

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER
AND
THE URSULINE ACADEMY OF NEW ORLEANS**

**REGARDING THE URSULINE ACADEMY PRIMARY BUILDING
2635 STATE STREET, NEW ORLEANS, ORLEANS PARISH, LA**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security, pursuant to Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121-5206) and implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR Part 206), proposes to provide Public Assistance to the Ursuline Academy (Subgrantee) through the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) in response to damages caused by Hurricane Katrina (DR-1603-LA) and in response to Ursuline Academy's request to fund the rehabilitation of their Primary Building (former Laundry building) located on the Ursuline Academy campus, 2635 State Street, New Orleans, Louisiana (Undertaking) as specified in the stipulations of this Memorandum of Agreement (MOA); and

WHEREAS, FEMA has determined to fulfill its Section 106 responsibilities for this Undertaking by consulting under Section 106 of the National Historic Preservation Act (16 U.S.C. §470f) (NHPA), its implementing regulations (36 CFR Part 800), and the "*Programmatic Agreement among FEMA, the Louisiana State Historic Preservation Officer, the Louisiana Governor's Office of Homeland Security and Emergency Preparedness, the Alabama-Coushatta Tribe of Texas, the Caddo Nation, the Chitimacha Tribe of Louisiana, the Choctaw Nation of Oklahoma, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, the Mississippi Band of Choctaw Indians, the Quapaw Tribe of Oklahoma, the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Tunica-Biloxi Tribe of Louisiana, and the Advisory Council on Historic Preservation*" executed August 17, 2009, as amended on July 22, 2011; and

WHEREAS, this Undertaking has been under development since 2009, and FEMA completed the Section 106 review and funded various portions of the Undertaking as the disaster-related damages were identified, and the Subgrantee took steps to fully develop and implement the Scope of Work for the Undertaking including FEMA eligible repairs and hazard mitigation proposals. However, the Subgrantee also completed improvements before FEMA received an improved project request and initiated the Section 106 review for this work, and therefore FEMA did not have the opportunity to advise the Subgrantee that adverse effects could be avoided by following the Secretary of Interior Standards for the Treatment of Historic Properties (*Standards*). In order to reconcile the improvements made to the former Laundry building with the previously reviewed FEMA eligible repairs and hazard mitigation and allow FEMA to meet its Section 106 requirements, the Subgrantee submitted an improved project request to FEMA in January 2011; and

WHEREAS, the improvements made to the former Laundry building included: interior modifications, construction of a fire escape, construction of a loggia and a two-story entry tower on the west side of the building, replacement of four exterior doors with windows and the replacement of three exterior doors with windows; and

WHEREAS, since the Undertaking was completed by the Applicant prior to FEMA's initiation of the Section 106 review, FEMA examined the history of the Undertaking, assessed its effects on historic properties and determined that Section 110(k) of the NHPA is not applicable, and circumstances may justify granting assistance to the Applicant for the Undertaking. FEMA requested the ACHP's opinion and any suggestions regarding possible mitigation of the adverse effect as described in 36 CFR §800.9(c)(2)(i). In a letter dated June 29, 2011, the ACHP concurred with FEMA's determination that circumstances justify granting assistance to the Subgrantee and determined it would not participate in the consultation to develop an MOA to resolve adverse effects caused by the Undertaking; and

WHEREAS, FEMA has taken steps to prevent future after-the-fact Environmental and Historic Preservation (EHP) reviews resulting from DR-1603-LA by providing training on EHP compliance requirements to FEMA program staff and GOHSEP and also improving internal and external communication and documentations standards; and

WHEREAS, FEMA consulted with the Louisiana State Historic Preservation Officer (SHPO) in a letter dated July 08, 2011, and SHPO concurred with FEMA's determination that: the Area of Potential Effects (APE), shown in Attachment 1, includes the entire campus of the Ursuline Academy for standing structures and the footprint of the Primary building walkway for Archaeology; the APE is located within the Uptown New Orleans National Register Historic District (Uptown NRHD) listed in the National Register on July 3, 1985 and the Primary Building (1918), The Main Building (1912), Chapel, State Street Residence (1925) and the Old Gymnasium (1933) on the campus of Ursuline Academy were constructed during the district's period of significance, c. 1820-1935 and are contributing resources to the Uptown NRHD; and

WHEREAS, FEMA applied the criteria of adverse effect, pursuant to 36 CFR §800.5(a)(2) and determined the Undertaking had an adverse effect on the Ursuline Academy Primary building and to initiate an adverse effect consultation, under 36 CFR §800.6, to develop an MOA to mitigate the adverse effect that has occurred; and

WHEREAS, SHPO's letter also reports that new information suggesting that the campus may rest upon an archaeological deposit became available to SHPO staff during a July 21, 2011, site visit to Ursuline Academy, which included representatives from FEMA, SHPO, GOHSEP, National Trust for Historic Preservation (NTHP) and senior staff of Ursuline Academy, and the senior staff of Ursuline Academy reported that prior to 1912, the property was a local dump. The information was reinforced by SHPO's observations of a strata composed of dense concentrations of glass and ceramics; and

WHEREAS, FEMA has determined to address the discovery of archaeological deposit within the APE by including a stipulation in this MOA; and

WHEREAS, FEMA and SHPO are the Signatories to the MOA as defined in 36 CFR §800.6(c)(1); and

WHEREAS, FEMA consulted with the Ursuline Academy, the Subgrantee, and in recognition that the Subgrantee will assume responsibilities to perform various actions described by this MOA, FEMA has invited the Subgrantee to participate in this consultation and execute this MOA as an Invited Signatory as defined in 36 CFR §800.6(c)(2); and

WHEREAS, GOHSEP, the Grantee, was invited by FEMA to participate in this consultation and execute this MOA as a Concurring Party as defined in 36 CFR §800.6(c)(3); and

WHEREAS, FEMA notified the Alabama Coushatta Tribe of Texas, Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, Quapaw Tribe of Oklahoma, Seminole Nation of Oklahoma, Seminole Tribe of Florida, and Tunica Biloxi Tribe of Louisiana and the Muscogee (Creek) Nation (collectively referenced as “Tribes”) and provided information regarding identified historic properties in the APE, information regarding the history and topography of the APE, and afforded the Tribes an opportunity to participate in the consultation; and

WHEREAS, FEMA provided information about the Undertaking and offered the opportunity to participate in this consultation to the NTHP, the Preservation Resource Center (PRC), the New Orleans Historic District Landmarks Commission, the Louisiana Landmarks Society, the Ursuline Alumnae Association, and the Claiborne-University Neighborhood Association; and

WHEREAS, the NTHP and PRC have requested Consulting Party status and are invited by FEMA to participate in this consultation and sign this MOA as a Concurring Party according to 36 CFR §800.6(c)(3); and

WHEREAS, information was provided to the public regarding the Undertaking prior to the initiation of this consultation in the form of the following; a sign posted at the corner of Claiborne and Nashville Avenues for two years showing the picture of the undertaking along with the names of the architects and contractors, floor plan signs that were hung on the chain link fence outside of the primary building for two years, and two articles about the Undertaking printed in the PRC’s May 2011 issue of *Preservation in Print* magazine and the November 2010 issue of the *Clarion Herald*; and

WHEREAS, FEMA provided information to the public regarding the Undertaking by posting it on the websites of the Louisiana Department of Culture, Recreation and

Tourism (CRT) and the PRC. The public notice invited the public to comment on the Louisiana Department of CRT website or mail comments to FEMA; and

WHEREAS, FEMA received no comments on the CRT website or via mail;

WHEREAS, during the course of consultation for this Undertaking, the consulting parties have studied historic drawings and photographs, provided by the Subgrantee, of the Primary Building and determined that some of the modifications including; the restoration of two sets of windows on the Nashville elevation, the restoration of one set of windows on the State Street side, and the construction of the Loggia, are consistent with the *Standards* and have restored some of the historic integrity of the former Laundry building. However, the construction of the Entry tower is not consistent with the *Standards* and still constitutes an adverse effect to the historic property; and

NOW THEREFORE, FEMA, SHPO, Subgrantee, GOHSEP, NTHP, and PRC agree that the Undertaking will be implemented in accordance with the following Stipulations to take into account the effects of the Undertaking on historic properties and to satisfy FEMA's Section 106 responsibilities for the Undertaking.

STIPULATIONS

To the extent of its legal authority and in coordination with the SHPO, Ursuline Academy, NTHP, PRC, and GOHSEP, FEMA will require that the following measures are implemented:

I. GENERAL PROVISIONS

- A. A Consulting Party will be recognized by FEMA as a Signatory, Invited Signatory, or a Concurring Party starting on the date the Consulting Party signs this MOA as a Signatory, Invited Signatory, or Concurring Party and provides FEMA with a record of this signature.
- B. FEMA will provide the Signatories, Invited Signatory, and Concurring Parties with the opportunity to review and comment on various documents and reports under the terms of the MOA. Determinations or reviews that have been completed by FEMA under the terms of this MOA prior to the signature of a Concurring Party will not be reconsidered because the Concurring Party did not have the opportunity to review and comment.
- C. The Signatories, Invited Signatory, and Concurring Parties may send and accept official notices, comments, requests for further information and documentation, and other communications required by this MOA by e-mail. If the size of an e-mail message is unusually large or an e-mail is returned to a sender because its size prevents delivery, the sender will contact the recipient(s) and determine alternative methods to deliver the information.

- D. Time sensitive information that is not sent by e-mail should be sent by overnight mail, courier, or be hand-delivered and the time frame for its review will be measured by the date the delivery is signed for by the individual recipient or the agency or organization representing the Signatories, Invited Signatory, or Concurring Parties.
- E. All references to time periods in this MOA are in calendar days. If a review period included in this MOA ends on a Saturday, Sunday, or Federal holiday, the review period will be extended until the next business day. Any electronic communication forwarding plans or other documents for review under the terms of the MOA that is sent after 4:00 pm Central Time will be deemed to have been received by the reviewing party on the next business day. E-mail comments by the Signatories, Invited Signatory, or Concurring Parties on any plans or documents submitted for review under this MOA are timely if they are received at any time on the last day of a review period. Responses sent by mail will be accepted as timely if they are postmarked by the last day allowed for the review.
- F. The failure of any Signatory, Invited Signatory, or Concurring Party to comment during the time frames set out in this MOA will be treated by FEMA as concurrence, and FEMA may proceed to the next step without taking additional steps to seek comments from that party.
- G. It is the responsibility of each Signatory, Invited Signatory, and Concurring Party to immediately inform FEMA of any changes in the name, address, e-mail address or phone number of the point-of-contact for the Signatory, Invited Signatory, or Concurring Party. FEMA will forward this information to the Signatories, Invited Signatory, and Concurring Parties by e-mail. The failure by any party to this MOA to notify FEMA of changes to their point-of-contact's information shall not be grounds for asserting that notice of a proposed action was not received.

II. ARCHAEOLOGICAL INVESTIGATIONS

- A. The archaeological investigations must be performed by or under the direct supervision of an archaeologist(s) who qualifies under the Secretary of the Interior's Professional Qualification Standards set out at 48 FR 44716, September 29, 1983, for Archaeology. Archaeological fieldwork and associated reporting will follow the Louisiana Division of Archaeology's Phase II Site Testing Standards, http://www.crt.state.la.us/archaeology/review/phase_II_site_testing_guidelines.aspx.
- B. FEMA submitted an archaeological site form for a portion of the Ursuline Academy property to the Louisiana Division of Archaeology in coordination with the archaeological investigations described in this MOA. The Louisiana Division of Archaeology assigned the site number 16OR587.

- C. FEMA has completed the fieldwork portion of archaeological investigation to assess the NRHP eligibility of the observed archaeological deposits. This investigation incorporated 1 sq meter of excavations.
- D. In addition to the 1 square meter of excavation, this investigation will incorporate analysis of approximately two (2) cubic feet of bottles (approximately 50 count) that have been collected by Ursuline School from the northern end of the campus.
- E. FEMA will ensure all artifacts associated with the investigation are curated with the Louisiana State Department of Culture, Recreation and Tourism – Division of Archaeology.

III. TREATMENT MEASURES

A. Recordation

1. FEMA will complete the photographic recordation described in this Stipulation within 60 days of execution of this MOA. The recordation will be performed by or under the direct supervision of an individual who meets the Secretary of the Interior’s Professional Qualification Standards set out at 48 FR 44716, September 29, 1983, for History, Architectural History, Architecture, or Historic Architecture.
2. The recordation will include digital photographs of the exterior and interior of the Primary Building and Main Building; and exterior shots of the Chapel, State Street Residence and the Old Gymnasium on the campus of Ursuline Academy. A list of twenty-five (25) photographs that will be included in the recordation materials is set out in Attachment 2.
3. The digital photography must comply with the “Best” category of requirements from the National Register Photo Policy Fact Sheet: http://www.nps.gov/history/nr/publications/guidance/Photo_Policy_final.doc, summarized below:
 - i. Image files must be saved as TIFF and JPEG files using high quality compression settings. The image files must be transferred as first generation image files that have not been degraded in quality by multiple revisions and re-saving. The image files must be saved on archival quality CD-R or archival DVD-R media.
 - ii. Digital camera files must be captured as 6 megapixel files or greater with a minimum pixel array of 3,000 pixels by 2,000 pixels at 300 dpi.
 - iii. Color images must be produced in RGB (Red Green Blue) color mode as 24-bit or 48-bit color files.
4. The color photographs must comply with the requirements of the National Register Photo Policy Fact Sheet:

http://www.nps.gov/history/nr/publications/guidance/Photo_Policy_final.doc,
as summarized below:

- i. Digital images must be produced at 300 dpi using manufacturer recommended paper and ink for photographic prints.
 - ii. Printed photographs must include at least thirty-five (35) different color archival photographs as listed in Attachment 2.
 - iii. Photographs will be labeled to state the latitude/longitude in NAD83, Parish and State where the photograph was taken; date of photograph; description of view including direction of camera; and name of photographer must be mechanically printed on the front of the photographs in the lower margin using archival quality ink.
6. FEMA will produce a short narrative history of the current Ursuline Academy campus coincident with the photographic recordation. This history will include the types of information required in Historic American Building Survey (HABS) Historical Reports: Outline form. The history will include a description of the buildings on the campus, including the Primary building and discuss the current and historic uses of each building.
 7. If FEMA determines it feasible, FEMA will include an archival copy of the elevation page of the original Laundry building drawings, currently housed at Tulane's Southeastern Architectural Archives (SEAA) in the recordation package. The drawings will be reproduced only if the SEAA allows the reproductions to be made and if copyright may be obtained. A reference to the location of the drawings will also be included in the narrative history.
 8. FEMA will provide the SHPO and Subgrantee with the draft digital photographs and narrative history for a fifteen (15) day comment period. If the SHPO and Subgrantee do not provide comments to FEMA on the draft within fifteen (15) days following FEMA's submission, FEMA may complete the recordation and the narrative history required by this Stipulation. FEMA will incorporate SHPO and Subgrantee comments on the recordation, prior to finalization of the materials
 9. FEMA will prepare four (4) sets of archival copies of the twenty-five (25) photographs, the narrative history, and original elevation drawings, if obtained, and shall forward two (2) copies to SHPO. SHPO will forward one (1) copy to the State Library and one (1) copy to the State Archives. FEMA shall submit one (1) copy to the Earl K. Long Library, University of New Orleans, Louisiana Special Collections, and one (1) copy to the Subgrantee

B. Archaeological Treatment Measure

If FEMA, in consultation with SHPO, determines the archaeological deposits at Ursuline Academy are eligible for listing in the NRHP, FEMA will create a brochure that describes archaeology in terms for students. FEMA will provide an electronic copy of the brochure to both Ursuline Academy and the SHPO for distribution electronically or printed.

C. Interpretive Plaque

FEMA will produce a small plaque, detailing the historic use of the Laundry building. The Subgrantee will install the plaque on the former Laundry building in a location visible to pedestrian traffic, such as near the entrance of the building or on an elevation close to a walkway.

IV. DISPUTE RESOLUTION

- A. Should any Signatory, Invited Signatory, or Concurring Party object in writing to FEMA within the timeframes provided by this MOA to the recordation or archaeological treatment measures, FEMA shall notify the Subgrantee and GOHSEP and consult further with the objecting party, Subgrantee, GOHSEP, and others as determined by FEMA, to seek resolution.
- B. If FEMA determines that the dispute cannot be resolved, FEMA shall forward its proposed resolution of the dispute and all relevant documentation to the ACHP. Within fourteen (14) days after receipt of the documentation, the ACHP will:
1. Advise FEMA that it concurs with FEMA's resolution of the dispute; or
 2. Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the dispute; or
 3. Notify FEMA that it shall comment pursuant to 36 CFR §800.7(c), and proceed to comment. Any comment provided shall be taken into account by FEMA in accordance with 36 CFR §800.7(c)(4) with reference to the subject of the dispute.
- C. If the ACHP does not provide FEMA with comments or recommendations within fourteen (14) days, FEMA may assume that the ACHP does not object to its recommended approach and it shall proceed accordingly.
- D. Any recommendation or comment provided by ACHP shall be understood to pertain only to the subject of the dispute, and FEMA's responsibilities to fulfill all actions that are not subject of the dispute shall remain unchanged.
- E. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with 36 CFR §800.4(c)(2).

V. PUBLIC OBJECTIONS

If at any time during implementation of the measures stipulated in this MOA, should an objection relevant to the implementation of recordation or archaeological treatment measures in this MOA be raised by a member of the public, FEMA shall take the objection into account, notify the Signatories, Invited Signatory, and Concurring Parties of the objection, and consult as needed with the objecting party, the Signatories, Invited Signatory, and Concurring Parties prior to FEMA's resolution of the objection. FEMA may request that the ACHP participate in the consultation to resolve the public objection. Neither FEMA nor Subgrantee is required to cease work on activities unrelated to the objection while the objection is being reviewed and resolved.

VI. AMENDMENTS, TERMINATION, AND NONCOMPLIANCE

- A. If FEMA determines that it is not feasible to fulfill the requirements of this MOA, FEMA will immediately notify the Signatories, Invited Signatory, and Concurring Parties in writing of this determination. Within twenty-one (21) days of receiving this notice, FEMA will meet with the Signatories, Invited Signatory, and Concurring Parties, in person or by telephone, to determine if the MOA must be amended or terminated, and proceed accordingly.
- B. Any Signatory or Invited Signatory may request in writing that the MOA be amended or terminated. Within twenty-one (21) days of such a request, FEMA will convene a meeting of the Signatories, Invited Signatory, and Concurring Parties to consider this request. The Parties will make a good faith effort to amend the MOA prior any Party taking steps to terminate it. The MOA may be amended upon the written agreement of the Signatories and Invited Signatory, and the process will comply with 36 CFR §800.6(c)(7).
- C. If the MOA is not amended, the Signatories or Invited Signatory may terminate the MOA by providing a thirty (30) day written notice to the Signatories, Invited Signatory, and Concurring Parties. The Signatories, Invited Signatory, and Concurring Parties will cooperate in good faith to seek amendments or other actions that would prevent termination during this thirty (30) day time frame. Should consultation fail, FEMA will promptly notify the Signatories, Invited Signatory, and Concurring Parties in writing of termination. Termination of the MOA will require FEMA to comply with the Statewide Programmatic Agreement in effect on the date of the termination. This MOA may be terminated without further consultation by execution of a subsequent agreement that explicitly terminates or supersedes this MOA.

VII. DURATION AND REPORTING

Unless amended or terminated in accordance with Stipulation VI, this MOA will remain in effect through July 1, 2014, or until FEMA determines that it has been

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satisfactorily fulfilled. FEMA will notify the Signatories, Invited Signatory, and Concurring Parties by e-mail when it determines that the recordation and archaeological treatment measures have been completed and the terms of this MOA have been fulfilled.


VIII. EFFECTIVE DATE AND IMPLEMENTATION OF MOA

This MOA shall become effective immediately upon FEMA's filing an original copy signed by the Signatories and Invited Signatory with the ACHP. FEMA shall provide each Signatory, Invited Signatory, and Concurring Party with a complete copy of the MOA including all executed signature pages.

EXECUTION AND IMPLEMENTATION of this Memorandum of Agreement evidences that FEMA has afforded ACHP a reasonable opportunity to comment on the proposed Undertaking and its effects on historic properties, that FEMA has taken into account the effects of the undertaking on historic properties, and that FEMA has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations.

SIGNATORY PARTIES:


FEDERAL EMERGENCY MANAGEMENT AGENCY



Katherine Zeringue
Environmental Liaison Officer
Louisiana Transitional Recovery Office

Date: 10-12-11

LOUISIANA STATE HISTORIC PRESERVATION OFFICER




Pam Breaux
State Historic Preservation Officer

Date: 10-14-11

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INVITED SIGNATORY

URSULINE ACADEMY OF NEW ORLEANS



Gretchen Kane
Ursuline Academy President

Date: 10-18-11



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CONCURRING PARTIES:

**GOVERNOR'S OFFICE OF HOMELAND SECURITY AND EMERGENCY
PREPAREDNESS**



Date: 10/17/11

Pat Santos

Interim Director

Governor's Office of Homeland Security and Emergency Preparedness

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NATIONAL TRUST FOR HISTORIC PRESERVATION

_____ Date: _____

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the Ursuline Academy Primary Building, New Orleans, LA

PRESERVATION RESOURCE CENTER

Kimball

Date: 10.24.2011

Michelle Kimball, Senior Advocate

ATTACHMENT 1: Area of Potential Effects



ATTACHMENT 2: List of Photographs

1. Elevation views of the Primary Building, Main Building, Chapel, State Street Residence and the Old Gymnasium (5)
2. Five (5) additional exterior views (including at least 1 oblique view of each) of the Primary Building, Main Building, Chapel, State Street Residence and the Old Gymnasium
3. Five (5) detail exterior shots
4. Three (3) contextual views of the campus, one of which captures the neighborhood
5. Two (2) shots of interior rooms in the Primary Building
6. Five (5) shots of interior rooms and hallways in the Main Building