pursuant to Stipulation VIII of the PA, the CG wishes to amend the PA, and has consulted with the Council and NCSHPO pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the NHPA;

WHEREAS, the definitions given in Appendix A are applicable throughout this PA;

NOW THEREFORE, the CG, the Council, and the NCSHPO agree that the outgranting of CG owned or controlled historic lighthouses shall be done in accordance with the following policies and procedures, thereby fulfilling the requirements of Section 106 of the NHPA.

Stipulations

I. PROCEDURES

A. IDENTIFICATION OF HISTORIC LIGHTHOUSES AND CONSIDERATION FOR OUTGRANTING

1. Within five (5) years of the date of this Agreement, the CG will evaluate each lighthouse it owns or controls, including operational components, to determine whether the lighthouse is historic (listed or eligible for listing on the National Register of Historic Places). Such evaluation will be undertaken in accordance with 36 CFR 800.4 by personnel or contractors meeting the minimum qualifications in the Secretary of Interior's Professional Qualifications Standard (36 CFR Part 61).

2. Within five (5) years of the date of this Agreement, the CG will evaluate each historic lighthouse to determine whether outgranting is the preferred management option. The evaluation will include consideration of the following conditions:
  - a. Outgrants will be executed for historic lighthouses when such action will control vandalism, ensure upkeep, minimize CG maintenance costs, facilitate the historic preservation of the property and not interfere with CG operations.
  - b. An outgrant of up to 30 years may be executed only when a continuing or possible future CG operational need exists for the historic lighthouse.
  - c. The historic lighthouse must not be needed for any other CG mission that would preclude outgranting.

B. NOTIFICATION

1. When outgranting of a historic lighthouse is determined to be the preferred form of property management, written notification regarding potential outgrants will be provided by the CG to the following parties. Outgrants existing at the time of execution of this PA are not subject to these notification requirements until time of expiration or non-renewal.
  - a. National Trust for Historic Preservation;
  - b. State Historic Preservation Officer (SHPO);
  - c. State Environmental or Natural Resources Department;
  - d. County and municipal governments;
  - e. Selected local newspapers;
  - f. Local historic societies; and
  - g. Lighthouse preservation societies
2. The notification will include the following information:
  - a. Property location;
  - b. Property description, including a brief description of its historic significance and status in relation to the National Register of Historic Places;
  - c. Type and term of outgrants available;

- d. Property condition statement;
  - e. Statement of any known contamination or safety hazards;
  - f. Grantee rehabilitation and maintenance responsibilities;
  - g. Limitations and restrictions imposed on use, for example: sound signal, operating optic light
  - h. Summary of outgrant terms and conditions, including insurance requirements;
  - i. Applicant information requirements;
  - j. Statement that the property is subject to excessing; and
  - k. Applicant selection criteria.
3. Sixty (60) days from the date of the notification will be allowed for submittal of applications.

C. APPLICANT INFORMATION REQUIREMENTS

1. All applicants for outgrants will be required to submit the following information:
  - a. Applicants name, and description of organization or corporation (if applicable);
  - b. Documentation to validate nonprofit status (only if applicable);
  - c. Proposed use(s) of historic lighthouse;
  - d. Type and level of public involvement in proposed preservation effort and subsequent use, including public access plan;
  - e. Statement of current financial capability with appropriate documentation);
  - f. Statement of commitment to preserve the historic lighthouse and documentation of all experience related to the rehabilitation or maintenance of a historic property; and
  - g. Name, title, address, phone number of contact person.

D. SELECTION OF GRANTEE

1. The CG will select the candidate(s) based on the following criteria (in order of priority). The CG

will offer the appropriate SHPO the opportunity to participate in this preliminary selection process, with 30 days advance notice.

- a. The candidate demonstrates financial and technical ability to rehabilitate, maintain, and preserve the historic lighthouse for the term of the outgrant;
  - b. Proposed use is consistent with the historic value of the lighthouse and complements the architectural and nautical character of the historic property; and
  - c. Proposed use affords opportunity for public involvement, access, participation, education, and enjoyment.
2. The selected candidate(s) will be notified by the CG and will be required to submit the following additional detailed documentation. The CG will permit access to the property for the purposes of developing such documentation for a period of 120 days after notification. The candidate(s) must develop this documentation in consultation with the SHPO. Required information includes:
- a. Proposed rehabilitation and maintenance plan (milestones and timetable) including any proposed structural or interior alterations;
  - b. Type and amount of property damage and liability insurance;
  - c. Impact of proposed use on CG roads, sewer and water systems, as well as impact of any proposed construction on known environmental and archeological resources with appropriate supporting studies and documentation;
  - d. Statement of future financial plan to restore and maintain the historic lighthouse; and
  - e. Comments from the SHPO on the proposed rehabilitation and maintenance plan.
3. Based on this documentation, the CG will select a final candidate. The CG will determine if the final candidate meets the selection criteria. If so, the CG will proceed to outgrant the historic lighthouse. If not, the CG will provide the candidate an opportunity to revise their submission. In the event the candidate does not successfully meet the criteria, the candidate will be notified that their selection is rescinded. The CG will then begin negotiations with the next best candidate.

4. The CG will not outgrant to an applicant who, with intent to avoid the requirements of Section 106, has intentionally, significantly, or adversely affected a historic property.

#### E. OUTGRANTING

1. The CG will incorporate provisions in all new, renewed or extended outgrant documents for historic lighthouses to address the following requirements of the grantee:
  - a. The CG will identify those features critical to the function of the aids to navigation, outlining all restrictions and responsibilities of the grantee regarding such features.
  - b. When initial condition reports and walk through inspections are conducted by the CG, the CG shall invite the SHPO prior to the inspection. Copies of documents generated by such inspections shall be provided to the SHPO upon request.
  - c. The grantee must restore, rehabilitate, maintain and/or preserve the lighthouse at grantee's expense, in accordance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and the submitted rehabilitation/maintenance plan.
  - d. The grantee must have written permission from the CG and SHPO prior to beginning any construction, maintenance or preservation efforts on the outgranted property. The CG will require documentation of SHPO concurrence in the grantee's proposal prior to granting permission for work to proceed.
  - e. The CG and SHPO shall require written documentation of post construction results within 60 days from completion of construction.
  - f. Aids to navigation maintenance inspections and repairs will be made by CG in conjunction with servicing the aids to navigation with appropriate advance notification to the grantee, when practicable. The CG reserves the right to enter the property for repairs and inspections.
  - g. SHPO may, with appropriate advance notice to the CG and the grantee, conduct an annual inspection of the property to assess preservation efforts.
  - h. The grantee must comply with all applicable environmental laws and regulations, including obtaining all necessary permits or authorizations for grantee activities on the property.

- i. The grantee shall indemnify and hold harmless the United States for any environmental claim or liability incurred as a result of the activities of the grantee.
2. The CG may include other clauses in individual circumstances, as it sees fit, to ensure that the mission of the CG and the public interest are served.
3. The CG may unilaterally terminate an historic lighthouse outgrant for any or all of the following reasons. The CG will notify the SHPO when planning any termination of a grantee.
  - a. Noncompliance with the outgranting, including historic preservation and/or environmental requirements, by the grantee;
  - b. Operational needs by the CG for the property;
  - c. Legislative mandate to transfer ownership of the property;
  - d. Property is reported as excess to the General Services Administration (GSA) or relinquished to the Bureau of Land Management (BLM).

#### ADMINISTRATION

- A. This PA will be integrated into CG policy concerning historic preservation issues. Copies of CG policy concerning historic preservation issues will be available to SHPOs upon request. SHPOs interested in obtaining a copy should contact the appropriate address listed in Appendix B.
- B. Within six months of the date of execution of this agreement, the CG will provide SHPOs with a list of existing outgrants. The SHPO will receive notification of each new outgrant upon its execution.
- C. Upon request by the CG, a SHPO will provide to the CG a list of historical organizations in that state.

#### DISPUTE RESOLUTION

- A. Should the SHPO or any member of the public object to the manner in which the Agreement is being implemented, the CG will consult as needed with the objecting party, the SHPO, and the Council to resolve the objection. If not resolved, the CG shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:
  1. Provide the CG with recommendations, which the CG will take into account in reaching a final decision regarding the dispute; or

2. Notify the CG that it will comment pursuant to 36 CFR Section 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the CG in accordance with 36 CFR Section 800.6(c)(2) with reference to the subject of the dispute. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. The CG's responsibility to carry out all actions under this Agreement that are not subject of the dispute will remain unchanged.
- B. Final selection of a grantee, or termination of an outgrant, is not subject to the dispute resolution process outlined above. However, for any outgrant, the CG will provide the Council, upon its request, with an explanation of how it considered the selection criteria outlined in stipulation I(D)(1). The CG will provide the Council, upon its request, with an explanation of why the CG has terminated an outgrant pursuant to stipulation I.(E)(3).

#### IV. AMENDMENT AND TERMINATION

- A. If any of the signatories to this Agreement determines that the terms of the Agreement cannot be met, or believes that a change is necessary, the signatory will request an amendment to the Agreement. Such an amendment will be executed in the same manner as the original Agreement.
- B. Any party of this Programmatic 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. In the event of termination, the CG will comply with 36 CFR Sections 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

Execution and implementation of this Programmatic Agreement evidences that the CG has satisfied its Section 106 responsibilities for all individual outgrants or their termination, and that the CG has afforded the Council and NCSHPO an opportunity to comment on the outgranting of historic lighthouse properties and its effects on historic lighthouse properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: Cathryn B. Sater DATE: 5-20-96

UNITED STATES COAST GUARD, DEPARTMENT OF TRANSPORTATION

BY: E. J. Barnett DATE: 7-10-96

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

BY: Judith E. Betman DATE: July 24, 1996

## APPENDIX A

A. HISTORIC LIGHTHOUSE: Any lighthouse listed in or eligible for listing in the National Register of Historic Places (NRHP).

B. LEASE: A lease is an agreement which grants exclusive possession and use of a definite and certain parcel of land and/or building, or other property, or part thereof, for a specific period of time, revocable at will or as otherwise provided in the agreement in consideration of a return or rent.

C. LICENSE: A license, as this term is used in the field of real property law, is the minimal authority to do a certain act or series of acts upon the land of the licensor without possessing or acquiring any estate therein.

D. LIGHTHOUSE: The real property, and any improvements such as navigation tower/structure/building with or without outbuildings that were constructed for the purposes of operating a lighted aid to navigation.

E. OUTGRANT: For the purposes of this agreement, outgrant means the execution by the CG of a lease or license, to a public or private applicant for use of a CG property.

APPENDIX B

COMMANDER (s)  
U. S. Coast Guard  
Maintenance and Logistics Command  
Atlantic  
Building 400, K-101  
Governors Island, NY 10004-5081

Commanding Officer  
U. S. Coast Guard  
Civil Engineering Unit Providence  
300 Metro Center Boulevard  
Warwick, RI 02886

Commanding Officer  
U. S. Coast Guard  
Civil Engineering Unit Honolulu  
Prince Kalanianole Federal Building  
300 Ala Moana Boulevard  
Honolulu, HI 95850-4982

Commanding Officer  
U. S. Coast Guard  
Civil Engineering Unit Miami  
Brickell Plaza Federal Building  
909 S. E. First Avenue  
Miami, FL 33131

COMMANDER (s)  
U. S. Coast Guard  
Maintenance and Logistics Command  
Pacific  
Coast Guard Island  
Building 54-D  
Alameda, CA 94501-5100

Commanding Officer  
U. S. Coast Guard  
Civil Engineering Unit Oakland  
2000 Embarcadero Avenue  
Suite 200  
Oakland, CA 94606-5000

Commanding Officer  
U. S. Coast Guard  
Civil Engineering Unit Cleveland  
1240 E. Ninth Street  
Cleveland, OH 44199-2060

Commanding Officer  
U. S. Coast Guard  
Civil Engineering Unit Juneau  
P. O. Box 3-500  
Juneau, AK 99802-1217