

**PROGRAMMATIC AGREEMENT
AMONG
FEDERAL EMERGENCY MANAGEMENT AGENCY,
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER, AND
SOUTH DAKOTA OFFICE OF EMERGENCY MANAGEMENT**

WHEREAS, the mission of the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards; and

WHEREAS, in the State of South Dakota, FEMA administers some or all of its federal assistance programs, set forth in Appendix A (Programs), pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296 (2002) (codified as amended at 6 U.S.C. § 101 *et seq.*); Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); the Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295 (2006) (as amended); implementing regulations contained in Title 44 of the Code of Federal Regulations (C.F.R.); and such other acts, implementing regulations, or Congressionally authorized programs currently in effect, or as enacted from time to time; and

WHEREAS, FEMA has determined that implementing its Programs may result in Undertakings (as that term is defined by 16 U.S.C. § 470w and 36 C.F.R. § 800.16(y)) that may affect historic properties listed in or eligible for the National Register of Historic Places (NRHP), and FEMA has consulted with the South Dakota State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act (NHPA), Pub. L. No. 89-665 (1966) (codified as amended at 16 U.S.C. § 470f) (Section 106) and Section 110(f) of the NHPA (codified as amended at 16 U.S.C. § 470h-2), and Section 106's implementing regulations at 36 C.F.R. Part 800; and

WHEREAS, as a result of FEMA implementing its Programs, the South Dakota Office of Emergency Management (SDOEM) will receive financial, direct, and/or technical assistance from FEMA and will in turn provide monies and other assistance to Subgrantees for FEMA Programs, SDOEM has participated in this consultation and has agreed to be a signatory to this Programmatic Agreement (Agreement); and

WHEREAS, pursuant to 36 C.F.R. § 800.14(b)(3) and 36 C.F.R. § 800.6(a)(1)(i)(C), FEMA notified ACHP of its intention to prepare an Agreement under 36 C.F.R. § 800.14(b)(3) by providing the documentation specified in 36 C.F.R. § 800.11(e), and ACHP declined the invitation to participate; and

WHEREAS, in anticipation or in the immediate aftermath of a Presidential declared disaster (Disaster) impacting the State of South Dakota, it may become necessary for FEMA to conduct critical preparedness, response and recovery activities to safeguard public health and safety and to restore vital community services and functions before, during, and or following a Disaster; and

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

WHEREAS, FEMA has engaged in government-to-government consultation with Tribes having an interest in the State of South Dakota including the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation; Crow Creek Sioux Tribe of the Crow Creek Reservation; Flandreau Santee Sioux Tribe; Lower Brule Sioux Tribe of the Lower Brule Reservation; Oglala Sioux Tribe of the Pine Ridge Reservation; Rosebud Sioux Tribe of the Rosebud Sioux Indian Reservation; Yankton Sioux Tribe, and pursuant to 36 CFR § 800.2 (c)(2)(ii)(E) has invited the Tribes to enter into this or another agreement as a signatory specifying how FEMA and the Tribes will carry out Section 106 responsibilities, including the confidentiality of information; and

WHEREAS, all of the above-referenced Tribal Nations have chosen to negotiate separate programmatic agreements or other protocols with FEMA; and

WHEREAS, a wide variety of government agencies, Tribes, historical organizations, and public entities have been identified by FEMA in consultation with SHPO as potentially interested parties to the Agreement, and have been invited to participate in consultation. FEMA staff has communicated with each of these parties in an attempt to solicit views and comments regarding the Agreement. Each organization was given 21 days to comment. Responses were received from # of the # individuals and organizations contacted. Their comments have been considered in drafting this Agreement;

WHEREAS, FEMA, SDOEM, and SHPO acknowledge that implementation of these Programs will be more effective if, pursuant to 36 C.F.R. § 800.14(b), this Agreement is in place to define roles and responsibilities in the Section 106 review process, eliminate the need for further SHPO review of certain activities with little potential to adversely affect historic properties, and streamline reviews so that the effects of Undertakings on historic properties may be considered while minimizing delays to FEMA's delivery of federal assistance;

NOW, THEREFORE, FEMA, SDOEM, SHPO, and ACHP agree that FEMA Programs in the State of South Dakota shall be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all resulting Undertakings and effectively integrate historic preservation compliance considerations into the delivery of FEMA assistance.

STIPULATIONS

FEMA shall ensure that the following Stipulations are carried out and will not authorize implementation of an individual Undertaking until the terms of this Agreement have been met.

I. GENERAL

A. Applicability

1. The execution of this Agreement supersedes the terms of any previously executed agreement between FEMA and SHPO.
2. This Agreement applies to the Programs as implemented after the execution of the Agreement and will remain in effect until the expiration of the Agreement. In the event that a specific Disaster occurs before the expiration date, the Agreement shall remain in effect for that specific Disaster so long as the Disaster remains open for funding.
3. Pursuant to 36 C.F.R. § 800.12(d), immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 and 36 C.F.R. Part 800.
4. Pursuant to 44 C.F.R. § 206.110(m), assistance to individuals and households provided under 44 C.F.R. Part 206, Subpart D and Section 408 of the Stafford Act, including funding for home repair and replacement, content replacement, personal property, transportation and healthcare expenses, is exempt from the provisions of Section 106. This exemption does not apply, however, to ground disturbing activities and construction related to 44 C.F.R. §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement housing), and 206.117(b)(4) (permanent housing construction), 206.117(c)(1)(vi) (privately owned access routes) and rental units (multi-family repair). FEMA will engage in Section 106 consultation for these non-exempt activities.
5. FEMA has determined that the following types of activities have limited or no potential to affect historic properties and FEMA has no further Section 106 consultation responsibilities, pursuant to 36 CFR § 800.3(a)(1):
 - a. Administrative actions such as personnel actions, travel, procurement of services, supplies (including vehicles and equipment) for the support of day-to-day and emergency operational activities, and the temporary storage of goods provided storage occurs within existing facilities or on previously disturbed soils.

- b. Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents.
- c. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.
- d. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.
- e. 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 and will not alter historic building fabric or cause ground disturbance.
- j. Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction and excluding demolition. The Grantee will ensure that applicants agree to secure their property from physical alteration, illegal entry, and damage until any applicable requirements of this Agreement are fulfilled. The applicant community will agree to these terms as a condition of its acquisition grant before FEMA will release any related funding.
- k. Reimbursement of a Subgrantee's insurance deductible, when the deductible is the total FEMA eligible cost for the project.
- l. 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.
- m. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
- n. Unemployment assistance.
- o. Distribution of food coupons.
- p. Legal services.

- q. Crisis counseling.
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- 6. This Agreement applies to Undertakings involving multiple federal agencies. If some or all of the federal agencies involved in the Undertaking designate FEMA as the lead federal agency pursuant to 36 C.F.R. § 800.2(a)(2), FEMA will act on the collective behalf of the agencies to fulfill all Section 106 consultation responsibilities. Federal agencies that do not designate FEMA as the lead federal agency remain individually responsible for their compliance with Section 106 and 36 C.F.R. Part 800.
 - 7. Any FEMA Programs authorized by the United States Congress prior to the termination date of the Agreement may be included in this Agreement. Any change in the FEMA name, Programs, or organizational structure will not affect this Agreement.
- B. Roles and Responsibilities of the Signatories
- 1. FEMA:
 - a. FEMA shall use federal, state, or contractor staff whose qualifications meet *The Secretary of the Interior's Professional Qualification Standards* 1983 (Secretary's Professional Qualifications) as set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended from time to time, to make determinations of National Register eligibility and effect. FEMA's Federal Preservation Officer (FPO) shall determine whether such staff meet the Secretary's Professional Qualifications and have the required discipline(s). FEMA acknowledges that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and/or cultural significance to them. Tribal leaders and, as appropriate, their representatives shall decide who meets qualifications/standards as defined by their Tribes.
 - b. In cases where FEMA requests that another federal agency, SDOEM, or a state agency other than SDOEM, identify and evaluate historic properties on behalf of FEMA, as described in 36 C.F.R. § 800.4(b)-(c), FEMA shall ensure that all work done on its behalf is done by staff that meet Secretary's Professional Qualifications, as determined by the FEMA FPO. FEMA will review any National Register eligibility determination and make its own findings of effect resulting from the performance of these delegated activities prior to submitting such determinations to SHPO.
 - c. Prior to authorizing the release of funds for individual projects requiring grant conditions pursuant to this Agreement, FEMA will fully inform SDOEM of all stipulations and conditions to insure they are understood by SDOEM and conveyed to any Subgrantee, pursuant to Stipulation I.B.3.
 - d. FEMA shall provide the signatories with an annual report for the previous fiscal year by January 15th following the end of the fiscal year for every year that this

Agreement is in effect. This annual report will summarize the actions taken to implement the terms of this Agreement, including:

- i. A summary of projects reviewed using Programmatic Allowances (Allowances) and a listing of projects requiring a cultural resources survey and/or individual consultation;
- ii. A summary of projects reviewed pursuant to Stipulation V.C;
- iii. The number of properties added to state cultural resource inventories;
- iv. A summary of archaeological activities;
- v. A summary of new agreement documents executed and treatment measures undertaken; and
- vi. Recommendations for additional actions that could be considered for inclusion as Programmatic Allowances in Appendices B & D.

2. SHPO:

- a. SHPO shall review FEMA's National Register eligibility determinations and FEMA's effect findings and provide comments within the timeframes required by this Agreement.
- b. If, as a result of a specific declared Disaster, SHPO staff is unable to meet the demands of the situation, SHPO will consult with FEMA at the earliest possible time to seek a solution.
- c. FEMA shall invite SHPO to participate in initial disaster scoping coordination for each declared Disaster.
- d. When requested during recovery operations, SHPO staff will be available as resources and for informal consultation through written requests, telephone conversations or electronic media.

3. SDOEM:

- a. SDOEM will work in partnership with FEMA to ensure that all Subgrantees are fully informed of Section 106 requirements as outlined in this Agreement. This includes providing Subgrantees with guidance on in-kind repair pursuant to the Secretary's *Standards for the Treatment of Historic Properties* 1995 (Standards), 36 C.F.R. Part 68, and techniques to avoid or minimize adverse effects to historic properties. This also includes ensuring that Subgrantees understand and acknowledge conditions that may be placed upon both disaster and non-disaster

grant projects as a result of Section 106 consultation and the provisions of this Agreement.

- b. SDOEM will ensure that Subgrantees understand that failure to comply with the terms of this Agreement and any project-specific conditions could jeopardize FEMA funding.
- c. SDOEM will notify FEMA as soon as possible of any proposed change to the approved scope of work for an Undertaking. SDOEM shall also direct a Subgrantee not to implement the changes to the proposed scope of work until SDOEM informs the Subgrantee that any additional consultation required by this Agreement is complete.
- d. SDOEM shall notify all Subgrantees of their responsibilities under Stipulation V.B.1 with respect to unexpected discoveries.
- e. SDOEM shall participate in any meeting and/or conference call convened by FEMA to review the effectiveness of the Agreement.
- f. SDOEM shall participate in an initial disaster scoping coordination for each declared Disaster.

C. Timeframes

1. All time designations will be in calendar days. If any signatory does not comment on a determination related to a proposed action within an agreed upon timeframe, FEMA may assume the signatory's concurrence with FEMA's determination.
2. Due to the varied nature of FEMA-funded Undertakings, the response times to FEMA's requests for comment/concurrence will vary as set forth below. At the time of submitting the consultation request FEMA will notify SHPO of the appropriate response time pursuant to this Agreement.
 - a. In a Federally declared emergency (Disaster Response and Recovery Program), SHPO will respond to any FEMA request for comments within three (3) days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.
 - b. For Undertakings associated with Programs authorized pursuant to Titles IV and V of the Stafford Act (Major Disaster Assistance), the response time shall be ten (10) days or for determinations of National Register eligibility and findings of effect.
 - c. For Undertakings associated with all other Programs (see Appendix A, Preparedness Grants), the response time shall be thirty (30) days, in accordance

with the Section 106 regulations, unless an Act of Congress mandates an expedited timeframe for consultation. Under such circumstances, FEMA will consult with the SHPO to develop a consultation strategy.

- d. FEMA will identify the applicable review timeframes in its correspondence when making a consultation request of the SHPO or other party.
- e. To expedite project review, FEMA may enter into informal consultation via e-mail, phone or other means if FEMA deems it necessary to obtain information from SHPO prior to making a determination of eligibility or finding of effect.

II. INITIAL COORDINATION FOLLOWING DECLARATION OF A DISASTER

- A. As soon as possible following a Stafford Act major disaster or emergency declaration (which are occasions where a determination has been made by the President to offer Federal assistance to supplement state and local disaster relief efforts), FEMA will notify SHPO of the declaration and provide a list of the designated counties.
- B. Within ten (10) days of establishing a Joint Field Office (JFO), FEMA will coordinate with SHPO and SDOEM to establish points of contact and protocols for the implementation of the Agreement. FEMA will further provide information to the SHPO about the types of damages identified during the Preliminary Damage Assessment (PDA).
- C. FEMA and SDOEM will provide guidance on Program issues and processes to SHPO and all Subgrantees. FEMA and SDOEM will also present information related to the Section 106 consultation process to all Subgrantees at briefings and kickoff meetings.
- D. FEMA will consult with other federal agencies having the authority to conduct Undertakings related to the Programs to assist such agencies' compliance with applicable historic preservation laws and regulations.
- E. In response to a file search request SHPO will provide FEMA with available information about historic properties within the declared disaster area and work with FEMA, local governments, and other interested parties to jointly compile a list of geographic areas with a high potential for containing unidentified or unevaluated historic properties.

- F. In the aftermath of a specific declared Stafford Act major disaster or emergency, FEMA and SHPO may identify National Register-eligible properties that as a result of the disaster may no longer be eligible for listing pursuant to 36 C.F.R. Part 60. For those Undertakings involving such properties FEMA will conclude its Section 106 review for that Undertaking and document the decision in the project file. If FEMA and the SHPO do not agree on whether a National Register or State Register-listed property has retained its integrity, FEMA will review all Undertakings that may affect the property in accordance with Stipulation III.C.
- G. FEMA will solicit public involvement in the Section 106 consultation process in accordance with 36 C.F.R. § 800.2(d). SHPO will assist FEMA in identifying any groups, organizations, or individuals that may have an interest in historic properties affected by a particular disaster. FEMA and SHPO may jointly or individually contact these interested parties to inform them of this Agreement and to request information on the location of damaged historic properties.
- H. If FEMA is informed that a National Historic Landmark (NHL) has been damaged as a result of a specific declared Stafford Act major disaster or emergency, FEMA will promptly notify SHPO, the Secretary of the Interior's NHL Program Manager at the National Park Service (NPS) Intermountain Regional Office and the FEMA FPO.
- I. FEMA and SHPO will provide guidance to local jurisdictions in identifying staging and landfill sites for debris disposal, chipping of clean vegetative debris, or performing other types of large-scale work efforts, if applicable, that will have minimal or no effect on historic properties. FEMA and SHPO will work out the guidance details based on the scale and nature of the Undertakings during their first post-disaster meeting.

III. PROJECT REVIEW

- A. Expedited Project Review Under Emergency Circumstances
 - 1. Immediate rescue and salvage operations conducted in response to a declared Stafford Act major disaster or emergency to preserve life and property are exempt from the provisions of Section 106 and 36 C.F.R. Sec. 800.12(d).
 - 2. As part of the Declaration process, FEMA will define the time interval during which the disaster causing incident occurs (the incident period) as defined in 44 CFR § 206.32(f). FEMA may approve Federal assistance and/or funding for emergency work (as defined in 44 CFR § 206.201(b)) that occurs during the incident period, including work already completed, in response to an immediate threat to human health and safety or improved property. Pursuant to 36 CFR § 800.12(d), FEMA may conduct expedited review of emergency Undertakings for thirty (30) days from the beginning of the incident period.

3. Should FEMA determine that it is necessary to extend the expedited review period beyond the initial thirty (30) days, FEMA will, in thirty (30) day increments, as needed, notify SHPO in writing.
4. For all emergency Undertakings, FEMA will determine the following:
 - a. If the Undertaking is an immediate rescue and salvage operations conducted in response to an event to preserve life and property, FEMA has no Section 106 consultation responsibilities in accordance with 36 CFR § 800.12(d); or
 - b. If the Undertaking meets one or more of the Allowances in Appendix B of this Agreement, FEMA will complete the Section 106 consultation process pursuant to Stipulation III.B. Programmatic Allowances.
 - c. If FEMA determines that the emergency Undertaking will adversely affect a historic property during this expedited review period, to the extent practicable FEMA may propose treatment measures that would address adverse effects during implementation, and request the comments of SHPO within three (3) days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period. FEMA may elect to consult with SHPO regarding the emergency Undertaking at any point before or during the implementation of an emergency Undertaking if FEMA determines circumstances are appropriate for expedited consultation.
 - d. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA will clarify that an “expedited Undertaking review” is being requested.
 - e. FEMA will take into account any timely comments provided by SHPO and notify the parties of how their comments were taken into consideration by FEMA.
 - f. Should SHPO not comment within three (3) days, FEMA may fund the emergency Undertaking based on the available information. This will complete the Section 106 review for the Undertaking.

B. Programmatic Allowances

1. If FEMA determines that an Undertaking conforms to one or more of the Allowances in Appendix B of this Agreement, FEMA will document this finding in the project file and conclude its Section 106 consultation.
2. For Undertakings that FEMA determines do not meet the Allowance criteria, FEMA shall complete the Section 106 consultation process in accordance with Stipulation III.C.

3. New Allowances may be added to this Agreement in accordance with Stipulation VI.D.

C. Standard Project Review

For Undertakings not exempt from further Section 106 review in accordance with Stipulations I.A.3, I.A.4, III.A, or III.B, FEMA will follow standard review protocols as set forth in 36 CFR 800 except as provided below.

1. *Resolution of Adverse Effect*

- a. If FEMA determines that an Undertaking will adversely affect a historic property, it will notify the consulting parties of its decision and provide documentation as required by 36 C.F.R. § 800.11(e) subject to the confidentiality provisions of Section 304 of the NHPA, 16 U.S.C. 470 and 36 C.F.R. § 800.11(c). FEMA will resolve the adverse effects through one of the following methods depending upon the nature and scale of the adverse effect, as well as the determination of the historic property's significance on a local, state or national level:
 - i. *Abbreviated Consultation:* Should FEMA and SHPO agree that an Undertaking may adversely affect a historic property and that the Undertaking substantially complies with the applicable Secretary's standards, FEMA and SHPO may also agree that conditions or mitigation measures are not necessary to offset adverse effects and that an MOA will not be developed. FEMA will confirm this agreement in writing with the SHPO, SDOEM, and any other consulting party. Unless SHPO, SDOEM, or other consulting party objects within fourteen (14) days of receipt, FEMA will complete the consultation and may fund the Undertaking. Should consensus agreement not be achieved using this process or its use is not appropriate given the scale of adverse effects, FEMA shall resolve the adverse effect(s) using procedures outlined in Stipulations III.C.6.a.ii, III.C.6.a.iii, or III.C.6.a.iv, as appropriate.
 - ii. *Standard Treatment Measures:* FEMA and SDOEM may propose to the SHPO and consulting parties the use of one or more Standard Treatment Measures to minimize or mitigate adverse effects associated with an Undertaking. The use of Standard Treatment Measures outlined in Appendix C will not require the execution of a Memorandum of Agreement (MOA) or Secondary Agreement.

FEMA will take into account the nature of historic properties affected and the severity of adverse effects before proposing the use of Standard Treatment Measures. FEMA will not seek to resolve adverse effects through application of Standard Treatment Measures if an Undertaking is likely to adversely affect a known human burial or an NHL. Following joint discussions, FEMA will put forth a written proposal for the implementation of a specific Standard Treatment Measure, or combination of Standard Treatment Measures, to the

SHPO and other consulting parties with the intent of expediting the resolution of adverse effects. Unless these parties object within fourteen (14) days of receipt, FEMA will proceed with the use of Standard Treatment Measure(s) and will fund the Undertaking. Funding and implementation details of Standard Treatment Measure(s) for specific Undertakings may vary by FEMA grant program, however, FEMA will provide written notice to the signatories and consulting parties within sixty (60) days of the completion of the Standard Treatment Measure(s). This written notice will serve as confirmation that the Standard Treatment Measure(s) for a specific Undertaking have been implemented. Should consensus agreement not be achieved on FEMA's proposed use of Standard Treatment Measures, FEMA shall resolve the adverse effect(s) using procedures outlined in Stipulation III.C.6.a.iii or III.C.6.a.iv.

- b. When an Undertaking will adversely affect an archaeological property and SHPO concurs, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery or other scientific means.
 - i. FEMA will follow the ACHP's "*Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*" published in the Federal Register (64 Fed. Reg. 27085-27087 (May 18, 1999)) and consult with the other consulting parties to prepare a data recovery plan. This data recovery plan will incorporate the provisions contained in the South Dakota SHPO's current *cultural resource survey manual* or other format as may be agreed to by FEMA and SHPO.
 - ii. FEMA and SDOEM shall work with the SHPO to ensure that all records produced during the course of data recovery operations are curated at a repository within the State of South Dakota and in accordance with 36 C.F.R. Part 79, "Curation of Federally Owned and Administered Archaeological Collections," and relevant State Archaeologist's requirements.
 - iii. For sites where FEMA determines that human remains or items of cultural patrimony, as defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001) or the *Code of South Dakota Regulations [CCR] 8 CCR 1504-7 HISTORICAL, PREHISTORICAL, AND ARCHAEOLOGICAL RESOURCES*, are present, or when other treatment measures are appropriate, FEMA will consult with identified consulting parties, including federally-recognized Tribes, when appropriate, to resolve the adverse effects. See Stipulation V.B.6 for further reference to the treatment of human remains.
- c. When an Undertaking will adversely affect an NHL, FEMA also will notify and invite the Secretary of the Interior and the ACHP to participate in consultation, pursuant to 36 C.F.R. § 800.10 ("Special requirements for protecting NHLs"). FEMA shall send

notice to the Secretary's NHL Program Manager at the NPS Regional Office in Philadelphia, Pennsylvania.

IV. PUBLIC PARTICIPATION

- A. FEMA recognizes that the views of the public are essential to informed decision making in the Section 106 review process. FEMA will consult with SHPO to determine if there are individuals, organizations or other entities with a demonstrated interest in the preservation of specific historic resources that should be made aware of a particular Undertaking. If such parties are identified, FEMA will provide them with information regarding the Undertaking and its effect on historic properties, consistent with the confidentiality provisions of Section 304 of the NHPA, 16 U.S.C. 470 and 36 C.F.R. § 800.11(c). When FEMA has determined that an Undertaking will have an adverse effect upon historic properties, FEMA will provide the public an opportunity to comment upon how to resolve the adverse effect.
- B. In accordance with the outreach strategy developed in consultation with SHPO for involving the public, FEMA will identify the appropriate stages of project review for seeking public input during the Section 106 consultation process. FEMA will notify the public of proposed actions in a manner that reflects the nature, complexity and effect(s) of the Undertaking, the likely public interest given FEMA's specific involvement, and any confidentiality concerns of Tribes, private individuals and businesses.
- C. FEMA will consider views provided by the public within designated project-specific timeframes, and will consider all written requests of individuals and organizations to participate as consulting parties, and in consultation with SHPO and SDOEM determine which should be consulting parties. FEMA may invite individuals and organizations that will assume a specific role or responsibility outlined to participate as a concurring party.
- D. FEMA may also provide public notices and the opportunity for public comment or participation in an Undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations as set out at 44 C.F.R. Part 10, as well as Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 C.F.R. Part 9.

V. OTHER CONSIDERATIONS

- A. Changes to an Approved Scope of Work
 - 1. SDOEM will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking related to a historic property. FEMA may authorize SDOEM to proceed with the change if it meets an Allowance in Appendix B, or if the change can be modified to conform to the Secretary's Standards. FEMA may consult again with SHPO to determine if the change will have an effect on the historic property.

2. If FEMA determines that the change does not meet an Allowance, or if FEMA and SHPO determine that the change cannot be modified to conform to the Secretary's Standards, FEMA shall initiate adverse effect consultation pursuant to Stipulation III.C.6.

B. Unexpected Discoveries

1. Subgrantees are required to notify SDOEM immediately if it appears that a FEMA funded Undertaking has affected a previously unidentified property or affected a known historic property in an unanticipated manner.
2. SDOEM will require the Subgrantee to immediately stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until SDOEM notifies the Subgrantee that FEMA has completed consultation with the SHPO and other consulting parties.
3. SDOEM will notify FEMA immediately of the previously unidentified property or unexpected effects so that FEMA may take prompt action to address the emergency nature of the situation.
4. FEMA will notify SHPO and other interested parties of the discovery, at the earliest possible time, and consult to develop actions to take into account the effects of the Undertaking. FEMA will notify SHPO of any time constraints, and all parties will mutually agree upon timeframes for this consultation. SDOEM and the Subgrantee will participate in this consultation in keeping with their level of responsibility for project implementation. FEMA will provide SHPO with written recommendations to take into account the effects of the Undertaking. Recognizing the need for swift resolution, SHPO will respond to the written recommendation within five (5) days of its receipt.
5. If SHPO does not object to FEMA's recommendations within the agreed upon timeframe, FEMA will require SDOEM, to modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, FEMA and SHPO will consult further to resolve this objection through actions including, but not limited to, identifying project alternatives that may result in the Undertaking having no adverse effect on historic properties, or proceeding in accordance with Stipulation III.C.6.
6. If human remains are discovered during the course of project implementation, SDOEM shall immediately stop construction activities in the vicinity of the discovery and follow the guidance outlined in the NPS publication *National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places*, and consider the Native American Graves Protection and Repatriation Act of 1990 (PL 101-160), and as appropriate, the *Code of South Dakota Regulations*, which requires the reporting of discovered human remains to law enforcement officials and the State Department of Health [**South Dakota Statutes – [REDACTED]**]. In turn, SDOEM will notify

FEMA immediately and require the sub-grantee to cease all project activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm until FEMA consults with the Office of the State Archaeologist and receives notification that a suitable plan of action has been developed in accordance with state law. The signatories will consult to determine the appropriate implementation of the plan of action.

C. Anticipatory Actions and After the Fact Review

1. FEMA shall specifically advise SDOEM and shall require that SDOEM advise its Subgrantees in writing that they may not initiate the Undertaking for which they are seeking Federal funding prior to compliance with this Agreement. SDOEM also shall advise its Subgrantees in writing that they may jeopardize Federal funding if activities are initiated prior to compliance with this Agreement.
2. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a Subgrantee who, with intent to avoid the requirements of this Agreement or Section 106 of the NHPA, has intentionally significantly and adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed an adverse effect to occur. However, if after consultation with SHPO, FEMA determines that extraordinary circumstances justify granting assistance despite the adverse effect created or permitted by the Subgrantee, FEMA shall complete consultation for the Undertaking pursuant to the terms of this Agreement.
3. In circumstances where FEMA determines a Subgrantee has initiated an Undertaking without willful intent to avoid the requirements of this Agreement or Section 106 of NHPA, FEMA will determine if the Undertaking would have required Section 106 review in accordance with Stipulation III.C, Standard Project Review.
4. If FEMA determines no Section 106 review or consultation with SHPO would have been required pursuant to Stipulation III.C, Standard Project Review, FEMA will document this determination to the project files and consider the project Section 106 compliant.
5. If FEMA determines the Undertaking would have required Section 106 consultation, FEMA will coordinate with SHPO to determine if consultation is feasible.
 - a. If after coordination with SHPO, FEMA determines that consultation is feasible, the Undertaking will be reviewed in accordance with Stipulation III.C, Standard Project Review.
 - b. If after coordination with SHPO, FEMA determines that review is infeasible, FEMA will document that the project is noncompliant with Section 106, and the FEMA program then will make a funding eligibility decision.

6. FEMA will ensure that all Undertakings considered for after-the-fact review in accordance with this stipulation are included in the annual report.

D. Non-Disclosure of Protected Information

1. Draft Determinations of Eligibility and Determinations of Effects Documents
 - a. These documents are pre-decision documents and do not necessarily represent FEMA's final decision. Such documents are protected from disclosure to outside third parties under exemptions to the Freedom of Information Act, 5 U.S.C. 552 a.
2. Archaeological Site Forms, Archaeological Management Summaries, Draft Reports and some Final Reports
 - a. If disclosure of the information to outside third parties would cause a significant invasion of privacy, risk harm to historic resources, or impede the use of a traditional religious site by practitioners, FEMA shall invoke document protections authorized under Section 304 of the National Historic Preservation Act, 16 U.S.C. 470 and 36 CFR 800.11 (c)

E. Curation

1. FEMA and SDOEM shall work with SHPO to ensure that all records produced during the course of an archaeological survey, testing, and any data recovery operations, related to the implementation of its Undertakings, are curated at an acceptable repository within the State of South Dakota and in accordance with 36 C.F.R. Part 79, "Curation of Federally Owned and Administered Archaeological Collections," and relevant State Archaeologist's requirements.

VI. IMPLEMENTATION OF THIS AGREEMENT

A. Execution and Implementation

1. Execution of this Agreement and implementation by FEMA evidences that FEMA has afforded ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs pursuant to FEMA's authorities described on page 1 of this Agreement, and that FEMA has satisfied its Section 106 and 36 C.F.R. Part 800 responsibilities for all individual Undertakings of the Programs.
2. This Agreement may be executed in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided a complete copy, including all appendices. This Agreement will become effective on the date of the last signature. In accordance with 36 C.F.R. § 800.6(b)(1)(iv), FEMA will submit a copy of the signed Agreement, including all appendices, to the ACHP for its permanent

records.

B. Disputes to the Terms of the Agreement

1. Should any signatory to this Agreement object in writing to the terms of this Agreement, FEMA will consult with the objecting party for not more than thirty (30) days from the date of objection to resolve the objection.
2. If the objection is resolved within thirty (30) days, FEMA shall proceed in accordance with the resolution.
3. If FEMA determines within thirty (30) days that the objection cannot be resolved, FEMA will forward to ACHP all documentation relevant to the objection, including FEMA's proposed resolution. Within thirty (30) days of receipt, the ACHP will:
 - a. Concur in FEMA's proposed resolution; or
 - b. Provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding the objection; or
 - c. Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so. FEMA will take the resulting comment into account.
4. FEMA will take into account any ACHP recommendations or comments, and any comments from the other signatories, in reaching a final decision regarding the objection in accordance with 36 CFR § 800.7(c)(4). The signatories will continue to implement all other terms of this Agreement that are not subject to objection.
5. Should ACHP not respond within thirty (30) days, FEMA may assume ACHP has no comment and proceed with its proposed resolution to the objection.
6. FEMA will provide the signatories with its final written decision regarding any objection brought forth pursuant to this Stipulation.
7. FEMA may authorize any disputed action to proceed, after making its final decision.
8. At any time while this Agreement is in effect, should a member of the public object in writing to implementation of its terms, FEMA will notify the other signatories in writing and take the objection into consideration. FEMA will consult with the objecting party and, if that party so requests, the other signatories, for not more than thirty (30) days. In reaching its decision regarding the objection, FEMA will take into consideration all comments from these parties. Within thirty (30) days after closure of this consultation period, FEMA will provide the other parties with its written decision. FEMA's decision will be final.

C. Duration and Extension

1. This Agreement shall remain in effect from the date of execution for a period not to exceed **seven (7) years**, unless otherwise extended pursuant to Stipulation VI.C.2. The Agreement shall remain in effect for any Stafford Act major disaster or emergency declarations made before its expiration in order to insure the uninterrupted provision of assistance appropriately authorized under the Stafford Act.
2. The signatories may collectively agree to extend this Agreement to cover additional calendar years, or portions thereof, provided that the original Agreement has not expired or if a new Agreement is in preparation. The concurrence of the signatories to extend this Agreement will be documented in writing prior to the expiration of the initial seven (7) year period during which the Agreement is in effect or prior to the expiration of each individual extension.

D. Amendments

1. If any signatory to the Agreement determines that the Agreement cannot be fulfilled, or that an amendment to this Agreement must be made, the signatories will consult for thirty (30) days to seek amendment of the Agreement. This Agreement may be amended only upon the written consensus of the signatories. This Stipulation VI.D.1 does not apply to amendments made to Appendices A- C pursuant to Stipulation VI.D.2.
2. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances), and Appendix C (Treatment Measures) may be amended at the request of FEMA or other signatory party in the following manner:
 - a. FEMA, on its own behalf or on behalf of another signatory, shall notify all signatories to this Agreement of the intent to add to or modify the current lists of FEMA Programs, Programmatic Allowances, or Treatment Measures and shall provide a draft of the updated Appendix or Appendices to all signatories.
 - b. If no signatory party objects in writing within thirty (30) days, the FEMA Regional Administrator will date and sign the amended Appendix or Appendices and provide a copy of the amended Appendix or Appendices to all signatories.

E. Severability and Termination

1. In the event any provision of this Agreement shall be deemed contrary to, or in violation of, any applicable existing law or regulation in the State of South Dakota or the United States of America, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the Agreement shall remain in effect.

2. FEMA, SHPO or SDOEM may terminate this Agreement by providing thirty (30) days written notice to the other parties, provided that the parties consult during this period to seek amendments or other actions that would prevent termination. If this Agreement is terminated, FEMA will comply with 36 C.F.R. Part 800 or with an applicable program alternative under 36 C.F.R. § 800.14. Upon such determination, FEMA will provide the signatories with written notice of the termination of this Agreement.

3. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 C.F.R. § 800.14(a).

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DRAFT

**PROGRAMMATIC AGREEMENT
AMONG
FEDERAL EMERGENCY MANAGEMENT AGENCY,
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,
AND SOUTH DAKOTA OFFICE OF EMERGENCY MANAGEMENT**

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: _____
Doug Gore, Acting Regional Administrator
FEMA, Region VIII

Date: _____

By: _____
Steven E. Hardegen, Regional Environmental Officer
FEMA, Region VIII

Date: _____

**PROGRAMMATIC AGREEMENT
AMONG
FEDERAL EMERGENCY MANAGEMENT AGENCY,
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,
AND SOUTH DAKOTA OFFICE OF EMERGENCY MANAGEMENT**

SOUTH DAKOTA OFFICE OF EMERGENCY MANAGEMENT

**By: _____
Kristi Turman, Director**

Date: _____

DRAFT

**PROGRAMMATIC AGREEMENT
AMONG
FEDERAL EMERGENCY MANAGEMENT AGENCY,
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,
AND SOUTH DAKOTA OFFICE OF EMERGENCY MANAGEMENT**

SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER

**By: _____
Jay D. Vogt, State Historic Preservation Officer**

Date: _____

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APPENDIX A

FEMA PROGRAMS

This Appendix may be amended in accordance with Stipulation VI.C of this Agreement.

Disaster Response and Recovery Programs

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

Public Assistance Program (PA)

Purpose: This Program assists state, tribal, and local governments and certain types of private nonprofit organizations to respond to and recover from major disasters or emergencies declared by the President. Grants are provided for debris removal (Public Assistance Category A), emergency protective measures (Public Assistance Category B), and the repair, replacement, or restoration of disaster-damaged facilities (Public Assistance Categories C-G).

During some events, state, tribal, and local governments may lack the capability to perform or to contract for eligible emergency work (Public Assistance Categories A and B). In such instances, the state may request that the work be accomplished by a federal agency. FEMA may either perform the work directly or, through a mission assignment (MA), may direct appropriate federal agencies to perform the eligible work.

Hazard Mitigation Grant Program (HMGP)

Purpose: The HMGP provides grants to state, tribal, and local governments to implement long-term hazard mitigation measures after a major disaster declaration. Activities may include buyouts, retrofits, relocations, elevations, and minor flood control projects. HMGP funds are disaster funds.

Individual Assistance Programs (IA)

Purpose: These programs help 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, including emergency sheltering (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 also provide disaster assistance to individuals, such as the US Small Business Administration, Department of Agriculture, and Department of Labor.

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.

Non-Disaster Programs

Pre-Disaster Mitigation Program (PDM)

Purpose: The PDM Program provides competitive grants to state, tribal, and local governments for hazard mitigation planning and the implementation of mitigation projects before a disaster. Activities may include planning, buyouts, retrofits, relocations, elevations, minor flood control projects, and vegetative fuels reduction.

Flood Mitigation Assistance Program (FMA)

Purpose: The FMA Program provides planning, project, or technical assistance grant funds to reduce or eliminate the long-term risk of flood damage to buildings and other structures insurable under the National Flood Insurance Program.

Repetitive Flood Claims Program (RFC)

Purpose: This program provides grant funds to reduce flood damages to insured properties that have had one or more claims to the National Flood Insurance Program.

Severe Repetitive Loss Program (SRL)

Purpose: This program provides grant funding to reduce or eliminate the long-term risk of flood damage to severe repetitive loss structures insured under the National Flood Insurance Program.

Assistance to Firefighters Grant Program (ASFG)

Purpose: The AFG program provides funding for purchase of equipment and retrofit or construction of fire stations to improve first responder capabilities.

State Homeland Security Program (SHSP)

Purpose: This assistance program provides funds to build capabilities at the state and local levels and to implement the goals and objectives included in state homeland security strategies and initiatives in the State Preparedness Report.

Urban Areas Security Initiative (UASI) Program

Purpose: The UASI Program focuses on enhancing regional preparedness in major metropolitan areas. The UASI Program directly supports the National Priority on expanding regional collaboration in the National Preparedness Guidelines and is intended to assist participating jurisdictions in developing integrated regional systems for prevention, protection, response and recovery.

Metropolitan Medical Response System (MMRS) Program

Purpose: The MMRS program supports the integration of emergency management, health, and medical systems into a coordinated response to mass casualty incidents caused by any hazard. Successful MMRS Grantees reduce the consequences of a mass casualty incident during the initial period of a response by having augmented existing local operational response systems before the incident occurs.

Citizen Corps Program (CCP)

Purpose: The Citizen Corps mission is to bring community and government leaders together to coordinate community involvement in emergency preparedness, planning, mitigation, response and recovery.

State Homeland Security Program Tribal (SHSP Tribal)

Purpose: This program provides supplemental funding to directly eligible Tribes to help strengthen the nation against risks associated with potential terrorist attacks.

Nonprofit Security Grant Program (NSGP)

Purpose: NSGP provides funding support for target-hardening activities to nonprofit organizations that are at high risk of a terrorist attack and are located within one of the specific UASI-eligible urban areas.

Operation Stonegarden (OPSG)

Purpose: The intent of OPSG is to enhance cooperation and coordination among local, state and federal law enforcement agencies in a joint mission to secure the United States borders along routes of ingress from international borders to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders.

Transit Security Grant Program (TSGP)

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

Freight Rail Security Grant Program (FRSGP)

Purpose: The FRSGP funds security training for frontline employees, the completion of vulnerability assessments, the development of security plans within the freight rail industry and GPS tracking systems for railroad cars transporting toxic inhalation materials (TIH).

Intercity Passenger Rail (Amtrak)

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

Port Security Grant Program (PSGP)

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

Intercity Bus Security Grant Program (IBSGP)

Purpose: The IBSGP provides funding to create a sustainable program for the protection of intercity bus systems and the traveling public from terrorism. The program seeks to assist

operators of fixed-route intercity and charter bus services in obtaining the resources required to support security measures such as enhanced planning, facility security upgrades and vehicle and driver protection.

Trucking Security Program (TSP)

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

Buffer Zone Protection Program (BZPP)

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

Emergency Management Performance Grants (EMPG)

Purpose: The purpose of the EMPG program is to assist state and local governments in enhancing and sustaining all-hazards emergency management capabilities.

Interoperable Emergency Communications Grant Program (IECGP)

Purpose: IECGP provides governance, planning, training and exercise and equipment funding to state, territory, and local and tribal governments to carry out initiatives to improve interoperable emergency communications, including communications in collective response to natural disasters, acts of terrorism and other man-made disasters. According to the legislation that created IECGP, all proposed activities must be integral to interoperable emergency communications and must be aligned with the goals, objectives and initiatives identified in the Grantee's approved statewide Communication Interoperability Plans (SCIP). IECGP will also advance DHS near-term priorities that are deemed critical to improving interoperable emergency communications and are consistent with goals and objectives of the National Emergency Communications Plan.

Emergency Operations Center (EOC) Grant Program

Purpose: The EOC grant program is intended to improve emergency management and preparedness capabilities by supporting flexible, sustainable, secure, and interoperable Emergency Operations Centers (EOCs) with a focus on addressing identified deficiencies and needs. This program provides funding for construction or renovation of a state, local, or tribal governments' principal EOC. Fully capable emergency operations facilities at the state and local levels are an essential element of a comprehensive national emergency management system and are necessary to ensure continuity of operations and continuity of government in major disasters caused by any hazard.

Driver's License Security Grant Program

Purpose: The purpose of the Driver's License Security Grant Program is to prevent terrorism, reduce fraud, and improve the reliability and accuracy of personal identification documents that states and territories issue.

Chemical Stockpile Emergency Preparedness Program

Purpose: The Chemical Stockpile Emergency Preparedness Program (CSEPP) is a partnership between FEMA and the U.S. Department of the Army that provides emergency preparedness assistance and resources to communities surrounding the Army's chemical warfare agent stockpiles. CSEPP's mission is to "enhance existing local, installation, tribal, state and federal capabilities to protect the health and safety of the public, work force and environment from the effects of a chemical accident or incident involving the U.S. Army chemical stockpile."

APPENDIX B

PROGRAMMATIC ALLOWANCES:

Undertakings Not Requiring SHPO Review

These Programmatic Allowances (Allowances) apply to all FEMA Disaster Response and Recovery Programs and Preparedness Grant Programs that will have limited or no effect on historic properties, either because the Undertakings do not “have the potential to cause effects on historic properties, assuming such historic properties were present,” pursuant to 36 C.F.R. § 800.3(a)(1), the work will be conducted in previously disturbed areas, or the repairs will meet specific standards. As set forth at Stipulation III.B., projects falling under one or more of these Allowances will require review by qualified FEMA staff, but do not require review by the SHPO.

Allowances are organized into various categories of activities based on the types of disaster related work typically funded by FEMA’s Disaster Response and Recovery Programs (see Appendix A). These are the largest number of FEMA-funded projects annually. Categories of work include: Debris Removal, Emergency Protective Measures, Roads and Bridges, Water Control Facilities, Buildings and Equipment, Utilities, and Parks, Recreational Facilities and Other. **Allowances listed under one category may apply equally to any other category of work.**

FEMA’s Preparedness Grants Programs (see Appendix A) focus on disaster preparedness, response, and recovery. **Some of these projects may be covered under the Allowances listed in the categories above, while additional Allowances related to such Programs are listed under “Preparedness Grant Activities.”** This Appendix may be amended in accordance with Stipulation VI.C of this Agreement.

Program activities that affect historic properties will be designed to consider ways to repair rather than replace damaged historic features whenever feasible unless the severity of deterioration or destruction requires replacement of a distinctive feature. When referenced in an Allowance applied to an historic property, “in-kind” repair will meet *The Secretary of the Interior’s Standards for the Treatment of Historic Properties* (latest edition). “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. “In-kind” mortar will also match the strength, content, color and joint tooling of historic mortar.

“Previously Disturbed Ground” will refer to soils that are not likely to possess intact and distinct soil horizons and thus have the reduced likelihood of possessing archaeological artifacts, features, and phenomena within their original depositional contexts. Should an unexpected discovery be encountered, work must stop and compliance with Stipulation IX of this Agreement is required.

“Temporary Actions” include the following:

- Installation of stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations, and does not affect known archaeological sites or features or areas of archaeological sensitivity.
- Temporary Installation of a (Bailey-type) bridge over an existing structure or at a previously disturbed location, such as a former bridge location, to allow passage of emergency vehicles.
- Dewatering flooded developed areas of an acre or less by pumping, unless an archaeologically sensitive area is identified.
- Installation of barriers on previously disturbed ground.
- Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage, irreversible alterations, or significant loss of historic fabric.

I. DEBRIS REMOVAL

Provided the proposed program activity will not disturb known archaeological sites or features or disturb more soil than previously disturbed by the original construction or installation. For projects where the extent of past disturbance or the APE required for construction is unclear, a site inspection will be conducted by a qualified FEMA staff member.

- A. Debris collection and removal from public rights-of-way and public areas (e.g., parks, playgrounds, boat launches, campgrounds).
- B. Establishment of non-hazardous debris staging or temporary storage areas at licensed transfer stations, or at other locations if such areas are capped with hard-top or gravel surfaces (e.g., parking lots, paved areas at such facilities as conference centers, shopping malls, airports or roads), provided other historical issues do not exist.
- C. Transport to and disposal of debris in licensed solid waste facilities or landfills. In the case of clean woody debris, wood chips or bucked limbs and trunks may be placed at temporary storage sites for subsequent sale or re-distribution for mulch, landscaping, fuel/biofuel or other environmentally sound purposes. Burning of clean woody debris may occur at a permitted site.
- D. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
- E. Removal of woody debris from cemeteries and historic properties provided that heavy equipment and other machinery are not operated on or staged on sensitive landscapes

(e.g., areas with potential human remains and locations of known or suspected archaeological sensitivity). In instances where damage might occur, hand clearing will be undertaken.

- F. Removal of debris from private property, when it is so widespread that public health, safety or the economic recovery of the community is threatened, provided that historic buildings are not affected, ground disturbance is limited to a few inches, and in-ground elements, such as driveways, walkways or swimming pools are left in place or filled.
- G. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or may be disposed of at an existing licensed or permitted spoil site.
- H. Wildfire Mitigation Projects involving the removal of woody debris such as branches, limbs, and uprooted trees (under a 6-inch diameter) by non-mechanical means from within the defined wildfire boundaries of improved property or infrastructure. This Allowance includes the transport on existing road surfaces and disposal of such waste to existing approved waste facilities or landfills and establishing or expanding temporary non-hazardous debris staging and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces.
- I. Vegetation management, including installation of natural wind breaks, living snow-fences, shoreline plantings, natural dune restoration using native vegetation and sand-fencing, urban-forest practices, and landslide stabilization.
- J. Funding snow removal following a disaster declaration by the President for a snowstorm or severe winter storm in accordance with FEMA Disaster Assistance Policy 9523.1.

II. **EMERGENCY PROTECTIVE MEASURES** - those prudent actions taken by a community before, during, and following a disaster to warn residents, reduce the disaster damage, ensure the continuation of essential public services, and protect lives and public health or safety. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 (36 C.F.R. § 800.12.d).

This list includes a number of emergency actions that do not have the potential to cause effects to historic properties, per 36 C.F.R. § 800.3(a)(1). It also includes Undertakings that will not disturb previously undisturbed ground or that involve historic structures, but meet specific conditions.

- A. Emergency mass care and shelter.
- B. Labor, equipment, and materials used to provide security in the disaster area, including lease, rental, purchase, or repair of equipment or vehicles and payment for staff and contract labor.

- C. Removal of health and safety hazards, including disposal of dead animals, pumping of trapped floodwaters that threaten improved property; pumping flooded basements, septic tanks or decontamination of wells; and vector control, specifically the application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.
- D. Installation and removal of temporary traffic control devices, including pre-formed concrete barriers and fencings.
- E. Construction of emergency protective measures to protect lives or improved property, including temporary levees, berms, dikes, and sandbagging by itself or on top of a levee.
- F. Emergency placement of sand on a natural or engineered beach when necessary to protect improved property from immediate threat from a 5-year event.
- G. Placement of emergency berms inland of improved property where severe erosion has occurred, with work performed under the authority of the U.S. Army Corps of Engineers and/or state environmental enforcement agency's permits for the sand/clay deposit areas and upland or offshore borrow sites, including dredge spoil piles.
- H. Installation of scaffolding, temporary barriers (e.g., chain link fences, Jersey barriers), polyethylene sheeting, or tarps on historic buildings, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
- I. Installation of temporary emergency power generators, as long as the exterior fabric of a historic structure is not altered.
- J. Installation of temporary structures for uses such as school classrooms or offices, for providing essential public services, such as police, fire, rescue and medical care, and temporary housing for disaster victims, provided installation occurs at one the following location categories:
 - 1. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility hookups.
 - 2. Paved areas, such as parking lots and paved areas at such facilities as conference centers, shopping malls, airports, business parks, military bases [when all utilities installed to address the emergency action are above ground].
 - 3. Sites that have been *previously cleared and prepared* for planned construction in accordance with the provisions of all applicable licenses and permits, such as land being developed for public housing, office buildings, city parks, ball fields, military bases, schools, etc. when all utilities are installed above-ground and no additional ground disturbance will be required to accommodate the site's use for the emergency action.

4. Areas previously filled to depths of at least six feet so that subsurface utilities can be installed.

K. Installation of a temporary (Bailey-type) bridge over an existing structure or at a previously disturbed location, such as a former bridge location, to allow passage of emergency vehicles.

III. ROADS, BRIDGES and SMALLER TRANSPORTATION FEATURES - provided that excavation or site work will not disturb previously undisturbed soil or known archaeological sites or features. *The intent is to avoid any archaeologically sensitive areas that may be present beyond the existing footprint. Previously identified "historic" road corridor segments will require consultation with the SHPO unless the SHPO has previously documented through a National Register nomination or other planning document the character defining features of the corridor and the excavation or site work will clearly have no effect on such features.*

A. Repair of roads to pre-disaster geometric design standards and conditions, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes, provided that all work is conducted from within previously disturbed areas of the existing road right-of-way, typically considered the outer edge of one road ditch to the outer edge of the other.

B. Repair of road composition with in-kind materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and compacting of road bed soil and the repair of asphalt, concrete, or cement modified soils. *This Allowance applies to the repair of pre-1950 brick or stone paving when repair materials are in-kind and the post-repair appearance of the road surface matches its pre-disaster appearance.*

C. Repair, replacement, or upgrade of culverts and associated head walls and wing walls within rivers, streams, or drainage ways, including any modest increase in capacity for mitigation purposes or to meet current codes and standards, *provided that they substantially conform to their pre-existing function, footprint, depth or profile, and location, and/or that related excavation will not disturb any previously undisturbed areas.* Also included is the repair, replacement, upgrade or installation of culverts functioning as cross-drains beneath roads or within drainage ditches, as well as related concrete or synthetic elements of culverts, such as flared end sections, riprap or small headwalls. **NOTE: Stone culverts and stone arches beneath roadways are specifically excluded from this Allowance. The use of a temporary by-pass bridge or culvert and related approach work (such as additional bank sloping) are also not included under this Allowance.**

- D.** Borrow material if from a commercial source, or a stock tank berm, dug-out, or reclaimed ditch provided the original surface of the ground is not impacted by the removal method.
- E.** Repairs to slope failures (road slips and landslides) that do not require grading of undisturbed soils and where staging areas are in improved existing rights of way.
- F.** Re-establishment, armoring, skimming and/or upgrading of existing ditches to original width and depth or to meet codes and standards.
- G.** Stabilization of hazardous slopes within transportation rights-of-way. Stabilization methods include the installation of footings, foundations, or retaining walls and systems, such as gabion basket walls, crib walls, and pile and lag walls. Work will not exceed the limits of previously disturbed portions of the rights-of-way without SHPO consultation, and will not take place in close proximity of structures that are listed in or eligible for listing in the National Register or are located within National Register eligible or listed Historic Districts.
- H.** In-kind repairs to bridge components, specifically abutments, wing walls, and decks, but also including scoured areas, when the area of potential effect, including staging areas, is restricted to previously disturbed portions of the right-of-way, typically considered the outer edge of one road ditch to the outer edge of the other.
- I.** Repair or replacement of non-historic bridges, where repair work, including staging areas do not exceed the existing road right-of-way, typically considered the outer edge of one road ditch to the outer edge of the other.
- J.** In-kind repair, replacement or hardening of utilities under existing improved roads/roadways or within other previously disturbed rights of way, typically considered the outer edge of one road ditch to the outer edge of the other.
- K.** Repair of driveways, parking lots, paths, trails and walkways. Repairs may include minor upgrades to prevent future erosion, such as the addition of pavement or the installation of water bars or other similar devices.
- L.** Repair of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.
- M.** In-kind repair of road lighting systems, including period lighting fixture styles.
- N.** In-kind repair of road appurtenances such as curbs, berms, fences, and sidewalks that are not brick or stone, unless they have been identified as historic elements to a historic property.
- O.** In-kind repair of freestanding exterior stone or brick walls. Consideration should first be given to identifying ways to repair rather than replace damaged historic materials whenever possible.

- P. In-kind repair of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. In the case of guardrails, the addition of safety end treatments is allowed.

IV. WATER CONTROL FACILITIES

- A. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and drainage canals, to restore the facility to its pre-disaster condition, provided that the sediment is used to repair eroded banks or is disposed at an existing licensed or permitted spoil site.
- B. Dewatering flooded developed areas of an acre or less by pumping, unless an archaeologically sensitive area is identified.
- C. Debris collection from canals, transport, and disposal in existing licensed solid waste facilities. This Allowance does not include establishment or expansion of previously unpermitted debris staging or disposal areas. However, it does apply to the use of temporary storage areas located in existing hard-topped areas with controlled drainage (such as parking lots), provided other issues do not exist. This does not include new or temporary access roads.
- D. In-kind repair of a canal's washed out trail surface and/or sub-base.
- E. In-kind repair of a canal's shoulders and stabilization.
- F. Canal towpath, berm, and adjacent river slope repairs. Repair of the embankments to functional restoration with in-kind fill material from an approved source.
- G. Canal towpath/embankment washout where entire areas of the embankment have been breeched, the embankment is functionally restored with in-kind fill material from an approved source.
- H. Canal bed scour repaired with in-kind fill material from an approved source.
- I. Repair and restoration of non-masonry seawalls or breakwaters (i.e., structures comprised of large blocks of placed stone), as well as adjacent areas of rubble or granular fill.
- J. Repair of stone revetments in front of shoreline features
- K. In-kind repair of earthen core dams and/or related spillways.
- L. Repair or replacement of any associated equipment, machinery, piping or any other non-structural item.

- M. Repair or upgrade of a waste-water treatment lagoon or other earthen feature, when all work is done within the same footprint or is confined to a previously disturbed area adjacent to it.
- N. Repair or replacement of wells, pumps, or surrounding protective structures.
- O. In-kind repair or minimal upgrade to codes and standards of existing piers, docks, boardwalks, and boat ramps, provided the footprint will substantially match the existing footprint.
- P. In-kind repairs of historic breakwaters and spillways that are listed, or are eligible for listing in the National Register, where character-defining features or elements of the structure are not altered or changed and repairs are consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards)*. Determination that any work undertaken meets the Secretary of the Interior's Standards will be made by a qualified FEMA staff member.

- V. **BUILDINGS AND EQUIPMENT** - These Allowances apply to buildings that qualify as historic properties because they are more than 50 years old (or less than 50 years old if of exceptional architectural and/or engineering significance) and are listed in or eligible for listing on the National Register of Historic Places, when all work is consistent with the Secretary of the Interior's Standards (36 C.F.R. Part 68) and when consideration has been given to identifying ways to repair rather than replace damaged historic features whenever feasible unless the severity of deterioration or destruction requires replacement of a distinctive feature. Determination that any work undertaken meets the Secretary of the Interior's Standards will be made by a qualified FEMA staff member.

Repairs to buildings younger than 50 years (unless of exceptional architectural and/or engineering significance) are not historic, do not require SHPO review, nor do they need to meet the Secretary of the Interior's Standards.

A. Interior Floors, Walls, Stairs and Ceilings

1. In-kind repair, replacement, restoration, preservation, protection, maintaining of materials, or features on interior floors, walls, stairs, ceilings and trim. The Allowance applies to repair of interior finishes, including plaster and wallboard, provided the repair is restricted to damaged areas and does not affect adjacent materials.
2. Painting and surface preparation provided color is matched to pre-existing finish and the coating and preparation is limited to material repaired or replaced or immediately adjacent thereto.
3. Repair or replacement of suspended or glued ceiling tiles.

4. In-kind replacement of sheetrock or prefabricated panel walls to their pre-disaster appearance.
5. Interior cleaning of non-porous 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 repair is restricted to damaged areas, does not affect adjacent materials, and character defining features are retained. Bleach solutions should be ¼ to ½ cup of bleach per gallon of water.
6. Installation of grab bars and other such minor interior modifications for handicapped accessibility, when significant interior features (such as trim or architectural details) are not altered.
7. Non-destructive or concealed testing for hazardous materials (lead paint, asbestos, etc.) or damage assessment.
8. Replacement of wood gymnasium floors with contemporary gym flooring materials.
9. Replacement of damaged vinyl or asbestos floor tile with contemporary floor tile of the same dimensions, thickness and similar texture or pattern.

B. Utilities, Mechanical and Electrical Systems

1. Heating, ventilation and air conditioning (HVAC), electrical, or plumbing work, which is limited to upgrading, elevation, or in-kind replacement. Historic fixtures, where exposed to view, must be repaired in-kind for this Allowance to apply. This Allowance does not apply to exposed new ductwork.
2. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. This Allowance does not apply to surface mounted wiring, conduits, and piping unless previously existing, or to the installation of new systems where they will affect significant interior features.
3. Elevation of HVAC and mechanical equipment as long as it is placed or located where it is not highly visible from the street, or if its installation does not result in significant loss of historic fabric, or character-defining details.

C. Windows, Doors and Shutters

1. In-kind repair or replacement of windows, doors and shutters where profiles, elevations, details and materials match those of the original windows, doors, and shutters.

2. Replacement of window panes provided the result does not alter the existing window material, form, muntin profiles or number of divided lights. This Allowance applies to the in-kind replacement of existing archaic or decorative glass. Historic windows or glazing may be treated with clear window films.
3. In-kind replacement of historic door and window hardware where repair is not possible.

D. Exterior Walls, Cornices, Porches, and Foundations

1. Cleaning, repairing or repainting of surfaces, provided that destructive surface preparation treatments, such as water blasting, sandblasting, power sanding, and chemical cleaning are not used. Surface treatments must comply with the treatment approaches outlined in *Preservation Brief #6: Dangers of Abrasive Cleaning to Historic Buildings* (National Park Service, 1979).
2. In-kind repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or trim, as long as the replacement pieces match the original element in detail and material.
3. In-kind repair or in-kind replacement of signs or awnings.
4. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage, loss of fabric, or irreversible alterations, and does not affect known archaeological sites or features.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view and disturbed historic fabric is restored in-kind.
6. In-kind repair or reconstruction of concrete/masonry walls, columns, parapets, chimneys, or cornices, including comparable brick, and mortar that matches the color, strength, content, rake, and joint width, where occurring.
7. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future without having damaged or caused visible changes to chimneys or fireplaces once removed.
8. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in-kind, including mortar that matches the color, content, strength, rake and joint width, where occurring.
9. In-kind repair, or installation of non-historic perimeter drainage systems, providing the work will not affect known archaeological sites or features or alter character defining features of an historic building.

10. In-kind repair or replacement of fencing and other freestanding exterior walls.
11. Repairs to and replacement of elements of curtain wall assemblies when materials, color, size, reflectivity and visual patterns are unaltered.

E. Roofing

1. In-kind repair or replacement of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes or downspouts. Consideration should first be given to identifying ways to repair rather than replace damaged historic materials whenever feasible. Also, cement asbestos shingles may be replaced with asphalt based shingles, three-tab asphalt shingles may be replaced with composite dimensional architectural shingles; and corrugated asbestos panels may be replaced with corrugated metal panels or other roofing of similar appearance to the original.
2. Replacement of T-lock asphalt shingles that are no longer available with an architectural/laminate shingle of similar appearance, depth, and wind rating.
3. Repairs to a flat roof, including changes in roofing materials, and making minor alterations to the roof slope to improve drainage, where the repairs are not visible from the ground level.
4. Replacement of metal roofs with in-kind materials. If the roofing material to be replaced is character defining, the replacement must be in-kind, not just a form of metal roofing.
5. In-kind replacement of greenhouse glass panels.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping to complement the color of adjacent surfaces.
2. Replacement of insulation provided that interior plaster, woodwork, or exterior siding or exterior architectural detail is not altered. This Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. Also, the Allowance does not apply to exterior insulation finishing systems (EIFS) that do not include an adequate vapor and moisture drainage system, or to work in enclosed spaces that are not vented.

G. Seismic, Tornado and Hurricane Upgrades

1. The installation of the following seismic upgrades, provided that such upgrades are not visible on the exterior or within character-defining historic interiors: attic bracing, cross-bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie

downs; strapping and anchoring of mechanical, electrical and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.

2. Replacement, repair or installation of lightning rods, provided no historic fabric will be substantially damaged due to installation.

- H. Building contents, repair or replacement, including furniture, movable partitions, computers, cabinetry, supplies, equipment, publications and any other moveable item that is not a character-defining element of a historic property.
- I. Elevation or demolition of an existing structure that is less than fifty years old and that is not individually listed in nor located in or adjacent to a historic district.
- J. Purchase, repair or replacement of a vehicle or equipment acquired or damaged during a declared event.
- K. Fees for builders, architects, engineers and design services provided the services will not result in an adverse effect on a property listed in or eligible for the National Register.
- L. Reimbursement of a Subgrantee's insurance deductible provided that the project meets one or more other Allowances.

VI. UTILITIES, COMMUNICATIONS SYSTEMS, AND TOWERS - provided the excavation will not disturb previously undisturbed soil, and that work occurs at least 100 feet outside the boundaries of all known historic and archaeological sites, including areas of archaeological sensitivity as defined by SHPO or qualified FEMA staff.

- A. In-kind repair or replacement, or minor upgrading, small scale realignment, and elevation of utilities and associated features and structures within previously disturbed soils of rights-of-way or utility corridors.
- B. Substantially in-kind repair or replacement of utilitarian structures including major exposed pipelines, except for those structures that have achieved historical significance. Modern materials may be used, provided their finish is compatible with the context of the site. Structures such as bridges, water towers, and antenna towers are not considered utilitarian structures for purposes of this Allowance.
- C. Installation of new utilities and associated features within existing rights-of-way.
- D. Connections to new metering points when the line is within twelve (12) feet of the previously disturbed public or private road right-of-way.

- E. Expansion of an existing substation, switching station, regulator/transformer platform, or similar facilities where work is confined to areas previously disturbed during construction of original facilities.
- F. Repair of or replacement of an existing substation, switching station, regulator/transformer platform, or similar facilities.
- G. Temporary storage of supplies and equipment (poles, cable spools, pedestals, etc.) where no ground disturbance will occur; this does not include construction of temporary access routes.
- H. Placement or replacement of pedestals in public or private right-of-way immediately adjacent to borrow ditch.
- I. Placement of sacrificial anodes in public or private right-of-way or adjacent to borrow ditch.
- J. Repair, replace, upgrade or retire existing poles, anchors, wires, cross arms and miscellaneous hardware on existing overhead lines, where work occurs from or within previously disturbed public or private right-of-ways or within a 6-foot radius of the existing pole.
- K. Placement of underground cables, overhead poles, or other equipment in previously disturbed public or private right-of-ways.
- L. Placement of new underground cable of any length within six (6) feet of fence line adjacent to the previously disturbed public right-of-way, when the placement of cable does not include open trenching.
- M. Underground cable replacements of any length when the replacement cable is placed within six (6) feet of the same trench as an existing or failed cable, and when the placement of cable does not include open trenching.
- N. Single pole overhead line construction on public or private right-of-way where the auguring, pole placement, and line placement is conducted from within the previously disturbed right-of-way or when the line will not pass within or through any areas known or suspected to contain human remains, archeological resources, or any other historic properties.
- O. Placement of poles, wires, and other facilities within developed areas unless those facilities are located within a National Register District.
- P. Directional boring of replacement service line and related appurtenances involving boring or silt trenches in previously disturbed ground up to one (1) foot in width and connection of directional boring for utility lines not greater than ten (10) square feet.

- Q. In-kind repair or replacement, or minor upgrade of water towers provided activities take place within previously disturbed soils. Ground-level facilities may be added or expanded in previously disturbed areas. This allowance does not apply to masonry water towers.
- R. In-kind repair or replacement, or minor upgrades elevation, and/or installation of generators, HVAC systems, and similar equipment provided activities occur within previously disturbed soils, or, if replaced to a rooftop, equipment is not visible from the ground level.
- S. Acquisition, installation, or operation of communication towers and security equipment/systems and weather-warning sirens that use existing distribution systems, facilities, or existing infrastructure right-of-way.
- T. The collocation of communication and security equipment on existing towers and buildings/structures less than 50 years of age, provided that the work is not located within an historic district and that it occurs within previously disturbed soils.
- U. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work is not located within an historic district and that it occurs within previously disturbed soils.
- V. 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 more than 50 years of age and occurs within previously disturbed soils.

VII. PARKS, RECREATION FACILITIES, AND OTHER ITEMS

- A. Repair or replacement in public use areas of recreational and landscaping elements and their related support features such as paving, planters, trellises, irrigation, lighting, signage, retaining walls, ramps and steps, flag poles, above ground swimming pools, decks, and athletic field recreational structures and equipment (i.e., benches, bleachers, permanent seating, batting cages, score boards, basketball hoops, picnic tables, fire pits, utility hook-ups, playground equipment, such as slides and swing sets, or other movable objects), provided that the repairs will not disturb more soil than was previously disturbed. This Allowance also permits associated minor mitigation measures, such as increases in equipment diameters and addition of safety anchors.
- B. Repair and re-vegetation of eroded or otherwise damaged school yards, playgrounds, athletic fields, campgrounds or amphitheaters, provided that the repairs will not disturb more soil than was previously disturbed.
- C. Removal of root balls from uprooted trees on developed property. When located in cemeteries, known archaeological sites, historic sites where landscaping elements are

character-defining features, or when root ball exposure has resulted in unexpected archaeological finds, root balls will be separated from the tree trunk and returned to their original depressions, removed by hand, or removed by heavy equipment taking any precautionary measures necessary to minimize ground disturbance or disturbance of associated landscaping elements. In all instances root ball voids are to be filled with suitable materials taken from an approved source.

- D. Debris collection within areas of historic or archaeological sensitivity when staging and operation of associated machinery is limited to existing service roads, parking lots, or other existing hardened surfaces.
- E. In-kind repair of historic gravestones, monuments, fences, and other historic components.
- F. Repair or upgrade to codes and standards of existing piers, docks, boardwalks, boat ramps, stands, and gazebos, provided the footprint will match the existing footprint.
- G. Repair of driveways, parking lots, paths, walking and snowmobile trails, and simple wooden/wire stream crossings. Repairs may include minor upgrades to prevent future erosion, such as the addition of pavement or the installation of water bars or other similar devices.
- H. In-kind repair or replacement of fencing and other freestanding exterior walls.
- I. Repairs to airport facilities, including:
 - 1. Repair of existing runways, taxiways, roadways, aprons, drainage systems, and parking areas; and
 - 2. Repair or replacement of safety components, including beacons, lighting bars, signage, and weather sensors, provided that repairs will not disturb more soil than was previously disturbed; and
 - 3. In-kind replacement or repair of existing beacons not on airport property, as long as no new access is required.
- J. In-kind repairs to railroads, including repair or replacement of damaged railroad tracks (e.g., rails, cross ties, spikes, plates and clips), earthen and ballast roadbeds and embankments, railroad crossings, passenger loading areas, and transportation safety components and systems (e.g., signals, gates, and automatic control devices), provided that excavation work site work will not disturb more soil than previously disturbed by the original construction.
- K. Repair or replacement of fish hatcheries (e.g., raceways, ponds, fish ladders, and water intake or outfall structures) provided that the work substantially conforms to the existing footprint and the integrity of any historic materials is not significantly compromised.

- L. In-kind replacement of fish-ways or fish ladders on spawning streams.
- M. Installation of temporary structures for uses such as classrooms or offices. This Allowance does not apply to such structures in historic districts or in archaeologically sensitive areas as determined through consultation between FEMA and SHPO.
- N. Installation of scaffolding, temporary barriers (e.g., chain link fences, etc.), polyethylene sheeting or tarps, provided such work does not result in additional damage, significant loss of historic fabric or irreversible alterations. This Allowance does not apply to such work in historic districts or in archaeologically sensitive areas as determined through consultation between FEMA and SHPO.
- O. Vector Control – Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.
- P. Mold Remediation – Damp wiping of non-porous materials; dry vacuuming of remediated areas; temporary pumping or vacuuming to remove standing water provided no changes are made to character-defining features; and use of portable de-humidification systems provided no changes are made to character-defining features.

VIII. OTHER FEMA-FUNDED GRANT ACTIVITIES

- A. Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations.
- B. Studies that involve no commitment of resources other than manpower and associated funding such as hazard mitigation planning, development of Codes and Standards and education/public awareness programs.
- C. Granting of community-wide exceptions for flood proofed residential basements meeting the requirements of 44 C.F.R. § 60.6(c) under the National Flood Insurance Program.
- D. Acquisitions/Buyouts: Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction. *This Allowance does not include the subsequent actions of demolition, elevation or relocation.*
- E. Acquisition and removal of mobile homes mounted on slabs, where future reuse of the site for residential purposes is prohibited and passive recreational use is encouraged, provided that the septic tank, well, and any buried utilities are left in place.
- F. Purchase, elevation or demolition of any structure that is less than fifty years old and that is not located in or adjacent to a historic district or archaeologically sensitive area.
- G. Retrofitting of existing structures that are less than 50 years old for purposes of general damage prevention, flood proofing, seismic retrofits, wind proofing, or to provide safe

rooms; or retrofitting of a historic structure for similar purposes when none of the character-defining elements or spaces of a structure are affected.

- H. Installation of tie-downs on oil tanks or other equipment to prevent their movement by wind or water.

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APPENDIX C

SUBMITTALS FOR SECTION 106 REVIEWS

The following is a list of documents that can help facilitate the Section 106 review for projects under consideration for FEMA funding. If this documentation exists, it will be used by FEMA to make determinations of effect and as submittals to the SHPO for project review. The level of documentation should be commensurate with the scope and nature of the project. Items A-C and E should be provided in all cases. (*Note: This information will also substantively improve the environmental review conducted under NEPA.*)

- A. Clear written description of the entire scope of work. Information should include the current conditions, any alternatives that may be under consideration, and any additional work not funded by FEMA that will be performed at substantially the same time. The description should be explicit about the size or extent of the area of potential effects (APE), including all associated construction or access areas (e.g., staging or stockpile areas, temporary roads, bridges, walkways, work areas) that will be required to complete the project. Include any studies, plans, drawings, sketches, or schematics, as may be available, to help understand the entire project.
- B. Original photographs sufficient to show the proposed project area in the context of its surroundings and any details necessary to understand the entire scope of the project. Photographic considerations:
 - 1. Photographs should be keyed to accompanying text and/or maps.
 - 2. If the project is a building, show all sides of the entire building (at least from opposite corners), and the context of the building in its setting, including the surrounding buildings.
 - 3. Where interior features of a building are of historic importance, quality photographs should be provided of any historic decorative floor, wall or ceiling treatments or highly decorative architectural elements.
 - 4. If the project is in a rural setting, show the project area in the foreground with the background of the surrounding area in all four directions. Photograph coverage should be detailed enough to illustrate all elements included in the project design. Where the project is linear, photos should include all environments within the APE.
 - 5. For identification purposes, original color photographs or high-resolution digital images are preferred. For National Register documentation, special conditions may apply.
- C. Location maps (e.g., USGS maps and City maps), as necessary to show the Undertaking in the context of its surroundings. For projects in rural settings or for projects with ground disturbing activities, USGS maps are mandatory. For identification purposes, maps may

be computer generated using GIS systems or such map-generating programs as Terraserver-USA or Maptech.

- D. Documentation of any other Agency's environmental determinations within the scope of the project and surrounding area.
- E. Documentation of the date of construction of the original, existing facility (e.g., building permit records, tax records, newspaper accounts, architectural drawings), or a circa date provided by a Historic Preservation professional.
- F. Where projects are complex, plans showing the limits of proposed excavations or other ground-disturbing activities associated with the project.
- G. Location maps, in addition to those provided above, showing the project within local, state, or NRHP historic districts.
- H. Local, state, or National Landmark listings of historic properties within the project area, including the NRHP.
- I. Any existing cultural resource surveys or reports describing the archaeological/historic properties (e.g., archaeological sites, historic buildings, historic landmarks) that exist within the project area or could be affected by the project.
- J. Copies of any available plans for the existing facility as well as documentation of any changes made since the original construction.
- K. A brief description, photographs and/or sketches of any obvious changes to the property that might affect the integrity of archaeological deposits, such as extensive filling, installation of driveways, stripping or grading, prior demolition of buildings, or installation of utilities, such as communication towers, water or sewer lines, septic tanks, leach field, wells, or cisterns.
- L. Documentation of the presence of former sites at the same locations, but where visible evidence is no longer immediately evident. Documentation should provide information about how and when changes came about. Examples include the sites of former residences, outbuildings, commercial or industrial building or facilities. Loss during prior floods may be particularly relevant for FEMA-related projects.
- M. Documentation of any large-scale landscape changes that may have occurred during the past 200 years, such as project areas being located in recently-developed floodplains, areas of prior flood scouring or erosion, landslides, etc.
- N. Any information about locally known or reported early historic, prehistoric, or pre-contact archaeological sites in or close to the project area.