

**TEXAS PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY;
THE TEXAS HISTORICAL COMMISSION; AND
THE TEXAS DEPARTMENT OF PUBLIC SAFETY/
TEXAS DIVISION 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, FEMA makes assistance available to States, Commonwealths, communities, Federally recognized Indian Tribes (Tribes) and other eligible entities through Federal programs (Programs), including: the Individuals and Households Grant, Pre-Disaster Mitigation (PDM), Public Assistance (PA) Grant, and Hazard Mitigation Grant Programs (HMGP) (Programs), further described in Appendix A; pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121-5207) (Stafford Act), and its implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR Part 206); the National Flood Insurance Reform Act of 1994 (42 U.S.C. §§ 4001 et seq.), and its implementing regulations in 44 CFR Part 78; the Disaster Mitigation Act of 2000 and its implementing regulations; the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA); and other such Programs, Acts, or implementing regulations that may be authorized by the United States (U.S.) Congress; and

WHEREAS, FEMA has determined that implementation of these Programs may result in Undertakings (as defined by 16 U.S.C. § 470w and 36 CFR § 800.16(y)) that may affect properties in the State of Texas (State) that are listed in or eligible for listing in the National Register of Historic Places (National Register); and FEMA has consulted with the Advisory Council on Historic Preservation (ACHP) and the Texas Historical Commission, as the State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, implementing regulations of Sections 106 and 110(f) of the National Historic Preservation Act (NHPA) (16 U.S.C. §§ 470f and 470h-2); and

WHEREAS, to implement the Programs, FEMA will provide financial and technical assistance to the State, which will in turn provide assistance to eligible Applicants, as defined by the FEMA Programs, and as such the Texas Department of Public Safety/Texas Division of Emergency Management (TXDPS) will administer the Programs for the State, and has participated in this consultation; and

WHEREAS, FEMA also may perform its own Undertakings pursuant to this Agreement; and

WHEREAS, this Programmatic Agreement will complement agreements currently being negotiated between FEMA and Federally recognized Tribes of the State of Texas, as well as those with ancestral tribal interests in the state; and will ensure other aspects of FEMA's required Section 106 compliance with the Tribes; and

WHEREAS, in anticipation or in the immediate aftermath of an event, impacted communities and the State of Texas, may 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 an event. Some of these activities may become Undertakings requiring Section 106 review subject to the terms of this Agreement, and FEMA shall coordinate the appropriate review as warranted; and

WHEREAS, this Agreement conforms to the FEMA Prototype Agreement as designated by the ACHP on December 17, 2013, and therefore does not require the participation or signature of the ACHP; and

WHEREAS, the definitions in 36 CFR § 800.16 apply to this Agreement; and

WHEREAS, implementation of the Programs will be more efficient if an Agreement is established in accordance with 36 CFR § 800.14(b)(2) to: specify procedures, roles, and responsibilities in the review process; eliminate further Signatory review of certain routine activities with little potential to adversely affect Historic Properties; and streamline reviews so that the effects of the Programs on Historic Properties are considered while expediting the delivery of FEMA assistance;

NOW, THEREFORE, FEMA, SHPO, and TXDPS agree that the FEMA Programs will be administered in the State of Texas pursuant to the following Stipulations to satisfy FEMA's Section 106 responsibilities for all of its Undertakings, and effectively integrate preservation requirements of those Undertakings. FEMA will not fund an Undertaking in Texas until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with the other Signatories, FEMA shall ensure that the following measures are implemented:

I. GENERAL

A. Applicability

1. The execution of this Agreement supersedes the terms of the previously executed Agreement in the State of Texas dated November 30, 2005.
2. FEMA will assess proposed Undertakings that are in Section 106 review on the date of execution of this Agreement. FEMA may complete this review pursuant to the ongoing process; and if so, will make all reasonable efforts to consult with Tribes. For an Undertaking that has been completely reviewed, FEMA will review any change in scope of work pursuant to this Agreement, unless an existing Memorandum of Agreement (MOA) or Secondary Programmatic Agreement (Secondary Agreement) requires otherwise.

3. In the event of a Stafford Act major disaster or emergency declaration (Declaration), State, Tribal and local governments may lack the capability to perform or to contract for emergency work, and instead request that the work be accomplished by a Federal agency. Through a mission assignment (MA), FEMA may direct appropriate Federal agencies to perform the work. This Agreement will apply to such Federal assistance undertaken by or funded by FEMA pursuant to Titles IV and V of the Stafford Act and 44 CFR Part 206.
4. FEMA may utilize this Agreement to fulfill its Section 106 responsibilities and those of other Federal agencies that designate FEMA as the lead Federal agency pursuant to 36 CFR § 800.2(a)(2) with appropriate notification to the other Signatories and the ACHP regarding Undertakings that fall within the scope of this Agreement. When FEMA is not designated as the lead Federal agency, all Federal agencies, including FEMA, remain individually responsible for their compliance with Section 106.
5. If another Federal program or Federal agency has concluded Section 106 consultation review and approved an Undertaking within the past five (5) years, FEMA has no further requirement for Section 106 review provided, that FEMA confirms that the scope and effect [as defined by 36 CFR § 800.16(i)] of its Undertaking are the same as that of the Undertaking reviewed by the previous agency, and SHPO or Tribal consultation and concurrence is documented. FEMA shall document these findings to the project file in order to confirm that the requirements of Section 106 have been satisfied. Should FEMA, in consultation with SHPO determine that the previous Section 106 review was insufficient or involved interagency disagreements about eligibility, effect, and/or treatment measures, FEMA shall conduct additional Section 106 consultation in accordance with the terms of this Agreement.
6. With the written concurrence of the Signatories, other Federal agencies providing financial assistance for the type of Program activities covered under the terms of this Agreement may satisfy their Section 106 responsibilities by accepting and complying with the terms of this Agreement.
 - a. Other Federal Agencies may include States and units of local government who have assumed environmental responsibilities of the U.S. Department of Housing and Urban Development, and acting as the Responsible Entity pursuant to 24 CFR Part 58, are responsible for environmental review, decision-making and action.
 - b. In such situations, the other Federal Agency shall notify the Signatories in writing of its intent to use this Agreement to achieve compliance with its Section 106 requirements, and consult with the Signatories regarding its Section 106 compliance responsibilities. Resumes of staff who meet the Secretary's Professional Qualification Standard(s) and will review Tier II projects in accordance with Appendix B of this Agreement shall be provided to FEMA and the SHPO/THPO.
7. For FEMA Undertakings that also are within the jurisdiction of the Federal Communications Commission (FCC) and within the scope of its Section 106 Programmatic Agreements for communication facilities, FEMA defers Section 106

review in accordance with the ACHP Program Comment of October 23, 2009. The approval of funding for the FEMA Undertaking will be conditioned on the compliance of the applicant with FCC's applicable Section 106 review, including any required consultation with Tribes. FEMA will notify the SHPO when it applies the ACHP Program Comment to an Undertaking. FEMA remains responsible for any FEMA Undertakings it determines are outside of the jurisdiction of FCC.

8. 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 responsibilities with regards to them, pursuant to 36 CFR § 800.3(a)(1):
 - a. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households provided under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act, including funding for owner-occupied home repair and replacement, content replacement, personal property, transportation and healthcare expenses, is exempt from the provisions of Section 106. For ground disturbing activities, and construction related to 44 CFR §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement housing), 206.117(b)(4) (permanent housing construction), 206.117(c)(1)(vi) (privately-owned access routes) and rental units (multi-family repair), FEMA will conduct Section 106 review.
 - b. 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.
 - c. Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents.
 - d. Granting of variances, and actions to enforce Federal, State, or local codes, standards or regulations.
 - e. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.
 - f. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.
 - g. Assistance provided for planning, studies, design and engineering costs that involve no commitment of resources other than staffing and associated funding.
 - h. 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.

- i. 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.
 - j. Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements.
 - k. Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction, but excluding demolition.
 - l. Reimbursement of applicant's insurance deductible, when the deductible is the total FEMA eligible cost for the project.
 - m. 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.
 - n. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
 - o. Unemployment assistance.
 - p. Distribution of food coupons.
 - q. Legal services.
 - r. Crisis counseling.
9. Any FEMA Programs authorized by the United States Congress in the future may be included in this Agreement in accordance with Stipulation IV.A, Amendments. 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. Will retain staff or contractors who meet the applicable Secretary of the Interior's (Secretary) *Professional Qualifications Standards (Qualifications)*, defined in 36 CFR Part 61, Appendix A, as determined by FEMA's Federal Preservation Officer (FPO) or designee, for Section 106 review of the Undertakings.
- b. May request that other Federal, State, or Applicant staff identify and evaluate Historic Properties on its behalf, in accordance with 36 CFR §§ 800.4 (b-c). This delegation includes, but is not limited to, preparation of documentation about effects of

Undertakings on Historic Properties, in accordance with 36 CFR § 800.5. FEMA will ensure that this staff also meets the *Qualifications*, as determined by the FPO or designee.

- c. Will make every effort to have *Qualified* FEMA staff coordinating directly with SHPO in accordance with 36 CFR §§ 800.4 (b-c) before following through with Stipulation I.B.1.b.
- d. Will review any eligibility or effects determinations provided by a delegated party. This includes correspondence between the delegated party and SHPO. The determinations will be reviewed and approved before the project is funded.
- e. Will ensure that documentation provided for review pursuant to this Agreement is consistent with the applicable SHPO guidelines for project submittal found at <http://www.thc.state.tx.us/project-review/what-send-project-review>, such as, but not limited to:
 - i. Architectural documentation of standing structures;
 - ii. For fieldwork: Archeological Survey Standards for Texas; and
 - iii. For publications: *The Secretary of the Interior's Standards and Guidelines for Historic Preservation*, as at “ http://www.cr.nps.gov/local-law/arch_stnds_0.htm ”
- f. Will require the same actions of its Applicants, as will TXDPS of its Applicants, as described throughout this Agreement.
- g. Prior to authorizing the release of funds for individual Undertakings requiring grant conditions pursuant to this Agreement, FEMA shall inform TXDPS of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to the Applicant. FEMA shall work in partnership with the TXDPS to provide Applicants with guidance on in-kind repair pursuant to *The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 (Standards)*, 36 CFR Part 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties
- h. Will provide the Signatories with an Annual Report about this Agreement for the previous calendar year, by March 31 of each year that the Agreement is in effect, unless all Signatories concur in an extension. The Report will summarize the Undertakings reviewed, and actions taken to implement the Agreement; and will recommend any actions or revisions to be considered during the next calendar year. TXDPS will assist FEMA in preparing this Report.
- i. Will confer annually and as necessary with the signatories to this Agreement within ninety (90) days after issuance of the annual report, to review the report and/or discuss issues and concerns in greater detail. TXDPS will assist FEMA in initiating this

consultation; which may be conducted by telephone, meeting, electronically, or other appropriate method of communication.

- j. Shall notify the SHPO, as soon as practicable, following a Declaration to provide specific points of contact and other pertinent information about the Declaration.
 - k. May convene an initial scoping meeting with the signatories and other interested parties as soon as practicable after each Declaration to address Declaration-specific issues and procedures.
 - l. Shall ensure that all documentation resulting from Undertakings reviewed pursuant to this Agreement is consistent with applicable SHPO guidelines and the confidentiality provisions of 36 CFR § 800.11(c).
 - m. With TXDPS, as appropriate, will present information about the Section 106 review process at all Applicants' Briefings and Kickoff Meetings.
2. SHPO:
- a. Will participate in the review of Undertakings pursuant to this Agreement, including all actions delegated by FEMA to another party on its behalf in accordance with Stipulation II.C.
 - b. Will provide FEMA with access to available information about historic properties in the disaster area, and guidance on related research to the best of SHPO's ability, including:
 - i. Records of designated historic properties (including those listed in the National Register and with state-level designation of Recorded Texas Historic Landmark and State Antiquities Landmark (buildings only)) via the Texas Historic Sites Atlas at <http://atlas.thc.state.tx.us>; and restricted archeological site information to qualified professionals via the Texas Archeological Sites Atlas at <http://nueces.thc.state.tx.us/>;
 - ii. Historic Properties (including any known historic streets, roads or intersections) listed in or previously determined eligible for the National Register by the SHPO or Keeper of the National Register;
 - iii. Properties recorded in the THC standing structures and archeological survey site files in Austin, Texas;
 - iv. Unevaluated or under-evaluated historic properties in the Disaster area; and
 - v. Geographic areas:
 - 1) where sufficient cultural resource surveys have been conducted, and the survey results;

- 2) where there are not likely to be Historic Properties; and
 - 3) where surveys have been conducted, but a high potential for unidentified or under-evaluated historic properties remains.
- c. Will identify SHPO staff or consultants to assist FEMA with its Section 106 responsibilities, and identify specific activities that SHPO may perform at FEMA's request.
 - d. May delegate any of its responsibilities of this Agreement to a liaison(s) who is not a member of its staff. SHPO will consult with FEMA about the selection of the liaison; the scope of responsibilities delegated; and implementing procedures for the duties, actions, and decisions delegated. The delegation must be acceptable to FEMA, and formally documented. FEMA may provide funding for a liaison when applicable.
 - e. Will assist FEMA in identifying out-of-State Tribes that claim affinity with properties of traditional, religious, and cultural significance in the State, including through information provided on the SHPO website at <http://www.thc.state.tx.us/project-review/tribal-consultation-guidelines/tribal-contacts>; and will assist FEMA in identifying other groups or persons with jurisdiction or a demonstrated interest in Undertakings, Historic Properties, or other properties of traditional, religious, and cultural significance to Tribes in the Disaster area.
 - f. Will assist Applicants and other local jurisdictions in identifying debris staging, chipping, and disposal sites that will not affect Historic Properties.

3. TXDPS:

- a. Will ensure that their Applicants understand and acknowledge conditions and potential requirements that may be placed upon Undertakings as a result of Section 106 consultation and the provisions of this Agreement. TXDPS will provide information about applicable Federal preservation laws; and guidance about in-kind repairs, pursuant to the Secretary's *Standards for the Treatment of Historic Properties 1995 (Standards)*, 36 CFR Part 68, as updated and ensure that the Applicants understand and acknowledge any additional requirements placed on Undertakings as a result of Section 106 review, consultation, or other provisions of this Agreement; such as performing work in accordance with the U.S. Department of the Interior, National Park Service (NPS) *Preservation Briefs*.
- b. Will ensure that documentation provided for review pursuant to this Agreement is consistent with applicable SHPO guidelines when FEMA is not coordinating directly with these parties in accordance with Stipulation I.B.1.d.
- c. Will ensure that its Applicants are made aware that in the event of an unexpected discovery involving an Undertaking that has affected a previously unidentified historic property or human remains, or affected a known historic property in an unanticipated

manner, the Applicant will comply with Stipulation III.B, Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects.

- d. Will ensure that in its Applicant agreements, any scope of work involving ground disturbance, and resultant contracts to execute said work, provide for the protection of and notification protocols for unexpected discoveries or unexpected effects to historic properties and human remains.
 - e. Will require the Applicant to comply with all provisions of Stipulation II. B.
 - f. Will require, to the greatest extent possible, that an Applicant will not begin demolition, ground disturbing, or construction activities until an Undertaking is approved by FEMA; and otherwise, such activities will jeopardize Federal funding of the Undertaking.
 - g. Will ensure that their Applicants understand that failure to comply with any project-specific conditions that have been placed on their grants could jeopardize FEMA funding.
 - h. Will notify FEMA as soon as possible of any proposed change to the approved scope of work. TXDPS shall direct its Applicant not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
4. ACHP:
- a. Should the Texas Historical Commission be an Applicant for FEMA assistance, SHPO will be responsible for following their internal protocols and procedures, *Protocols and Procedures for Consultation on Historic Sites Division Projects*, for consultation with FEMA. If for any reason FEMA or SHPO determine that SHPO review of an Undertaking may otherwise be an apparent or actual conflict of interest, ACHP will review the Undertaking in lieu of SHPO.

C. Public Participation

1. FEMA recognizes that the views of the public are essential to informed decision making throughout the Section 106 consultation process. FEMA shall notify the public of proposed Undertakings 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 affected Tribe(s) private individuals and businesses.
2. FEMA may consult with TXDPS, Applicant, and SHPO, to determine if there are individuals or organizations with a demonstrated interest in historic properties that should be made aware of an Undertaking. If such parties are identified or identify themselves to FEMA, FEMA shall provide them with information regarding the Undertaking and its

effect on historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c).

3. In accordance with the outreach strategy developed for an Undertaking in consultation with the SHPO for involving the public, FEMA shall identify the appropriate stages for seeking public input during the Section 106 consultation process.
4. FEMA shall consider all views provided by the public regarding an Undertaking and will consider all written requests of individuals and organizations to participate as consulting parties, and in consultation with the SHPO determine which should be consulting parties. FEMA will invite any individual or organization that will assume a specific role or responsibility outlined in a Section 106 agreement document to participate as a signatory party.
5. 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 set out at 44 CFR Part 10, and/or Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 CFR Part 9, and Executive Order 12898, Environmental Justice, provided such notices specifically reference Section 106 as a basis for public involvement.
6. Should a member of the public object in writing to implementation of the Agreement's terms, FEMA will notify the other signatories in writing and take the objection into consideration. FEMA shall consult with the objecting party and, if that party so requests, the other Signatories, for not more than 30 days. In reaching its decision regarding the objection, FEMA shall take into consideration all comments from these parties. Within 15 days after closure of this consultation period, FEMA shall provide the other parties with its final decision in writing.

D. Timeframes and Communications

1. All time designations shall be in calendar days unless otherwise stipulated. If any signatory does not object to FEMA's determination related to an Undertaking within an agreed upon timeframe, FEMA may proceed to the next step in the consultation process as described in Stipulation II, Project Review. Due to the varied nature of Undertakings, the individual response times to FEMA's requests for comment/concurrence may vary. The Signatories may send and accept official notices, comments, requests for further information and documentation, and other communications required by this Agreement by e-mail.
2. For Emergency Undertakings as outlined in Stipulation II.B.2(c)(i), Expedited Review of Emergency Undertakings, the SHPO shall respond to any FEMA request for comments within seven (7) days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.

3. For Undertakings associated with the Individual Assistance (IA) and Public Assistance (PA) programs, the review time will be a maximum of fifteen (15) days.
4. For the Hazard Mitigation Grant Program (HMGP) and all non-disaster programs, the response time for each request for concurrence shall be a maximum of thirty (30) days
5. FEMA will maintain a record of contact information for the Signatories. A Signatory may update this information by notification to FEMA without amending the Agreement. The Signatory will notify the Region VI Environmental Officer within thirty 30 days after an update, whereupon FEMA will notify the other Signatories of the update.

II. PROJECT REVIEW

A. Programmatic Allowances

1. If FEMA determines an Undertaking conforms to one or more allowances in Appendix B of this Agreement, FEMA shall complete the Section 106 review process by documenting this determination in the project file, without SHPO review or notification.
2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify the SHPO, and the Intermountain Regional NPS Office that the Undertaking conforms to one or more allowances. FEMA will provide information about the proposed scope of work for the Undertaking and the allowance(s) enabling FEMA's determination.
3. If the Undertaking involves a State Antiquities Landmark (SAL) (designated per the Antiquities Code of Texas, Title 9, Chapter 191, Texas Natural Resource Code), Recorded Texas Historic Landmark (RTHL) (per Section 442.006, Texas Government Code), or any current or former county courthouse (per Section 442.008, Texas Government Code), FEMA shall notify the SHPO that the Undertaking conforms to one or more allowances. FEMA will provide information about the proposed scope of work for the Undertaking and the allowance(s) enabling FEMA's determination.
4. If FEMA determines any portion of an Undertaking's scope of work does not conform to one or more allowances listed in Appendix B, FEMA shall conduct Section 106 review for the entire Undertaking in accordance with Stipulation II.B, Expedited Review for Emergency Undertakings, or Stipulation II.C, Standard Project Review.
5. Allowances may be revised and new allowances may be added to this Agreement in accordance with Stipulation IV.A., Amendments.

B. Expedited Review for Emergency Undertakings

1. Determine Expedited Review
 - a. As part of the Declaration process, FEMA shall 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 property. Pursuant to 36 CFR § 800.12(d), FEMA may conduct expedited review of emergency Undertakings for 30 days from the beginning of the incident period.

- b. Should FEMA determine that it is necessary to extend the expedited review period beyond the initial 30 days, FEMA will, in 30-day increments, as needed, notify the ACHP and SHPO.

2. Conduct Expedited Reviews

- a. If the Undertaking is an immediate rescue and salvage operation 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 emergency Undertaking meets one or more of the Allowances in Appendix B of this Agreement, FEMA shall complete the Section 106 review process pursuant to Stipulation II.A., Programmatic Allowances.
- c. If FEMA determines that the emergency Undertaking may adversely affect a historic property during this expedited review period:
 - i. To the extent practicable FEMA may propose treatment measures that would address adverse effects during implementation, and request the comments of the SHPO within 7 days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period.
 - ii. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA shall clarify that an “expedited Undertaking review” is being requested.
 - iii. FEMA shall take into account any timely comments provided by SHPO.
 - iv. Should the SHPO not comment within 7 days, FEMA may fund the emergency Undertaking based on the available information. This will complete the Section 106 consultation for the Undertaking.
 - v. FEMA will notify the SHPO of the final decision, indicating how any comments received were considered in reaching that decision.

C. Standard Project Review:

For Undertakings not exempt from further Section 106 review, FEMA shall ensure that the following standard project review steps are implemented. In the interest of streamlining, FEMA may combine some or all of these steps during consultation.

1. Consulting Parties: FEMA shall consult as appropriate with the SHPO to identify any other parties that meet the criteria to be consulting parties and invite them to participate in the Section 106 consultation process. FEMA may invite others to participate as consulting parties as the Section 106 consultation proceeds.
2. Area of Potential Effects (APE): For standing structures not adjacent to or located within the boundaries of a National Register or eligible district, qualified staff shall define the APE as the individual structure when the proposed Undertaking is limited to the repair or rehabilitation (as defined in 36 CFR § 68.3(b)). For all other Undertakings, Qualified staff shall determine the APE in consultation with the SHPO. FEMA may consider information provided by other parties, such as local governments and the public, when establishing the APE.
3. Identification and Evaluation: Qualified staff shall determine, in consultation with the SHPO if the APE contains historic properties, including archaeological sites or properties of religious or cultural significance, that are listed in or potentially eligible for the National Register. This may include the review of documentation provided by the State or Applicant in coordination with the SHPO.
 - a. Level of Effort: FEMA shall make a reasonable and good faith effort to identify historic properties in accordance with 36 CFR § 800.4(b)(1). FEMA may consult with the SHPO to determine the level of effort and methodology necessary to identify and define the limits of these properties. For historic properties of religious and cultural significance to affected Tribe(s), FEMA shall consult with the affected Tribe(s) to determine geographical areas containing historic properties of Tribal religious and cultural significance that may be affected by an Undertaking in order to determine the necessary level of effort to identify and evaluate or avoid any such historic properties.
 - b. National Historic Landmarks: When FEMA determines an Undertaking has the potential to affect an NHL, FEMA shall notify the Secretary through the Intermountain Regional NPS Office Manager in addition to the SHPO, affected Tribe(s) and other consulting parties. The purpose of this notification is to ensure early coordination for the Undertaking which FEMA later may determine adversely affects the NHL as outlined in Stipulation II.C.6.
 - c. Determinations of Eligibility: FEMA shall review or determine National Register eligibility based on identification and evaluation efforts, and consult with SHPO regarding these determinations. Should the SHPO disagree with the determination of eligibility, FEMA shall either:
 - i. Elect to consult further with the objecting party;
 - ii. Treat the property as eligible for the National Register; or

- iii. Obtain a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4(c)(2).
4. Findings of No Historic Properties Affected: FEMA shall make a finding of “no historic properties affected” under the following circumstances:
- a. If no historic properties are present in the APE;
 - b. The Undertaking is designed to avoid historic properties, including archaeological sites or properties of religious or cultural significance to Tribe(s); or
 - c. The Undertaking does not affect the character defining features of a historic property.
 - d. FEMA shall notify the SHPO, and any other consulting parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d). Unless the SHPO objects to the finding within the timeframe outlined in Stipulation I.D., Timeframes and Communications, FEMA shall complete the Section 106 review.
 - e. If the SHPO, objects to a finding of “no historic properties affected,” FEMA shall consult with the objecting party to resolve the disagreement.
 - i. If the objection is resolved, FEMA either may proceed with the Undertaking in accordance with the resolution or reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation II.C.5, Application of the Criteria of Adverse Effect, below.
 - ii. If FEMA is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review FEMA’s finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36 CFR § 800.4(d)(1)(iv)(C). FEMA will consider the ACHP’s recommendation in making its final determination. If FEMA’s final determination is to reaffirm its “no historic properties affected” finding, the Section 106 review of the Undertaking will have concluded. Otherwise, FEMA will proceed to Stipulation II.C.5., below.
5. Application of the Criteria of Adverse Effect: If FEMA finds an Undertaking may affect historic properties in the APE, including properties of religious or cultural significance to affected Tribe(s), FEMA shall apply the criteria of adverse effect to historic properties within the APE(s), taking into account the views of the consulting parties and public concerning effects in accordance with 36 CFR § 800.5(a).
- a. If FEMA determines that an Undertaking does not meet the adverse effect criteria FEMA shall propose a finding of “no adverse effect” in accordance with 36 CFR § 800.5(b).

- i. FEMA shall notify the SHPO, and all other consulting parties of its finding and provide supporting documentation pursuant to 36 CFR §800.11(e).
 - ii. Unless a consulting party objects within the applicable timeframe outlined in Stipulation I.D. Timeframes and Communications, FEMA will proceed with its “no adverse effect” determination and complete the Section 106 review.
 - iii. If a consulting party objects to a finding of “no adverse effect,” FEMA will consult with the objecting party to resolve the disagreement.
 - 1) If the objection is resolved, FEMA shall proceed with the Undertaking in accordance with the resolution, or;
 - 2) If the objection cannot be resolved, FEMA shall request that the ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. FEMA shall consider the ACHP’s comments in making its final determination.
 - b. If FEMA finds the Undertaking may adversely affect historic properties, FEMA shall request through the State that the Applicant revise the scope of work to substantially conform to the *Standards* for standing structures, or avoid or minimize adverse effects for National Register listed or eligible archaeological properties.
 - i. If the Applicant modifies the scope of work to avoid the adverse effect, FEMA shall notify the consulting parties, and provide supporting documentation. Unless a consulting party makes a timely objection in accordance with the applicable timeframe outlined in Stipulation I.D. Timeframes and Communications, FEMA shall proceed with its “no adverse effect” determination, including any conditions, and complete the Section 106 review.
 - ii. If an Undertaking is not modified to avoid the adverse effect(s), FEMA shall initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.C.6. Resolution of Adverse Effects.
6. Resolution of Adverse Effects: If FEMA determines that an Undertaking may adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with SHPO, TXDPS, the Applicant, and other consulting parties, by one of the following methods depending on the severity of the adverse effect(s) as well as determination of the historic property’s significance on a local, state, or national level. When FEMA determines an Undertaking will adversely affect an NHL, FEMA shall notify and invite the Secretary and ACHP to participate in consultation in accordance with 36 CFR § 800.10. When the ACHP participates in consultation related to an NHL, the ACHP shall report the outcome of the consultation to the Secretary and the FEMA Administrator.

- a. **Abbreviated Consultation Process:** For an Undertaking not affecting an NHL, after taking into consideration the significance of the historic properties affected, the severity of the adverse effect(s), and avoidance or minimization of the adverse effect(s), FEMA may propose in writing to the consulting parties to resolve the adverse effects of the Undertaking through the application of one or more Treatment Measures outlined in Appendix C as negotiated with the SHPO, TXDPS, the Applicant, and other consulting parties. The use of these Treatment Measures will not require the execution of a Memorandum of Agreement (MOA) or Programmatic Agreement.
 - i. In consultation with the SHPO, TXDPS, Applicant, and other consulting parties, FEMA shall propose in writing the implementation of a specific Treatment Measure, or combination of Treatment Measures with the intent of expediting the resolution of adverse effects and provide documentation as required by 36 CFR § 800.11(e) and subject to the confidentiality provisions of 36 CFR § 800.11(c). Unless a consulting party or the ACHP objects within fifteen (15) days of receipt of FEMA's proposal, FEMA shall proceed with the use of Treatment Measures and will complete the Section 106 review.
 - ii. If any of the consulting parties or the ACHP objects within the 15 day review and comment period to the resolution of adverse effects through the application of the Abbreviated Consultation Process, FEMA shall resolve the adverse effect(s) using procedures outlined below in Stipulation II.C.6(b), Memorandum of Agreement (MOA) or Stipulation II.C.6(c). Programmatic Agreement.
 - iii. Because funding and implementation details of Treatment Measures for specific Undertakings may vary by program, FEMA shall provide written notice to the consulting parties within sixty (60) days of the completion of the Treatment Measures. This written notice will serve as confirmation that the Treatment Measures for a specific Undertaking have been implemented. FEMA also shall include information pertaining to the completion of Treatment Measures in the annual report pursuant to Stipulation I.B.1(d), FEMA Roles and Responsibilities.
 - iv. FEMA will notify the ACHP of all adverse effects and afford the ACHP the opportunity to participate or comment on the project including those where agreed upon Standard Treatment Measures are implemented.
- b. **Memorandum of Agreement:** FEMA shall provide the ACHP with an adverse effect notice in accordance with 36 CFR § 800.6(a)(1) if it has not already provided such under the Abbreviated Consultation Process of this Agreement, if a consulting party or the ACHP objects in accordance with Stipulation II.C.6(a)(ii), or if FEMA, in consultation with the SHPO, TXDPS, the Applicant, and other consulting parties, has determined that an MOA would be more appropriate to resolve the adverse effect(s). In consultation with the other consulting parties,

including the ACHP (if participating), FEMA shall develop an MOA in accordance with 36 CFR § 800.6(c) to agree upon treatment measures to avoid, minimize, and/or mitigate adverse effects on historic properties. The MOA may also include treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of more traditional treatment measures. Programmatic Agreement: Should the execution of an MOA be inappropriate given the similar nature of effects on historic properties, the inability to determine effects prior to approval of an Undertaking, or where other circumstances warrant, FEMA, the SHPO, the ACHP, if participating, and any other consulting party may consult to develop a Programmatic Agreement in accordance with 36 CFR § 800.14(b) to identify programmatic conditions or treatment measures to govern the resolution of potential or anticipated adverse effects from certain complex project situations for an Undertaking or for multiple but similar Undertakings by a single Applicant.

- c. Objections: Should any signatory, consulting party, or member of the public object within the timeframes established by this Agreement to any plans, specifications, or actions pursuant to resolving an adverse effect, FEMA shall consult further with the objecting party to seek resolution. If FEMA determines the objection cannot be resolved, FEMA shall address in accordance with Stipulation IV.B., Dispute Resolution.

D. Debris Operations:

Staging, collecting, storing, chipping, burning, burying, or disposing.

1. An Applicant may provide available information about emergency debris operations to SHPO for review and comment.
 - a. This information will include: the location of each site of activity, planned or completed debris operations, and any additional information required on the most current THC debris form.
 - b. The Applicant will provide this information by the most expeditious, reasonable, and appropriate means possible: in writing, by facsimile, or electronically.
2. SHPO will comment within 7 days after receipt of sufficient information.
 - a. SHPO may approve an Undertaking and notify FEMA if it determines that the Undertaking will not adversely affect a known Historic Property or a property that is at least 45 years old or meets the Allowances, Appendix B. The SHPO may request that an Applicant modify the scope of work, if feasible, to avoid adverse effects on Historic Properties. TXDPS will ensure that its Applicant implements any agreed upon modifications before proceeding.

- b. Should SHPO make a “no historic properties affected” or “no adverse effect” determination, FEMA may request sufficient documentation of determination from the SHPO when an Applicant cannot provide it.
3. Should FEMA concur with the determination, it will document it in the project file and may fund the Undertaking. Otherwise, FEMA may consult with SHPO for not more than 7 days to resolve any objection, or will review the Undertaking pursuant to Stipulation II.C., Standard Project Review.
4. The SHPO will review debris operations only after it receives notification of a Disaster declaration from FEMA as stated in Stipulation I.B.1(k).
5. TXDPS will provide information to its Applicants about this review process through the Debris Management briefing, Grant Management training, Applicant Briefings and other appropriate methods.

III. OTHER CONSIDERATIONS

A. Changes to an approved scope of work:

TXDPS is required to notify FEMA and will require its Applicants to notify it immediately when there are proposed changes to an approved scope of work for an Undertaking.

1. If FEMA determines the change meets an Allowance or has no effect on the property, FEMA will approve the change.
2. If the change can be modified to meet an Allowance, or conform to any applicable SOI Standards, FEMA will complete its Section 106 review responsibilities.
3. If FEMA determines that the change does not meet an Allowance, FEMA will initiate consultation pursuant to Stipulation II.C, Standard Project Review.

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

1. Through the SLA with each of its Applicants, TXDPS will require the Applicant to notify it immediately if it appears that an Undertaking will affect a previously unidentified, potential, or known Historic Property (standing structure or archeological site) in an unanticipated manner.
2. TXDPS will require the Applicant to stop construction activities in the vicinity of the discovery; and take all reasonable measures to avoid, protect, and minimize harm to the property until the consultation required by Stipulation III. E is completed.
3. TXDPS may request that the Applicant document the discovery in writing.

4. TXDPS will notify FEMA of the discovery at the earliest practicable time, but not later than 24 hours after notification by the Applicant.
5. FEMA will notify SHPO and any other party that may have an interest in the discovery at the earliest practicable time, but not later than 72 hours after notification by TXDPS. FEMA will initiate consultation with these parties pursuant to Stipulation III. E.

C. Archeological Deposits:

This section applies to archeological deposits; including those discovered during construction activities, archeological investigations, or removal of tree root balls.

1. TXDPS will require the Applicant to secure the area of the discovery and restrict access to the deposits. After initial review by an archeologist meeting the Secretary of the Interior's standards for archeologists has assessed the site FEMA may authorize the Applicant to resume work in an area that does not contain Historic Properties or human remains, with the concurrence of the SHPO.
2. FEMA will consult by telephone or e-mail to assess and avoid any possible adverse effects to the historic property. If adverse effects to an historic property or State Antiquities Landmark have occurred or are unavoidable, these adverse effects will be mitigated as is described through consultation processes outlined in Stipulation II.C.6 and the Antiquities Code of Texas, while reconstruction and recovery work continues in nearby areas.
3. FEMA will ensure compliance with applicable Federal laws and regulations, including Archeological Resources Protection Act (ARPA), for discoveries on Federal or tribal land.

D. Burial Sites, Human Remains, and Funerary Objects:

This section applies to the discovery of burial sites, human remains, and funerary objects.

1. TXDPS will require the Applicant to preserve the site as found, and immediately notify local law enforcement as required by Texas law.
2. With its notification to FEMA and SHPO, TXDPS will identify steps taken to secure the site and notify the appropriate agency.
3. TXDPS will ensure that the Applicant complies with Chapter 711 of the Texas Health and Safety Code and any other applicable laws. Should the appropriate law enforcement official and/or medical examiner determine that discovered human remains are related to a criminal investigation, SHPO will not record the discovery as an archeological site. FEMA will complete the review and may fund the Undertaking.
4. Should the official and/or medical examiner determine that remains/objects discovered on private, local, or State land are not related to a crime and release the scene back to the owner, SHPO will consult with FEMA and the Applicant regarding appropriate treatment of the remains. Should the official determine that the remains/objects are or may be

Native American; FEMA will notify and consult with appropriate Tribe(s). FEMA will also comply with the 2007 ACHP *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects*.

5. Should the official determine that remains/objects discovered on Federal or tribal land are or may be Native American, FEMA will also consult as required by the Native American Graves Protection and Repatriation Act (NAGPRA) and any other applicable Federal laws.
6. TXDPS will ensure that the Applicant does not resume work in the area of the discovery until the requirements of applicable laws have been met, such as securing a burial excavation permit, as required.

E. Consultation:

1. FEMA will consult with SHPO, TXDPS, the Applicant, and any other interested party, as appropriate (e.g., a descendent of the deceased), about the discovery, in accordance with Stipulation II.C, Standard Project Review. FEMA will advise the parties of any time constraints, and the parties will mutually agree upon timeframes for this consultation. FEMA will provide the parties with written recommendations that take into account the effects of the Undertaking on the discovery.
2. Should SHPO or other consulting party not object to FEMA's recommendations within the agreed upon timeframe, FEMA may request that the Applicant modify the scope of work accordingly. Should SHPO or ACHP, if participating, object to FEMA's recommendations, or the scope of work not be modified, FEMA will initiate adverse effect consultation pursuant to Stipulation II.C.6.
3. FEMA will notify TXDPS when consultation is completed; and TXDPS will ensure that the Applicant implements any additional measures required by this consultation or applicable laws, regulations, and guidelines before proceeding.

F. Curation of Records and Artifacts:

1. Records: TXDPS will ensure that any surveying, testing, or data recovery records related to an Undertaking are curated at a SHPO-approved facility in Texas that meets the standards of, and in accordance with, 36 CFR Part 79: *Curation of Federally Owned and Administered Archeological Collections*, and any applicable laws.
2. Private Artifacts: Artifacts recovered on private land that are not subject to Chapter 711 of the Texas Health and Safety Code are the property of the land owner, and TXDPS will ensure that they are provided to that owner. TXDPS will also inform the owner about stewardship, site protection, and preservation; encourage him/her to curate the artifacts at a SHPO-approved facility in Texas that meets the standards of, and in accordance with, 36

CFR Part 79; and make them available for public display and education. Should the owner transfer ownership of the artifacts to a public entity, TXDPS will ensure curation in accordance with SHPO guidelines.

3. Tribal Artifacts: Any artifacts recovered on tribal land are the property of the tribe; and TXDPS or FEMA, as appropriate, will ensure that they are provided to that tribe.

G. Review of Undertakings Initiated Before Initiation or Completion of Section 106:

1. FEMA shall advise TXDPS and shall require that it advise Applicants in writing that they may jeopardize Federal funding if work is performed without all required local, State, and/or Federal licenses, permits, or approvals, including the completion of the Section 106 process. FEMA also shall document this requirement in its Record of Environmental Consideration, as applicable, as well as all project approval documents specifying the project scope and limits, and containing all conditions and caveats, including an approved Project Worksheet (PW) for a Public Assistance project, and an approved Application for an HMGP project.
2. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to an Applicant 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 the SHPO, and ACHP, FEMA determines that extraordinary circumstances justify granting assistance despite the adverse effect created or permitted by the Applicant, FEMA shall complete consultation for the Undertaking pursuant to the terms of this Agreement.
3. In circumstances where FEMA determines an Applicant has initiated an Undertaking without willful intent to avoid the requirements of this Agreement or Section 106 of NHPA, FEMA shall proceed as follows:
 - a. Determine if the Undertaking is of a type for which FEMA has no further Section 106 responsibilities, namely:
 - i. An Undertaking listed in Stipulation I.A.10; or
 - ii. An immediate rescue and salvage operation in accordance with 36 CFR 800.12(d); or
 - iii. An Allowance as described under Stipulation II.A, Programmatic Allowances.
 - b. In any such cases, FEMA will document this determination in the project files, and consider the Undertaking Section 106 compliant.

- c. If FEMA determines the Undertaking would have required Section 106 review, FEMA shall coordinate with the SHPO to determine if consultation is feasible.
 - i. If after coordination with the SHPO and affected Tribes, FEMA determines that consultation is feasible, FEMA shall review the Undertaking in accordance with Stipulation II.C, Standard Project Review.
 - ii. If after coordination with the SHPO, FEMA determines that review is infeasible, FEMA shall document the outcome to the Section 106 review process, and the applicable FEMA program shall take the outcome into account before making a decision whether to fund the Undertaking. FEMA shall provide written notification of its funding decision to the SHPO, appropriate Tribe(s) and the ACHP.
4. FEMA shall ensure that all Undertakings considered for after the fact review in accordance with this stipulation are included in the annual report.
5. FEMA will ensure TXDPS is notified about whether after-the-fact consultation is feasible.

IV. IMPLEMENTATION OF AGREEMENT

A. Amendments

1. If any Signatory to the Agreement determines that an amendment to the terms of this Agreement must be made, the Signatories shall consult for no more than 30 days to seek amendment of the Agreement.
2. An amendment to this Agreement, exclusive of the appendices, shall be effective only when it has been signed by the Signatories.
3. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances), Appendix C (Treatment Measures), and Appendix D (Other Federal Agency Accepting Terms of Agreement) may be amended at the request of FEMA or another Signatory party in the following manner:
 - a. FEMA, on its own behalf or on behalf of another Signatory, shall notify all Signatory parties to this Agreement of the intent to modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all Signatory parties.
 - b. If no Signatory party objects in writing within 30 days of receipt of FEMA's proposed modification, FEMA shall date and sign the amended Appendix and provide a copy of the amended Appendix to all Signatories.

B. Dispute Resolution

1. Should a Signatory object in writing within an applicable timeframe to a plan, specification, determination, or action produced pursuant to this Agreement, FEMA will consult with that party by the most expeditious and appropriate means possible. Should FEMA object in writing, it will consult with the other Signatories, as appropriate, to resolve its objection.
2. Should FEMA resolve the objection within 14 days, the disputed action may proceed accordingly.
3. Should FEMA determine that the objection will not be resolved within 30 days; FEMA will forward all relevant documentation to ACHP, including FEMA's proposed resolution. Within 30 days after receipt, ACHP will:
 - a. Concur in FEMA's resolution; or
 - b. Provide FEMA with recommendations, which FEMA will take into account in resolving the objection; or
 - c. Notify FEMA that it will comment in accordance with 36 CFR § 800.7(c), and proceed to do so. FEMA will take these comments into account in accordance with 36 CFR § 800.7(c)(4).
4. FEMA shall take into account any ACHP recommendations or comments, and any comments from the other Signatories, in reaching a final decision regarding the objection. FEMA shall provide in writing to the ACHP and Signatories a summary of its final decision before authorizing any disputed action to proceed.
5. Should ACHP not respond within 30 days, FEMA may assume ACHP has no comment and proceed with its proposed resolution to the objection after providing the ACHP and Signatories a written summary of its final decision.
6. Any ACHP response will pertain only to the subject in dispute, and the Signatories will continue to fulfill all actions of this Agreement that are not subject to dispute.
7. The Applicant may continue activities unrelated to the objection while it is being resolved.
8. Any objection about National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with 36 CFR § 800.4(c)(2).

C. Severability and Termination

1. Severability: Should a provision of this Agreement be deemed contrary to, or in violation of, an applicable U.S., State, or tribal law or regulation, that provision will be deemed null and void, and all other provisions of the Agreement will remain in effect.
2. Termination of the Agreement: FEMA, SHPO, or TXDPS may terminate this Agreement by providing a 30-day written notice to all other Signatories, provided that the Signatories consult during this period to seek an amendment or other action that would prevent termination. Should the Agreement be terminated, FEMA will comply with 36 CFR §§ 800.3 through 800.7, or § 800.14.
3. Termination by Subsequent Arrangement: This Agreement may be terminated without consultation by execution of a subsequent Agreement that explicitly terminates or supersedes it, or by implementation of 36 CFR § 800.14 [Program Alternatives].

D. Duration and Extension

1. Duration: This Agreement shall remain in effect from the date of execution for a period not to exceed 7 years unless otherwise extended pursuant to Stipulation IV.D.2 below, or terminated pursuant to Stipulation IV.C.1.2. or IV.C.1.3, Severability and Termination. The Agreement shall remain in effect for Declarations made prior to expiration of the Agreement in order to minimize delays in delivery of FEMA assistance.
2. Extension: The Signatories may collectively agree to extend this Agreement to cover additional calendar years, or portions thereof, through an amendment per Stipulation IV.A., provided that the original Agreement has not expired.

E. Execution and Implementation


1. This Agreement may be executed in counterparts, with a separate page for each signatory, and shall become effective on the date of the final signature of FEMA, TXDPS, and SHPO.
2. FEMA shall ensure that each signatory party is provided with a complete copy of the Agreement, including an original set of signatures.
3. Execution and implementation of this Agreement evidence that FEMA has afforded ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of its Programs.

**TEXAS PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY;
THE TEXAS HISTORICAL COMMISSION; AND
THE TEXAS DEPARTMENT OF PUBLIC SAFETY/
TEXAS DIVISION OF EMERGENCY MANAGEMENT**

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: 
Kevin Jaynes
Regional Environmental Officer
Federal Emergency Management Agency - Region VI

Date: 9/11/14

By: 
George A. Robinson
Regional Administrator
Federal Emergency Management Agency - Region VI

Date: 9/11/14

**TEXAS PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY;
THE TEXAS HISTORICAL COMMISSION; AND
THE TEXAS DEPARTMENT OF PUBLIC SAFETY/
TEXAS DIVISION OF EMERGENCY MANAGEMENT**

TEXAS HISTORICAL COMMISSION

By: Mark Wolfe
Mark Wolfe
State Historic Preservation Officer
Texas Historical Commission

Date: 9/9/14

**TEXAS PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY;
THE TEXAS HISTORICAL COMMISSION; AND
THE TEXAS DEPARTMENT OF PUBLIC SAFETY/
TEXAS DIVISION OF EMERGENCY MANAGEMENT**

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TEXAS DEPARTMENT OF PUBLIC SAFETY

By: *Robert J. Bodisch*

Robert J. Bodisch
Deputy Director, Texas Homeland Security and Services
Texas Department of Public Safety

Date: 9.9.14



TABLE A
CONTACT INFORMATION FOR SIGNATORIES

Federal Emergency Management Agency

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Regional Environmental Officer
Federal Emergency Management Agency
800 North Loop, Federal Center
Denton, TX 76201-3698
Phone: 940-383-7224
Fax: 940-383-7299

Mr. George A. Robinson
Regional Administrator
Federal Emergency Management Agency
800 North Loop, Federal Center
Denton, TX 76201-3698
Phone: 940-898-5104
Fax: 940-898-5325

Texas Historical Commission (SHPO)

Mr. Mark Wolfe
State Historic Preservation Officer
Texas Historical Commission
P.O. Box 12276
Austin, TX 78711
Phone: 512-463-6100

Shipping Address
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Austin, TX 78701

Texas Department of Public Safety/ Texas Division of Emergency Management

Robert J. Bodisch
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Austin, TX 78752

Appendix A

FEMA Program Summaries

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

Disaster Response and Recovery Programs

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

Public Assistance Program (PA)

This program assists States, Tribal and local governments, and certain types of private nonprofit organizations in quickly responding to and recovering 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, publicly owned and certain private non-profit facilities (Public Assistance Categories C-G).

Individual Assistance Programs (IA)

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

Fire Management Assistance Grant Program (FMAG)

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

Hazard Mitigation Grant Program (HMGP)

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

Non-Disaster Programs

Pre-Disaster Mitigation Program (PDM)

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

State Homeland Security Program (SHSP)

This core 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

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 assists participating jurisdictions in developing integrated regional systems for prevention, protection, response and recovery.

Metropolitan Medical Response System (MMRS) Program

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)

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

Nonprofit Security Grant Program (NSGP)

NSGP provides funding 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)

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 including travel corridors in States bordering Mexico and Canada, as well as States and territories with international water borders.

Buffer Zone Protection Program (BZPP)

The BZPP provides funding to increase the preparedness 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)

The EMPG program assists State and local governments in enhancing and sustaining all-hazards emergency management capabilities.

Interoperable Emergency Communications Grant Program (IECGP)

IECGP provides governance, planning, training and exercise and equipment funding to States, territories, 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

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 government in major disasters

Driver's License Security Grant Program

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.

Integrated Public Alert and Warning System (IPAWS)

The Integrated Public Alert and Warning System (IPAWS) was established by Executive Order 13407 in 2006. In the event of a national emergency, the President will be able to use IPAWS to send a message to the American people quickly and simultaneously through multiple communications pathways. FEMA has identified several radio transmission sites across the nation which provide significantly powerful signals for this purpose, and is responsible for upgrading, maintaining, and managing the agency installed and owned auxiliary fuel systems at each of these radio transmission sites.

Homeland Security Grant Program (HSGP)

The HSGP plays an important role in the implementation of the National Preparedness System (NPS) by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal (NPG) of a secure and resilient Nation. HSGP is comprised of three interconnected grant programs including (1) the State Homeland Security Program (SHSP), (2) the Urban Areas Security Initiative (UASI) and the Operation Stonegarden (OPSG). Together, these grant programs and other future projects that may be included under the

HSGP fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration.

Appendix B

Programmatic Allowances

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

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

When referenced in the allowances, “in-kind” shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including form, color, texture, finish, dimension, pattern, and workmanship. The National Park Service (NPS) *Preservation Briefs* provide guidance on preserving, rehabilitating and restoring historic buildings. The Briefs can be found at <http://www.nps.gov/tps/how-to-preserve/briefs.htm>. The in-kind repair provided for in both First and Second Tier allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures.

For the purposes of these Allowances, Historic Properties/Districts refer to known properties, based on the National Register and the latest existing information provided by SHPO and Interested Tribes. “Archeologically surveyed areas” are those with surveys reviewed by FEMA and SHPO. “Significant” archeological sites are those that are or contain Historic Properties, such as Tribal Historic Properties, or human remains.

All earthen building materials must be obtained from identifiable, authorized sources (e.g. borrow pits or quarries) that are not significant archeological sites. All debris must be disposed of in identifiable, authorized locations that are not significant archeological sites.

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

For the purposes of these Allowances, “minor upgrades” refer to upgrading or replacement in a manner that substantially conforms to preexisting design, function, and location. This may include a change in materials when not associated with a historic property.

Per Stipulation II.E., when FEMA proposes to perform work that falls within the Programmatic Allowances below, but that will affect a property that is a State Antiquities Landmark (SAL), Recorded Texas Historic Landmark (RTHL), or any current or former county courthouse, FEMA must notify SHPO of the work.

I. First Tier Allowances

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

1. Debris and Snow Removal

- a. Debris removal and collection, including removal of uprooted trees, limbs and branches from public rights of way and public areas, as well as the transport and disposal of such waste to existing licensed waste facilities or landfills. This includes non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads. *This Allowance does not include the removal of standing trees.*
- b. Removal of debris from private property provided that buildings are not affected, heavy equipment is limited to existing rights-of-way, ground disturbance is minimal and in-ground elements, such as driveways, walkways or swimming pools, are left in place. *This Allowance does not apply to removal of intact or partially standing structures or to the removal of partially buried modern materials. If heavy equipment will be used on the property, refer to the second tier of allowances for Debris and Snow Removal II.A.1.b.*
- c. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
- d. 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.
- e. Dewatering flooded developed areas by pumping.

2. Temporary Structures and Housing

- a. Installation and removal of temporary structures for use as school classrooms, offices, or temporary shelters for essential public service agencies, such as police, fire, rescue and medical care, as well as temporary housing for disaster personnel and survivors at the following types of locations:
 - i. Single units on private residential sites when all utilities are installed above ground or tie into pre-existing utility lines.

- ii. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility hookups.
- iii. Paved areas, such as parking lots and paved areas at such facilities as conference centers, shopping malls, airports, industrial port facilities business parks, and military bases when all utilities are installed above ground or tie into pre-existing utility lines.
- iv. Sites that have been previously cleared and prepared for planned construction, such as land being developed for public housing, office buildings, city parks, ball fields, schools, etc. when all utilities are installed above-ground or tie into pre-existing utility lines.
- v. Areas previously filled to depths of at least six feet so that subsurface utilities can be installed.

3. Recreation and Landscaping

- a. Installation of temporary removable barriers.
- b. In-kind repairs, installation, or replacement, and minor upgrades/mitigation of bollards and associated protective barriers when in previously disturbed areas.

B. BUILDINGS AND STRUCTURES

- 1. Repair or retrofit of buildings less than 45 years old.
- 2. Removal of water by physical or mechanical means.
- 3. Repair, replacement or installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA). *This allowance does not include permanent modifications such as changes to door widths or installation of ramps.*
- 4. Installation of security bars over windows on rear elevations.
- 5. Installation of exterior security features and early warning devices on existing light poles or other permanent utilities.

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

1. Roads and Roadways

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

2. Airports

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

3. Rail Systems

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

II. Second Tier Allowances

Only staff meeting the applicable SOI Professional Qualifications Standards in accordance with Stipulation I.B(1)(a) of this Agreement may apply Second Tier allowances.

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

1. Debris and Snow Removal

- a. Debris removal and collection, including the transport and disposal of such waste to existing licensed waste facilities or landfills, including the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads. *This Allowance does not include areas with archeological sites that may be eligible for the National Register of Historic Places.*
- b. Removal of debris from private property provided that buildings are not affected, ground disturbance is minimal and in-ground elements, such as driveways, walkways or swimming pools, are left in place. *This Allowance does not apply when heavy equipment is not limited to existing rights-of-way or in-ground elements are removed in areas with archeological sites that may be eligible for the National Register of Historic Places.*
- c. Removal of standing or uprooted trees, including rootballs, when the tree is located within medians, parkways, parking lots etc., except when the trees are located within a designated historic district, historic roadway or significant archeological sites.

2. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems

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

3. Recreation and Landscaping

- a. In-kind repairs or replacement of recreational facilities and features (e.g. playgrounds, campgrounds, fire pits, picnic tables, dump stations and utility hook-ups, swimming pools, athletic fields and signage, batting cages, basketball courts,

swing sets, pathways, simple wooden/wire stream crossings). *When the facilities and features are not historic.*

- b. In-kind repair or replacements, and minor upgrades to landscaping elements (e.g., fencing, sidewalks, free standing walls, paving, planters, irrigation systems, lighting elements, signs, flag poles, ramps, steps) *when landscape elements are not historic.*

4. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers

- a. In-kind repair or replacement and minor upgrades to existing piers, docks, boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils *when existing piers, docks, boardwalks, boat ramps and dune crossovers are not historic.*

5. Cemeteries

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

B. BUILDINGS AND STRUCTURES

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

- a. In-kind repair and selective replacement of floors, walls, stairs, ceilings, and/or trim, limited to damaged areas only. The allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster.
- b. Interior cleaning of surfaces using a weak solution of household bleach and water, mold remediation, or mold removal. The allowance applies to interior finishes, including plaster and wallboard, provided the cleaning is restricted to damaged areas and does not affect adjacent materials.
- c. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.
- d. Repair or replacement of suspended or glued ceiling tiles. In public spaces that are at least 45 years old, tiles that are original to the space shall be replaced with tiles of the same dimensions and similar texture and pattern.
- e. Replacement of damaged wood gymnasium floors with in-kind or contemporary materials.

- f. Replacement of damaged or hazardous vinyl or asbestos floor tile with contemporary tile of the same dimensions and similar texture and pattern.

2. Building Contents

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

3. Utilities and Mechanical, Electrical, and Security Systems

- a. In-kind repair or replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning), electrical, and plumbing systems. This allowance does not provide for the installation of new exposed ductwork. Exposed fixtures, grilles, etc. that are at least 45 years old will be repaired in kind if possible.
- b. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment as long as it is placed or located where it is not highly visible from the street (e.g. setback from the building façade on a secondary elevation).
- c. Installation or replacement of interior fire detection, fire suppression, or security alarm systems. The allowance does not apply to surface mounted wiring, conduits, piping, etc., unless previously existing, and is provided that installation of the system hardware does not damage or cause the removal of character-defining architectural features and can be easily removed in the future.
- d. Installation of communication and surveillance security systems, such as cameras, closed-circuit television, alarm systems, and public address systems, provided that installation of the system hardware does not damage or cause the removal of character defining architectural features and can be easily removed in the future.
- e. Installation of building access security devices, such as card readers, enhanced locks, and security scanners (e.g., metal detectors), provided the device does not damage or cause the removal of character-defining architectural features and can be removed in the future without impacts to significant architectural features.

4. Windows and Doors

- a. In-kind repair or selective replacement of damaged or severely deteriorated windows and window frames, shutters, storm shutters, doors and door frames, and associated hardware, where profiles, elevations, details and materials match those of the originals. All work will be performed in accordance with *Preservation Brief 9: The Repair of Historic Wooden Windows* or *Preservation Brief 13: The Repair and Thermal Upgrading of Historic Steel Windows*.

- b. In-kind replacement of window panes. Clear plate, double, laminated or triple insulating glazing can be used, provided it does not result in altering the existing window material, tint, form, muntin profiles, or number of divided lights. This allowance does not apply to the replacement of existing intact archaic or decorative glass, except that clear film may be applied to any glass.
- c. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non character-defining spaces with metal blast resistant doors and frames.

5. Exterior Walls, Cornices, Porches, and Foundations

- a. In-kind repainting and cleaning of previously painted surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding and chemical cleaning.
- b. In-kind repair of walls, porches, foundations, columns, cornices, siding, balustrades, stairs, dormers, brackets, trim, and their ancillary components or in-kind replacement of severely deteriorated or missing or lost features, as long as the replacement pieces match the original in detail and material. Any ground disturbance will be limited to previously disturbed soils.
- c. In-kind repair or replacement of signs or awnings.
- d. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage.
- e. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view.
- f. In-kind repair of concrete and masonry walls, columns, parapets, chimneys, or cornices or limited in-kind replacement of damaged components including comparable brick, and mortar that matches the color, texture, strength, content, rake, and joint width. *Hydraulic or Portland cement mortar may be used only if a laboratory analysis confirms its historic use.*
- g. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or reversible in the future.
- h. 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. *Hydraulic or Portland cement mortar may be used only if a laboratory analysis confirms its historic use.*

- i. Repairs to and in-kind replacement of elements of curtain wall assemblies or exterior cladding that is hung on the building structure, usually from floor to floor, and when the color, size reflectivity, materials, and visual patterns are unaltered. *This Allowance only applies to those features that are less than 45 years old.*

6. Roofing

- a. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character defining features.
- b. In-kind repair, replacement, or strengthening of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components.
- c. Replacement of roofing materials with the same color, shape, and pattern, including replacement of three-tab asphalt shingles with dimensioned architectural shingles; cement asbestos shingles with fiberglass, composition, or asphalt shingles; asbestos panels with fiberglass, cement, or metal panels; or untreated wood shingles and shakes with fire resistant wood shingles and shakes.
- d. Repairs to flat roof cladding, including changes in roofing materials, where the repairs are not visible from the ground level.

7. Weatherproofing and Insulation

- a. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
- b. In-kind repair or replacement of insulation systems, provided that existing interior plaster, woodwork, exterior siding, or exterior architectural detail is not altered. *This Allowance does not apply to spray foam insulation.*

8. Structural Retrofits

- a. Installation of the following retrofits/upgrades, provided that such upgrades are not visible on the exterior: attic bracing, cross bracing on pier and post foundations; 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.
- b. Replacement or repair of lightning rods.

9. Safe Rooms

- a. Installation of individual safe rooms within the property limits of a residence where the installation would occur within the existing building or structure or in previously disturbed soils. *This Allowance does not apply to rooms attached to or abutting a residence or highly visible from a public right-of-way.*
- b. Modifications to buildings that are less than 45 years old, or modifications that are not visible on the exterior or in public interior spaces of buildings that are at least 45 years old, for community safe rooms.

10. Elevation, Demolition, and Reconstruction

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

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

1. Roads and Roadways

- a. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches.
- b. In kind repair to historic paving materials for roads and walkways.
- c. In-kind repair or replacement of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap (including riprap beyond the original footprint) and an increase in size or capacity not to exceed one foot in diameter/width (plus two feet of excavation on either side to set the new culvert system and direct the water flow), provided that the work substantially conforms to the existing footprint and does not involve an increase in roadway width. *For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.*
- d. In-kind repair or replacement of road lighting systems, including period lighting fixture styles.

- e. In-kind repair or replacement of road appurtenances such as curbs, berms, fences, and sidewalks.

2. Bridges

- a. 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.
- b. In-kind repair or replacement of bridge components (e.g. abutments, wing walls, piers, decks, and fenders) in previously disturbed soils.
- c. Major repair or replacement of bridges that are less than 45 years old and are not located on significant archeological sites, where construction and staging is limited to the existing rights-of-way.

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

1. General

- 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. Installation of new utilities and associated features within existing rights-of-way.
- c. Directional boring of new/replacement service line and related appurtenances involving boring or silt trenches within previously disturbed soils of rights-of-way or utility corridors.
- d. In-kind repair or replacement, or minor upgrades 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 historic-age water towers.

2. Generators and Utilities

- a. 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 and any roof mounted equipment is not visible from the ground level. *This includes any related trenching within previously disturbed soils, except when in close proximity to a known archaeological site.*

3. Communication Equipment/Systems and Towers

- a. Acquisition, installation, or operation of communication and security equipment/systems that use existing distribution systems, facilities, or existing infrastructure right-of-way.
- b. The collocation of communication and security equipment on existing towers and buildings/structures less than 45 years of age, provided that the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
- c. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
- d. Installation of new temporary (not to exceed 12 months) communications towers and antenna structures provided that the work does not require modification of buildings/structures older than 45 years and occurs within previously disturbed soils.
- e. Installation of new communication towers, less than 200 feet tall, in previously developed urban complexes when the work does not require modification of buildings/structures older than 45 years, occurs within previously disturbed soils and is not within 500 feet of the boundaries of a historic property.

E. WATER RESOURCE MANAGEMENT AND CONTROLS, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

1. Canal Systems

- a. In-kind repairs or replacement to canal systems and associated elements *when existing canal systems are not historic*.

2. Breakwaters, Seawalls, Revetments, and Berms

- a. In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the work occurs in previously disturbed soils *when existing breakwaters, seawalls, and revetments are not historic*.

3. Dams, Levees, and Floodwalls

- a. In-kind repair or replacement of dams, levees, floodwalls and related features, including spillways, tide gates, and fuse plugs, provided the work occurs in previously disturbed soils *when existing dams, levees and floodwalls are not historic*.

4. Fish Hatcheries

- a. In-kind repair or replacement of fish hatcheries and fish ladders.

5. Waste-Water Treatment Lagoon Systems

- a. In-kind repair or replacement, or minor upgrades of waste-water treatment lagoon systems.

Appendix C

Treatment Measures

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

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

A. Recordation

1. **Digital Photography Package:** Prior to project implementation, the designated responsible party shall oversee the successful delivery of a digital photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The digital photography package will meet the standards cited in the NPS' *National Register of Historic Places Photographic Policy March 2010* or subsequent revisions (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>).
 - a. The digital photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
 - b. The digital photography package shall include printed color copies of the digital photographs (on appropriate paper, per *NPS Photographic Policy*), a CD/DVD of the digital photographs (per *NPS Photographic Policy*), a completed state architectural inventory form, and a written site history of the historic property.
 - c. The designated responsible party shall submit the digital photography package to the SHPO for review and approval. Once approved by the SHPO, the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive, and/or library for permanent retention.

2. 35mm Black and White Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a 35 mm black and white film photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
 - a. The 35 mm black and white film photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
 - b. The 35 mm black and white film photography package shall include one (1) full set of 35mm black and white photographs printed on fiber-based paper, the corresponding 35mm film negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.
 - c. The designated responsible party shall submit the 35 mm black and white film photography package the SHPO for review and approval. Once approved by the SHPO, the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive, and/or library for permanent retention.
3. Large Format Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a large format photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
 - a. The large format photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
 - b. The large format film photography package shall include one (1) full set of 4x5 or 5x7-inch photographs printed on fiber-based paper, the corresponding 4x5 or 5x7-inch negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.

- c. The designated responsible party shall submit the large format film photography package to the SHPO for review and approval. Once approved by the SHPO, the designated responsible party shall submit copies of the approved documentation to a local historical society, archive, and/or local library for permanent retention.

B. Design Review by the SHPO

Prior to project implementation, including any demolition, ground disturbing, or construction activities, the Applicant shall submit to the SHPO for review and comment plans, drawings, and specifications which will, to the greatest extent possible, preserve the basic character of a building, including: design, scale, massing, fenestration patterns, orientation, and materials. Primary emphasis will be given to the major, visible street elevations. Significant contributing features (e.g., windows, doors, porches, or trim) will be repaired or replaced either in kind, or with substantially in kind materials that match all visual aspects of the historic features. Aesthetic camouflaging treatments such as paints, veneers, texture compounds, other surface treatments, sympathetic infill panels, or landscaping features will be incorporated to the greatest extent possible. Construction bid documents (drawings and specifications) will be provided for SHPO review, comment, and approval. SHPO shall provide comments and recommendations within thirty (30) days of receipt.

C. Public Interpretation

Prior to project implementation, FEMA, TXDPS, and the Applicant shall work with the SHPO to design an educational interpretive plan. The plan may include signs, displays, educational pamphlets, websites, workshops and other similar mechanisms to educate the public on historic properties within the local community, state, or region. Once an interpretive plan has been agreed to by the parties, SHPO and the designated responsible party shall continue to consult throughout implementation of the plan until all agreed upon actions have been completed by the designated responsible party.

D. Historical Context Statements and Narratives

Prior to project implementation, FEMA, TXDPS, and the Applicant shall work with the SHPO to determine the topic and framework of a historic context statement or narrative the designated responsible party shall be responsible for completing. The statement or narrative may focus on an individual property, a historic district, a set of related properties, or relevant themes as identified in the statewide preservation plan. Once the topic of the historic context statement or narrative has been agreed to, the designated responsible party shall continue to coordinate with the SHPO through the drafting of the document and delivery of a final product. The SHPO shall have final approval over the end product. The designated responsible party shall use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

E. Oral History Documentation

Prior to project implementation, FEMA, TXDPS, and the Applicant shall work with the SHPO to identify oral history documentation needs and agree upon a topic and list of interview candidates. Once the parameters of the oral history project have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO through the data collection, drafting of the document, and delivery of a final product. The SHPO shall have final approval over the end product. The designated responsible party shall use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

F. Historic Property Inventory

Prior to project implementation, FEMA, TXDPS and the Applicant shall work with the SHPO to establish the appropriate level of effort to accomplish a historic property inventory. Efforts may be directed toward the resurvey of previously designated historic properties and/or districts which have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation. Once the boundaries of the survey area have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO through the data collection process. The designated responsible party shall use SHPO standards for the survey of historic properties and SHPO forms as appropriate. The designated responsible party shall prepare a draft inventory report, according to SHPO templates and guidelines, and work with the SHPO until a final property inventory is approved. The designated responsible party shall use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

G. National Register and National Historic Landmark Nominations

Prior to project implementation, FEMA, TXDPS and the Applicant shall work with the SHPO to identify the individual properties that would benefit from a completed National Register or National Historic Landmark nomination form. Once the parties have agreed to a property, the designated responsible party shall continue to coordinate with the SHPO through the drafting of the nomination form. The SHPO shall provide adequate guidance to the designated responsible party during the preparation of the nomination form and shall formally submit the final nomination to the Keeper for inclusion in the National Register. The designated responsible party shall make revisions as requested by the State Board of Review or the Keeper. The designated responsible party shall use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

H. Geo-References of Historic Maps and Aerial Photographs

Prior to project implementation, FEMA, TXDPS and the Applicant shall work with the SHPO to identify the historic maps and/or aerial photographs for scanning and geo-referencing. Once a list of maps and/or aerial photographs have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to the SHPO for review. The SHPO shall have final approval on the quality of the documentation provided by the designated responsible party. The final deliverable shall include a paper copy of each scanned image, a geo-referenced copy of each scanned image, and the metadata relating to both the original creation of the paper maps and the digitization process.