

**FIRST AMENDMENT TO
SECONDARY PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY; THE LOUISIANA STATE
HISTORIC PRESERVATION OFFICER OF THE
DEPARTMENT OF CULTURE, RECREATION & TOURISM;
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION;
THE CITY OF NEW ORLEANS; AND THE
UNITED STATES ARMY CORPS OF ENGINEERS
REGARDING THE DEMOLITION OF PRIVATELY OWNED
RESIDENTIAL BUILDINGS WITHIN ORLEANS PARISH DAMAGED
AS A RESULT OF HURRICANES KATRINA AND RITA**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security entered into a Secondary Programmatic Agreement (Secondary PA) in May 2006, with the Louisiana State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), the U.S. Army Corps of Engineers (USACE), the City of New Orleans (the City) to administer Federal disaster assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121-5206, (Stafford Act) as a result of Hurricanes Katrina (DR-1603-LA) and Rita (DR-1607-LA) in August and September 2005 (Disasters), and provide for the City of New Orleans (the City) to use FEMA Public Assistance Program (Program) funding to demolish and remove numerous privately owned buildings (Buildings) that the City has determined are an imminent threat to public health and safety (Undertaking); and

WHEREAS, the Chitimacha Tribe of Louisiana (CTL), the Jena Band of Choctaw Indians (JBC), the Mississippi Band of Choctaw Indians (MBCI), and the Tunica-Biloxi Tribe of Louisiana (TBTL) are all Federally recognized sovereign Indian Nations, which have a government-to-government relationship with the United States and an interest in the area surrounding and including the entirety of Orleans Parish, Louisiana, are Concurring Parties to the Secondary PA; and

WHEREAS, the City of New Orleans Historic District Landmarks Commission (HDLC), the Preservation Resource Center of New Orleans (PRC), the Louisiana Landmarks Society (LLS), and the National Trust for Historic Preservation are Concurring Parties to the Secondary PA; and

WHEREAS, USACE's demolition and debris removal mission assignment concluded on September 30, 2007, and USACE no longer has a role in the Undertaking; and

WHEREAS, and the City fully assumed USACE's responsibilities to implement the Undertaking on October 1, 2007; and

WHEREAS, FEMA has reviewed its efforts to complete the Treatment Measures outlined in Appendix B and has determined that certain measures to perform the intensive field examinations, or "Tier II testing," described in the Post-Demolition Treatment Measures set out in Appendix B to refine the Preliminary Archeological Probability Zone Map for Orleans Parish of May 3, 2006, are not commensurate with the effects of the Undertaking; and

WHEREAS, FEMA has determined that it is necessary to amend the Secondary PA under Stipulation IX.A to address the ongoing Undertaking and its implementation by the City and FEMA has notified SHPO, ACHP, the City, CTL, JBC, TBTL, HDLC, PRC, LLS, and NTHP and requested that these parties consult to seek agreement on amendment to the Secondary PA; and

WHEREAS, on December 8, 2008, FEMA requested that the ACHP provide guidance regarding the need for FEMA to perform the intensive field examinations, or “Tier II testing,” and in a letter dated December 17, 2008, the ACHP concurred with FEMA that Tier II archaeological testing is no longer necessary to determine the effectiveness of the Lower-Impact Demolition Stipulations (LIDS); and

NOW, THEREFORE, FEMA, SHPO, ACHP, and the City agree that the Undertaking shall be implemented in accordance with the May 2006 Secondary PA as amended by the following measures.

STIPULATIONS

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

1. The Secondary PA is amended in its entirety, including the Appendices, to remove references to the USACE. Any and all actions that were assigned by the Secondary PA to the USACE will and are being fulfilled by the City.
2. Appendix B, Part B (4) is struck in its entirety and amended to require:
 - a. FEMA will initiate regular reporting on its implementation of the Secondary PA. It will provide quarterly reports within 10 business days following the end of each quarter (March 31, June 30, September 30, and December 31) by e-mail to all Signatories and Concurring Parties. This report will include a summary of any finds and discoveries; outline FEMA’s educational efforts; and provide copies of any recently developed GIS shape files.
 - b. FEMA will require that LIDS are included as a material requirement of the demolition contracts.
 - c. FEMA will continue its educational outreach to the City, demolition contractors, and demolition crews.
 - d. FEMA historic preservation staff will continue to conduct cursory, pre-demolition inspections of demolition sites in the high probability zones to identify readily visible archeological features and will work with QA/QC Monitors to implement adequate measures to avoid adverse impacts to these visible features. (Secondary PA, Stipulation VIII.B.1)

- e. FEMA will spot check demolition sites to verify compliance with LIDS.
 - f. FEMA will continue to require that demolition contracts provide FEMA with the right to request that work be discontinued if violations of LIDS are observed or if finds or discoveries are identified. The procedures for FEMA to conduct oversight (field inspections) on sites potentially involving asbestos materials will not be revised. (Stipulations VIII.B.3, 4, and 5)
 - g. FEMA will consult with SHPO and others, as necessary, regarding demolitions on recorded archeological sites to determine if site-specific avoidance measures can be implemented. If a recorded archeological site may be adversely affected, FEMA will consult with SHPO and others, as necessary, to determine if the site is eligible for the National Register and to prepare a treatment plan for any National Register eligible archeological site that addresses the adverse effect (clarification of Stipulation VIII.C.)
 - h. FEMA will continue to follow the process regarding the treatment of unexpected discoveries of archeological artifacts and human remains. (Stipulation VIII.D)
 - i. FEMA will refine the Probability Map. This effort will require FEMA to scan and geo-reference the relevant historic maps as time allows. Information from FEMA's oversight (field inspections) and information from contractor discoveries will be incorporated into the map. FEMA will report on this effort as part of the quarterly report.
3. All remaining Stipulations and measures in the Appendices of the Secondary PA remain in full force and effect.
 4. This First Amendment to the Secondary PA shall be effective immediately upon signature by all signatory parties.
 5. FEMA shall provide each signatory party with a complete copy of the Secondary PA including all signature pages.
 6. FEMA will notify all concurring parties of this First Amended Secondary PA and provide them with a copy of the executed agreement.

Execution of this First Amendment to the Secondary PA by all signatory parties and implementation by FEMA evidences that FEMA has taken into account the effects of the Undertaking on historic properties.

SIGNATORIES:

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: Marc Roy
Marc Roy
Environmental Liaison Officer
Louisiana Transitional Recovery Office

Date: 1/27/09

**LOUISIANA STATE HISTORIC PRESERVATION OFFICE OF THE
DEPARTMENT OF CULTURE, RECREATION & TOURISM**

By: Scott Hutcheson
Scott Hutcheson
State Historic Preservation Officer

Date: 3/26/09

CITY OF NEW ORLEANS

By: C. Ray Nagin
C. Ray Nagin
Mayor of New Orleans

Date: 4/30/09

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler
John M. Fowler
Executive Director

Date: 2/18/09

FORM AND LEGALITY APPROVED:
Fred [Signature]
Law Department, City of New Orleans
FRED [Signature]