

G. Data Sharing Agreement Content

Introduction

As part of the Unified Federal Review (UFR) Process, data sharing agreements assist Federal Agencies, Indian Tribes and National Hawaiian organizations (NHOs), state Agencies, and stakeholders (parties) during disaster recovery projects in facilitating the generation, exchange, and/or use of data. Data sharing agreements encourage collaboration during EHP reviews of disaster recovery projects because they facilitate sharing of data between parties, which saves resources and expedites EHP reviews. The primary benefit of having a data sharing agreement in place during disaster recovery projects is to enable the exchange of information between two or more parties in a way that helps ensure that the parties have the same understanding of what is being represented by the data and can exchange that information in a useful, meaningful, and efficient way.

Knowing ahead of time what provisions to include in a data sharing agreement will expedite the development, negotiation, and adoption of such agreements and help ensure that cultural and natural resources data and information are readily available to parties performing EHP reviews of proposed disaster recovery projects. Data sharing agreements typically establish roles and responsibilities regarding data ownership, collection, maintenance, updates, storage, archiving, and disposal, as well as identifying who is the authoritative source for the data set being shared. Data requestors need to know how to ask for data so that they receive it in a format that they are able to use, and data providers need to know how to package the data they are being asked to provide so that it's useful to the recipient. Therefore, data sharing agreements may need to spell out specific requirements such as IT equipment and software capabilities, technical specifications, and definitions and standards for data schemas, field types, scale, etc. Data sharing agreements may also need to establish restrictions on the use of, access to, and/or dissemination of protected or sensitive information. A compilation of content areas for parties to consider when developing data sharing agreements, as well as sample language from such agreements, is provided below. Sample language is found within the blue textboxes. Examples of actual agreements are also included on the [UFR Webpage](#).

Parties who are regularly involved in disaster recovery projects and activities and can anticipate a need to exchange data and information are encouraged to establish these relationships through some level of formal written data sharing agreement. Data sharing agreements can take a variety of forms. They may be negotiated before or after a disaster event occurs and at a variety of organizational levels (e.g., national headquarters, regional or field offices, state or Indian Tribe, specific disaster event), and they may address broad concerns or a specific natural or cultural resource or type of data. Pre-positioning such agreements will help support expedited modeling, resource allocation, and timely project

reviews during disaster recovery. At a minimum, parties should develop agreement templates or execute agreements that address general considerations before a disaster event occurs and then add the disaster-specific details following a disaster event once more specific data sharing needs are identified. Headquarters-level memoranda of understanding (MOUs) may be appropriate among Federal Agencies that regularly consult or coordinate with one another during disaster recovery activities. Such headquarters-level MOUs do not normally include a lot of detail; rather, they establish the foundation and legal authorities for a data sharing relationship, and provide general terms and commitments, which the Agencies will follow when specific data sharing needs are identified following a disaster event. For very specific data sharing needs during recovery from a particular disaster event (e.g., points of contact, affected EHP resources, datasets, data transfer protocols, funding, or personnel commitments), it may not be possible or reasonable to execute an agreement until after the event occurs and these details are known.

The following information is provided as guidance only. Prior to entering into any data sharing agreement, parties should coordinate with their respective legal counsel.

Data Sharing Agreement Instruction and Samples

Title

The title of the agreement normally includes such information as the names of the parties entering into the agreement and an identification of the kind(s) of data or information being shared, as well as the disaster event (if applicable). In addition to “data sharing agreement,” other terms are often used such as “license agreement” or “memorandum of understanding.”

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE FEDERAL EMERGENCY MANAGEMENT AGENCY
AND THE LOUISIANA STATE HISTORIC PRESERVATION OFFICE
PROVIDING FOR DATA SHARING AND TRANSFER REGARDING CERTAIN
HISTORIC PROPERTIES IN LOUISIANA
AFFECTED BY HURRICANE KATRINA**

Parties/Signatories

Identify all parties who are entering into the agreement (e.g., Agencies, departments, offices, companies, universities, and Tribes); be specific regarding organizational level (s) (e.g., headquarters, regional/field office). You may also identify which party is requesting data/information, and which party is providing data/information.

I. Parties

The parties to this Memorandum of Understanding (MOU) are the Federal Emergency Management Agency (FEMA) of the United States Department of Homeland Security and the Louisiana State Historic Preservation Office (SHPO), an Agency of the Louisiana Department of Culture, Recreation and Tourism.

Authorities

The purpose of this section is to identify legal authorities that uphold the agreement. List any relevant laws, executive orders, Agency directives, or other requirements related to environmental planning/historic preservation compliance, grant program authority, etc., which necessitate development of an agreement between the parties to address data sharing/collection/use. Examples of these laws include: Emergency Assistance Act, Endangered Species Act, Housing and Community Development Act, National Historic Preservation Act, and Robert T. Stafford Disaster Relief.

II. Authorities

This Agreement is in furtherance of FEMA’s responsibilities under 16 U.S.C. § § 470 et seq., National Historic Preservation Act (NHPA) and 36 CFR Part 800, regulations implementing Section 106 of NHPA, and 42 U.S.C. § § 5121 et seq. (Stafford Act); the Programmatic Agreement among the Advisory Council on Historic Preservation, the Federal Emergency Management Agency, the Louisiana Office of Homeland Security and Emergency Preparedness, and the Louisiana State Historic Preservation Officer executed in December 2004 (2004 Statewide PA); the Secondary Programmatic Agreement among the Advisory Council on Historic Preservation, the City of New Orleans, the Federal Emergency Management Agency, the Louisiana State Historic Preservation Officer of the Department of Culture, Recreation & Tourism, and the United States Army Corps of Engineers Regarding the Demolition of Privately Owned Residential Buildings within Orleans Parish Damaged as a Result of Hurricanes Katrina and Rita, executed in June 2006 (Orleans 2PA); and, in FEMA’s discretion, other future agreements developed to satisfy FEMA’s Section 106 responsibilities.

Data Overview

The purpose of this section is to specify the data that is the subject of the agreement. Provide a description of the data/information to be collected/used/shared. Be specific. Examples: map products; digital data products/formats; spatial data for use with GIS; and electronic copies of surveys or inventory forms.

III. Data Overview

A. FEMA’s surveys of individual properties that have been identified by the City of New Orleans (City) and other Applicants as candidates for demolition using funds from FEMA. The data resulting from this survey effort known as the “Red Tag Data” and is defined as Paragraph 4.C. The inclusion of property on this survey list does not represent a commitment by FEMA to fund or reimburse the cost of its demolition. FEMA’s survey of these properties is limited to the purpose of consulting with the SHPO and others, as appropriate, to determine the property is eligible for inclusion in the National Register of Historic Places (NRHP) according to the criteria set out in 36 CFR part 60.4 a-d; and

B. FEMA’s corrected digitization of the City of New Orleans’ Historic District Landmark Commission’s database for the Holy Cross and the Bywater NRHD as required by Section B (3) of Appendix B in the Orleans 2PA.

C. Historic property surveys and other Geographic Information System (GIS) based data regarding historic properties developed by FEMA to fulfilled FEMA’s Section 106 responsibilities for future Undertakings in response to DR-1603-LA, DR-1607-LA, or other Presidentially-declared disasters, provided that FEMA and SHPO agree in writing that the data is subject to the terms of this MOU.

Purpose

The Purpose is designed to identify which disaster this agreement applies to, the agreement content, and briefly states the general commitments of the parties. This section should include a concise statement discussing the intention of the agreement related to data sharing and interagency coordination. Explain how the data will be used and/or what data will be collected. Describe the disaster/event; and include the Presidentially-disaster declaration number (if applicable). Indicate name(s) of the Federal grant program(s) providing funding for the proposed disaster recovery project(s). This section does not need to address specific details of the agreement.

IV. Purpose

The *[insert Agencies]*, enter into this Memorandum of Understanding (MOU) to identify archaeological or environmentally sensitive resources that may be present in an area where a grant project is being proposed and to evaluate potential impacts on those resources; to survey homes and buildings in an area damaged by a Presidentially-declared disaster *[insert disaster name and number]*.

Definitions

The Definition section provides definitions of terms used in the agreement, especially technical terms or lexicon specific to a particular Agency, scientific discipline, etc. contained in the agreement. Providing definitions will help avoid confusion and uncertainty. Definitions are particularly useful when multiple Agencies use terminology in different ways.

V. Definitions

- A. Data: factual information that can be digitally transmitted or processed.
- B. Red Tag Data: information collected as a result of FEMA's surveys of individual properties that have been identified by the City and other Applicants as candidates for demolition using funds from FEMA.
- C. Link tables: table serving as a digital switchboard to link data collected by FEMA either Red Tag data to other external databases(s).
- D. Undertaking: a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal Agency, including those carried out by or on behalf of a Federal Agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval [36 CFR §800.16(y)].

Responsibilities of the Parties

The purpose of this section is to determine the responsibilities by parties to the generation, exchange, and/or use of data. When drafting this section consider adding the following:

- Indicate if what is being shared is proprietary, sensitive, or protected information, or is copyrighted, trademarked, etc.
- Indicate if there are restrictions on who can view/have access to the data, and if so, define the user access levels/categories (e.g., public, restricted, confidential, classified).

When determining if the data/information needs to be restricted, consider what the potential harmful outcomes may be of an unauthorized distribution.

- Indicate if individual users are required to sign a separate “terms of use” or “nondisclosure” agreement.
- Indicate if a source notation, statement of confidentiality, disclaimer, etc. must accompany the data if used in a secondary project such as a map, publication, presentation, etc.
- Indicate if any legal action may be taken if the data recipient violates the terms of the agreement, such as through the unauthorized disclosure of restricted datasets.
- Indicate if there are any particular laws, regulations, policies, etc. regarding the protection or sharing of information that are applicable to the agreement.
- Indicate where the data will be stored (e.g., on a personal computer drive, shared office network, password protected/restricted access site).
- Indicate what protocols and security measures must be followed to safeguard sensitive information.
- Indicate what must happen to the data at the end of the agreement period (e.g., specify whether the recipient may retain the data, whether the data must be deleted from all media and devices or such devices destroyed, etc.).
- Provide names and qualifications of staff who will have access to the data (e.g., staff who meet SOI Professional Qualification Standards, GIS technicians) [this information may be included in an appendix].
- Indicate if there is a person or persons who will be responsible for the data (i.e., data steward), but who is not the actual owner(s) of the data.

VI. Responsibilities

Data provided by [Party A] may not be transferred, copied, replicated, or otherwise distributed by [Party B]. Data has been provided for sole use by [Party B] to perform the work defined in this agreement and shall not be used in whole or in part to create derivative works or other forms of data.

The recipient party agrees that the data will not be reproduced, transmitted, or otherwise disclosed. The data will be maintained on individual computers belonging to each of the qualified users named in this agreement and will not be placed on a shared computer network. The data will not be distributed to the general public, made available on the internet, or transmitted via e-mail.

The data will exist on the internal hard drives of the computers assigned to the authorized recipients identified in this agreement and remain there under password protection. Alternatively, the data may reside on a secure network drive and made available through password protection only to the authorized recipients.

The information provided by [Party A] to [Party B] is not to be sold or distributed to any party not a signatory to this agreement without written permission of [Party A], and is not to be used for any purpose(s) other than the purpose(s) specified in this agreement.

If the information will be used in publically-available documents, physical site descriptions and locations may need to be generalized so that sensitive resources cannot be located.

If a request is received by [Party B] to make available information which is owned or is the primary responsibility of [Party A], [Party B] will refer the request to the [Party A].

The data being shared per this agreement is the property of [Party A]. [Party B] acknowledges that pursuant to this Agreement it obtains only the right to use the data for the purposes specified herein and that no right, title, or interest in or any copyrights, trademarks, or other proprietary information is being transferred from [Party A] to [Party B].

[Party B] shall not remove, alter, cover, or obfuscate any acknowledgements, copyright notice, trademark, or other proprietary rights notice placed by [Party A] on the data or any portion thereof. [Party B] shall comply with directions provided by [Party A] regarding the form and placement of proprietary rights notices on any product or portion thereof that is generated by [Party B] using the data provided by [Party A].

The data is provided by [Party A] for exclusive and official use by [Party B] and cannot be released, disseminated, given, sold, loaned, leased, or conveyed in any manner to any other person or entity. The data shall be retained by [Party B] solely within its own computer network. The data may not be incorporated into any profit-generating product. The data may not be copied, distributed, or made accessible in any form (digital, written, or verbal) to other entities, except with expressly written authorization from [Party A].

Because of the sensitive nature of the data, no document or map, in any format, which identifies or displays the location of any [resource] at a scale of greater than [#:###], or which links the location of any [resource] to a scale of greater than [#:###] with its name, will be released or made available to the public or to other parties, without written authorization by [Party A].

Unauthorized use or distribution of the information may subject [Party] to claims and penalties for intellectual property infringement.

Citation/Disclaimer for inclusion with secondary products: This [product] was developed using data provided by [Party]. As such, this is a secondary product and has not been verified or authorized by [Party].

Method(s) or Format for Data Transfer

The purpose of this section is to determine data format and how it will be transferred between parties. When drafting this section consider the following:

- Indicate if a particular IT infrastructure, software (include iteration), computer program, etc. is necessary to store, transmit, view, or use the data.
- Example formats: ArcGIS 10 (or most recent version) Geodatabase, Geographic Markup Language (GML), ESRI Shape File, Microsoft Access database, GIS data set.
- Indicate if there are limitations on data accuracy beyond a certain scale.
- Indicate if the data has a “shelf life” and if there is a point in time in which the data should be considered outdated or reviewed for currency.
- Indicate if the party providing the data will be responsible for periodically updating that data and providing it to the recipient party so that the recipient has the most current data.
- Indicate if the data meets Federal Geographic Data Committee (FGDC) metadata, data transfer, or other industry/Agency data standards. The Data Standard List found in Appendix H can be utilized to determine data standards.

VII. Methods for Data Transfer

Datasets will be delivered on an external data storage device in the file GeoDatabase format with link tables as applicable, and will include completed Federal Geographic Data Committee (FGDC) metadata statements to explain the creation, purpose, and potential use of the datasets.

Digital data is for use with Geographic Information Software (GIS); it is not an image of a map but the data used to generate one for recipients who have the appropriate GIS software.

Use and analysis of geographic data are limited by the scale at which the data are collected and mapped. Some of the locations in the data are at a scale of [#:###] and use of the data by zooming or enlarging at a scale greater than [#:###] may be subject to error.

[Party A] intends to update the data set periodically. In order to ensure that the most current data is used by [Party B], anytime an update is made it will be provided to [Party B]. The old data set will be deleted and only the most current data set is to be maintained on [Party B's] computers/network.

Reporting/Products

The purpose of this section is to determine the products or reporting requirements relating to the use of the data by the recipient party. Often, the party providing data would like a copy of the product the data was used to create, or a report describing how the data was used. Indicate if the party providing the data is entitled to receive a copy of any product(s) generated by the recipient party. Indicate if the party receiving/using the data is required to prepare a written report for the provider describing how the data is used, and if so, what the timing of such reporting must be (e.g., every # weeks/months, at any point that the party providing the data asks for a report). If a reporting requirement is included, provide directions on what the report should contain.

VIII. Reporting

FEMA will report the status of its surveys and its data subject to terms of this MOU:

- A. FEMA will report to the Advisory Council on Historic Preservation and SHPO on its actions to fulfill the requirements of Section B(1) of Appendix B of the 2PA, any other Section 106 Agreement that references this MOU, and this MOU in the Annual Report in accordance with the reporting requirements set out in the 2004 statewide PA or any future FEMA statewide PA that replaces and supersedes the 2004 statewide PA.
- B. FEMA will provide a Quarterly Report to the SHPO on the status of its action to complete the terms of the Orleans 2PA. These Quarterly Reports may be forwarded to the SHPO by e-mail and will be sent no later than 30-days following the end of the quart, March 31, June 30, September 30, and December 31.
- C. FEMA may agree to perform additional reporting requirements as part of a Section 106 Memorandum of Agreement or Programmatic Agreement.

Dispute Resolution

This section describes the process for resolving any disputes that may arise between the parties to the agreement. This may be a reference to an Agency's general dispute resolution process and not specific to data sharing matters, or a dispute resolution process may need to be developed specifically for the data sharing agreement. Consider that previous MOUs or Programmatic Agreements between the parties may already establish a dispute resolution process. Parties should consult with their legal counsel to determine if there is already a pre-existing dispute resolution process. Additionally, The MOU Establishing the Unified Federal Environmental and Historic Preservation Review Process created by the UFR effort establishes an Issue Elevation process.

IX. Dispute Resolution

If SHPO objects to data transferred by FEMA, FEMA will address the SHPO's objection through the Dispute Resolution Stipulation included in the Section 106 Agreement governing the Undertaking that required FEMA to develop the data. If no Dispute Resolution Stipulation is included in the governing document, FEMA will follow the Dispute Resolution Stipulation in the 2004 Statewide PA.

Representations/Warranties/Liabilities

Representations and warranties are assurances that one party gives to another party in an agreement. These assurances are statements that the parties can rely on as factual. Include statement(s) specifying or limiting the scope of liabilities, obligations, etc. of the parties entering into the agreement.

X. Representations

[Party A] has made its best efforts to ensure the accuracy and completeness of the information and data transferred to [Party B]. [Party A] makes no warranties or representations to [Party B] or third parties regarding the data. It shall be the responsibility of [Party B] or any third party to verify the accuracy of the [Party A] data. All data transferred under the terms of this agreement should be independently verified by [Party B] or any third party if it will be used or relied upon for any other purpose. [Party A] accepts no liability that may arise from the use of the data by [Party B] or any third party.

[Party A] makes no warranties with respect to the accuracy of this data and assumes no responsibility for the use or reliability of the data provided under this agreement. All information is provided on an "as is" basis.

The data will be provided "as is" with no warrantee of any kind concerning fitness of use. [Party A] shall not be liable for [Party B's] use of the data or any inferences, judgments, or decisions resulting from use of the data.

The data is provided "as is," and [Party B] is responsible for understanding the limitations of the data, including but not limited to its accuracy, as well as its suitability for any particular use. [Party A] makes no representations of any kind and assumes no responsibility for [Party B's] use of the data for planning, regulatory, or other purposes.

Site-specific or comprehensive surveys for [resource] have not been conducted for [geographic area]. The data cannot be relied on as a definitive statement of the presence or absence of [resource] at given locations and do not provide an adequate substitute for on-site surveys that may be required for environmental impact assessment.

Costs/Resources

A Costs/Resources section identifies costs or resources that may be required to facilitate the exchange and use of data. Indicate whether any funds or commitment of other resources (such as staff time) is required as part of the agreement. Indicate whether resources for executing each party's responsibilities are the sole responsibility of the respective performing party.

XI. Costs

A \$[x] fee is charged for all data requests to recover data publication costs. Additionally, an incremental amount above this fee is charged for materials (media). [Party] will receive an invoice itemizing the cost for requests and instructions for submitting payment.

Severability

The purpose of a Severability section is to manage a potentially unenforceable or illegal provision in an agreement. Parties may sever such a provision while keeping the remainder of the agreement intact and in effect. Include a clause stating that the terms of agreement are independent of one another, so that if a particular term is deemed unenforceable, unlawful, void, etc., the agreement as a whole will not be deemed as such.

XII. Severability

Nothing in this agreement is intended to conflict with or violate state or Federal laws, regulations, policies, etc. If a term or provision of this agreement is inconsistent with a law or authority, then that term or provision shall be invalid, but the remaining terms and provisions shall remain in full force and effect.

If any provision of this agreement is unenforceable, unlawful, or void, the provision shall be deemed severable from the agreement and shall not affect the validity and enforceability of the remaining provisions.

Termination

The purpose of the Termination section is to allow parties to formally end their involvement in the agreement either singularly or as a group. This section acknowledges that parties may disagree and if amendments cannot be reached proscribes a method for exiting the agreement. In the spirit of collaboration, consider requiring notifications and/or consultation before the termination. Indicate for what reasons and how the agreement may be terminated. Indicate what must happen to the data if an agreement is terminated (e.g., the data will be destroyed by the recipient party, returned to the owner, etc.)

XIII. Termination

This agreement may be terminated for any reason by either *[Party A]* or *[Party B]* by giving a [#]-day written notice to the other party.

[Party A] has the right to terminate this agreement in the event that *[Party B]* violates any of the terms and conditions contained herein.

Amendments

The Amendments section allows Signatory Agencies to amend the agreement as changes occur. Further, this section can be used to include additional Agencies who would like to participate in the agreement. Indicate by whom and how an amendment can be played.

XIV. Amendments

Any signatory may request an amendment to this agreement. The amendment must be in writing and shall take effect once it has been executed by all signatories.

This agreement can only be modified by a writing signed by both *[Party A]* and *[Party B]*. No waiver of any provision of this agreement shall be valid unless in writing and signed by both parties. If modifications are made, a copy of the new agreement shall be distributed to all *[Party B]* staff who have access to *[Party A]* data.

Administrative Provisions

The purpose of this section is to further define the scope of the agreement by including additional laws or provisions that will govern the contract. These are example provisions that many Federal Agencies may consider standard terms to include in any interagency agreement.

The Anti-Deficiency Act provision protects the Federal Government by preventing the obligation of funds that have not yet been appropriated by Congress. The exclusivity provision determines whether the agreement restricts the parties from forming similar agreements with outside parties.

XV. Administrative Provisions

- A. Anti-Deficiency Act provision: Nothing in this agreement may be construed to obligate [Party] or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Nor does this agreement obligate [Party] or the United States to spend funds on any particular project or purpose, even if funds are available.
- B. Exclusivity provision: This agreement in no way restricts the parties from participating in similar activities or arrangements with other public or private Agencies, organizations, or individuals.

Effective Date

This section identifies when the agreement will become effective and how long the parties will be bound by the data sharing agreement. Indicate the start date (this is commonly the date that the agreement is fully signed by all parties). Indicate whether there is an end date (this may be when an Agency closes out a disaster) or whether the agreement is on-going. For an agreement with no end date, specify if there is a timeframe under which the agreement should be periodically reviewed and updated, if necessary.

XVI. Effective Date

The terms of this MOU shall become effective on the date it is fully executed by FEMA and the SHPO. It shall remain in effect until FEMA closes out DR-1603-LA and DR-1607-LA, or this MOU is specifically superseded or terminated in writing by FEMA and SHPO.

Contact Information

The Contact Information section designates responsible parties for maintaining the terms of the data sharing agreement. Consider adding contacts based on the Agency's chain of command, decision-making ability, and usefulness during the dispute resolution process. Identify how often your points of contact information should be reviewed and updated. Provide contact information (for specific individuals and/or offices) of all parties where questions about the agreement should be directed (this information may be included in an appendix). Include a requirement for each party to notify the other if there are changes to the contact information.

XVII. Contact Information

Contact persons for [Party A] and [Party B] are listed in the attached Appendix A. Contact information shall include: full name, title, office address and telephone number, e-mail address, and cell phone number(s). [Party A] and [Party B] each mutually agree to notify the other party when there are any material changes to contact information. In addition, [Party A] agrees to report on any changes to its contact information in the Quarterly Report to [Party B] described in Paragraph X.

Signatures

This section indicates the official authorization and date for the agreement by the parties involved. Consider your Agency’s delegation of authority to identify the appropriate signatory person. Consider the required internal review processes in order for your Agency to become a signatory to a data sharing agreement. Agencies’ internal review processes typically involve multiple review cycles. Consult with your general counsel if you are uncertain where to begin.

XVIII. Signatories

[insert Agency name]

_____ Date

[insert Agency official name and title]

[insert name of state or Tribe] ["state" or "Tribal"] Historic Preservation Officer

_____ Date

[insert name and title]