



44  
45 **WHEREAS**, FEMA also may directly perform its own Undertakings pursuant to this Agreement;  
46 and

47  
48 **WHEREAS**, in anticipation or in the immediate aftermath of an event, impacted communities  
49 and the State of Florida, and/or affected Tribes, may conduct critical preparedness, response and  
50 recovery activities to safeguard public health and safety and to restore vital community services  
51 and functions before, during, and or following an event. Some of these activities may become  
52 Undertakings requiring Section 106 review subject to the terms of this Agreement, and FEMA  
53 shall coordinate the appropriate review as warranted; and

54  
55 **WHEREAS**, FEMA has determined that its Programs may result in Undertakings with the  
56 potential to affect historic properties having religious and cultural significance to Tribes,  
57 including sites that may contain human remains and/or associated cultural items; and

58  
59 **WHEREAS**, FEMA, SHPO, FDEM and the ACHP National Conference of State Historic  
60 Preservation Officers (NCSHPO) have determined that FEMA's Section 106 requirements can be  
61 more effectively and efficiently implemented and delays to the delivery of FEMA assistance  
62 minimized if a programmatic approach is used to stipulate roles and responsibilities, exempt  
63 certain Undertakings from Section 106 review, establish protocols for consultation, facilitate  
64 identification and evaluation of historic properties, and streamline the assessment and resolution  
65 of adverse effects; and

66  
67 **WHEREAS**, FEMA recognizes that the Alabama-Coushatta Tribe of Texas, Alabama-Quassarte  
68 Tribal Town, Choctaw Nation of Oklahoma, Jena Band of Choctaw Indians, Miccosukee Tribe of  
69 Indians in Florida, Mississippi Band of Choctaw Indians, Muscogee (Creek) Nation, Poarch Band  
70 of Creek Indians, Seminole Tribe of Florida, Seminole Nation of Oklahoma, and Thlopthlocco  
71 Tribal Town may have sites and land of religious and cultural significance within the State of  
72 Florida, and in meeting its Federal trust responsibility pursuant to 36 CFR § 800.2 (c)(2)(ii) has  
73 invited the Tribes to enter into a separate agreement that specifies how FEMA and the Tribes will  
74 carry out Section 106 responsibilities, including the confidentiality of information. The agreement  
75 may grant the Tribes additional rights to participate or concur in FEMA decisions in the Section  
76 106 process beyond those specified in Subpart B of 36 CFR Part 800; and

77  
78 **WHEREAS**, FEMA recognizes that the Alabama-Coushatta Tribe of Texas, Alabama-Quassarte  
79 Tribal Town, Choctaw Nation of Oklahoma, Jena Band of Choctaw Indians, Miccosukee Tribe of  
80 Indians in Florida, Mississippi Band of Choctaw Indians, Muscogee (Creek) Nation, Poarch Band  
81 of Creek Indians, Seminole Tribe of Florida, Seminole Nation of Oklahoma, and Thlopthlocco  
82 Tribal Town may have sites of religious and cultural significance on or off Tribal lands, and in  
83 meeting its Federal trust responsibility, FEMA has engaged in government-to-government  
84 consultation with the Tribes, and pursuant to 36 CFR § 800.2 (c)(2)(ii)(E) has invited the Tribes  
85 to enter into an agreement that specifies how FEMA and the Tribes will carry out Section 106  
86 responsibilities, including the confidentiality of information; and

87  
88 **WHEREAS**, the Seminole Tribe of Florida have assumed the responsibilities of the SHPO  
89 through appointment of a THPO in accordance with Section 101(d)(2) of the NHPA, and FEMA

90 shall consult with the THPO in lieu of the SHPO for Undertakings occurring on or affecting  
91 Tribal lands; and

92  
93 **WHEREAS**, notwithstanding the aforementioned invitation to enter into a separate agreement,  
94 FEMA has invited the Alabama-Coushatta Tribe of Texas, Alabama-Quassarte Tribal Town,  
95 Choctaw Nation of Oklahoma, Jena Band of Choctaw Indians, Miccosukee Tribe of Indians in  
96 Florida, Mississippi Band of Choctaw Indians, Muscogee (Creek) Nation, Poarch Band of Creek  
97 Indians, Seminole Tribe of Florida, Seminole Nation of Oklahoma, and Thlopthlocco Tribal  
98 Town to enter into this Agreement as an invited signatory party to fulfill the requirements of  
99 Section 106; and

100  
101 **WHEREAS**, no Tribes(s) have agreed to enter into a separate Programmatic Agreement or other  
102 agreement with FEMA; and

103  
104 **WHEREAS**, Miccosukee Tribe of Indians in Florida Tribes(s) have declined to enter into this  
105 Agreement as a signatory party; and

106  
107 **WHEREAS**, Alabama-Quassarte Tribal Town, Jena Band of Choctaw Indians, Muscogee  
108 (Creek) Nation, Poarch Band of Creek Indians, Seminole Tribe of Florida, Seminole Nation of  
109 Oklahoma, and Thlopthlocco Tribal Town Tribes(s) have not responded to FEMA's invitation to  
110 enter into this Agreement as a signatory party; and

111  
112 **WHEREAS**, FEMA may invite additional Tribes that have sites of religious and cultural  
113 significance to enter into the terms of this Agreement as invited signatories or concurring parties  
114 in accordance with 36 CFR § 800.14(f), and nothing in this Agreement prevents a Tribe from  
115 entering into a separate Programmatic Agreement or other agreement with FEMA for  
116 administration of FEMA Program; and

117  
118 **WHEREAS**, the terms of this Agreement shall not apply to Undertakings on or affecting Tribal  
119 lands without prior execution of the Agreement by the affected Tribe(s); and

120  
121 **WHEREAS**, for specific Undertakings, FEMA may invite other agencies, organizations, and  
122 individuals to participate as consulting parties; and

123  
124 **NOW, THEREFORE**, FEMA, the Grantee(s), SHPO, and participating Tribe(s) (Signatories)  
125 agree that FEMA Programs in the State of Florida and/or on Tribal lands shall be administered in  
126 accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all  
127 resulting Undertakings and effectively integrate historic preservation compliance considerations  
128 into the delivery of FEMA assistance. FEMA will not authorize implementation of an individual  
129 Undertaking until Section 106 review of the project is completed pursuant to this Agreement.

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134 **STIPULATIONS**

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136 To the extent of its legal authority, and in coordination with other Signatories, FEMA shall  
137 require that the following measures be implemented:

138 **I. GENERAL**

139  
140 A. Applicability

- 141  
142 1. The execution of this Agreement supersedes the terms of the previously executed  
143 Agreement in the State of Florida dated September 9, 2005.  
144  
145 2. For FEMA Undertakings that also are within the jurisdiction of the Federal  
146 Communications Commission (FCC) and within the scope of its Section 106  
147 Programmatic Agreements for communication facilities, FEMA defers Section 106  
148 review in accordance with the ACHP Program Comment of October 23, 2009. The  
149 approval of funding for the FEMA Undertaking shall be conditioned upon the  
150 compliance of the subgrantee with FCC's applicable Section 106 review, including  
151 any required consultation with Tribes. FEMA shall notify the SHPO/THPO when it  
152 applies the ACHP Program Comment to an Undertaking. FEMA remains responsible  
153 for any FEMA Undertakings it determines are outside of the jurisdiction of FCC.  
154  
155 3. In the event of a Stafford Act major disaster or emergency declaration (Declaration),  
156 State, Tribal and local governments may lack the capability to perform or to contract  
157 for emergency work, and instead request that the work be accomplished by a Federal  
158 agency. Through a mission assignment (MA), FEMA may direct appropriate Federal  
159 agencies to perform the work. This Agreement shall apply to such Federal assistance  
160 undertaken by or funded by FEMA pursuant to Titles IV: Major Disaster Assistance  
161 Programs and V: Emergency Assistance Programs of the Stafford Act and 44 CFR  
162 Part 206.  
163  
164 4. FEMA may utilize this Agreement to fulfill its Section 106 responsibilities and those  
165 of other Federal agencies that designate FEMA as the lead Federal agency pursuant to  
166 36 CFR § 800.2(a)(2) with appropriate notification to the other Signatories and the  
167 ACHP regarding Undertakings that fall within the scope of this Agreement. When  
168 FEMA is not designated as the lead Federal agency, all Federal agencies, including  
169 FEMA, remain individually responsible for their compliance with Section 106.  
170  
171 5. If another Federal program or Federal agency has concluded Section 106 consultation  
172 review and approved an Undertaking within the past five (5) years, FEMA has no  
173 further requirement for Section 106 review provided that FEMA confirms that the  
174 scope and effect [as defined by 36 CFR § 800.16(i)] of its Undertaking are the same as  
175 that of the Undertaking reviewed by the previous agency, and SHPO and Tribal  
176 consultation and concurrence is documented. FEMA shall document these findings  
177 to the project file in order to confirm that the requirements of Section 106 have been  
178 satisfied. Should FEMA, in consultation with SHPO and participating Tribe(s)

179 determine that the previous Section 106 review was insufficient or involved  
180 interagency disagreements about eligibility, effect, and/or treatment measures, FEMA  
181 shall conduct additional Section 106 consultation in accordance with the terms of this  
182 Agreement.  
183

184 6. With the concurrence of the Signatories, other Federal agencies providing financial  
185 assistance for the type of Program activities covered under the terms of this Agreement  
186 may satisfy their Section 106 responsibilities by accepting and complying with the  
187 terms of this Agreement.  
188

189 a. Other Federal Agencies may include municipalities who have assumed  
190 environmental responsibilities of the U.S. Department of Housing and Urban  
191 Development, and acting as the Responsible Entity pursuant to 24 CFR Part 58, are  
192 responsible for environmental review, decision-making and action.  
193

194 b. In such situations, the other Federal Agency shall notify the Signatories in writing  
195 of its intent to use this Agreement to achieve compliance with its Section 106  
196 requirements, and consult with the Signatories regarding its Section 106  
197 compliance responsibilities. Resumes of staff who meet the Secretary's  
198 Professional Qualification Standard(s) and will review Tier II projects in  
199 accordance with Appendix B of this Agreement shall be provided to FEMA and  
200 the SHPO/THPO.  
201

202 7. FEMA has determined that the following types of activities have limited or no  
203 potential to affect historic properties and FEMA has no further Section 106  
204 responsibilities with regards to them, pursuant to 36 CFR § 800.3(a)(1):  
205

206 a. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households  
207 provided under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act,  
208 including funding for owner occupied home repair and replacement, content  
209 replacement, personal property, transportation and healthcare expenses, is exempt  
210 from the provisions of Section 106. For ground disturbing activities, and  
211 construction related to 44 CFR §§ 206.117(b)(1)(ii) (temporary housing),  
212 206.117(b)(3) (replacement housing), 206.117(b)(4) (permanent housing  
213 construction), 206.117(c)(1)(vi) (privately owned access routes) and rental units  
214 (multi-family repair), FEMA shall conduct Section 106 review.  
215

216 b. Administrative actions such as personnel actions, travel, procurement of services,  
217 supplies (including vehicles and equipment) for the support of day-to-day and  
218 emergency operational activities, and the temporary storage of goods provided  
219 storage occurs within existing facilities or on previously disturbed soils.  
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221 c. Preparation, revision, and adoption of regulations, directives, manuals, and other  
222 guidance documents.  
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- d. Granting of variances, and actions to enforce Federal, State, or local codes, standards or regulations.
  - e. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.
  - f. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.
  - g. Assistance provided for planning, studies, design and engineering costs that involve no commitment of resources other than staffing and associated funding.
  - g. Assistance provided for training, management and administration, exercises, and mobile/portable equipment purchases; with the exception of potential ground-disturbing activities and modification of existing structures.
  - h. Community Disaster Loans for funding to perform governmental functions for any eligible jurisdiction in a designated disaster area that has suffered a substantial loss of tax and other revenue.
  - i. Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements.
  - j. Funding the administrative action of acquiring properties in acquisition projects, including the real estate transaction, but excluding demolition.
  - k. Labor, equipment and materials used to provide security in the Declaration area, including lease, rental, purchase or repair of equipment or vehicles and payment for staff and contract labor.
  - l. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
  - m. Unemployment assistance.
  - n. Distribution of food coupons.
  - o. Legal services.
  - p. Crisis counseling.

265 10. Any FEMA Programs authorized by the United States Congress in the future may be  
266 included in this Agreement in accordance with Stipulation IV.A, Amendments. Any  
267 change in the FEMA name, Programs, or organizational structure shall not affect this  
268 Agreement.

269 B. Roles and Responsibilities of the Signatories

- 270
- 271 1. FEMA:
- 272
- 273 a. FEMA shall use Federal, Tribal, State, subgrantee, or contractor staff whose  
274 qualifications meet the Secretary of the Interior's (Secretary's) Professional  
275 Qualifications Standards (Professional Qualifications) set forth in the Federal  
276 Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended (Qualified),  
277 in completing identification and evaluation of historic properties and in making  
278 determinations of effects. FEMA shall review any National Register eligibility  
279 determination and make its own findings of effect resulting from the performance  
280 of these activities prior to submitting such determinations to the SHPO and  
281 participating Tribes.
- 282
- 283 i. FEMA acknowledges that Tribes possess special expertise in assessing the  
284 National Register eligibility of properties with religious and cultural  
285 significance to them. Tribal leaders, and as appropriate, their representatives,  
286 shall decide who meets qualifications/standards as defined by their Tribes for  
287 review of Undertakings affecting properties with religious and cultural  
288 significance.
- 289
- 290 b. FEMA alone shall conduct all project consultation with Tribes. In accordance with  
291 36 CFR § 800.2(c)(4), FEMA may authorize the Grantee(s), or a subgrantee  
292 through the Grantee(s), to initiate the Section 106 process with the SHPO and  
293 other consulting parties, assist in identifying other consulting parties with a  
294 demonstrated interest in the Undertaking, and prepare any necessary analyses and  
295 documentation, but FEMA will remain responsible for determinations of National  
296 Register eligibility and findings of effect recommended by the authorized party.  
297 FEMA shall follow the process set forth in Stipulation I.B.1(a), FEMA Roles and  
298 Responsibilities, and notify the SHPO in writing when a Grantee or subgrantee has  
299 been authorized to initiate consultation on FEMA's behalf.
- 300
- 301 c. Prior to authorizing the release of funds for individual Undertakings requiring  
302 grant conditions pursuant to this Agreement, FEMA shall inform the Grantee(s) of  
303 all stipulations and conditions and ensure that they are understood so they can be  
304 adequately conveyed to the subgrantee. FEMA shall work in partnership with the  
305 Grantee(s) to provide subgrantees with guidance on in-kind repair pursuant to *The*  
306 *Secretary of the Interior's Standards for the Treatment of Historic Properties 1995*  
307 *(Standards)*, 36 CFR Part 68, or the most updated version, and techniques to avoid  
308 or minimize adverse effects to historic properties.
- 309

- 310 d. FEMA shall provide the other Signatories with an annual report for the previous  
311 calendar year by May 31st of each year that this Agreement is in effect. This  
312 annual report will summarize the actions taken to implement the terms of this  
313 Agreement, statistics on Undertakings reviewed, and recommend any actions or  
314 revisions to be considered, including updates to the appendices.  
315  
316 e. FEMA shall confer annually and as necessary with the other Signatories within 45  
317 days after issuance of the annual report, to review the report and/or discuss issues  
318 and concerns in greater detail. This review shall occur in person or by telephone  
319 as determined by FEMA.  
320  
321 f. FEMA shall notify the SHPO and affected Tribes, as soon as practicable,  
322 following a Declaration to provide specific points of contact and other pertinent  
323 information about the Declaration.  
324  
325 g. FEMA may convene an initial scoping meeting with the Signatories and other  
326 interested parties as soon as practicable after each Declaration to address  
327 Declaration-specific issues and procedures.  
328  
329 h. FEMA shall ensure that all documentation resulting from Undertakings reviewed  
330 pursuant to this Agreement is consistent with applicable SHPO and Tribal  
331 guidelines and the confidentiality provisions of 36 CFR § 800.11(c).

332 2. SHPO:

- 333  
334 a. SHPO shall review FEMA's determination of the Areas of Potential Effect (APE),  
335 National Register eligibility determinations, and FEMA's effect findings and  
336 provide concurrence within timeframes required by this Agreement.  
337  
338 b. Upon request, the SHPO shall provide FEMA and/or its designee(s) with available  
339 information about historic properties (such as access to online systems or site files,  
340 GIS data, survey information, geographic areas of concern). Such data sharing  
341 may be memorialized in an agreement. Only Qualified FEMA staff and/or  
342 designee(s) shall be afforded access to protected historic property information.  
343  
344 c. The SHPO shall identify staff to assist FEMA staff with their Section 106  
345 responsibilities, and identify, in coordination with FEMA, specific activities that  
346 SHPO may perform for specific Undertakings as agreed in writing with FEMA.  
347 FEMA and SHPO will ensure that there is no conflict of interest in these assigned  
348 Section 106 responsibilities.  
349  
350 d. As requested, SHPO staff shall be available as a resource and for consultation  
351 through site visits, written requests, telephone conversations or electronic media.  
352 In those instances where consultation with SHPO has occurred, FEMA shall  
353 provide a written summary via e-mail or regular mail to SHPO, including any  
354 decisions that were reached.

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- e. The SHPO may delegate some or all of its responsibilities under this Agreement to one or more Liaisons. The SHPO will confer with FEMA about the selection of any Liaisons, the scope of responsibilities delegated and related implementing procedures. SHPO shall formally document these decisions for concurrence by FEMA. Liaisons are not required to be members of the SHPO staff.
  - f. The SHPO shall participate in an initial scoping meeting for a Declaration.
  - g. The SHPO may assist local jurisdictions and/or the Grantee(s) in the State of Florida with advance planning efforts to consider historic properties as part of homeland security, including disaster preparedness, response, recovery, and mitigation programs for which FEMA funding may be requested.
  - h. The SHPO shall coordinate with FEMA, to identify consulting parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.
  - i. The SHPO shall participate in annual reviews convened by FEMA to review the effectiveness of this Agreement in accordance with Stipulation I.B.1(e).

375 3. Grantee(s):

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- a. The Grantee(s) shall ensure that their subgrantees understand and acknowledge conditions and potential requirements that may be placed upon Undertakings as a result of Section 106 consultation and the provisions of this Agreement.
  - b. The Grantee(s) shall participate in an initial scoping meeting for a Declaration.
  - c. The Grantee(s) shall ensure that their subgrantees understand that failure to comply with any project-specific conditions that have been placed on their grants could jeopardize FEMA funding.
  - d. The Grantee(s) shall notify FEMA as soon as possible of any proposed change to the approved scope of work. The Grantee(s) shall direct their subgrantee not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
  - e. The Grantee(s) shall ensure that its subgrantees are made aware that in the event of an unexpected discovery involving an Undertaking that has affected a previously unidentified historic property, human remains, or affected a known historic property in an unanticipated manner, the subgrantee will comply with Stipulation III.B, Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects.

- 399 f. The Grantee(s) shall ensure that in its subgrant agreements, any scope of work  
400 involving ground disturbance, and resultant contracts to execute said work, provide  
401 for the protection of and notification protocols for unexpected discoveries or  
402 unexpected effects to cultural material and human remains.  
403
- 404 g. If a Signatory Tribe assumes the role of Grantee for projects on Tribal lands, the  
405 Tribe shall assume the same responsibilities as outlined in Stipulation I.B.3 of this  
406 Agreement, Roles and Responsibilities of the Signatories.

407 C. Tribal Consultation

- 408
- 409 1. Where no tribe-specific consultation agreements or protocols are in place, FEMA shall  
410 consult with affected Tribe(s) in accordance with 36 CFR Part 800. In determining  
411 who the affected Tribe(s) may be, FEMA will first establish that it is a type of  
412 Undertaking with potential to affect historic properties with religious and cultural  
413 significance and may consult with the SHPO or Tribe(s), and access the National Park  
414 Service (NPS) Native American Consultation Database or other tools to identify  
415 geographic tribal interests. Appendix D lists individual Tribe's areas of interest,  
416 project-type interest, and preferred method of communication.  
417
- 418 2. FEMA shall ensure that its consultations with other consulting parties shall not include  
419 the dissemination of information, when advised of data sensitivity by the Tribe(s), that  
420 might risk harm to an American Indian site or property of religious and cultural  
421 significance or that might impede the use of such a site by the Tribe(s) in accordance  
422 with Section 304 of the NHPA and other applicable laws. Information provided is  
423 exempt from public knowledge and disclosure under the Freedom of Information Act  
424 (FOIA) by both Section 304 of the NHPA and Section 9 of the Archaeological  
425 Resources Protection Act (ARPA) (16 U.S.C. §470aa – 470mm).  
426
- 427 3. FEMA shall invite affected Tribe(s) to participate in initial scoping within their  
428 geographic area of interest for each Declaration.

429 D. Public Participation

- 430
- 431 1. FEMA recognizes that the views of the public are essential to informed decision  
432 making throughout the Section 106 consultation process. FEMA shall notify the public  
433 of proposed Undertakings in a manner that reflects the nature, complexity, and  
434 effect(s) of the Undertaking, the likely public interest given FEMA's specific  
435 involvement, and any confidentiality concerns of Tribe(s), private individuals and  
436 businesses.  
437
- 438 2. FEMA may consult with the Grantee(s), subgrantee, SHPO, and participating Tribe(s),  
439 and other consulting parties to determine if there are individuals or organizations with  
440 a demonstrated interest in historic properties that should be made aware of an  
441 Undertaking. If such parties are identified or identify themselves to FEMA, FEMA  
442 shall provide them with information regarding the Undertaking and its effect on

- 443 historic properties, consistent with the confidentiality provisions of 36 CFR §  
444 800.11(c).  
445
- 446 3. In accordance with the outreach strategy developed for an Undertaking in consultation  
447 with the SHPO and participating Tribes, for involving the public, FEMA shall identify  
448 the appropriate stages for seeking public input during the Section 106 consultation  
449 process. FEMA shall consider all views provided by the public regarding an  
450 Undertaking.  
451
  - 452 4. FEMA may also provide public notices and the opportunity for public comment or  
453 participation in an Undertaking through the public participation process of the  
454 National Environmental Policy Act (NEPA) and its implementing regulations set out  
455 at 44 CFR Part 10, and/or Executive Orders 11988 and 11990 relating to floodplains  
456 and wetlands as set out in 44 CFR Part 9, and Executive Order 12898, Environmental  
457 Justice, provided such notices specifically reference Section 106 as a basis for public  
458 involvement.  
459
  - 460 5. Should a member of the public object in writing to implementation of the Agreement's  
461 terms, FEMA will notify the other Signatories in writing and take the objection into  
462 consideration. FEMA shall consult with the objecting party and, if that party so  
463 requests, the other Signatories, for not more than 30 days. In reaching its decision  
464 regarding the objection, FEMA shall take into consideration all comments from these  
465 parties. Within 15 days after closure of this consultation period, FEMA shall provide  
466 the other parties with its final decision in writing.

467 E. Timeframes and Communications

- 468 1. All time designations shall be in calendar days unless otherwise stipulated. If any  
469 Signatory does not object to FEMA's determination related to an Undertaking within  
470 an agreed upon timeframe, FEMA may proceed to the next step in the consultation  
471 process as described in Stipulation II, Project Review. Due to the varied nature of  
472 Undertakings, the individual response times to FEMA's requests for  
473 comment/concurrence may vary. The consulting parties may send and accept official  
474 notices, comments, requests for further information and documentation, and other  
475 communications required by this Agreement by e-mail.  
476
- 477 2. For Emergency Undertakings as outlined in Stipulation II.B.2(c)(i), Expedited Review  
478 of Emergency Undertakings, the SHPO and participating Tribe(s) shall respond to any  
479 FEMA request for comments within three (3) days after receipt, unless FEMA  
480 determines the nature of the emergency action warrants a shorter time period.  
481
- 482 3. For all other Undertakings associated with the Individual Assistance (IA) and Public  
483 Assistance (PA) programs, the review time shall be a maximum of fifteen (15) days.  
484
- 485 4. For the Hazard Mitigation Grant Program (HMGP) and all non-disaster programs, the  
486 response time for each request for concurrence shall be a maximum of thirty (30) days.

487 **II. PROJECT REVIEW**

488 A. Programmatic Allowances

- 489
- 490 1. If FEMA determines an Undertaking conforms to one or more allowances in Appendix
- 491 B of this Agreement, FEMA shall complete the Section 106 review process by
- 492 documenting this determination in the project file, without SHPO and participating
- 493 Tribe(s) review or notification.
- 494
- 495 2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify
- 496 the SHPO, participating Tribe(s), and the appropriate Southeast Region's NPS NHL
- 497 Program Manager that the Undertaking conforms to one or more allowances. FEMA
- 498 shall provide information about the proposed scope of work for the Undertaking and
- 499 the allowance(s) enabling FEMA's determination.
- 500
- 501 3. If FEMA determines any portion of an Undertaking's scope of work does not conform
- 502 to one or more allowances listed in Appendix B, FEMA shall conduct Section 106
- 503 review for the entire Undertaking in accordance with Stipulation II.B, Expedited
- 504 Review for Emergency Undertakings, or Stipulation II.C, Standard Project Review.
- 505
- 506 4. Allowances may be revised and new allowances may be added to this Agreement in
- 507 accordance with Stipulation IV.A.3, Amendments.

508 B. Expedited Review for Emergency Undertakings

509 1. Determine Expedited Review

- 510 a. As part of the Declaration process, FEMA shall define the time interval during
- 511 which the disaster causing incident occurs (the incident period, as defined in 44
- 512 CFR § 206.32(f)). FEMA may approve Federal assistance and/or funding for
- 513 emergency work (as defined in 44 CFR § 206.201(b)) that occurs during the
- 514 incident period, including work already completed, in response to an immediate
- 515 threat to human health and safety or property. Pursuant to 36 CFR § 800.12(d),
- 516 FEMA may conduct expedited review of emergency Undertakings for 30 days
- 517 from the beginning of the incident period.
- 518 b. Should FEMA determine that it is necessary to extend the expedited review period
- 519 beyond the initial 30 days, FEMA shall, in 30-day increments, as needed, notify in
- 520 writing the ACHP, SHPO and participating Tribe(s).

521 2. Conduct Expedited Reviews

- 522 a. If the Undertaking is an immediate rescue and salvage operation conducted in
- 523 response to an event to preserve life and property, FEMA has no Section 106
- 524 consultation responsibilities in accordance with 36 CFR § 800.12(d); or
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- b. If the emergency Undertaking meets one or more of the Allowances in Appendix B of this Agreement, FEMA shall complete the Section 106 review process pursuant to Stipulation II.A.1, Programmatic Allowances.
  - c. If FEMA determines that the emergency Undertaking would adversely affect a historic property during this expedited review period:
    - i. To the extent practicable FEMA may propose treatment measures that would address adverse effects during implementation, and request the comments of the SHPO and participating Tribes within 3 days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period.
    - ii. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA shall clarify that an “expedited review” is being requested for the Undertaking and will follow-up in writing.
    - iii. FEMA shall take into account comments provided by SHPO and/or participating Tribe(s) received within the three days.
    - iv. Should the SHPO and/or participating Tribe(s) not comment within 3 days, FEMA may fund the emergency Undertaking based on the available information. This will complete the Section 106 consultation for the Undertaking.
    - v. FEMA shall notify the SHPO and participating Tribe(s) of the final decision, indicating how any comments received were considered in reaching that decision.
  - C. Standard Project Review: For Undertakings not exempt from further Section 106 review, FEMA shall ensure that the following standard project review steps are implemented. In the interest of streamlining, FEMA may combine some or all of these steps during consultation.
    - 1. Consulting Parties: FEMA shall consider all written requests of individuals and organizations to participate as consulting parties, and consult with the SHPO and participating Tribes to identify any other parties that meet the criteria to be consulting parties and invite them to participate in the Section 106 process. FEMA shall invite any individual or organization that will assume a specific role or responsibility outlined in a Section 106 agreement document to participate as a signatory party. FEMA may invite others to participate as consulting parties as the Section 106 consultation proceeds.
    - 2. Area of Potential Effects: For standing structures not adjacent to or located within the boundaries of a National Register or eligible district, Qualified staff shall define the

572 APE as the individual structure when the proposed Undertaking is limited to the repair  
573 or rehabilitation (as defined in 36 CFR § 68.3(b)). For all other Undertakings,  
574 Qualified staff shall determine the APE in consultation with the SHPO and  
575 participating Tribe(s). FEMA may consider information provided by other parties,  
576 such as local governments and the public, when establishing the APE.  
577

578 3. Identification and Evaluation: Qualified staff shall determine, in consultation with the  
579 SHPO and participating Tribe(s) if the APE contains historic properties, including  
580 archaeological sites or properties of religious or cultural significance, that are listed in  
581 or potentially eligible for the National Register. This may include the review of  
582 documentation provided by the Grantee(s) or subgrantee in coordination with the  
583 SHPO.  
584

585 a. Level of Effort: FEMA shall make a reasonable and good faith effort to identify  
586 historic properties in accordance with 36 CFR § 800.4(b)(1). FEMA shall consult  
587 with the SHPO to determine the level of effort and methodology necessary to  
588 identify and evaluate a variety of historic property types. FEMA shall consult with  
589 the affected Tribe(s) to determine geographical areas that may contain properties  
590 of religious and cultural significance that may be affected by an Undertaking and  
591 determine the necessary level of effort to identify and evaluate or avoid any such  
592 historic properties.  
593

594 b. National Historic Landmarks: When FEMA determines an Undertaking has the  
595 potential to affect an NHL, FEMA shall notify the Secretary through the Southeast  
596 Region's NPS NHL Program Manager in addition to the SHPO, participating  
597 Tribes, and other consulting parties.  
598

599 c. Determinations of Eligibility: FEMA shall review or determine National Register  
600 eligibility based on identification and evaluation efforts, and consult with SHPO  
601 and participating Tribe(s) regarding these determinations. Should the SHPO or  
602 participating Tribe(s) disagree with the determination of eligibility, FEMA shall  
603 either:  
604

605 i. Elect to consult further with the objecting party;

606 ii. Treat the property as eligible for the National Register; or

607 iii. Obtain a determination of eligibility from the Keeper of the National Register  
608 in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4(c)(2).  
609

610 4. Findings of No Historic Properties Affected: FEMA shall make a finding of "no  
611 historic properties affected" under the following circumstances:  
612

613 a. If no historic properties are present in the APE;  
614

615 b. The Undertaking is designed to avoid historic properties, including archaeological  
616  
617

- 618 sites or properties of religious or cultural significance to participating Tribe(s); or  
619
- 620 c. The Undertaking does not affect the character defining features of a historic  
621 property.  
622
- 623 d. FEMA shall notify the SHPO, participating Tribes(s), and any other consulting  
624 parties of this finding and provide supporting documentation in accordance with 36  
625 CFR § 800.11(d). Unless the SHPO or participating Tribe(s) object to the finding  
626 within the timeframe outlined in Stipulation I.E, Timeframes and  
627 Communications, FEMA shall complete the Section 106 review.  
628
- 629 e. If the SHPO or participating Tribe(s) objects to a finding of “no historic properties  
630 affected,” FEMA shall consult with the objecting party to resolve the  
631 disagreement.  
632
- 633 i. If the objection is resolved, FEMA either may proceed with the Undertaking in  
634 accordance with the resolution or reconsider effects on the historic property by  
635 applying the criteria of adverse effect pursuant to Stipulation II.C.5,  
636 Application of the Criteria of Adverse Effect, below.  
637
- 638 ii. If FEMA is unable to resolve the disagreement, it will forward the finding and  
639 supporting documentation to the ACHP and request that the ACHP review  
640 FEMA’s finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36  
641 CFR § 800.4(d)(1)(iv)(C). FEMA shall consider the ACHP’s recommendation  
642 in making its final determination. If FEMA’s final determination is to reaffirm  
643 its “no historic properties affected” finding, the Section 106 review of the  
644 Undertaking will have concluded. Otherwise, FEMA will proceed to  
645 Stipulation II.C.5., below.  
646
- 647 5. Application of the Criteria of Adverse Effect: If FEMA finds an Undertaking may  
648 affect historic properties in the APE, including properties of religious or cultural  
649 significance to affected Tribe(s), FEMA shall apply the criteria of adverse effect to  
650 historic properties within the APE(s), taking into account the views of the consulting  
651 parties and public concerning effects in accordance with 36 CFR § 800.5(a).  
652
- 653 a. If FEMA determines that an Undertaking does not meet the adverse effect criteria,  
654 FEMA shall propose a finding of “no adverse effect” in accordance with 36 CFR §  
655 800.5(b).  
656
- 657 i. FEMA shall notify the SHPO, participating Tribe(s), and all other consulting  
658 parties of its finding and provide supporting documentation pursuant to 36  
659 CFR §800.11(e).  
660
- 661 ii. Unless a consulting party objects within the applicable timeframe outlined in  
662 Stipulation I.E, Timeframes and Communications, FEMA will proceed with  
663 its “no adverse effect” determination and complete the Section 106 review.

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- iii. If a consulting party objects to a finding of “no adverse effect,” FEMA will consult with the objecting party to resolve the disagreement.
  - 1) If the objection is resolved, FEMA shall proceed with the Undertaking in accordance with the resolution, or;
  - 2) If the objection cannot be resolved, FEMA shall request that the ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. FEMA shall consider the ACHP’s comments in making its final determination.
- b. If FEMA finds the Undertaking may adversely affect historic properties, FEMA shall request through the Grantee(s) that the subgrantee revise the scope of work to substantially conform to the *Standards* for standing structures, or avoid or minimize adverse effects for National register listed or eligible archaeological properties.
  - i. If the subgrantee modifies the scope of work to avoid the adverse effect, FEMA shall notify the consulting parties, and provide supporting documentation. Unless a consulting party makes a timely objection in accordance with the applicable timeframe outlined in Stipulation I.E, Timeframes and Communications, FEMA shall proceed with its “no adverse effect” determination, including any conditions, and complete the Section 106 review.
  - ii. If an Undertaking is not modified to avoid the adverse effect(s), FEMA shall initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.C.6, Resolution of Adverse Effects.
- 6. Resolution of Adverse Effects: If FEMA determines that an Undertaking may adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with the SHPO, Grantee(s), subgrantee, participating Tribe(s), the ACHP, if participating, and other consulting parties, by one of the following methods depending upon the severity of the adverse effect as well as the determination of the historic property’s significance on a local, state or national level. When FEMA determines an Undertaking will adversely affect an NHL, FEMA shall notify and invite the Secretary and ACHP to participate in consultation in accordance with 36 CFR § 800.10. When the ACHP participates in consultation related to an NHL, the ACHP shall report the outcome of the consultation to the Secretary and the FEMA Administrator.
  - a. Abbreviated Consultation Process: After taking into consideration the significance of the historic properties affected, the severity of the adverse effect(s), and avoidance and minimization of the adverse effect(s), FEMA may propose in writing to the consulting parties to resolve the adverse effects of the Undertaking

710 through the application of one or more Treatment Measures outlined in Appendix  
711 C as negotiated with the SHPO and participating Tribes. The use of these  
712 Treatment Measures shall not require the execution of a Memorandum of  
713 Agreement (MOA) or Programmatic Agreement.

714  
715 i. In consultation with the SHPO, participating Tribe(s), and other consulting  
716 parties, FEMA shall propose in writing the implementation of a specific  
717 Treatment Measure, or combination of Treatment Measures, with the intent of  
718 expediting the resolution of adverse effects, and provide documentation as  
719 required by 36 CFR § 800.11(e) and subject to the confidentiality provisions of  
720 36 CFR § 800.11(c). Unless a consulting party or the ACHP objects within 15  
721 days of receipt of FEMA's proposal, FEMA shall proceed with the use of the  
722 Treatment Measure(s) and will complete the Section 106 review.

723  
724 ii. If any of the consulting parties or the ACHP objects within the 15 day review  
725 and comment period to the resolution of adverse effects through the application  
726 of the Abbreviated Consultation Process, FEMA shall resolve the adverse  
727 effect(s) using procedures outlined below in Stipulation II.C.6(b),  
728 Memorandum of Agreement (MOA) or Stipulation II.C.6(c), Programmatic  
729 Agreement.

730  
731 iii. Because funding and implementation details of Treatment Measures for  
732 specific Undertakings may vary by program, FEMA shall provide written  
733 notice to the consulting parties within sixty (60) days of the completion of the  
734 Treatment Measure(s). This written notice will serve as confirmation that the  
735 Treatment Measure(s) for a specific Undertaking have been implemented.  
736 FEMA also shall include information pertaining to the completion of  
737 Treatment Measures in the annual report pursuant to Stipulation I.B.1(d),  
738 FEMA Roles and Responsibilities.

739  
740 b. Memorandum of Agreement: FEMA will provided the ACHP with an adverse  
741 effect notice in accordance with 36 CFR § 800.6(a)(1) if it has not already  
742 provided such under the Abbreviated Consultation Process of this Agreement, if a  
743 consulting party or the ACHP objects in accordance with Stipulation II.C.6(a)(ii),  
744 or if FEMA in consultation with the SHPO, participating Tribes, and other  
745 consulting parties has determined that an MOA would be more appropriate to  
746 resolve adverse effects.. In consultation with the other consulting parties,  
747 including the ACHP (if participating), FEMA shall develop an MOA, in  
748 accordance with 36 CFR § 800.6(c) to agree upon treatment measures to avoid,  
749 minimize, and/or mitigate adverse effects on historic properties. The MOA may  
750 also include treatment measures that serve an equal or greater public benefit in  
751 promoting the preservation of historic properties in lieu of more traditional  
752 treatment measures.

753  
754 c. Programmatic Agreement: Should the execution of an MOA be inappropriate  
755 given the similar nature of effects on historic properties, the inability to determine

756 effects prior to approval of an Undertaking, or where other circumstances warrant,  
757 FEMA shall consult with the SHPO, participating Tribes, the ACHP, if  
758 participating, and any other consulting party to develop a Programmatic  
759 Agreement in accordance with 36 CFR § 800.14(b) and identify programmatic  
760 conditions or treatment measures to govern the resolution of potential or  
761 anticipated adverse effects from certain complex project situations for an  
762 Undertaking or for multiple but similar Undertakings by a single subgrantee.  
763  
764 d. Objections: Should any signatory, consulting party, or member of the public  
765 object within the timeframes established by this Agreement to any plans,  
766 specifications, or actions pursuant to resolving an adverse effect, FEMA shall  
767 consult further with the objecting party to seek resolution. If FEMA determines  
768 the objection cannot be resolved, FEMA shall address in accordance with  
769 Stipulation IV.B, Dispute Resolution.  
770

### 771 III. OTHER CONSIDERATIONS

772 A. Changes to an Approved Scope of Work: The Grantee(s) shall notify FEMA and shall  
773 require a subgrantee to notify it immediately when a subgrantee proposes changes to an  
774 approved scope of work for an Undertaking.

- 775
- 776 1. If FEMA determines the change meets an Allowance or has no effect on the property,  
777 FEMA shall approve the change.
  - 778
  - 779 2. If the change can be modified to meet an Allowance, or conform to any applicable *SOI*  
780 *Standards*, FEMA shall complete its Section 106 review responsibilities.
  - 781
  - 782 3. If FEMA determines that the change does not meet an Allowance, FEMA shall initiate  
783 consultation pursuant to Stipulation II.C, Standard Project Review.
  - 784

785 B. Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects:

- 786
- 787 1. Upon notification by a subgrantee of an unexpected discovery, or if it appears that a  
788 Undertaking has affected a previously unidentified property or affected a known  
789 historic property in an unanticipated manner, in accordance with Stipulation I.B.3(e),  
790 Grantee(s) Roles and Responsibilities, the Grantee(s) shall immediately notify FEMA  
791 and require the subgrantee to:

- 792 a. Stop construction activities in the vicinity of the discovery.
- 793
- 794 b. Take all reasonable measures to avoid or minimize harm to the property until  
795 FEMA has completed consultation with the SHPO or participating Tribe(s), and  
796 any other consulting parties. Upon notification by the Grantee of a discovery,  
797 FEMA shall immediately notify the SHPO, participating Tribe(s), and other  
798 consulting parties that may have an interest in the discovery, previously  
799

800 unidentified property or unexpected effects, and consult to evaluate the discovery  
801 for National Register eligibility and/or the effects of the undertaking on historic  
802 properties.

803  
804 c. If human remains are discovered, notify the local law enforcement office and  
805 coroner/medical examiner in accordance with Florida Statute 872.05: Offenses  
806 Concerning Dead Bodies and Graves: Unmarked Burials and protect the remains  
807 from any harm. Discoveries of human remains on Federal or Tribal lands shall be  
808 subject to the Native American Graves Protection and Repatriation Act  
809 (NAGPRA) (25 U.S.C. §3001-3013, 18 U.S.C. § 1170) and ARPA, as applicable.

810  
811 d. Assist FEMA in completing the following actions, as required:

812  
813 i. FEMA shall consult with the consulting parties in accordance with the  
814 consultation process outlined in Stipulation II, Project Review, to develop a  
815 mutually agreeable action plan with timeframes to identify the discovery or  
816 previously unidentified property, take into account the effects of the  
817 Undertaking, resolve adverse effects if necessary, and ensure compliance with  
818 applicable Federal, State, and local statutes.

819  
820 ii. FEMA shall coordinate with the Grantee(s) and the subgrantee regarding any  
821 needed modification to the scope of work for the Undertaking necessary to  
822 implement recommendations of the consultation and facilitate proceeding with  
823 the Undertaking.

824  
825 iii. In cases where discovered human remains are determined to be American  
826 Indian, FEMA shall consult with the appropriate Tribal representatives and  
827 SHPO. In addition, FEMA shall follow the guidelines outlined in the ACHP's  
828 *Policy Statement Regarding the Treatment of Burial Sites, Human Remains,*  
829 *and Funerary Objects* (2007) and any state-specific policies that may be in  
830 force.

831  
832 C. Curation

833  
834 1. In cases where survey and testing are conducted on private land, any recovered  
835 collections remain the property of the land owner. In such instances, FEMA and the  
836 Grantee(s), in coordination with the SHPO and affected Tribe(s), shall encourage land  
837 owners to donate the collection(s) to an appropriate public or Tribal entity. In cases  
838 where the property owner wishes to transfer ownership of the collection(s) to a public  
839 or Tribal entity, and in the case of artifacts recovered from public lands, FEMA and  
840 the Grantee(s) shall ensure that recovered artifacts and related documentation are  
841 curated in a suitable repository as agreed to by FEMA, SHPO, and affected Tribe(s),  
842 and following applicable State guidelines.

843 2. When an Undertaking will adversely affect a National Register listed or eligible  
844 archaeological property, FEMA may treat the adverse effect by providing for the

845 recovery of significant information through archaeological data recovery. FEMA shall  
846 consult SHPO and interested tribal parties with the other consulting parties to prepare  
847 a research design (data recovery plan), including a specific plan for curation. This  
848 plan will incorporate any relevant curation provisions contained in the SHPO's  
849 *Module Three: Guidelines for Use by Historic Preservation Professionals and IA-46*  
850 *– Archaeological and Historic Report Standards and Guidelines*, ACHP's  
851 *"Recommended Approach for Consultation on Recovery of Significant Information*  
852 *from Archaeological Sites"* published in the Federal Register (64 Federal Register  
853 27085-27087 (May 18, 1999)), or other provisions agreed to by the consulting  
854 parties. No excavation should be initiated before FEMA acceptance and approval of  
855 the curation plan.

856 a. As stipulated in the curation plan, artifacts, as well as field and laboratory records  
857 sufficient to document the collection, will be curated at a facility, preferably in-  
858 state, that meets the standards of, and in accordance with the provisions of 36 CFR  
859 Part 79, "Curation of Federally Owned and Administered Archaeological  
860 Collections," and applicable State or Tribal requirements.

861 D. Review of Undertakings Initiated Before Initiation or Completion of Section 106

862  
863 1. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a  
864 subgrantee who, with intent to avoid the requirements of this Agreement or Section  
865 106 of the NHPA, has intentionally significantly and adversely affected a historic  
866 property to which the assistance would relate, or having legal power to prevent it,  
867 allowed an adverse effect to occur. However, if after consultation with the SHPO,  
868 affected Tribes(s), and ACHP, FEMA determines that extraordinary circumstances  
869 justify granting assistance despite the adverse effect created or permitted by the  
870 subgrantee, FEMA shall complete consultation for the Undertaking pursuant to the  
871 terms of this Agreement.

872  
873 2. FEMA shall specifically advise the Grantee(s) and shall require that the Grantee(s)  
874 advise its subgrantees in writing that they may jeopardize Federal funding if work is  
875 performed without all required local, State, and Federal licenses, permits, or approvals,  
876 including the completion of the Section 106 process. FEMA also shall document this  
877 requirement in its Record of Environmental Consideration, as applicable, as well as all  
878 project approval documents specifying the project scope and limits, and containing all  
879 conditions and caveats.

880  
881 3. In circumstances where FEMA determines a subgrantee has initiated an Undertaking  
882 without willful intent to avoid the requirements of this Agreement or Section 106 of  
883 NHPA, FEMA shall proceed as follows:

884  
885 a. Determine if the Undertaking is of a type for which FEMA has no further Section  
886 106 responsibilities, namely:

887  
888 i. An Undertaking listed in Stipulation I.A.8; or

- 889  
890           ii. An immediate rescue and salvage operation in accordance with 36 CFR §  
891           800.12(d); or  
892           iii. A Programmatic Allowance as described under Stipulation II.A.  
893  
894           b. In any such cases, FEMA will document this determination in the project files, and  
895           consider the Undertaking Section 106 compliant.  
896  
897           c. If FEMA determines the Undertaking would have required Section 106 review,  
898           FEMA shall coordinate with the SHPO and affected Tribe(s) to determine if  
899           consultation is feasible.
- 900           i. If after coordination with the SHPO and affected Tribes, FEMA determines  
901           that consultation is feasible, FEMA shall review the Undertaking in accordance  
902           with Stipulation II.C, Standard Project Review.
- 903           ii. If after coordination with the SHPO and affected Tribe(s), FEMA determines  
904           that review is infeasible, FEMA shall document the outcome to the Section 106  
905           process, and the applicable FEMA program shall take the outcome into account  
906           before making a decision whether to fund the Undertaking. FEMA shall  
907           provide written notification of its funding decision to the SHPO, appropriate  
908           Tribes and the ACHP.
- 909  
910           4. FEMA shall ensure that all Undertakings considered for after the fact review in  
911           accordance with this stipulation are included in the annual report.  
912  
913           5. FEMA will ensure the Grantee is notified the state of the determination whether after-  
914           the-fact consultation can be conducted.  
915  
916

#### 917 **IV. IMPLEMENTATION OF AGREEMENT**

##### 918 919 **A. Amendments**

- 920  
921           1. If any Signatory determines that an amendment to the terms of this Agreement must be  
922           made, the Signatories shall consult for no more than 30 days to seek amendment of the  
923           Agreement  
924  
925           2. An amendment to this Agreement, exclusive of the appendices, shall be effective only  
926           when it has been signed by the Signatories. An amendment shall be effective for  
927           Undertakings occurring on or affecting historic properties on Tribal lands only when  
928           the Tribe has signed the Agreement and its amendment.  
929  
930           3. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances), Appendix  
931           C (Treatment Measures), and Appendix D (Tribal Areas of Interest) may be amended  
932           at the request of FEMA or another Signatory party in the following manner:

- 933  
934 a. FEMA, on its own behalf or on behalf of another Signatory, shall notify the  
935 Signatories of the intent to modify the current Appendix or Appendices and shall  
936 provide a draft of the updated Appendix or Appendices to all signatory parties.  
937  
938 b. If no other Signatory objects in writing within 30 days of receipt of FEMA's  
939 proposed modification, FEMA shall date and sign the amended Appendix and  
940 provide a copy of the amended Appendix to the other Signatories.  
941

942 B. Dispute Resolution

- 943  
944 1. Should any Signatory object in writing to the terms of this Agreement, FEMA shall  
945 consult with the objecting party for not more than 30 days to resolve the objection.  
946  
947 2. If the objection is resolved within 30 days, FEMA shall proceed in accordance with  
948 the resolution.  
949  
950 3. If FEMA determines within 30 days that the objection cannot be resolved, FEMA shall  
951 forward to ACHP all documentation relevant to the objection, including FEMA's  
952 proposed resolution. Within 30 days of receipt, ACHP will:  
953  
954 a. Concur in FEMA's proposed resolution; or  
955  
956 b. Provide FEMA with recommendations, which FEMA shall take into account in  
957 reaching a final decision regarding the objection; or  
958  
959 c. Notify FEMA that the objection will be referred for comment in accordance with  
960 36 CFR § 800.7(a)(4), and proceed to do so.  
961  
962 4. FEMA shall take into account any ACHP recommendations or comments, and any  
963 comments from the other Signatories, in reaching a final decision regarding the  
964 objection. FEMA shall provide in writing to the ACHP and Signatories a summary of  
965 its final decision before authorizing any disputed action to proceed. The Signatories  
966 shall continue to implement all other terms of this Agreement that are not subject to  
967 objection.  
968  
969 5. Should ACHP not respond within 30 days, FEMA may assume ACHP has no  
970 comment and proceed with its proposed resolution to the objection.  
971

972 C. Severability and Termination

- 973  
974 1. In the event any provision of this Agreement is deemed to be contrary to, or in  
975 violation of, any applicable existing law or regulation of the United States of America,  
976 only the conflicting provision(s) shall be deemed null and void, and the remaining  
977 provisions of the Agreement shall remain in effect.

- 978 2. FEMA, the SHPO, Grantee(s), or participating Tribe(s) may terminate this Agreement  
979 by providing 30 days written notice to the other Signatories, provided that the  
980 Signatories consult during this period to seek amendments or other actions that would  
981 prevent termination. If this Agreement is terminated, FEMA will comply with 36 CFR  
982 Part 800. Upon such determination, FEMA shall provide all other signatories with  
983 written notice of the termination of this Agreement.
- 984 3. A participating Tribe may notify the other Signatories that it is fully withdrawing from  
985 participation in the Agreement. Following such a withdrawal, FEMA shall review  
986 undertakings that may affect historic properties of religious and cultural significance to  
987 the Tribe in accordance with 36 CFR §§ 800.3 through 800.7, 36 CFR § 800.8(c), or  
988 an applicable alternative under 36 CFR § 800.14. Withdrawal from this Agreement by  
989 a Tribe does not terminate the Agreement. At any time that this Agreement remains in  
990 effect, a Tribe that has withdrawn from the Agreement may notify FEMA, the  
991 Grantee(s), and SHPO in writing that it has rescinded its notice withdrawing from  
992 participation in the Agreement.
- 993 4. This Agreement may be terminated by the implementation of a subsequent Agreement,  
994 pursuant to 36 CFR § 800.14(b), that explicitly terminates or supersedes this  
995 Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36  
996 CFR § 800.14(a).

997  
998 D. Duration and Extension

- 999 1. This Agreement shall remain in effect from the date of execution for a period not to  
1000 exceed 7 years unless otherwise extended pursuant to Stipulation IV.D.2 below, or  
1001 until FEMA, in consultation with all other signatories, determines that the terms of this  
1002 Agreement should be terminated pursuant to Stipulation IV.C.2 or IV.C.4, Severability  
1003 and Termination. The Agreement shall remain in effect for Declarations made prior to  
1004 expiration of the Agreement in order to minimize delays in delivery of FEMA  
1005 assistance.
- 1006 2. The signatories may collectively agree to extend this Agreement to cover additional  
1007 calendar years, or portions thereof, through an amendment in accordance with  
1008 Stipulation IV.A., provided that the original Agreement has not expired.

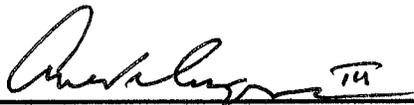
1009 E. Execution and Implementation

- 1010
- 1011 1. This Agreement may be executed in counterparts, with a separate page for each  
1012 signatory, and shall become effective on the date of the final signature of FEMA,  
1013 SHPO, and ACHP.
- 1014
- 1015 2. The Agreement shall go into effect for participating Tribe(s) once the Agreement has  
1016 been signed by the Tribe(s).  
1017

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1025
3. FEMA shall ensure that each Signatory is provided with a complete copy of the Agreement, including an original set of signatures.
  4. Execution and implementation of this Agreement evidence that FEMA has afforded ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of its Programs.

1026                                   **PROGRAMMATIC AGREEMENT AMONG**  
1027                                   **THE FEDERAL EMERGENCY MANAGEMENT AGENCY,**  
1028                                   **THE FLORIDA STATE HISTORIC PRESERVATION OFFICE,**  
1029                                   **THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT, AND**  
1030                                   **ALABAMA COUSHATTA TRIBE OF TEXAS,**  
1031                                   **CHOCTAW NATION OF OKLAHOMA,**  
1032                                   **MISSISSIPPI BAND OF CHOCTAW INDIANS;**  
1033                                   **AND**  
1034                                   **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

1035  
1036 Federal Emergency Management Agency

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1041 Andrew Velasquez III  
1042 Acting Regional Administrator  
1043

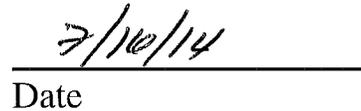
8 July 2014  
Date

1044                                   **PROGRAMMATIC AGREEMENT AMONG**  
1045                                   **THE FEDERAL EMERGENCY MANAGEMENT AGENCY,**  
1046                                   **THE FLORIDA STATE HISTORIC PRESERVATION OFFICE,**  
1047                                   **THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT, AND**  
1048                                   **ALABAMA COUSHATTA TRIBE OF TEXAS,**  
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1051                                   **AND**  
1052                                   **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

1053  
1054 State Historic Preservation Office

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1059 Robert Bendus  
1060 State Historic Preservation Officer

  
\_\_\_\_\_  
Date

1061                   **PROGRAMMATIC AGREEMENT AMONG**  
1062                   **THE FEDERAL EMERGENCY MANAGEMENT AGENCY,**  
1063                   **THE FLORIDA STATE HISTORIC PRESERVATION OFFICE,**  
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1065                   **ALABAMA COUSHATTA TRIBE OF TEXAS,**  
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1068                   **AND**  
1069                   **THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
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1071 Florida Division of Emergency Management  
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1076 *for* Bryan Koon  
1077 Director  
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7/10/14  
\_\_\_\_\_  
Date









## Appendix A

### FEMA Program Summaries

This Appendix may be amended in accordance with Stipulation IV.A, Amendments.

#### Disaster Response and Recovery Programs

The following programs are authorized under Titles IV and V of the Stafford Act.

##### *Public Assistance Program (PA)*

This program assists States, Tribal and local governments, and certain types of private nonprofit organizations quickly respond to and recover from major disasters or emergencies declared by the President. Grants are provided for debris removal (Category A), emergency protective measures (Category B), and the repair, replacement, or restoration of disaster-damaged, publicly owned and certain private non-profit facilities (Categories C-G).

##### *Individual Assistance Programs (IA)*

These programs help to ensure that individuals and families that have been affected by disasters have access to the full range of FEMA assistance including: crisis counseling (Section 416), disaster legal services (Section 415), essential assistance (Section 403), emergency sheltering assistance (Section 403), transportation (Section 419), funeral services, minor home repairs (Section 408), and temporary housing assistance (Section 408). It should be noted that other Federal agencies provide disaster assistance programs, services, and activities to individuals as well, such as the U.S. Small Business Administration, U.S. Department of Agriculture, and U.S. Department of Labor, but such assistance is not subject to the terms of this Agreement.

##### *Fire Management Assistance Grant Program (FMAG)*

The FMAG is available to State, Tribal, and local governments for the mitigation, management, and control of fires on publicly or privately owned lands. Eligible costs may include expenses for field camps, equipment use, repair and replacement, materials and supplies, and mobilization and demobilization activities.

##### *Hazard Mitigation Grant Program (HMGP)*

The HMGP provides grants to States, Territories, Tribes, and local governments to implement long-term hazard mitigation measures after a Declaration. Activities may include acquisitions, retrofits, relocations, elevations, and minor flood control projects.

#### Non-Disaster Programs

##### *Pre-Disaster Mitigation Program (PDM)*

The PDM program provides competitive grants to States, Territories, Tribes, and local governments for hazard mitigation planning and the implementation of mitigation projects prior to a disaster event. Activities may include planning, acquisitions, retrofits, relocations, elevations, minor flood control projects, and vegetative fuels reduction.

1196 *Flood Mitigation Assistance Program (FMA)*  
1197 The FMA program provides grants to States, Territories, Tribal entities, and communities to assist  
1198 in their efforts to reduce or eliminate the risk of repetitive flood damage to buildings and  
1199 structures insurable under the National Flood Insurance Program (NFIP).  
1200  
1201 *Assistance to Firefighters Grant Program*  
1202 The AFG program provides funding for purchase of equipment and retrofit or construction of fire  
1203 stations to improve first responder capabilities.  
1204  
1205 *State Homeland Security Program (SHSP)*  
1206 This core assistance program provides funds to build capabilities at the state and local levels and  
1207 to implement the goals and objectives included in state homeland security strategies and  
1208 initiatives in the State Preparedness Report.  
1209  
1210 *Urban Areas Security Initiative (UASI) Program*  
1211 The UASI program focuses on enhancing regional preparedness in major metropolitan areas. The  
1212 UASI program directly supports the National Priority on expanding regional collaboration in the  
1213 National Preparedness Guidelines and is intended to assist participating jurisdictions in  
1214 developing integrated regional systems for prevention, protection, response and recovery.  
1215  
1216 *Metropolitan Medical Response System (MMRS) Program*  
1217 The MMRS program supports the integration of emergency management, health, and medical  
1218 systems into a coordinated response to mass casualty incidents caused by any hazard. Successful  
1219 MMRS grantees reduce the consequences of a mass casualty incident during the initial period of a  
1220 response by having augmented existing local operational response systems before the incident  
1221 occurs.  
1222  
1223 *Citizen Corps Program (CCP)*  
1224 The Citizen Corps mission is to bring community and government leaders together to coordinate  
1225 community involvement in emergency preparedness, planning, mitigation, response and recovery.  
1226  
1227 *State Homeland Security Program Tribal (SHSP Tribal)*  
1228 To provide supplemental funding to directly eligible tribes to help strengthen the nation against  
1229 risks associated with potential terrorist attacks. Pursuant to the 9/11 Act, “a directly eligible tribe  
1230 applying for a grant under section 2004 [SHSP] shall designate an individual to serve as a tribal  
1231 liaison with [DHS] and other Federal, state, local, and regional government officials concerning  
1232 preventing, preparing for, protecting against and responding to acts of terrorism.”  
1233  
1234 *Nonprofit Security Grant Program (NSGP)*  
1235 NSGP provides funding support for target-hardening activities to nonprofit organizations that are  
1236 at high risk of a terrorist attack and are located within one of the specific UASI-eligible urban  
1237 areas.  
1238  
1239 *Operation Stonegarden (OPSG)*  
1240 The intent of OPSG is to enhance cooperation and coordination among local, State and Federal  
1241 law enforcement agencies in a joint mission to secure the United States borders along routes of

1242 ingress from international borders to include travel corridors in States bordering Mexico and  
1243 Canada, as well as States and territories with international water borders.

1244

1245 *Transit Security Grant Program (TSGP)*

1246 The TSGP provides grant funding to the nation's key high-threat urban areas to enhance security  
1247 measures for their critical transit infrastructure including bus, ferry and rail systems.

1248

1249 *Freight Rail Security Grant Program (FRSGP)*

1250 The FRSGP funds security training for frontline employees, the completion of vulnerability  
1251 assessments, the development of security plans within the freight rail industry and GPS tracking  
1252 systems for railroad cars transporting toxic inhalation materials.

1253

1254 *Intercity Passenger Rail (Amtrak)*

1255 The purpose of the Intercity Passenger Rail (IPR) is to create a sustainable, risk-based effort to  
1256 protect critical surface transportation infrastructure and the traveling public from acts of terrorism,  
1257 major disasters and other emergencies within the Amtrak rail system.

1258

1259 *Port Security Grant Program (PSGP)*

1260 The PSGP provides grant funding to port areas for the protection of critical port infrastructure  
1261 from terrorism. PSGP funds are primarily intended to assist ports in enhancing maritime domain  
1262 awareness, enhancing risk management capabilities to prevent, detect, respond to and recover  
1263 from attacks involving improvised explosive devices (IEDs), weapons of mass destruction  
1264 (WMDs) and other non-conventional weapons, as well as training and exercises and  
1265 Transportation Worker Identification Credential (TWIC) implementation.

1266

1267 *Intercity Bus Security Grant Program (IBSGP)*

1268 The IBSGP provides funding to create a sustainable program for the protection of intercity bus  
1269 systems and the traveling public from terrorism. The program seeks to assist operators of fixed-  
1270 route intercity and charter bus services in obtaining the resources required to support security  
1271 measures such as enhanced planning, facility security upgrades and vehicle and driver protection.

1272

1273 *Trucking Security Program (TSP)*

1274 TSP funding will be awarded to eligible applicants to implement security improvement measures  
1275 and policies deemed valuable by DHS as indicated in the *Security Action Items* publication of  
1276 June 26, 2008. These items are primarily focused on the purchase and installation or enhancement  
1277 of equipment and systems related to tractor and trailer tracking systems. Additionally, the TSP  
1278 will provide funding to develop a system for DHS to monitor, collect and analyze tracking  
1279 information; and develop plans to improve the effectiveness of transportation and distribution of  
1280 supplies and commodities during catastrophic events.

1281

1282 *Buffer Zone Protection Program (BZPP)*

1283 The BZPP provides funding to increase the preparedness capabilities of jurisdictions responsible  
1284 for the safety and security of communities surrounding high-priority pre-designated Tier 1 and  
1285 Tier 2 critical infrastructure and key resource (CIKR) assets, including chemical facilities,  
1286 financial institutions, nuclear and electric power plants, dams, stadiums and other high-risk/high-  
1287 consequence facilities, through allowable planning and equipment acquisition.

1288  
1289 *Emergency Management Performance Grants (EMPG)*  
1290 The purpose of the EMPG program is to assist State and local governments in enhancing and  
1291 sustaining all-hazards emergency management capabilities.  
1292  
1293 *Interoperable Emergency Communications Grant Program (IECGP)*  
1294 IECGP provides governance, planning, training and exercise and equipment funding to States,  
1295 territories, and local and Tribal governments to carry out initiatives to improve interoperable  
1296 emergency communications, including communications in collective response to natural disasters,  
1297 acts of terrorism and other man-made disasters. According to the legislation that created IECGP,  
1298 all proposed activities must be integral to interoperable emergency communications and must be  
1299 aligned with the goals, objectives, and initiatives identified in the grantee's approved statewide  
1300 Communication Interoperability Plans (SCIP). IECGP will also advance DHS near-term  
1301 priorities that are deemed critical to improving interoperable emergency communications and are  
1302 consistent with goals and objectives of the National Emergency Communications Plan.  
1303  
1304 *Emergency Operations Center (EOC) Grant Program*  
1305 The EOC grant program is intended to improve emergency management and preparedness  
1306 capabilities by supporting flexible, sustainable, secure, and interoperable Emergency Operations  
1307 Centers (EOCs) with a focus on addressing identified deficiencies and needs. This program  
1308 provides funding for construction or renovation of a State, local, or tribal governments' principal  
1309 EOC. Fully capable emergency operations facilities at the State and local levels are an essential  
1310 element of a comprehensive national emergency management system and are necessary to ensure  
1311 continuity of operations and continuity of government in major disasters caused by any hazard.  
1312  
1313 *Driver's License Security Grant Program*  
1314 The purpose of the Driver's License Security Grant Program is to prevent terrorism, reduce fraud,  
1315 and improve the reliability and accuracy of personal identification documents that States and  
1316 territories issue.  
1317  
1318 *Integrated Public Alert and Warning System (IPAWS)*  
1319 The Integrated Public Alert and Warning System (IPAWS) was established by Executive Order  
1320 13407 in 2006. In the event of a national emergency, the President may use IPAWS to send a  
1321 message to the American people quickly and simultaneously through multiple communications  
1322 pathways. FEMA has identified several radio transmission sites across the nation which provide  
1323 significantly powerful signals for this purpose, and is responsible for upgrading, maintaining, and  
1324 managing the agency installed and owned auxiliary fuel systems at each of these radio  
1325 transmission sites.  
1326

## Appendix B

### Programmatic Allowances

This list of Programmatic Allowances enumerates FEMA funded activities that based on FEMA experience have no or limited effect on historic properties if implemented as specified in this Appendix and will not require review by the SHPO and participating Tribe(s).

The allowances consist of two tiers – First Tier and Second Tier. Staff may apply First Tier allowances without meeting any professional historic preservation qualification standards, while only staff meeting the applicable SOI Professional Qualifications Standards in accordance with Stipulation I.B(1)(a) of this Agreement may apply Second Tier allowances.

When referenced in the allowances, “in-kind” shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including form, color, and workmanship. The in-kind repair provided for in both First and Second Tier allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures.

When referenced in the allowances, “previously disturbed soils” shall refer to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing historic properties within their original depositional contexts in the area and to the depth to be excavated.

#### I. First Tier Allowances

**A. GROUND DISTURBING ACTIVITIES AND SITE MODIFICATION**, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

##### 1. Debris and Snow Removal

- a. Debris removal and collection, including removal of snow, uprooted trees, limbs and branches from public rights of way and public areas and areas as well as the transport and disposal of such waste to existing licensed waste facilities or landfills. This includes the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed solid waste transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads.
- b. Removal of debris from private property provided that buildings are not affected, ground disturbance is minimal and in-ground elements, such as driveways, walkways or swimming pools are left in place.
- c. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.

1369 d. Sediment removal from man-made drainage facilities, including  
1370 retention/detention basins, ponds, ditches, and canals, in order to restore the  
1371 facility to its pre-disaster condition. The sediment may be used to repair eroded  
1372 banks or disposed of at an existing licensed or permitted spoil site.

1373  
1374 e. Dewatering flooded developed areas by pumping.

1375  
1376 **2. Temporary Structures and Housing**

1377  
1378 a. Installation and removal of temporary structures for use as school classrooms,  
1379 offices, or temporary shelters for essential public service agencies, such as police,  
1380 fire, rescue and medical care, as well as temporary housing for disaster personnel  
1381 and survivors at the following types of locations:

1382  
1383 i. Single units on private residential sites when all utilities are installed above  
1384 ground or tie into pre-existing utility lines.

1385  
1386 ii. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility  
1387 hookups;

1388  
1389 iii. Paved areas, such as parking lots and paved areas at such facilities as  
1390 conference centers, shopping malls, airports, industrial port facilities business  
1391 parks, and military bases when all utilities are installed above ground or tie into  
1392 pre-existing utility lines.

1393  
1394 iv. Sites that have been previously cleared and prepared for planned construction,  
1395 such as land being developed for public housing, office buildings, city parks,  
1396 ball fields, schools, etc. when all utilities are installed above-ground or tie into  
1397 pre-existing utility lines.

1398  
1399 v. Areas previously filled to depths of at least six feet so that subsurface utilities  
1400 can be installed.

1401  
1402 **3. Recreation and Landscaping**

1403  
1404 a. Installation of temporary removable barriers.

1405  
1406 b. In-kind repairs, installation, or replacement, and minor upgrades/mitigation of  
1407 bollards and associated protective barriers when in previously disturbed areas.

1408  
1409 **B. BUILDINGS AND STRUCTURES**

1410  
1411 1. Repair or retrofit of buildings less than 45 years old.

1412  
1413 2. Removal of water by physical or mechanical means.

1414

- 1415  
1416  
1417  
1418 3. Installation of exterior security features and early warning devices on existing light  
1419 poles or other permanent utilities.  
1420

1421 **C. TRANSPORTATION FACILITIES**, when proposed activities substantially conform to  
1422 the original footprint and/or performed in previously disturbed soils, including any staging  
1423 areas.  
1424

1425 **1. Roads and Roadways**

- 1426  
1427 a. Paving and repair of roads to pre-disaster geometric design standards and  
1428 conditions using in-kind materials, shoulders medians, clearances, curbs, and side  
1429 slopes. This allowance does not include improvement to existing roadways and  
1430 appurtenances.  
1431  
1432 b. Construction of temporary emergency access roads in previously disturbed soils to  
1433 allow for passage of emergency vehicles.  
1434  
1435 c. Repairs to road slips and landslides that do not require grading of undisturbed soils  
1436 on the up-hill side of the slip.  
1437  
1438 d. Re-establishment, armoring and/or upgrading of existing roadway ditches.  
1439  
1440 e. In-kind repair or replacement of traffic control devices such as traffic signs and  
1441 signals, delineators, pavement markings, traffic surveillance systems.  
1442  
1443 f. Installation and removal of temporary traffic control devices, including pre-formed  
1444 concrete barriers and fencings.  
1445  
1446 g. In-kind repair or replacement of roadway safety elements such as barriers,  
1447 guardrails, and impact-attenuation devices. In the case of guardrails, the addition  
1448 of safety end treatments is permitted.  
1449

1450 **2. Airports**

- 1451  
1452 a. In-kind repair or replacement of existing runway surfaces and features (e.g.  
1453 asphalt, concrete, gravel, and dirt) and associated air transportation safety  
1454 components and systems (e.g. lighting bars, beacons, signage and weather  
1455 sensors).  
1456

1457 **3. Rail Systems**  
1458

- 1459 a. In-kind repair or replacement of safety components.
- 1460
- 1461 b. In-kind repair or replacement of existing track system and passenger loading areas.
- 1462

1463 **D. FEES AND SERVICES**

- 1464
- 1465 1. Reimbursement of a subgrantee's insurance deductible, not to exceed \$2,500.
- 1466
- 1467

1468 **II. Second Tier Allowances**

- 1469
- 1470 **A. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when proposed activities
- 1471 described below substantially conform to the original footprint and/or are performed in
- 1472 previously disturbed soils, including the area where the activity is staged.
- 1473

1474 **1. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems**

- 1475
- 1476 a. In-kind repair, replacement, and reinforcement of footings, foundations, retaining
- 1477 walls, slopes, and slope stabilization systems (e.g., gabion baskets, crib walls,
- 1478 soldier pile and lag walls) if related ground disturbing activities are within the
- 1479 boundary of previously disturbed soils.
- 1480
- 1481 b. Installation of perimeter drainage (e.g. French drains) when performed in
- 1482 previously disturbed soils.
- 1483

1484 **2. Recreation and Landscaping**

- 1485
- 1486 a. In-kind repairs or replacement, and minor upgrades to recreational facilities and
- 1487 features (e.g. playgrounds, campgrounds, fire pits, dump stations and utility hook-
- 1488 ups, swimming pools, athletic fields and signage, batting cages, basketball courts,
- 1489 swing sets, pathways, simple wooden/wire stream crossings).
- 1490
- 1491 b. In-kind repair, replacements, and minor upgrades to landscaping elements (e.g.,
- 1492 fencing, free standing walls, paving, planters, irrigation systems, lighting elements,
- 1493 signs, flag poles, ramps, steps).
- 1494

1495 **3. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers**

- 1496
- 1497 a. In-kind repair and replacement and minor upgrades to existing piers, docks,
- 1498 boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils.
- 1499

1500 **4. Cemeteries**

- 1501
- 1502 a. Removal of woody debris such as branches and limbs, from cemeteries, provided
- 1503 that heavy equipment and other machinery are not operated or staged on areas
- 1504 potentially containing human remains.

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**B. BUILDINGS AND STRUCTURES**

**1. Interior Work: Floors, Walls, Stairs, Ceilings and Trim**

- a. In-kind repair and replacement of floors, walls, stairs, ceilings, and/or trim. The allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster.
- b. Interior cleaning of surfaces using a weak solution of household bleach and water, mold remediation, or mold removal. The allowance applies to interior finishes, including plaster and wallboard, provided the cleaning is restricted to damaged areas and does not affect adjacent materials.
- c. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.

**2. Building Contents**

- a. Repair or replacement of building contents including furniture, movable partitions, computers, cabinetry, supplies, and equipment and any other moveable items which are not character defining features of a historic property.

**3. Utilities and Mechanical, Electrical, and Security Systems**

- a. In-kind repair or replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning), electrical, and plumbing systems. This allowance does not provide for the installation of new exposed ductwork.
- b. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment as long as it is placed or located where it is not highly visible from the street.
- c. Installation or replacement of interior fire detection, fire suppression, or security alarm systems. The allowance does not apply to surface mounted wiring, conduits, piping, etc., unless previously existing, provided that installation of the system hardware does not damage or cause the removal of character-defining architectural features and can be easily removed in the future.
- d. Installation of communication and surveillance security systems, such as cameras, closed-circuit television, alarm systems, and public address systems, provided that installation of the system hardware does not damage or cause the removal of character defining architectural features and can be easily removed in the future.
- e. Installation of building access security devices, such as card readers, enhanced locks, and security scanners (e.g., metal detectors), provided the device does not

1550 damage or cause the removal of character-defining architectural features and can  
1551 be removed in the future without impacts to significant architectural features.

1552

1553 **4. Windows and Doors**

1554

1555 a. In-kind repair of damaged or severely deteriorated windows and window frames,  
1556 shutters, storm shutters, doors and door frames, and associated hardware, where  
1557 profiles, elevations, details and materials match those of the originals.

1558 b. In-kind replacement of window panes. Clear plate, double, laminated or triple  
1559 insulating glazing can be used, provided it does not result in altering the existing  
1560 window material, tint, form, muntin profiles, or number of divided lights. This  
1561 allowance does not apply to the replacement of existing intact archaic or decorative  
1562 glass.

1563  
1564 c. Replacement of exterior, utilitarian, non-character-defining metal doors and frames  
1565 leading into non character-defining spaces with metal blast resistant doors and  
1566 frames.

1567

1568 d. Installation of security bars over windows on rear elevations.

1569

1570 **5. Exterior Walls, Cornices, Porches, and Foundations**

1571 a. In-kind repainting of surfaces, provided that destructive surface preparation  
1572 treatments are not used, such as water blasting, sandblasting, power sanding and  
1573 chemical cleaning.

1574  
1575 b. In-kind repair of walls, porches, foundations, columns, cornices, siding,  
1576 balustrades, stairs, dormers, brackets, trim, and their ancillary components or in-  
1577 kind replacement of severely deteriorated or missing or lost features, as long as the  
1578 replacement pieces match the original in detail and material. Any ground  
1579 disturbance will be limited to previously disturbed soils.

1580

1581 c. In-kind repair or replacement of signs or awnings.

1582

1583 d. Installation of temporary stabilization bracing or shoring, provided such work does  
1584 not result in additional damage.

1585

1586 e. Anchoring of walls to floor systems, provided the anchors are embedded and  
1587 concealed from exterior view.

1588

1589 f. In-kind repair of concrete and masonry walls, columns, parapets, chimneys, or  
1590 cornices or limited in-kind replacement of damaged components including  
1591 comparable brick, and mortar that matches the color, strength, content, rake, and  
1592 joint width.

1593

- 1594 g. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing  
1595 and reinforcing are either concealed from exterior view or reversible in the future.  
1596  
1597 h. Strengthening of foundations and the addition of foundation bolts, provided that  
1598 visible new work is in-kind, including mortar that matches the color, content,  
1599 strength, rake, and joint width where occurring.  
1600  
1601 i. Repairs to and in-kind replacement of elements of curtain wall assemblies or  
1602 exterior cladding that is hung on the building structure, usually from floor to floor,  
1603 and when the color, size reflectivity, materials, and visual patterns are unaltered.

1604 **6. Roofing**

- 1605  
1606 a. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will  
1607 not result in additional damage or irreversible alterations to character defining  
1608 features.  
1609  
1610 b. In-kind repair, replacement, or strengthening of roofing, rafters, fascia, soffits,  
1611 gutters, verge boards, leader boxes, downspouts, or other damaged roof system  
1612 components.  
1613  
1614 c. Repairs to flat roof cladding, including changes in roofing materials, where the  
1615 repairs are not highly visible from the ground level.  
1616

1617 **7. Weatherproofing and Insulation**

- 1618 a. Caulking and weather-stripping to complement the color of adjacent surfaces or  
1619 sealant materials.  
1620  
1621 b. In-kind repair or replacement of insulation systems, provided that existing interior  
1622 plaster, woodwork, exterior siding, or exterior architectural detail is not altered.

1623 **8. Structural Retrofits**

- 1624  
1625 a. The installation of the following retrofits/upgrades, provided that such upgrades  
1626 are not visible on the exterior: attic bracing, cross bracing on pier and post  
1627 foundations; fasteners; collar ties; gussets; tie downs; strapping and anchoring of  
1628 mechanical, electrical, and plumbing equipment; concealed anchoring of furniture;  
1629 installation of plywood diaphragms beneath first floor joists, above top floor  
1630 ceiling rafters, and on roofs; and automatic gas shut off valves.  
1631  
1632 b. Replacement, repair or installation of lightning rods.

1633 **9. Americans with Disabilities Act (ADA) Compliance**

- 1634  
1635 a. Installation of grab bars and other such minor interior modifications.  
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**10. Safe Rooms**

- a. Installation of individual safe rooms within the property limits of a residence where the installation would occur within the existing building or structure or in previously disturbed soils.

**11. Elevation, Demolition, and Reconstruction**

- a. Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than 45 years of age so long as the proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils including any staging area, and the buildings or structures are not located within or adjacent to a National Register listed or eligible historic district.

**C. TRANSPORTATION FACILITIES**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

**1. Roads and Roadways**

- a. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches.
- b. In kind repair to historic paving materials for roads and walkways.
- c. In-kind repair or replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided that the work substantially conforms to the existing footprint. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.
- d. In-kind repair or replacement of road lighting systems, including period lighting fixture styles.
- e. In-kind repair or replacement of road appurtenances such as curbs, berms, fences, and sidewalks.

**2. Bridges**

- 1681 a. Installation of a temporary (Bailey-type) bridge over an existing structure or at a
- 1682 previously disturbed location, such as a former bridge location, to allow passage of
- 1683 emergency vehicles.
- 1684
- 1685 b. In-kind repair or replacement of bridges and bridge components (e.g. abutments,
- 1686 wing walls, piers, decks, and fenders) in previously disturbed soils.
- 1687

**D. UTILITIES, COMMUNICATIONS SYSTEMS AND TOWERS**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

**1. General**

- 1693 a. In-kind repair or replacement, or minor upgrading, small scale realignment, and
- 1694 elevation of utilities and associated features and structures within previously
- 1695 disturbed soils of rights-of-way or utility corridors.
- 1696
- 1697 b. Installation of new utilities and associated features within previously surveyed
- 1698 existing rights-of-way.
- 1699
- 1700 c. Directional boring of new/replacement service line and related appurtenances
- 1701 involving boring or silt trenches within previously disturbed soils of rights-of-way
- 1702 or utility corridors.
- 1703
- 1704 d. In-kind repair or replacement, or minor upgrade of water towers provided activities
- 1705 take place within previously disturbed soils. Ground-level facilities may be added
- 1706 or expanded in previously disturbed areas. This allowance does not apply to
- 1707 masonry water towers.
- 1708

**2. Generators and Utilities**

- 1710 a. In-kind repair or replacement, or minor upgrades, elevation, and/or installation of
- 1711 generators, HVAC systems, and similar equipment provided activities occur within
- 1712 previously disturbed soils and any roof mounted equipment is not visible from the
- 1713 ground level.
- 1714
- 1715
- 1716

**3. Communication Equipment/Systems and Towers**

- 1717 a. Acquisition, installation, or operation of communication and security
- 1718 equipment/systems that use existing distribution systems, facilities, or existing
- 1719 infrastructure right-of-way.
- 1720
- 1721 b. The collocation of communication and security equipment on existing towers and
- 1722 buildings/structures less than 45 year in age, provided that the work does not
- 1723 increase existing tower height or footprint by more than 10% and occurs within
- 1724 previously disturbed soils.
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- c. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
  - d. Installation of new temporary (not to exceed 12 months) communications towers and antenna structures provided that the work occurs does not require modification of buildings/structures 45 years or older and occurs within previously disturbed soils.
  - e. Installation of new communication towers, less than 200 feet tall, in previously developed urban complexes when the work does not require modification of buildings/structures 45 years or older, occurs within previously disturbed soil, and is not within 500 feet of the boundaries of a historic property.
- E. WATER RESOURCE MANAGEMENT AND CONTROLS**, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.
- 1. Canal Systems**
    - a. In-kind repairs or replacement to canal systems and associated elements.
  - 2. Breakwaters, Seawalls, Revetments, and Berms**
    - a. In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the work occurs in previously disturbed soils.
  - 3. Dams, Levees, and Floodwalls**
    - a. In-kind repair of dams, levees, floodwalls and related features, including spillways, tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.
  - 4. Fish Hatcheries**
    - a. In-kind repair of fish hatcheries and fish ladders.
  - 5. Waste-Water Treatment Lagoon Systems**
    - a. In-kind repair or replacement, or minor upgrades of waste-water treatment lagoon systems.

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## Appendix C

### Treatment Measures

When avoidance or minimization of adverse effects is not appropriate, the following Treatment Measures are suggested for the resolution of adverse effects:

If Undertakings result or will result in adverse effects, FEMA, the Grantee(s), subgrantee, SHPO, and participating Tribes(s), may develop a treatment measure plan that includes one or more of the following Treatment Measures, depending on the nature of historic properties affected and the severity of adverse effects. This Appendix may be amended in accordance with Stipulation IV.A.3 of this Agreement, Amendments.

#### A. Recordation

1. Digital Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a digital photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The digital photography package will meet the standards cited in the NPS' *National Register of Historic Places Photographic Policy March 2010* or subsequent revisions (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>).
- a. The digital photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame

- 1816 number, subject matter and photographer's name recorded on the reverse side in  
1817 pencil.
- 1818
- 1819 b. The digital photography package shall include printed color copies of the digital  
1820 photographs (on appropriate paper, per *NPS Photographic Policy*), a CD/DVD of  
1821 the digital photographs, a completed state architectural inventory form, and a  
1822 written site history of the historic property.
- 1823
- 1824 c. The designated responsible party shall submit the digital photography package to  
1825 the SHPO and participating Tribe(s), for review and approval. Once approved by  
1826 the SHPO and participating Tribe(s), the designated responsible party shall submit  
1827 a copy of the approved documentation to a state or local historical society, archive,  
1828 and/or library for permanent retention.
- 1829
- 1830 2. 35mm Black and White Photography Package: Prior to project implementation, the  
1831 designated responsible party shall oversee the successful delivery of a 35 mm film  
1832 black and white film photography package prepared by staff or contractors meeting the  
1833 Professional Qualifications for Architectural History, History, Architecture, or Historic  
1834 Architecture, as appropriate.
- 1835
- 1836 a. The 35 mm film black and white film photography package shall include a  
1837 comprehensive collection of photographs of both interior and exterior views  
1838 showing representative spaces and details of significant architectural features and  
1839 typical building materials. Exterior photographs shall include full oblique and  
1840 contextual images of each elevation. Exterior views shall be keyed to a site plan  
1841 while interior views shall be keyed to a floor plan of the building/structure. The  
1842 photographs shall be indexed according to the date photographed, site number, site  
1843 name, site address, direction, frame number, subject matter and photographer's  
1844 name recorded on the reverse side in pencil.
- 1845
- 1846 b. The 35 mm film black and white film photography package shall include one (1)  
1847 full set of 35mm film black and white photographs printed on acid free paper, the  
1848 corresponding 35mm film negatives in acid free sleeves, a completed state  
1849 architectural inventory form, and a written site history of the historic property.
- 1850
- 1851 c. The designated responsible party shall submit the 35 mm black and white film  
1852 photography package the SHPO and/or participating Tribe(s) for review and  
1853 approval. Once approved by the SHPO and participating Tribe(s), the designated  
1854 responsible party shall submit a copy of the approved documentation to a state or  
1855 local historical society, archive, and/or library for permanent retention.
- 1856
- 1857 3. Large Format Photography Package: Prior to project implementation, the designated  
1858 responsible party shall oversee the successful delivery of a large format photography  
1859 package prepared by staff or contractors meeting the Professional Qualifications for  
1860 Architectural History, History, Architecture, or Historic Architecture, as appropriate.
- 1861

- 1862 a. The large format photography package shall include a comprehensive collection of  
1863 photographs of both interior and exterior views showing representative spaces and  
1864 details of significant architectural features and typical building materials. Exterior  
1865 photographs shall include full oblique and contextual images of each elevation.  
1866 Exterior views shall be keyed to a site plan while interior views shall be keyed to a  
1867 floor plan of the building/structure. The photographs shall be indexed according to  
1868 the date photographed, site number, site name, site address, direction, frame  
1869 number, subject matter and photographer's name recorded on the reverse side in  
1870 pencil.  
1871  
1872 b. The large format film photography package shall include one (1) full set of 4 x 5 or  
1873 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5 x  
1874 7-inch negatives in acid free sleeves, a completed state architectural inventory  
1875 form, and a written site history of the historic property.  
1876  
1877 c. The designated responsible party shall submit the large format film photography  
1878 package to the SHPO and/or participating Tribe(s) for review and approval. Once  
1879 approved by the SHPO, and/or participating Tribe(s), the designated responsible  
1880 party shall submit a copies of the approved documentation to a state or local  
1881 historical society, archive, and/or library for permanent retention.  
1882

#### 1883 B. Tribal Treatment Plan

1884

1885 FEMA shall work with participating Tribe(s) to develop a plan for the protection and  
1886 treatment of, including but not limited to, Native American human remains, funerary  
1887 objects, cultural and religious landscapes, ceremonial items, traditional gathering areas  
1888 and cultural items, for known sites and in the event that any are discovered in conjunction  
1889 with the Undertaking, including archaeological studies, excavation, geotechnical  
1890 investigations, grading, and all ground-disturbing activity. The plan shall also formalize  
1891 procedures for Tribal monitoring during archaeological studies, grading, and ground  
1892 disturbing activities for the Undertaking.  
1893

#### 1894 C. Public Interpretation

1895

1896 Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with  
1897 the SHPO and/or participating Tribe(s) to design an educational interpretive plan. The  
1898 plan may include signs, displays, educational pamphlets, websites, workshops and other  
1899 similar mechanisms to educate the public on historic properties within the local  
1900 community, state, or region. Once an interpretive plan has been agreed to by the parties,  
1901 SHPO and/or participating Tribes, and the designated responsible party shall continue to  
1902 consult throughout implementation of the plan until all agreed upon actions have been  
1903 completed by the designated responsible party.  
1904

#### 1905 D. Historical Context Statements and Narratives

1906

1907 Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with  
1908 the SHPO and participating Tribe(s) to determine the topic and framework of a historic  
1909 context statement or narrative the designated responsible party shall be responsible for  
1910 completing. The statement or narrative may focus on an individual property, a historic  
1911 district, a set of related properties, or relevant themes as identified in the statewide  
1912 preservation plan. Once the topic of the historic context statement or narrative has been  
1913 agreed to, the designated responsible party shall continue to coordinate with the SHPO  
1914 and participating Tribe(s) through the drafting of the document and delivery of a final  
1915 product. The designated responsible party shall use staff or contractors that meet the  
1916 Secretary's Professional Qualifications for the appropriate discipline.

1917  
1918 E. Oral History Documentation

1919  
1920 Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with  
1921 the SHPO and/or participating Tribe(s) to identify oral history documentation needs and  
1922 agree upon a topic and list of interview candidates. Once the parameters of the oral history  
1923 project have been agreed upon, the designated responsible party shall continue to  
1924 coordinate with the SHPO and/or participating Tribe(s) through the data collection,  
1925 drafting of the document, and delivery of a final product. The designated responsible party  
1926 shall use staff or contractors that meet the Secretary's Professional Qualifications for the  
1927 appropriate discipline.

1928  
1929 F. Historic Property Inventory

1930  
1931 Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with  
1932 the SHPO and/or participating Tribe(s) to establish the appropriate level of effort to  
1933 accomplish a historic property inventory. Efforts may be directed toward the resurvey of  
1934 previously designated historic properties and/or districts which have undergone change or  
1935 lack sufficient documentation, or the survey of new historic properties and/or districts that  
1936 lack formal designation. Once the boundaries of the survey area have been agreed upon,  
1937 the designated responsible party shall continue to coordinate with the SHPO and/or  
1938 participating Tribe(s), through the data collection process. The designated responsible  
1939 party shall use SHPO and/or participating Tribe(s) standards for the survey of historic  
1940 properties and SHPO and/or participating Tribe(s) forms as appropriate. The designated  
1941 responsible party shall prepare a draft inventory report, according to SHPO and/or  
1942 participating Tribe(s) templates and guidelines, and work with the SHPO and/or  
1943 participating Tribes, until a final property inventory is approved. The designated  
1944 responsible party shall use staff or contractors that meet the Secretary's Professional  
1945 Qualifications for the appropriate discipline.

1946  
1947 G. National Register and National Historic Landmark Nominations

1948  
1949 Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with  
1950 the SHPO and/or participating Tribes to identify the individual properties that would  
1951 benefit from a completed National Register or National Historic Landmark nomination  
1952 form. Once the parties have agreed to a property, the designated responsible party shall

1953 continue to coordinate with the SHPO and/or participating Tribes, through the drafting of  
1954 the nomination form. The SHPO and/or participating Tribe(s) shall provide adequate  
1955 guidance to the designated responsible party during the preparation of the nomination  
1956 form and shall formally submit the final nomination to the Keeper for inclusion in the  
1957 National Register. The designated responsible party shall use staff or contractors that meet  
1958 the Secretary's Professional Qualifications for the appropriate discipline.  
1959

1960 H. Geo-References of Historic Maps and Aerial Photographs  
1961

1962 Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with  
1963 the SHPO and/or participating Tribe(s) to identify the historic maps and/or aerial  
1964 photographs for scanning and geo-referencing. Once a list of maps and/or aerial  
1965 photographs have been agreed upon, the designated responsible party shall continue to  
1966 coordinate with the SHPO and/or participating Tribes through the scanning and geo-  
1967 referencing process and shall submit drafts of paper maps and electronic files to the  
1968 SHPO, and/or participating Tribe(s) for review. The final deliverable shall include a paper  
1969 copy of each scanned image, a geo-referenced copy of each scanned image, and the  
1970 metadata relating to both the original creation of the paper maps and the digitization  
1971 process.  
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**Appendix XXXXX**  
**Tribal Areas of Interest within the State of Florida**

**Tribe**  
Counties included within Area of Interest  
Project Types of Interest  
Any Excluded Project Types  
Preferred Method of Communication