

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
KINGSLEY HOUSE ARCHAEOLOGICAL SITE (16OR221),
TEMPORARY HOUSING PROJECT OR-154, NEW ORLEANS, ORLEANS PARISH
LOUISIANA**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security proposed to administer federal funds pursuant to Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, (Stafford Act) as a result of Hurricanes Katrina (DR-1603-LA) and Rita (DR-1607-LA) respectively in August and September 2005 (Disasters) in the City of New Orleans for the construction of temporary housing at the Kingsley House, designated Temporary Housing Project OR-154 (Undertaking); and

WHEREAS, FEMA, the Louisiana Office of Homeland Security and Emergency Preparedness (LOHSEP), the Louisiana State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) executed a Programmatic Agreement (2004 PA) on December 3, 2004 to satisfy FEMA's responsibilities pursuant 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act of 1966, (16 U.S.C. 470f) (NHPA) as amended, for all FEMA funded undertakings as a result of such Disasters; and

WHEREAS, FEMA, in consultation with the SHPO and pursuant to the 2004 PA have established that the Undertaking's Area of Potential Effect (APE) consists of a 4.5-acre tract of land located at 1600 Constance Street, New Orleans, Louisiana; this area encompasses all of New Orleans City Square 111, bounded by Orange Street to the north, Annunciation Street to the east, Richard Street to the south, and Constance Street to the west, as well as a contiguous portion of City Square 146, the block bounded by Orange Street to the north, Constance Street to the east, Richard Street to the south, and Magazine Street to the west (Appendix A) and is located in the southeastern quadrant of the Lower Garden District, a National Register Historic District; and

WHEREAS, FEMA in consultation with the SHPO, determined that the Undertaking possessed a high potential for affecting undocumented National Register of Historic Places (NRHP) eligible historic properties in the APE, and accordingly, the SHPO concurred with FEMA's recommendation to locate the utilities primarily above-ground and to monitor the utility interconnects during mechanical excavations (letter dated January 18, 2006 Appendix B); and

WHEREAS, on March 10, 2006, the Undertaking was converted from an Expedited Group Site with above-ground utilities to a Group Site with subsurface utilities (FEMA Memorandum to File dated March 10, 2006, Appendix C), and based on subsequent review of the modified Undertaking, FEMA determined that the revised scope fell within the parameters of the original National Environmental Policy Act (NEPA) Categorical Exclusion dated January 28, 2006, (Appendix D) but did not consult with the SHPO regarding the change in scope pursuant to Section 106 of NHPA; and

WHEREAS, on March 28, 2006, mechanical excavations within a portion of the APE, City Square 111, exposed and truncated significant historic properties, including multiple structural foundations and associated features; initial observations of these properties indicated that the entire City Square (111), designated as archaeological site 16OR221 (the Kingsley House Site or Site), was eligible for the NRHP; and

WHEREAS, FEMA, in consultation with the SHPO and pursuant to the 2004 PA, has applied the criteria of adverse effect and has determined that the modified Undertaking has adversely affected a NRHP eligible historic property, and that continued project activities would result in the physical destruction of or damage to all or part of identified and unidentified archaeological resources in the APE; and

WHEREAS, FEMA, in consultation with SHPO, has determined that Site development shall cease and an alternate location shall be selected as a temporary housing site; and

WHEREAS, FEMA, in consultation with the SHPO, has determined that mitigation measures to treat the identified adverse effect should be focused exclusively on the portion of City Square 111 which was adversely affected by the modified Undertaking, rather than on the full APE (Appendix E); and

WHEREAS, on April 4, 2006 the General Services Administration (GSA) revoked the lease, making FEMA's access to the site problematic; and

WHEREAS, on May 25, 2006, two features were looted at the Site, including one previously disturbed feature and one intact ca. 1870 privy, and accordingly, FEMA ensured that emergency documentation of the looted features was conducted and that appropriate procedures were undertaken to protect the site from additional vandalism; and

WHEREAS, FEMA has ensured that a consultant meeting *The Secretary of the Interior's (SOI) Professional Qualifications Standards* for Archeology (48 FR 44738-39) completed the necessary Damage Assessment in the APE including recovery of a sample of artifacts from the back dirt and documentation of features in three-dimensional space using scaled drawings and standardized forms, transit mapping, and photography; and

WHEREAS, to ensure that it has gathered sufficient information regarding the Site's content, location, and significance to make informed decisions, FEMA has prepared the preliminary archaeological report "Archaeological Documentation of the Federal Emergency Management

Agency (FEMA) Temporary Housing Project at the Kingsley House Site, New Orleans, Orleans Parish, Louisiana, Preliminary Report, June 2006"; and

WHEREAS, FEMA notified the ACHP on May 17, 2006, regarding the ongoing consultation efforts, and invited the ACHP to participate in consultation on resolving the undertaking's adverse effect, but the ACHP had elected not to participate in the consultation for the undertaking (see letters, Appendix F); and

WHEREAS, FEMA contacted the ACHP again on May 1, 2007, with updates, and invited the ACHP to participate in consultation on this MOA; and the ACHP has elected to participate in consultation and become a signatory to this MOA (see letters, Appendix G and H); and

WHEREAS, the Alabama-Coushatta Tribe of Texas (ACTT), the Caddo Nation (CN), the Chitimacha Tribe of Louisiana (CTL), the Coushatta Tribe of Louisiana (CATL), the Jena Band of Choctaw Indians (JBCI), the Mississippi Band of Choctaw Indians (MBCI), the Quapaw Tribe of Oklahoma (QTO), the Seminole Tribe of Florida (STF), and the Tunica-Biloxi Tribe of Louisiana (TBTL), are all federally recognized sovereign Indian Nations, which have a government-to-government relationship with the United States and have an interest in the area surrounding and including the entirety of Orleans Parish, Louisiana, and based on the recovery of two unrefined aboriginal earthenware pottery sherds, which are possibly prehistoric, they have been invited to participate in the consultation for this MOA; and

WHEREAS, the ACTT, CN, CTL, CATL, JBCI, MBCI, QTP, STF, and TBTL were invited as concurring parties to participate in consultation on this MOA; and have declined to participate in the consultation for this MOA; and

WHEREAS, FEMA has invited the Kingsley House to consult regarding the resolution of adverse affects to property leased from it and Kingsley House has participated in the consultation for this MOA, but has declined to sign as a concurring party; and

WHEREAS, FEMA, SHPO, and the ACHP recognize that the agreed upon treatment measures in this document represent mitigation only for those portions of City Square 111 impacted by FEMA's modified Undertaking; and

NOW THEREFORE, FEMA, the SHPO, and the ACHP agree that the following terms and conditions shall be implemented in a timely manner and with adequate resources to satisfy FEMA's responsibilities in accordance with Section 106 of the NHPA.

STIPULATIONS

In coordination with the SHPO and ACHP, FEMA shall require that the following treatment measures be implemented:

I. ADMINISTRATIVE CONDITIONS

A. Personnel Qualifications

FEMA shall ensure that all further archaeological analysis and archival research carried out pursuant to this MOA will be by or under the direct supervision of a person or persons meeting at a minimum *The Secretary of the Interior's Professional Qualification Standards* for Archeologists (48 FR 44738-39).

B. Report Standards

FEMA shall ensure that all draft and final archaeological reports and public information materials resulting from actions pursuant to this MOA will meet professional standards set forth by *The Secretary of the Interior's Standards for Archeological Documentation* (48 FR 44734-37) and will be prepared in accordance with the SHPO's *Section 106 Investigations and Report Standards*. All reports will be completed and provided to the SHPO within 90 days of the completion of the archaeological investigations, for review and comment. The SHPO will be afforded thirty (30) days to review and comment on all submissions. Upon comment from FEMA and SHPO, a final report will be produced within one (1) year of the date of execution of this MOA.

C. Curation Standards

FEMA shall ensure that all archaeological materials collected and all associated documentation are curated in accordance with regulations for *Curation of Federally-Owned and Administered Archeological Collections*, (36 CFR Part 79) and the curation guidelines developed by the SHPO. FEMA will ensure that Kingsley House is afforded the opportunity to select any or all artifacts to be displayed at their facility. Any remaining artifacts shall be curated at the SHPO. However, regardless of the final disposition of the artifacts, associated records shall be curated with the SHPO in keeping with the policies of the SHPO. FEMA will be responsible for the one-time curation fee of two hundred dollars (\$200) per cubic foot at the Louisiana Division of Archaeology.

D. Inadvertent Discoveries

1. Archaeological Remains

If, in the course of backfilling, dense amounts of intact archaeological deposits, broad artifact scatters, and/or structural feature remains are encountered, FEMA shall ensure through their archaeological monitor that the contractor shall immediately stop work in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the finds. FEMA shall also ensure that the archaeological findings are secured and access to the sensitive area is restricted. In such cases, FEMA shall notify the SHPO and Kingsley House within 24 hours of the discovery and shall ensure that its contractors shall not proceed with work until FEMA has completed consultation with the SHPO and other consulting parties, as necessary.

2. Human Remains

- a. If human remains are uncovered during the implementation of the terms of this MOA, FEMA shall ensure that all activity in the vicinity of the discovery will cease and FEMA shall immediately notify the City, the New Orleans Police Department, and the Orleans Parish Coroner's Office of the discovery. Within twenty-four (24) hours of the discovery, FEMA will also notify and coordinate with the SHPO, the ACTT, CATL, CN, CTL, JBCI, MBCI, QTO, STF, and TBTL. The local law enforcement officials shall assess the nature and age of the human skeletal remains. If the coroner determines that the human skeletal remains are older than 50 years of age, the Louisiana Division of Archaeology has jurisdiction over the remains. FEMA shall ensure compliance with the Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671 *et seq.*) and other applicable laws. In addition, FEMA shall adhere to guidelines set forth by the ACHP in its "Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects (2007)."
- b. If it can be determined that the human remains are American Indian, FEMA shall consult with the ACTT, CN, CTL, CATL, JBCI, MBCI, QTP, STF, and TBTL and representatives of the State of Louisiana as necessary.

II. TREATMENT MEASURES

FEMA, in consultation with the SHPO and Kingsley House, shall ensure that the following treatment measures are implemented.

A. Archaeological Mitigation

In order to evaluate the integrity of the Site, archaeological mitigation will concentrate on the clarification of the nature and research potential of the anticipated stratified deposits; and sampling of selected features identified during the 2006 feature documentation and recordation efforts at the Site. Accordingly, archaeological excavations will incorporate existing information from the 2006 field studies. Complete and accurate records will be maintained of all field observations and operations. Locational and stratigraphic information will be referenced to archaeological consultant's site datum. Additional information on site depth and stratigraphy will be revealed during excavations within the area of adverse effects. The archaeological mitigation effort will be conducted by the Earth Search, Inc. under FEMA's supervision. The task of the archaeological mitigation will involve the excavation of a maximum of 16 square meters within the area of adverse effects within the APE. Excavations will consist of a series of test units that vary in size, as determined by the consultant's lead archaeologist in consultation with FEMA and the SHPO. Provisionally, test unit locations have been allocated as follows:

1. To sample the high density of artifacts, two square meters of feature fill will be excavated from each of three identified brick-lined privy shafts (designated Features 22, 34, and 47)(refer to Appendix E).
2. In an effort to determine degree of stratification and function, two square meters will be excavated within proximity of two midden deposits and associated brick footings (designated Features 20 and 29)(Appendix E).
3. A series of stratified midden deposits (designated Feature 26), including a context likely to date to the early-nineteenth century, was identified at the southeastern corner of the Site. Additionally, two prehistoric pottery sherds were recovered from this area. In order to determine the nature and configuration of these discrete components, six test units will be excavated within the vicinity of Feature 26.

If, during the course of the investigations, excavations reveal that feature integrity has been compromised and/or data recovery results in redundant information, FEMA will direct the consultant's lead archaeologist to select alternative feature locations, if necessary, within the area adversely affected in order to maximize use of the allotted 16 square meters.

B. Backfilling

Following excavations, FEMA shall ensure that the Site will be backfilled and returned to its pre-lease condition. To avoid additional adverse affects to the integrity of the Site, FEMA shall make sure a SOI qualified archaeologist will be present to ensure that the heavy equipment does not further damage unmitigated or undiscovered portions of the Site.

C. Artifact Analysis

Establishment of the presence of adequate data and determination of integrity of the Site will require more extensive analysis than was performed at the Damage Assessment level. The consultant hired to conduct the archaeological mitigation will also perform the artifact analysis. The precise nature of the analysis required will be determined on the basis of the character of the Site and its research potential. However, certain minimal types of analysis can be defined:

1. The tabulation of all artifacts by type and by provenience unit, stratum, and feature, if feasible.

2. The categorization of artifacts in a manner that allows for comparisons with other sites and collections. By example, for ceramics, analysis will include identification of ware types, forms, functions, manufacturing technologies, and dates of production. For floral and faunal specimens, an attempt will be made to classify by taxon (genus or species) and structural part of form (i.e., long bone, scapula, scales, nut, etc.)
3. When appropriate, techniques such as cross-mending and distributional plotting will be used to assess Site structure.
4. If applicable, intra-site patterning and the potential to identify activity areas will be examined.
5. Should test unit excavations result in the recovery of additional diagnostic prehistoric ceramics, FEMA will notify the ACTT, CATL, CN, CTL, JBCI, MBCI, QTO, STF, and TBTL of their findings following the analysis. These objects may possess historical, traditional, or cultural importance central to these Native American Tribes.

D. Historic Context Development

FEMA shall ensure that both Prehistoric and Historic Contexts are prepared for the Site, which presents prehistoric and historic-era overviews. Given the almost exclusive historic component at the Site, the historic context will be expanded in an attempt to define the historic character of the Site, including the history of the property ownership, occupation, land-use, and development. The minimum level of documentary research will include the following types of information:

1. Primary documents consulted will include, as available, deeds, tax assessments, insurance surveys, census data, city directories, maps, atlases, city plots, building permits, lithographs, photographs, and other public and private records.
2. A chain of title will be produced for each parcel/area of the Site, which will receive mitigation.
3. Secondary literature that pertains to the historical or cultural context of the Site will be consulted in order to address more fully the issues of Site significance and NRHP eligibility.

E. Report Production

FEMA shall ensure that a research report is prepared that incorporates the Historic Contexts, Site mapping, and Artifact Analysis. Using information from the artifacts recovered and features identified at the Site, an attempt will be made to answer research questions from Louisiana's Comprehensive Archaeology Plan

and those of current interest to historians and archaeologists, as well as defining future research avenues.

F. Education and Enhancement Activities

FEMA will develop and maintain a program of historic preservation awareness to educate its contractors about the fragility of historic properties and the importance of preserving them. This program will be implemented through internal training sessions prior to the onset of temporary housing projects. Enhancement of historic preservation awareness will include a program of resource interpretation documented through educational brochures or pamphlets. The purpose of these training sessions will be to avoid the potential for inadvertently adversely affecting historic properties by providing an overview of the types of sites, features, and artifacts that might be encountered. Training sessions will also include a discussion of the regulatory framework that governs FEMA's treatment of historic properties. In addition, a listing of resource information and points of contact will be provided should historic properties and/or artifacts be encountered.

III. DURATION, AMENDMENTS, AND TERMINATION

- A. This MOA shall become effective upon signature of all the signatory parties. It shall remain in effect until successful completion of the Submittals described in Stipulation II.E.
- B. If any signatory party to this MOA believes that its terms cannot be carried out, or that amendments to its terms are required, that party will immediately consult with the other parties to develop amendments. The process of amending this MOA will be the same as that exercised in the 2004 PA.
- C. FEMA, SHPO, or ACHP may terminate the MOA providing 30 days written notice to the other parties, provided the signatory parties consult during the period prior to termination. Termination of the MOA will require compliance with 36 CFR Part 800. This MOA may be terminated without further consultation by the execution of a subsequent MOA that explicitly terminates or supersedes its terms, or FEMA and the SHPO may conclude the Section 106 process if consultation is terminated in accordance with 36 CFR 800.7(a)(2).

IV. DISPUTE RESOLUTION

- A. Should any consulting party object within the time frames provided to any plans, specifications, or actions provided for review pursuant to this MOA, FEMA will consult further with the objecting party to seek resolution.


- B.** If FEMA determines that the dispute cannot be resolved, FEMA shall forward all documentation relevant to the dispute to the ACHP, including FEMA's proposed resolution of the dispute. Within fifteen (15) days after receipt of all pertinent documentation, the ACHP will:
1. Advise FEMA that it concurs with FEMA's resolution of the dispute;
 2. Provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding the dispute; or
 3. Notify FEMA that it will comment pursuant to 36 CFR 800.7(c) and proceed to comment. Any comment provided will be taken into account by FEMA in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.
- C.** If the ACHP does not provide FEMA with comments or recommendations within fifteen (15) days, FEMA may assume that the ACHP does not object to its recommended approach and will proceed accordingly.
- D.** Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute, and FEMA's responsibility to fulfill all actions that are not subject to the dispute will remain unchanged.

V. IMPLEMENTATION OF THIS AGREEMENT

- A.** FEMA will provide the SHPO and the ACHP with a signed original of this MOA. The MOA will take effect immediately upon signature by all signatory parties.
- B.** Execution of this MOA by all signatory parties and implementation of its terms by FEMA is evidence that FEMA has taken into account the effects of the Undertaking on historic properties and has fulfilled its responsibilities under Section 106 of the NHPA and afforded the ACHP an opportunity to comment on the Undertaking.

SIGNATORIES:

FEDERAL EMERGENCY MANAGEMENT AGENCY

By:  Date: 7/28/07
James Stark, Director, Transitional Recovery Office

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 8/1/07
John M. Fowler, Executive Director

LOUISIANA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 7-30-07
Pam Breaux, State Historic Preservation Officer

APPENDIX A

