

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE TEXAS HISTORICAL COMMISSION, AND
THE GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT**

WHEREAS, the Federal Emergency Management Agency (FEMA) proposes to administer the Public Assistance, Hazard Mitigation Grant, Individual and Households, Flood Mitigation Assistance, and Pre-Disaster Mitigation Programs (Programs) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 et. seq. as amended, (Stafford Act), and its implementing regulations contained in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, and the National Flood Insurance Reform Act of 1994 and its implementing regulations contained in 44 CFR Part 78; the Disaster Mitigation Act of 2000 and its implementing regulations; and such other Acts, implementing regulations or congressionally authorized programs as are passed from time to time; and

WHEREAS, FEMA has determined that implementation of these Programs will result in undertakings (Undertakings) that may affect properties listed in or eligible for the National Register of Historic Places (historic properties), and FEMA has consulted with the Texas State Historic Preservation Officer (SHPO), pursuant to 36 CFR Part 800, implementing Sections 106 and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470; and

WHEREAS, FEMA has afforded the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment on these Programs in accordance with Section 106, and has invited the Council to participate in this consultation process in accordance with 36 CFR Part 800, and the Council has declined to formally consult or become a signatory party, pursuant to 36 CFR §800.6(a)(1)(C)(iii); and

WHEREAS, as a result of the implementation of FEMA Programs, the State of Texas will receive financial and/or technical assistance from FEMA and will in turn provide assistance to eligible applicants, and as such the Governor's Division of Emergency Management (DEM) will be responsible for administering these Programs, has participated in this consultation, and has been invited to enter into this Programmatic Agreement (Agreement); and

WHEREAS, FEMA, the SHPO, and DEM acknowledge that implementation of these Programs will be more effective if, pursuant to 36 CFR §800.14(b), an Agreement is in place to define roles and responsibilities in the Section 106 review process, eliminate the need for further SHPO review of certain routine activities with little potential to adversely affect historic properties, and promote efficiency so that the effects of Undertakings on historic properties may be considered while delays to FEMA's delivery of disaster assistance are minimized; and

WHEREAS, FEMA also assists qualified applicants with direct Grants pursuant to the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. § 2201 et seq.) (Program), and these applicants (Fire Grant Recipients, or Recipients) are responsible for administering this Program; and

WHEREAS, FEMA has determined that implementation of these Programs may result in Undertakings that have the potential to affect historic properties that have religious and cultural significance to Federally or non-Federally recognized tribes (Tribes), and FEMA may request that these Tribes participate as a consulting party to fulfill the requirements of the NHPA;

NOW, THEREFORE, FEMA, the SHPO, and DEM agree that these Programs will be administered in accordance with the following Stipulations to satisfy FEMA's NHPA responsibilities for all Undertakings. FEMA will not approve funding of any Undertaking until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with the SHPO and DEM, FEMA shall require that the following measures be implemented:

I. LEAD AGENCY COORDINATION

- A. When FEMA is determined to be the Lead Agency, FEMA will coordinate the Section 106 review activities of all Federal agencies and Tribes that participate in Undertakings funded by the Programs.
- B. If a project has been previously reviewed and approved under the NHPA in another Federal program or by another Federal agency, no further review is required, as long as the project is the same one that was reviewed under the other program. The applicant and/or DEM shall certify to FEMA that a project has not changed (i.e., that the project plans bear the same date and scope of work as those referenced in the previous comment letter) when submitting a previous comment letter for compliance with the NHPA.
- C. FEMA may request that a Federally-recognized Tribe become a signatory to this Agreement by entering into an Addendum with a signature page, thus accepting the provisions of this Agreement. The addition of a Federally-recognized Tribe without further change to this Agreement will not require an amendment to the Agreement. A sample Tribal Addendum is attached as Appendix B.

II. APPLICABILITY

- A. This Agreement applies immediately upon the date of execution.
- B. This agreement will only apply to historic properties that retain National Register eligibility pursuant to 36 CFR Part 60.
- C. FEMA has determined the proposed Federal action is an Undertaking as defined in 36 CFR §800.16(y).

- D. FEMA will determine when an Undertaking meets applicable criteria of the Programmatic Allowances (Allowances) listed in Appendix A. FEMA will document this determination in the project file and authorize the release of funding for the Undertaking without further review and SHPO notification.
- E. For all other activities, FEMA will conduct Section 106 review in accordance with Stipulation V. or VI. of this Agreement.

III. GENERAL

A. Professional Qualifications:

- 1. FEMA will use Federal, State, or contractor staff whose qualifications meet the Secretary of the Interior's (SOI) Professional Qualifications Standards (Qualifications), as determined by FEMA's Preservation Officer (PO), in ensuring compliance with this Agreement.
 - 2. FEMA acknowledges that Tribes possess special expertise related to properties that possess Tribal religious and cultural significance, and FEMA may utilize this expertise in determining if any such properties are eligible for the National Register.
- B. All time designations will be in calendar days. If any party does not comment on a determination related to a proposed action within an agreed upon timeframe, FEMA shall assume the party's concurrence with FEMA's determination.

C. FEMA responsibilities:

- 1. FEMA may request that Federal, tribal, state agency, or applicant staff who meet the Qualifications, as determined by FEMA's PO, conduct the identification and evaluation of historic properties on behalf of FEMA, as described in 36 CFR §800.4(b, c).
- 2. FEMA will review any National Register eligibility determinations resulting from the performance of these delegated activities.
- 3. FEMA shall ensure that all final reports resulting from Undertakings pursuant to this Agreement will be consistent with applicable SHPO guidelines for such documents.

D. SHPO responsibilities:

- 1. The SHPO will concur or non-concur with FEMA's National Register eligibility determinations and effect findings within the timeframes required by this Agreement.

2. The SHPO may delegate some or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff and who will serve as SHPO representatives with respect to the actions and decisions required by this Agreement. The SHPO will consult with FEMA about the selection of representatives, the scope of responsibilities delegated, and implementing procedures related to the actions and decisions delegated.

IV. MONITORING AND REPORTING

- A. FEMA or DEM will provide all parties to this Agreement with an annual report detailing work undertaken pursuant to the terms on this Agreement, for the previous calendar year, on March 31st of each year that this Agreement is in effect. This report will summarize the actions taken to implement this Agreement, and recommend any actions or revisions to be considered during the next year. These parties will review this information to determine if amendments are necessary. For specific Undertakings, (as agreed upon by all parties of this Agreement at the Implementation or Disaster scoping meeting), FEMA or DEM will provide all parties to this Agreement a summary report six months from the onset of the specific Undertaking, and every six months thereafter until the final report after completion of the Undertaking.

Such reports shall include the following;

1. A summary of the progress of the Undertaking;
 2. Any problems encountered, and any disputes and objections received in FEMA's efforts to carry out terms of this agreement during the report period;
 3. A list of all actions documented in the project file, noting the names and addresses of the properties on which the actions were taken and the specific nature of each action including:
 - a. All actions taken under Stipulation II.E. (Appendix A, Programmatic Allowances);
 - b. All unilateral actions taken by or on behalf of FEMA due to expired review periods under Stipulations III, V, VI and IX.
 4. Any changes that the agency believes should be made in implementation of this agreement.
- B. The SHPO may request to review selected actions documented in the project file from the summary report lists provided.
 - C. The agency shall ensure that each report is made available for public inspection, that potentially interested members of the public are made aware of its availability, and that interested members are invited to provide comments to the SHPO as well as the agency.

- D. The signatories to this agreement shall review the summary report and provide comments to the agency. Non-signatory parties to this agreement may review and comment on the summary report at their discretion.
- E. At the request of any party to this agreement, the agency shall ensure that a meeting or meetings are held to facilitate review and comment, to resolve questions, or to resolve adverse comments.
- F. Based on this review, the signatories to this agreement shall determine whether this agreement shall continue in force, be amended or be terminated.
- G. Failure to provide such summary report or the additional file documentation requested by the SHPO may be considered noncompliance with the terms of this Agreement pursuant to Stipulation XII, below.

V. INITIAL COORDINATION

Upon entering into this Agreement, FEMA will meet with the SHPO and DEM to establish points of contact and protocols for the implementation of the Agreement. Following a Presidential emergency or major disaster declaration (Disaster), SHPO and DEM representatives will then attend a Disaster-specific historic preservation-scoping meeting with FEMA, where FEMA and DEM will provide guidance on program issues and processes. FEMA and DEM, as appropriate, will also present information related to the Section 106 review process to all applicants at the applicants' briefings and kickoff meetings.

A. FEMA will:

- 1. In the aftermath of a Disaster, determine with the SHPO those historic properties that are standing structures, which are program eligible, that have not retained National Register eligibility. This Agreement will only apply to historic properties that retain National Register eligibility in the aftermath of the Disaster, pursuant to 36 CFR Part 60. For those Undertakings involving standing structures that lack integrity as agreed by FEMA and SHPO, 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 historic property has retained National Register eligibility, FEMA will review all Undertakings that may affect the property in accordance with Stipulations V through VII.
- 2. Consult with other Federal agencies and any Federally-recognized Tribes having jurisdiction for Undertakings related to the Programs to ensure compliance with applicable historic preservation laws and regulations.
- 3. FEMA, in accordance with 36 CFR §800.2(d)(3), will use agency procedures for public involvement under the National Environmental Policy Act and/or other program requirements in lieu of 36 CFR §800.3 (e) requirements. At the request of

a consulting party, FEMA will develop with the SHPO a feasible plan for involving the public in the Section 106 review process for specific projects. In doing so, FEMA will seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its potential to effect historic properties, the likely interest of the public in those effects, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking. FEMA, in consultation with the SHPO, may invite interested groups or persons to participate as consulting parties in the Section 106 process in accordance with 36 CFR §800.3(f).

B. The SHPO will:

1. Provide FEMA with available information about historic properties within the declared Disaster area, including:
 - a. Historic properties listed in or previously determined eligible for the National Register through a Section 106 review or by the SOI;
 - b. Recorded Texas Historic Landmarks and properties listed in the Texas Historic Sites Inventory;
 - c. Geographic areas with high potential for archaeological resources, and areas where it is known that there are not any archaeological resources; and
 - d. Previously identified Traditional Cultural Properties.
2. Compile a list of previously identified or unevaluated historic properties, within the declared Disaster area, geographic areas with a high potential for unidentified historic properties.
3. Identify SHPO staff or consultants to assist FEMA staff with its Section 106 responsibilities, and identify, in coordination with FEMA, specific activities that the SHPO may perform at FEMA's request for specific projects.
4. Assist FEMA in identifying any Tribes, organizations, or individuals that may have an interest in historic properties affected by the Disaster. FEMA and the SHPO will jointly contact these interested parties to inform them of this Agreement and to request information on the location of damaged historic properties.
5. Assist local jurisdictions in identifying staging and disposal sites for debris disposal, and sites for chipping of vegetation debris, if applicable, that will have no potential to cause effects on historic properties.
6. When requested by DEM, and agreed to by all signatories, designate individuals by name to perform expedited reviews for specific undertakings

VI. EXPEDITED PROJECT REVIEW FOR EMERGENCIES

- A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 (36 CFR §800.12(d)).
- B. As a result of or in anticipation of a disaster, FEMA may be requested to authorize funding for emergency protective measures in response to an immediate threat to human health and safety or improved property, which may adversely affect historic properties. For all Undertakings that the Federal Coordinating Officer (FCO) determines are of an emergency nature as defined in Section 102(1) of the Stafford Act, and are not exempt from Section 106 review in accordance with Stipulation V.A above, FEMA will conduct the following expedited review:
 1. The expedited review period will begin at the time FEMA determines that an emergency action is required, and will remain in effect for the time necessary to implement this expedited review, but not for more than 30 days after the time of discovery of the emergency.
 2. FEMA will notify the SHPO of the need to conduct expedited project review for individual Undertakings. Should FEMA determine that it is necessary to extend the expedited review period beyond 30 days, FEMA will, as needed, notify the SHPO in writing, at least 7 (seven) days prior to the expiration of the initial/existing 30-day period, that it is extending the emergency period, in 30-day increments. FEMA may assume the SHPO's concurrence if no response is received within 7 (seven) after the notification is received by the SHPO.
 3. If it appears that an emergency action has the potential to affect a historic property during this expedited review period, FEMA will provide the SHPO with available information about the condition of the property, the proposed action, and prudent and feasible measures that would avoid and mitigate the potential effect and request the SHPO's comments. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. Information provided through telephone conversations and meetings should include the precise location of the Area of Potential Effects (APE) and/or project elements located on 7.5-minute topographic maps provided by FEMA or the applicant. The SHPO will respond to any FEMA request for comments within 7 (seven) days after receipt of the complete project documentation. If FEMA determines the nature of the emergency action warrants a shorter time period for SHPO review, FEMA will request a reasonable expedited review period, with which the SHPO will make every effort to comply.
 4. If FEMA does not accept the recommendations provided by the SHPO pursuant to this Stipulation, or the SHPO objects to FEMA's proposal to use or extend the emergency review procedure and/or proposed treatment measures, FEMA will consult with the SHPO to resolve the dispute. If FEMA is unable to resolve the

dispute, FEMA will seek comment from the Council by providing the documentation stipulated in 36 CFR 800.11(e). The Council will provide final comments to FEMA within 7 (seven) days after receipt of complete documentation from FEMA. If FEMA determines the nature of the emergency action warrants a shorter time period for Council review, FEMA will request a reasonable expedited review period, by the Council.

5. Emergency actions involving an identified historic property or a property that is determined to be 45 years old or older, and that FEMA has determined will meet the Programmatic Allowances included in Appendix A, may proceed without further review pursuant to this PA unless FEMA elects to consult with the SHPO. FEMA will document this decision with a written record in the project file.

VII. STANDARD PROJECT REVIEW

The signatories of this agreement will implement the following Standard Project Review procedures for all non-emergency undertakings:

- A. Area of Potential Effects (APE): For all project reviews of standing structures the APE will be the individual facility (as defined in 44 CFR §206.201(c)) when an Undertaking is limited to the in kind repair or rehabilitation of the facility's interior or exterior. FEMA will establish the APE in consultation with the SHPO for all other Undertakings including those that may affect archaeological properties. FEMA will also identify and invite other appropriate parties (such as local governments and the public) to provide information related to the APE.
- B. In accordance with 36 CFR §800.4(b, c), FEMA will determine, in consultation with the SHPO, if the APE contains historic properties (including archaeological properties) that are listed in or eligible for the National Register. For small projects under the Public Assistance Program, as defined by 44CFR 206.203(c)(2), (less than or equal to \$55,500 in FY 2005), properties in the APE that will be returned to pre-disaster condition, and that are not listed in or determined eligible for listing in the National Register, or are not Recorded Texas Historic Landmarks, will not require review by the SHPO. FEMA may approve funding for such projects after documenting its decision in writing in the project files and conclude the review required by this Agreement.
- C. If no historic properties are present, or if an Undertaking is designed to avoid archeological properties, or has no potential to affect the qualifying characteristics of historic properties that are standing structures, in accordance with application of the criteria of adverse effect, 36 CFR 800.5(a), FEMA will make a finding of "no historic properties affected" in accordance with 36 CFR §800.4(d)(1). FEMA will notify the SHPO, all consulting parties and the public of this finding and provide supporting documentation in accordance with 36 CFR 800.11(d). Unless the SHPO, any consulting party, or a member of the public objects to this finding within 30 days after receipt of complete project documentation, FEMA will complete the Section 106 review and may approve funding.

D. If FEMA finds an Undertaking may affect identified historic properties, or if the SHPO objects to the finding of “no historic properties affected” within 30 days after receipt of complete project documentation, FEMA will consult with the SHPO to apply the criteria of adverse effect, pursuant to 36 CFR §800.5(a)(1), and determine if the Undertaking meets the SOI Standards for the Treatment of Historic Properties (Standards), or any other applicable SOI Standards (most updated version). FEMA will also consider any views provided by consulting parties and the public related to such effects.

1. For standing structures only:

- a. If FEMA and the SHPO agree that an Undertaking does not meet the adverse effect criteria or that it meets the Standards, FEMA will propose a finding of “no adverse effect” pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO, all consulting parties and the public of this finding and provide supporting documentation pursuant to 36 CFR §800.5(c). Unless the SHPO, any consulting party, or a member of the public objects within 14 days after receipt of complete project documentation, FEMA will complete the Section 106 review and may approve funding.
- b. If the SHPO, any consulting party, or a member of the public objects to the finding of “no adverse effect”, FEMA will request through DEM that the applicant revise the scope of work to conform to the Standards, in consultation with the SHPO and the objecting party. FEMA also will ensure that the revised scope of work is reviewed for funding eligibility. If the applicant modifies the scope of work to address the objections, FEMA will notify the SHPO, all consulting parties and any other objecting party and provide supporting documentation. Unless the SHPO or any consulting party objects within 14 days after receipt of the complete revised documentation FEMA will complete the Section 106 review and may approve funding.
- c. If the applicant is unable to, or will not modify the Undertaking to meet the Standards or address the objections, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

2. For archaeological properties only:

- a. If there is a reasonable potential for archaeological properties to be present within the APE, FEMA will consult with the SHPO to determine the level of effort necessary to identify the anticipated type and location of these properties.
- b. If the SHPO or any other consulting party objects to a “no adverse effect” finding whereby identified archaeological properties can be avoided or effects minimized through redesign of an Undertaking, or through procedures/requirements agreed upon among all the consulting parties; or

concur that there will be an adverse effect, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

VIII. RESOLUTION OF ADVERSE EFFECTS FOR HISTORIC PROPERTIES

- A. If FEMA finds that an Undertaking will adversely affect a historic property, FEMA will determine if the Undertaking will be reviewed in accordance with 36 CFR §800.6(b), resulting in a Memorandum of Agreement (MOA), or addressed through a Secondary Programmatic Agreement (Secondary Agreement). Following this decision, FEMA will notify the SHPO and all other consulting parties.
1. Memorandum of Agreement (MOA): FEMA may develop an MOA in accordance with 36 CFR §800.6(c) to outline measures to mitigate potential adverse effects to historic properties through impact avoidance, minimizing, reducing or eliminating impacts, appropriate repair, rehabilitation or restoration of affected historic properties, or other mitigation that may be appropriate for a specific aspect of the Undertaking. FEMA may consider reasonable alternate mitigation measures that serve an equivalent or greater public benefit than standard measures (such as recordation, curation, relocation, or elevation) or archaeological data recovery, while promoting the preservation of historic properties. FEMA will attempt to identify all feasible mitigation measures in consultation with the SHPO and other consulting parties. Alternate mitigation measures may include, but are not limited to, preservation planning, interpretive programs, or development of a historic properties database with Geographic Information Systems.
 2. Secondary Programmatic Agreement: FEMA, the SHPO, DEM, and other consulting parties may consult to develop a Secondary Agreement to require programmatic conditions and/or treatment measures for multiple, but similar Undertakings by an applicant.
- B. When an Undertaking will adversely affect an archaeological property, FEMA may treat the adverse effect by providing for the recovery of significant information through archeological data recovery or other scientific means, assuming provisions in Stipulation VI have been exhausted. To accomplish this objective, FEMA will follow the SOI's *Guidelines for Archaeological Documentation* as well as the SHPO's data recovery/documentation guidelines; and confer with the other consulting parties to prepare a data recovery plan, including material and record curation provisions. For sites where FEMA determines special circumstances exist or when other treatment measures are appropriate, FEMA will consult further with the other consulting parties to develop an appropriate approach to resolving the adverse effects.
- C. FEMA will also involve the public in the resolution of adverse effects in accordance with 36 CFR §800.6(a)(4).

- D. When an Undertaking may adversely affect a National Historic Landmark (NHL), FEMA will also notify the National Park Service Regional Office and invite the Secretary of the Interior (Secretary) to participate in consultation.

IX. CHANGES TO AN APPROVED SCOPE OF WORK

DEM 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 will then consult with the SHPO to determine if the change will have an effect on the property. FEMA may authorize the applicant to proceed with the change if it meets an Allowance or if, for a standing structure, the change can be modified to conform to the Standards, or any other applicable SOI Standards. If FEMA determines that the change does not meet an Allowance, or if FEMA and the SHPO determine that the change cannot be modified to conform to the Standards, or any other applicable SOI Standards, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

X. UNEXPECTED DISCOVERIES

- A. DEM will notify FEMA at the earliest possible time if it appears that an Undertaking will affect a previously unidentified property that may be historic or affect a known historic property in an unanticipated manner. DEM will require the applicant to stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO. In the case of human remains, DEM will require the applicant to notify the local law enforcement office.
- B. FEMA will notify the SHPO 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 the SHPO of any time constraints, and all parties will mutually agree upon timeframes for this consultation. DEM and the applicant may participate in this consultation. FEMA will provide the SHPO with complete documentation on the change in the Undertaking, potential effects, and written recommendations to take into account the effects of the Undertaking.
- C. If the SHPO does not object to FEMA's recommendations within the agreed upon timeframe, as developed pursuant to stipulation IX (B) of this agreement, DEM will require the applicant to modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, FEMA and the 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 VII.

XI. DISPUTE RESOLUTION

- A. Should the SHPO, DEM, or a consulting party object within the timeframe provided by his Agreement to any plans, specifications, or actions provided for review pursuant to this

Agreement, FEMA will consult further with the objecting party to seek resolution. If FEMA objects within any such timeframe to any such plans, specifications, or actions, FEMA will consult further with the other parties to seek resolution. If FEMA determines within 14 days of receipt of an objection that the objection cannot be resolved, FEMA will forward all documentation relevant to the dispute to the Council in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise FEMA on the resolution of the objection within 15 days. Any comment provided by the Council and all comments from the parties to the Agreement, will be taken into account by FEMA in reaching a final decision regarding the dispute.

- B. If the council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, FEMA may render a decision regarding the dispute. In reaching its decision, FEMA will take into account all comments regarding the dispute from the parties to the Agreement.
- C. FEMA's responsibility to carry out all other actions subject to the terms of this Agreement that is not the subject of the dispute remain unchanged. FEMA will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. FEMA's decision will be final.
- D. Any recommendation or comment provided by the Council will pertain only to the subject of the dispute. The responsibility of the signatories to implement all actions pursuant to this Agreement that is not subject to the dispute will remain unchanged.

XII. ANTICIPATORY ACTIONS

- A. FEMA will not grant assistance to an applicant who, with intent to avoid the requirements of this Agreement or Section 106, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. After consulting with the SHPO, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant, and will complete consultation for the Undertaking pursuant to Stipulation VII.
- B. FEMA will specifically advise DEM of this Stipulation and will require that DEM advise its applicants during initial meetings that they may not initiate construction on projects for which they are seeking Federal funding prior to compliance with this Agreement. DEM will also advise its applicants that they may jeopardize Federal funding if construction is initiated prior to compliance with this Agreement.

XIII. AMENDMENTS AND NONCOMPLIANCE

- A. If any signatory to this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that signatory shall immediately consult with the other signatories to develop amendments to this Agreement.

- B. The amendment will apply only to the specific Undertaking that is the subject of the amendment, unless otherwise agreed to by the signatories.
- C. The process of amending the Agreement shall be the same as that exercised in creating the original Agreement and the amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council.
- D. If the signatories cannot agree to appropriate terms to amend the Agreement, any signatory may terminate the agreement in accordance with Stipulation XIII A.


XIV. TERMINATION AND TERM OF AGREEMENT

- A. FEMA, SHPO, or DEM may terminate this Agreement by providing 30 calendar days written notice to the other parties, provided that the parties consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination. Any party that elects to terminate this Agreement shall notify the other parties if its intention is to terminate its effectiveness regarding any previously declared disaster or its applicability to subsequent disasters.
- B. In the event of termination, FEMA will comply with 36 CFR Part 800 with regard to Undertakings covered by this Agreement.
- C. This Agreement remains in force for a period of five years from the date of execution by all signatories. At that time the parties may consult to renew or amend the Agreement.

XV. IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT

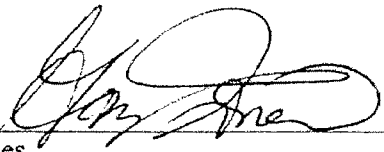
- A. This Agreement may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. This agreement will take effect when executed by FEMA, SHPO, and DEM.
- B. FEMA programs authorized by Congress in the future may be included under this Agreement, without amending this Agreement.
- C. Any change in FEMA's name, Programs, or organizational structure occurring during or after the agency's transition to the Department of Homeland Security will not affect this agreement.

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: 
Donald R. Fairley, REM
Regional Environmental Officer
FEMA Region VI

Date: 11/30/05

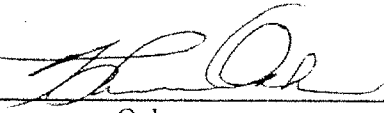
FEDERAL EMERGENCY MANAGEMENT AGENCY

By: 

Gary Jones
Acting Regional Director
FEMA Region VI

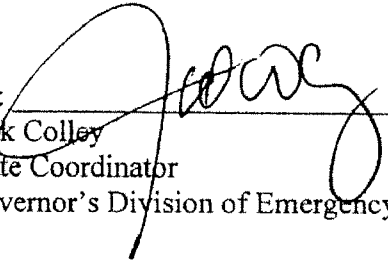
Date: 10-5-05

TEXAS HISTORICAL COMMISSION

By: 
F. Lawrence Oaks
State Historic Preservation Officer
Texas Historical Commission

Date: 25 Oct 2005

TEXAS DIVISION OF EMERGENCY MANAGEMENT

By: 

Jack Colley
State Coordinator
Governor's Division of Emergency Management

Date: 11/10/05

APPENDIX A: PROGRAMMATIC ALLOWANCES

The following repair or construction activities do not require review by the SHPO pursuant to Stipulations III – VI. This list may be revised without amending this Agreement, with a letter concurred to by FEMA and the SHPO.

When referenced in an Allowance, “in kind” shall mean that is either the same or a similar material, and the result will match all physical and visual aspects, including form, color, and workmanship. “In kind” mortar will also match the strength, content, color, rake, joint width, and tooling of historic mortar.

- I. **GROUND DISTURBING ACTIVITIES AND SITE WORK** shall mean all work being performed in previously disturbed or archaeologically surveyed areas that is consistent with the Standards, or any other applicable SOI Standards, latest editions. FEMA may consult with SHPO to determine previously disturbed archeologically surveyed areas.
 - A. Ground disturbing activities related to the repair, replacement, reinforcing or pouring of footings, foundations, retaining walls, other slope stabilization systems (i.e., gabion baskets, etc.), and utilities (including sewer, water, drains, electric service or distribution, gas, communications, leaching systems, cesspools and septic tanks). This Allowance refers to archeological review. The Allowance also applies to historic review of character defining features of a historic property that is listed in, or eligible for listing in the Register, when the work is in kind.
 - B. Substantial in kind repair, replacement, or upgrade of culvert systems within rivers, streams, or drainage ways, including any moderate increase in capacity. This Allowance also applies to related features of historic properties such as headwalls and wing walls that may be included in, or eligible for inclusion in the Register, when the work is to be in kind.
 - C. Repair, replacement, or hardening of utilities under existing improved roads or roadways, or within previously disturbed rights of way, and for repair, replacement, or hardening of above ground utilities where they are set in or immediately adjacent to their previous location.
 - D. In kind repair or replacement of driveways, parking areas, and walkways.
 - E. In kind repair or replacement of fencing and other freestanding exterior walls.
 - F. Substantial in kind repair or replacement of metal utilitarian structures (i.e. pump houses, etc.), including exposed pipelines. Modern materials may be used, provided their finish is compatible with existing structures and the site. Structures such as bridges, water towers, service towers, and antenna towers will not be considered utilitarian structures.

- G. Installation of temporary structures for uses such as classrooms, offices, or medical support facilities, except when located in historic districts or archaeologically sensitive areas as determined by FEMA or through SHPO consultation.
 - H. Installation of scaffolding, temporary barriers (i.e., chain link fences, etc.), polyethylene sheeting, or tarps, provided such work would not result in additional damage, irreversible alterations, or significant loss of historic fabric.
 - I. In kind repair or replacement of landscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.
 - J. In kind repair, replacement, or upgrade to codes and standards of existing piers, docks, boat ramps, boardwalks, stands, gazebos, and dune crossovers, provided the footprint would substantially match the existing footprint.
 - K. Debris collection from public rights of way, transport, and disposal in existing licensed solid waste facilities. The Allowance does not include the establishment or expansion of debris staging or disposal areas.
 - L. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.
 - M. Dewatering of flooded developed areas.
 - N. Placement of emergency beach berms seaward of improved property where severe erosion has occurred, with work performed under the authority of U.S. Army Corps of Engineers and/or a State environmental enforcement agency's permits for the sand deposit areas and upland or offshore borrow sites, including dredge spoil piles.
- II. BUILDINGS**, requiring repairs or replacement, when all work is consistent with the Secretary of the Interior's Standards, latest edition.
- A. Interior Work: Floors, Walls, Stairs, and Ceilings
 - 1. In kind repair, replacement, restoration, preservation, protection, or maintaining of materials or features.
 - 2. In kind repair of interior floors, walls, stairs, and ceilings. 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. The Allowance does not apply to substrates for decorative materials such as murals, glazed paint, gold leaf, etc.

3. Repair or replacement of ornamental plaster, when such repair or replacement is undertaken by those experienced in such finish work. Damaged ornamental plaster will be repaired or reattached, when possible. Where severity of deterioration requires replacement, the ornamental plaster will be replaced in kind; every effort shall be made to minimize the loss of additional historic fabric through use of the gentlest means of repair possible, and through adequate protection of undamaged areas.
4. In kind repair or replacement of specialized finishes such as decorative painting, glazing or gilding on flat or ornamental plaster. Such finish replacement or repair shall be tested in an inconspicuous location for matching purposes, prior to initiation of the actual specialized finish replacement or repair.
5. Repair or replacement of suspended or glued ceiling tile.
6. Installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA).
7. Non-destructive or concealed testing for hazardous materials (i.e., lead paint, asbestos, etc.) or for assessment of hidden damages.

B. Utilities, Mechanical, and Electrical Systems

1. Minor interior mechanical (e.g., HVAC), electrical, or plumbing work, limited to upgrading, elevating or in kind replacement. Historic fixtures, grilles, etc., where exposed to view, shall be repaired in kind for the Allowance to apply. The Allowance shall not apply to installation of exposed new ductwork.
2. Replacement or installation of interior fire detection, fire suppression, or security alarm systems. The Allowance does not apply to surface mounted wiring, conduits, piping, etc., unless previously existing.

C. Windows and Doors

1. In kind repair or replacement of damaged or deteriorated windows and doors including all hardware.
2. Replacement of windowpanes in kind. Clear plate, double, or triple insulating glazing may be used, provided it does not result in altering the existing window material or form. This Allowance does not apply to the replacement of existing archaic or decorative glass. Historic windows or glazing may be treated with clear window films.

D. Exterior Walls, Cornices, Porches, and Foundations

1. Repainting of surfaces, provided that destructive surface cleaning and preparation treatments are not used, such as water blasting, sandblasting, power sanding, and chemical cleaning, except where appropriate.
2. In kind repair or partial replacement of porches, cornices, siding, balustrades, stairs, or trim.
3. In kind repair or replacement of signs or awnings.
4. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations to this or adjacent areas.
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 and masonry walls, parapets, chimneys or cornices, using compatible brick and mortar as previously described.
7. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
8. Reinforcing of foundations and addition of foundation bolts, provided that visible new work is in kind, and if required, mortar shall be as previously described.

E. Roofing

1. In kind repair, replacement, or strengthening of roofs including roofing, gutters, or downspouts. Cement asbestos shingles may be replaced with asphalt-based shingles, and untreated wood shingles or shakes may be replaced with similar items of fire resistant wood.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
2. In kind replacement or installation of insulation systems, provided that existing plaster, woodwork, or siding is not altered. The Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. It does not apply to exterior insulation finishing systems (EIFS) that do not include an adequate vapor and moisture drainage system, or work in enclosed spaces that are not finished.

G. Seismic 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: 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.

^H
E. Miscellaneous

1. Building contents, repair or replacement, including furniture and equipment (e.g., medical equipment).

III. ROADS AND ROADWAYS

FEMA in consultation with the SHPO will consider the effects to any known archeological sites within roadway right-of-ways, when roadway repair is to pre-disaster geometric design standards and conditions. FEMA may consult with the SHPO to determine known archaeological sites within roadway right-of-ways.

- A. Repair of roads to pre-disaster geometric design standards and conditions using in kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes.
- B. Repair of road composition finish course with 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 or concrete pavements.
- C. Repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.
- D. In kind repair of road lighting systems, including period lighting fixture styles.
- E. In kind repair of road appurtenances such as curbs, berms, fences, and sidewalks.
- F. In kind repair of roadway safety elements such as barriers, guardrails, and impact-attenuation devices.

IV. BRIDGES

- A. In kind repairs of abutments, wing walls, piers, decks, and fenders, where no new construction is proposed.

V. UTILITIES

- A. Replacement or relocation of existing utility poles between the edge of sidewalk and the road.

VI. AIRPORTS

- A. Repair of existing runways, taxiways, roadways, aprons and other hard surface facilities.
- B. In kind repair of safety components, including beacons, on airport property.
- C. In kind repair of existing beacons or other navigation aids not on airport property.

VII. RAILROADS

- A. In kind repair or replacement of railroad safety components.
- B. Repair of railroad crossings.
- C. In kind replacement of existing bolt connected railroad tracks and wood ties.
- D. Repair of passenger loading areas.

VIII. ACQUISITIONS

- A. Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction and excluding demolition, providing that the SHPO was notified of the pending action and their comments were solicited by DEM during the selection process.

IX. FEES AND SERVICES shall be based upon:

- A. Miscellaneous labor costs.
- B. Rental or purchase of vehicles or other motorized equipment.
- C. Builders fees.
- D. Fees for architectural and engineering or other design services provided the services will not result in an adverse effect on a property listed in or eligible for the Register.
- E. Reimbursement of an applicant's insurance deductible, not to exceed \$1,000.

X. HUMAN SERVICES

The following activities relating to implementation of Sections 408, 409, 411, 412, 415, and 416 of the Stafford Act:

- A. The minimal repair program.

- B. Temporary housing for disaster victims whose homes are uninhabitable, with the exception of potential archeological issues related to temporary housing sites in previously undisturbed areas.
- C. Disaster unemployment assistance.
- D. Legal services.
- E. Crisis counseling.
- F. Loans or grants to individuals, businesses, and farmers for the repair, rehabilitation, or replacement of damaged real and personal property.
- G. The Cora Brown Fund, to assist victims of natural disasters for those disaster-related needs that are not met by government agencies or private organizations.

XI. VECTOR CONTROL

- A. Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.

APPENDIX B

**ADDENDUM TO THE PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE TEXAS HISTORICAL COMMISSION,
THE GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT, AND
_____ INDIAN TRIBE**

WHEREAS, the Federal Emergency Management Agency (FEMA) proposes to administer the Public Assistance, Hazard Mitigation Grant, Individual and Household, Pre-Disaster Mitigation and Flood Mitigation Assistance Programs (Programs) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 et seq. as amended, (Stafford Act), and its implementing regulations contained in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, and the National Flood Insurance Reform Act of 1994 and its implementing regulations contained in 44 CFR Part 78; the Disaster Mitigation Act of 2000 and its implementing regulations; other such Acts, implementing regulations or congressionally authorized programs as are passed from time to time; and

WHEREAS, FEMA, the Texas State Historic Preservation Officer (SHPO), and the Governor's Division of Emergency Management (DEM), recognize that implementation of these Programs will result in Undertakings that may occur on lands under the jurisdiction of the _____ Indian Tribe (Tribe); and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may have an effect on properties of religious and cultural significance to the Tribe, located on or off Tribal lands, that are listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with the Tribe and its Tribal Historic Preservation Officer (THPO) pursuant to 36 CFR §800.2(c)(2)(ii) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA);

NOW, THEREFORE, FEMA has consulted with the Tribe pursuant to 36 CFR §800.14(b)(1)(iii), and requested that it enter into this Addendum to the Programmatic Agreement (Agreement) to facilitate the Section 106 review of Undertakings that may directly or indirectly affect historic properties of religious and cultural significance on or off Tribal lands.

STIPULATIONS

FEMA shall require that the following measures be implemented:

I. OPTIONS

[OPTION 1: The THPO has not assumed SHPO responsibilities pursuant to Section 101(d)(2) of the NHPA:]

1. FEMA will consult with the _____ THPO in addition to the SHPO, pursuant to this Agreement, for all Undertakings that may affect historic properties of religious and cultural significance to the Tribe, on or off Tribal lands. The THPO agrees to participate in the review of all of these Undertakings in accordance with the terms of the Agreement. For the purposes of this Addendum, all references to "the SHPO" in the Agreement will also refer to the THPO for the review of these Undertakings.
2. This Addendum shall become effective on the last date of signature by FEMA, the THPO, and DEM (if the Grantee).

[OPTION 2: The THPO has assumed SHPO responsibilities pursuant to Section 101(d)(2) of the NHPA:]

1. FEMA recognizes that the _____ Tribe has assumed the responsibilities of the SHPO for Section 106 on Tribal lands, pursuant to Section 101(d)(2) of the NHPA, and shall consult with the THPO in lieu of the SHPO, pursuant to this Agreement for all Undertakings that may affect historic properties of religious and cultural significance to the Tribe, on or off Tribal lands. The THPO agrees to participate in the review of all of these Undertakings in accordance with the terms of the Agreement. For the purposes of this Addendum, all references to "the SHPO" in the Agreement will refer only to the THPO for the review of such Undertakings occurring on or affecting historic properties on Tribal lands. All references to the SHPO will refer to both the SHPO and the THPO for the review of such Undertakings that may affect historic properties off Tribal lands, unless the SHPO elects to not participate in this review.
2. The parties recognize that the SHPO shall participate as a consulting party pursuant to the Agreement if an Undertaking will occur on Tribal land but affect historic properties off Tribal land. The SHPO may also participate in consultation if requested in accordance with 36 CFR §800.3(c)(1).
3. This Addendum shall become effective on the last date of signature by FEMA, the THPO, and DEM (if the Grantee).

II. IMPLEMENTATION OF THIS ADDENDUM TO THE PROGRAMMATIC AGREEMENT

- A. This Agreement may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. This Agreement will become effective on the date of the last signature.
- B. FEMA programs authorized by Congress in the future may be included under this Agreement, without amending this Agreement.

- C. Any change in FEMA's name, Programs, or organizational structure occurring during or after the agency's transition to the Department of Homeland Security will not affect this agreement.

FEMA, [any OTHER FEDERAL AGENCY], SHPO, DEM, and the THPO

[NOTE: Multiple sheets will be required when multiple tribes involved.]

APPENDIX C
[FIRE GRANT RECIPIENT]
ADDENDUM TO THE PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE TEXAS HISTORICAL COMMISSION, AND
THE GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT

WHEREAS, the Federal Emergency Management Agency (FEMA), incorporated into the Department of Homeland Security, Emergency Preparedness and Response Directorate, assists qualified applicants with Grants pursuant to the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. § 2201 et seq.) (a Program); and

WHEREAS, FEMA, and the Texas State Historic Preservation Officer, have recognized that these Grants are directly dispersed to Fire Grant Recipients (Recipients), who did not participate in the development of this Programmatic Agreement (Agreement); and

WHEREAS, FEMA has determined that implementation of this Program may affect properties in the State of Texas listed in or eligible for the National Register of Historic Places (historic properties), and has consulted with Recipients, pursuant to 36 CFR § 800.14(b)(3) of the regulations implementing Section 106 of the National Historic Preservation Act;

NOW, THEREFORE, FEMA has requested that the Recipients execute this Addendum to facilitate the Section 106 review of Undertakings that may affect historic properties.

I. STIPULATIONS

FEMA will require that the following Stipulations be implemented:

1. FEMA will consult with a Recipient, in lieu of the Governor's Division of Emergency Management (DEM), pursuant to this Agreement, for all of the Recipient's Undertakings that may affect historic properties. The Recipient will participate in the review of all such Undertakings in accordance with this Agreement. All references to the terms "DEM" or "its applicants" in this Agreement are understood to refer only to the Recipient for review of these Undertakings.
2. FEMA will require any other Federal agencies participating in the Undertaking to consult with the Recipient, in lieu of DEM, in accordance with this Agreement and Addendum.
3. This Addendum takes effect on the last date of signature by FEMA, [any other participating Federal agency], and the Recipient.

A. SIGNATORY PARTIES:

FEMA, [any OTHER FEDERAL AGENCY], and the Recipient