

1 **PROGRAMMATIC AGREEMENT AMONG**
2 **THE FEDERAL EMERGENCY MANAGEMENT AGENCY,**
3 **THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,**
4 **THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,**
5 **THE LANDMARKS PRESERVATION COMMISSION,**
6 **ADVISORY COUNCIL ON HISTORIC PRESERVATION,**
7 **AND _____ TRIBE**
8 **AS A RESULT OF HURRICANE SANDY**
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11 **WHEREAS**, the mission of the Federal Emergency Management Agency (FEMA) of the
12 Department of Homeland Security is to support our citizens and first responders to ensure that as
13 a nation we work together to build, sustain, and improve our capability to prepare for, protect
14 against, respond to, recover from, and mitigate all hazards; and

15 **WHEREAS**, as a result of Hurricane Sandy (DR-4085-NY) (Disaster Declaration), FEMA
16 proposes to administer Federal disaster assistance programs set forth in Appendix A (Programs),
17 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-
18 288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood
19 Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection
20 Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance Reform Act
21 of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing regulations contained in
22 Title 44 of the Code of Federal Regulations (CFR).

23 **WHEREAS**, FEMA has determined that implementation of its Programs may result in
24 Undertakings (as defined by 16 U.S.C. § 470w and 36 CFR § 800.16(y)) that may affect
25 properties listed in or eligible for listing in the National Register of Historic Places (National
26 Register) pursuant to 36 CFR Part 60 (historic properties), and FEMA has consulted with the New
27 York State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation
28 (ACHP) pursuant to Section 106 of the National Historic Preservation Act (NHPA), Pub. L. No.
29 89-665 (1966) (codified as amended at 16 U.S.C. § 470f) and Section 110 of NHPA (codified as
30 amended at 16 U.S.C. §470h-2), and the Section 106 implementing regulations at 36 CFR Part
31 800; and
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33 **WHEREAS**, FEMA, ACHP, and SHPO have determined that FEMA’s Section 106 requirements
34 can be more effectively and efficiently implemented and delays to the delivery of FEMA
35 assistance minimized if a programmatic approach is used to stipulate roles and responsibilities,
36 exempt certain Undertakings from Section 106 review, establish protocols for consultation,
37 facilitate identification and evaluation of historic properties, and streamline the assessment and
38 resolution of adverse effects; and
39

40 **WHEREAS**, in order to implement its Programs, FEMA will provide assistance to the State of
41 New York that may provide monies and other assistance to eligible subgrantees, and as such, the
42 New York Office of Emergency Management (OEM) that is typically responsible for

43 administering funds provided under these Programs, has participated in this consultation, and has
44 been invited to enter into this Agreement as a signatory party; and
45

46 **WHEREAS**, the Landmarks Preservation Commission (LPC) is the New York City agency
47 responsible for identifying and designating the City's landmarks and historic districts, regulates
48 changes to designated buildings, and by law, issues permits under the LPC law (Charter of the
49 City of New York §§ 3020 et seq. and the Administrative Code of the City of New York §§25-
50 301 et seq.) for LPC designated properties in the City of New York, and therefore any FEMA
51 Undertaking affecting such a property shall require an LPC permit prior to commencement of
52 work or demolitions, LPC has participated in this consultation and has been invited to enter into
53 this Agreement as a concurring party; and
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55 **WHEREAS**, FEMA has determined that its Programs may result in Undertakings with the
56 potential to affect historic properties having religious and cultural significance to Indian Tribes,
57 including sites that may contain human remains and/or associated cultural items; and
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59 **WHEREAS**, FEMA recognizes that the Delaware Nation, the Delaware Tribe of Indians, the
60 Shinnecock Nation and the Stockbridge-Munsee Community Band of Mohican (Tribes) may have
61 sites of religious and cultural significance on or off Tribal lands, and in meeting its Federal trust
62 responsibility, FEMA has engaged in government-to-government consultation with the Tribes,
63 and pursuant to 36 CFR § 800.2 (c)(2)(ii)(E) has invited the Tribes to enter into an agreement that
64 specifies how FEMA and the Tribes will carry out Section 106 responsibilities, including the
65 confidentiality of information. The agreement may grant the Indian Tribes additional rights to
66 participate or concur in FEMA decisions in the Section 106 review process beyond the ones
67 outlined in 36 CFR Part 800; and
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69 **WHEREAS**, notwithstanding the aforementioned invitation to enter into an agreement, FEMA
70 has invited the _____ Participating Tribe(s) to enter into this Agreement as a signatory
71 party to fulfill the requirements of Section 106; and
72

73 **WHEREAS**, _____ Tribes(s) have declined to enter into this Agreement as
74 signatory party; and
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76 **WHEREAS**, FEMA may invite additional Tribes that may have sites of religious and cultural
77 significance to enter into the terms of this Agreement; and
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79 **WHEREAS**, FEMA may perform direct Undertakings in order to implement its Programs; and
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81 **WHEREAS**, in anticipation or in the immediate aftermath of the Disaster Declaration, impacted
82 communities in the State of New York and/or affected Tribe(s) may conduct critical preparedness
83 and response and recovery activities to safeguard public health and safety and to restore vital
84 community services and functions. Some of these activities may become Undertakings requiring
85 Section 106 review subject to the terms of this Agreement, and FEMA shall coordinate the
86 appropriate review as warranted; and
87

88 **NOW, THEREFORE**, FEMA, ACHP, SHPO, OEM and Participating Tribe(s) agree that the
89 Programs in the State of New York shall be administered in accordance with the following
90 Stipulations to satisfy FEMA’s Section 106 responsibilities for all resulting Undertakings and
91 effectively integrate historic preservation compliance considerations into the delivery of FEMA
92 assistance. FEMA will not authorize implementation of an individual Undertaking until Section
93 106 review of the project is completed pursuant to this Agreement.

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95 **STIPULATIONS**

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97 To the extent of its legal authority, and in coordination with the other signatories, FEMA will
98 require that the following measures be implemented:

99 **I. GENERAL**

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101 **A. Applicability**

- 102
103 1. This Agreement applies immediately for this Disaster Declaration after execution by
104 all signatory parties and will remain in effect for the duration of the period that the
105 Disaster Declaration remains open for FEMA funding.
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107 2. For FEMA undertakings that also are within the jurisdiction of the Federal
108 Communications Commission’s (FCC) and within the scope of its Section 106
109 Programmatic Agreements for communication facilities, FEMA defers Section 106
110 review in accordance with the ACHP Program Comment of October 23, 2009. The
111 approval of funding for the FEMA Undertaking will be conditioned on the compliance
112 of the subgrantee with FCC’s applicable Section 106 review, including any required
113 consultation with affected Tribes. FEMA will notify the SHPO when it applies the
114 ACHP Program Comment to an Undertaking.
115
116 3. Other Federal agencies providing financial assistance for Program activities covered
117 under the terms of this Agreement may, with the concurrence of ACHP, FEMA and
118 SHPO, satisfy their Section 106 responsibilities by accepting and complying with the
119 terms of this Agreement. "Other Federal Agencies" may include municipalities
120 providing funds and acting as the Responsible Entity pursuant to 24 CFR Part 58. In
121 such situations, the Federal Agency shall notify FEMA, SHPO and ACHP in writing
122 of their intent to use this Agreement to achieve compliance with Section 106
123 requirements, and consult with those agencies regarding its section 106 compliance.
124 Resumes of staff that meet the Secretary’s Professional Qualifications and will review
125 Tier II projects will be included with the notification. The Federal agency may utilize
126 this Agreement to satisfying its Section 106 responsibilities by executing the
127 Addendum included in Appendix D. The Agreement will be effective for the Federal
128 agency on the date the Addendum is executed by SHPO, FEMA and ACHP.
129
130 4. This Agreement may apply to Undertakings involving multiple Federal agencies and
131 where some or all of the Federal agencies involved in the Undertaking may designate
132 FEMA as the lead Federal agency pursuant to 36 CFR § 800.2(a)(2) with appropriate

133 notification to the ACHP. FEMA will act on the collective behalf of the agencies to
134 fulfill all Section 106 responsibilities. Federal agencies that do not designate FEMA
135 as the lead Federal agency will be responsible for doing a separate consultation
136 pursuant to Section 106 and 36 CFR Part 800.
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- 138 5. As a result of the Disaster Declaration, State, Tribal and local governments may lack
139 the capability to perform or to contract for emergency work, and instead request that
140 the work be accomplished by a Federal agency. Through a mission assignment (MA),
141 FEMA may direct appropriate Federal agencies to perform the work. This Agreement
142 will apply to such Federal assistance undertaken by or funded by FEMA pursuant to
143 Titles IV and V of the Stafford Act and 44 CFR Part 206.
144
- 145 6. If another Federal program or Federal agency has reviewed and approved an
146 Undertaking under Section 106 of the NHPA within the past five years, FEMA has no
147 further requirement for Section 106 review provided that it confirms that the scope and
148 effect [as defined by 36 CFR § 800.16(i)] of the Undertaking as reviewed by the
149 previous agency has not changed, and SHPO/Tribal concurrence is documented.
150 FEMA shall document these findings to the project files in order to confirm that the
151 requirements of Section 106 have been satisfied.
152
- 153 6. Should FEMA, in consultation with SHPO and Participating Tribe(s), determine that
154 the previous Section 106 review was insufficient or involved interagency
155 disagreements on eligibility, effect, or mitigation, FEMA shall conduct additional
156 Section 106 review in accordance with the terms of this Agreement.
157
- 158 7. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households provided
159 under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act, including
160 funding for owner occupied home repair and replacement, content replacement,
161 personal property, transportation and healthcare expenses, is exempt from the
162 provisions of Section 106. For ground disturbing activities, and construction related to
163 44 CFR §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement
164 housing), 206.117(b)(4) (permanent housing construction), and 206.117(c)(1)(vi)
165 (privately owned access routes), FEMA will conduct Section 106 review.
- 166 8. FEMA has determined that the following types of activities have limited or no
167 potential to affect historic properties and FEMA has no further Section 106
168 responsibilities, pursuant to 36 CFR § 800.3(a)(1):
169
 - 170 a. Administrative actions such as personnel actions, travel, procurement of services,
171 supplies (including vehicles and equipment) for the support of day-to-day and
172 emergency operational activities, and the temporary storage of goods provided
173 storage occurs within existing facilities or on previously disturbed soils.
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 - 175 b. Preparation, revision, and adoption of regulations, directives, manuals, and other
176 guidance documents.
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- c. Granting of variances, and actions to enforce Federal, State, or local codes, standards or regulations.
 - d. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.
 - e. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.
 - f. Assistance provided for planning, studies, design and engineering costs that involve no commitment of resources other than staffing and associated funding.
 - g. 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.
 - h. 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.
 - i. Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements.
 - j. Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction and excluding demolition. The Grantee will ensure that applicants agree to secure their property from physical alteration, illegal entry, and damage until any applicable requirements of this Agreement are fulfilled. The applicant community will agree to these terms as a condition of its acquisition grant before FEMA will release any related funding.
 - k. Reimbursement of a subgrantee's insurance deductible, when the deductible is the total FEMA eligible cost for the project.
 - l. Labor, equipment and materials used to provide security in the Disaster Declaration area, including lease, rental, purchase or repair of equipment or vehicles and payment for staff and contract labor.
 - m. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
 - n. Unemployment assistance.
 - o. Distribution of food coupons.
 - p. Legal services.

- 224 q. Crisis counseling.
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226 9. The terms of this Agreement will not apply to Undertakings on Tribal (reservation)
227 lands) unless the affected Tribe(s) have concurred in writing.
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229 10. Any FEMA Programs authorized by the United States Congress in the future may be
230 included in this Agreement in accordance with Stipulation IV.A, Amendments. Any
231 change in the FEMA name, Programs, or organizational structure will not affect this
232 Agreement.

233 B. Roles and Responsibilities of the Signatories

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235 1. FEMA:
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237 a. FEMA will use Federal, Tribal, State, subgrantee, or contractor staff whose
238 qualifications meet the Secretary of the Interior's (Secretary's) Professional
239 Qualifications Standards (Professional Qualifications) set forth in the Federal
240 Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended (Qualified),
241 in completing identification and evaluation of historic properties and in making
242 determinations of effects. FEMA will review any National Register eligibility
243 determination and make its own findings of effect resulting from the performance
244 of these activities prior to submitting such determinations to the SHPO and
245 Participating Tribe(s).
246
247 i. FEMA acknowledges that Tribes possess special expertise in assessing the
248 National Register eligibility of properties with religious and/or cultural
249 significance to them. Tribal leaders and, as appropriate, their representatives
250 shall decide who meets qualifications/standards as defined by their Tribes for
251 review of undertakings affecting properties with religious and/or cultural
252 significance to Tribes.
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254 b. FEMA will coordinate with the LPC to help LPC ensure that subgrantees apply for
255 permits.
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257 i. If an Undertaking as defined by 36 CFR § 800.5 has the potential to adversely
258 affect an LPC designated property or one proposed for designation, then
259 FEMA will provide LPC with the same documentation that is provided to
260 SHPO and Participating Tribes.
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262 ii. When LPC notifies FEMA that an Undertaking is subject to further LPC
263 review and permitting, FEMA EHP may approve the project and will notify the
264 the Grantee that the subgrantee is responsible for obtaining a permit from LPC.
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266 iii. FEMA will request LPC to be a consulting party on any Memorandum of
267 Agreement (MOA) that is written to resolve adverse effects to buildings that
268 are LPC designated or proposed landmarks.
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- 270 c. In accordance with 36 CFR § 800.2(c)(4), FEMA may authorize OEM, or a
271 subgrantee through OEM, to initiate the Section 106 process with the SHPO and
272 any other consulting parties, but remains responsible for determinations of
273 National Register eligibility and findings of effect made by the authorized party.
274 FEMA will follow the process set forth in Stipulation I.B.1.a, FEMA Roles and
275 Responsibilities, above and will notify the SHPO in writing when OEM or a
276 subgrantee has been authorized to initiate consultation on FEMA's behalf. FEMA
277 shall conduct all project consultation with Tribe(s).
278
- 279 d. Prior to authorizing the release of funds for individual undertakings requiring grant
280 conditions pursuant to this Agreement, FEMA will inform OEM of all stipulations
281 and conditions and ensure that they are understood so they can be adequately
282 conveyed to subgrantees. FEMA will work in partnership with OEM to provide
283 subgrantees with guidance on in-kind repair pursuant to The Secretary of the
284 Interior's Standards for the Treatment of Historic Properties 1995 (Standards), 36
285 CFR Part 68, or the most updated version, and techniques to avoid or minimize
286 adverse effects to historic properties.
287
- 288 e. FEMA shall provide the signatories with bi-annual reports for the previous six
289 months by July 1st and December 31st of each year that this Agreement is in
290 effect. This annual report will summarize the actions taken to implement the terms
291 of this Agreement, statistics on Undertakings reviewed, and recommend any
292 actions or revisions to be considered, including updates to the appendices.
293
- 294 f. FEMA will confer bi-annually and as necessary with signatories to this Agreement
295 within 30 days after issuance of the annual report, to review the report and/or
296 discuss issues and concerns in greater detail.
297
- 298 g. FEMA shall notify the SHPO and affected Tribe(s) as soon as practicable
299 following the Disaster Declaration and provide specific points of contact and other
300 pertinent information about the Disaster Declaration.
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- 302 h. FEMA shall ensure that all documentation resulting from Undertakings reviewed
303 pursuant to this Agreement shall be consistent with applicable SHPO and Tribal
304 guidelines and the confidentiality provisions of 36 CFR § 800.11(c).
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306 2. SHPO:
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- 308 a. SHPO shall review FEMA's determination of the Areas of Potential Effect (APE),
309 National Register eligibility determinations, and FEMA's effect findings and
310 provide comments within timeframes required by this Agreement.
311
- 312 b. Upon request, the SHPO will provide FEMA/and or its designee(s) with available
313 information about historic properties (such as access to online systems or site files,
314 GIS data, survey information, geographic areas of concern). Such data sharing

315 may be memorialized in an agreement. Only Qualified FEMA staff and/or its
316 designee(s) shall be afforded access to protected cultural resources information.
317

318 c. The SHPO will identify staff or consultants to assist FEMA staff with its Section
319 106 responsibilities, and identify, in coordination with FEMA, specific activities
320 that SHPO may perform for specific undertakings as agreed in writing with
321 FEMA.
322

323 d. As requested, SHPO staff will be available as a resource and for consultation
324 through site visits, written requests, telephone conversations or electronic media.
325 In those instances where consultation with SHPO has occurred, a written notice
326 (via e-mail or regular mail) will be sent to SHPO to confirm any decisions that
327 were reached.
328

329 e. FEMA and the SHPO may agree to delegate some or all of the SHPO's
330 responsibilities under this Agreement to supplementary SHPO staff assigned to
331 FEMA-DR-4085-NY that are physically located in FEMA's Joint Field Office or
332 SHPO offices in order to help expedite project review or other responsibilities
333 under this Agreement. FEMA and SHPO will consult about the selection of the
334 supplementary SHPO staff, the scope of responsibilities delegated, and the
335 implementing procedures related to the actions and decisions delegated. FEMA
336 and SHPO shall formally document their agreement regarding the supplementary
337 SHPO staff.
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339 f. The SHPO shall participate in an initial scoping meeting for the Disaster
340 Declaration.
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342 g. The SHPO may assist local jurisdictions or OEM with advance planning efforts to
343 consider historic properties related to their preparedness, homeland security,
344 response, recovery, and mitigation programs, for which FEMA funding may be
345 requested.
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347 h. The SHPO will coordinate with FEMA, to identify consulting parties, including
348 any communities, organizations, or individuals that may have an interest in a
349 specific Undertaking and its effects on historic properties.
350

351 3. LPC 352

353 a. LPC will review FEMA Undertakings that have the potential to adversely affect an
354 LPC designated property or one proposed for designation using FEMA consultation
355 documents that are provided to SHPO and Participating Tribes so that LPC may notify
356 FEMA whether or not an LPC property may be affected by the Undertaking and will
357 require a LPC permit.
358

359 b. LPC understands that if it does not respond to FEMA's submittal of Undertakings to
360 them within the timeframes outlined in Stipulation I.E, i.e. within 3 days under

361 emergency conditions, 15 days for IA and PA Undertakings and 30 days for HMGP
362 Undertakings, FEMA will assume that none of the Undertakings are subject to LPC
363 review and permitting and will proceed with the Undertaking.
364

365 4. OEM:

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- 367 a. OEM shall ensure that its subgrantees understand and acknowledge conditions and
368 potential requirements that may be placed upon Undertakings as a result of Section
369 106 consultation and the provisions of this Agreement.
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- 371 b. OEM will notify the subgrantee that a permit is required when LPC notifies FEMA
372 that an Undertaking is subject to further LPC review.
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- 374 c. OEM will participate in an initial scoping meeting for the Disaster Declaration.
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- 376 d. OEM shall ensure that subgrantees understand that failure to comply with the
377 terms of this Agreement and any project-specific conditions could jeopardize
378 FEMA funding.
379
- 380 e. OEM will notify FEMA as soon as possible of any proposed change to the
381 approved scope of work and direct the subgrantee not to implement the changes to
382 the proposed scope of work until any additional review required by this Agreement
383 is complete.
384
- 385 f. OEM shall ensure that its subgrantees are made aware that in the event of an
386 unexpected discovery involving an Undertaking that has affected a previously
387 unidentified historic property, human remains, or affected a known historic
388 property in an unanticipated manner, the subgrantee will comply with Stipulation
389 III.B, Unexpected Discoveries.
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- 391 g. OEM shall ensure that in its subgrant agreements, any scope of work involving
392 ground disturbance, and resultant contracts to execute said work, provide for the
393 protection of and notification protocols for unexpected discoveries of cultural
394 material and human remains.
395
- 396 h. If the Tribe assumes the role of Grantee for projects on Tribal lands, it will assume
397 the same responsibilities as outlined in Stipulation I.B.3 of this Agreement, Roles
398 and Responsibilities of the Signatories.

399 C. Tribal Consultation

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- 401 1. For Tribes that have assumed the responsibilities of the SHPO through appointment of
402 a Tribal Historic Preservation Officer (THPO) per Section 101 of the NHPA, FEMA
403 shall consult with the THPO in lieu of the SHPO for undertakings occurring on or
404 affecting tribal lands.
405

- 406 2. Where no Tribal-specific consultation agreements or protocols are in place, FEMA
407 shall consult with affected Tribe(s) in accordance with 36 CFR Part 800. In
408 determining who the affected Tribe(s) may be, FEMA will first establish that an
409 Undertaking has the potential to affect historic properties with religious or cultural
410 importance. FEMA may consult with the SHPO, affected Tribe(s), any State Tribal
411 Agency, and access the National Park Service (NPS) Native American Consultation
412 Database to identify Tribal geographic interests.
413
- 414 3. FEMA shall ensure that its consultations with other consulting parties shall not include
415 the dissemination of information, when advised of data sensitivity by the affected
416 Tribe(s), that might risk harm to an American Indian site or property of religious or
417 cultural significance or that might impede the use of such a site by the affected
418 Tribe(s) in accordance with Section 304 of the NHPA and other applicable laws.
419 Information provided is exempt from public knowledge and disclosure under the
420 Freedom of Information Act (FOIA) by both Section 304 of the NHPA and Section 9
421 of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. §470aa –
422 470mm).

423 D. Public Participation

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- 425 1. FEMA recognizes that the views of the public are essential to informed decision
426 making throughout the Section 106 review process. FEMA will notify the public of
427 proposed Undertakings in a manner that reflects the nature, complexity, and effect(s)
428 of the Undertaking, the likely public interest given FEMA's specific involvement, and
429 any confidentiality concerns of affected Tribe(s), and private individuals and
430 businesses.
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- 432 2. FEMA will consult with OEM, the subgrantee, SHPO, and Participating Tribe(s), to
433 determine if there are individuals or organizations with a demonstrated interest in
434 historic properties that should be made aware of an Undertaking. If such parties are
435 identified or identify themselves to FEMA, FEMA will provide them with information
436 regarding the Undertaking and its effect on historic properties, consistent with the
437 confidentiality provisions of 36 CFR § 800.11(c).
438
- 439 3. In accordance with the outreach strategy developed for an Undertaking in consultation
440 with the SHPO and Participating Tribe(s), for involving the public, FEMA will
441 identify the appropriate stages for seeking public input during the Section 106 process.
442
- 443 4. FEMA will consider all views provided by the public regarding an Undertaking and
444 will consider all written requests of individuals and organizations to participate as
445 consulting parties, and in consultation with the SHPO and Participating Tribe(s),
446 determine which should be consulting parties. FEMA will invite any individual or
447 organization that will assume a specific role or responsibility outlined in a Section 106
448 agreement document to participate as a signatory party in that agreement document.
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450 5. FEMA also may provide public notices and the opportunity for public comment or
451 participation in an Undertaking through the public participation process of the
452 National Environmental Policy Act (NEPA) and its implementing regulations set out
453 at 44 CFR Part 10, and/or Executive Orders 11988 and 11990 relating to floodplains
454 and wetlands as set out in 44 CFR Part 9, and Executive Order 12898, Environmental
455 Justice, provided such notices specifically reference Section 106 as a basis for public
456 involvement.

457 E. Timeframes

458 All time designations will be in calendar days unless otherwise stipulated. If any signatory
459 does not object to FEMA's determination related to a proposed action within an agreed upon
460 timeframe, FEMA may proceed to the next step in the review process as described in
461 Stipulation II, Project Review. Due to the varied nature of Undertakings, the individual
462 response times to FEMA's requests for comment/concurrence will vary.

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- 464 1. Under emergency conditions, the SHPO and Participating Tribe(s) will respond to any
465 FEMA request for comments within three (3) days after receipt, unless FEMA determines
466 the nature of the emergency action warrants a shorter time period.
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 - 468 2. For Undertakings associated with the Individual Assistance (IA) and Public Assistance
469 (PA) programs, the review time shall be a maximum of fifteen (15) days for delineation of
470 the Area of Potential Effect (APE), determinations of National Register eligibility and
471 findings of effect.
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 - 473 3. For the Hazard Mitigation Grant Program (HMGP), the response time for each request for
474 concurrence shall be a maximum of thirty (30) days.

475 **II. PROJECT REVIEW**

476 A. Programmatic Allowances

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- 478 1. If FEMA determines an Undertaking conforms to one or more of the allowances in
479 Appendix B of this Agreement, FEMA will complete the Section 106 review process
480 by documenting this determination in the project file, without SHPO and Tribal review
481 or notification.
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 - 483 2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify
484 the SHPO and Participating Tribe(s) and the NHL Program Manager in the NPS
485 Northeast Regional Office that the activities meet allowance criteria. FEMA will
486 provide information about the proposed scope of work for the Undertaking and the
487 allowance(s) enabling FEMA's determination. Unless the SHPO, Participating
488 Tribe(s), or NPS object or request more information within 15 days after their receipt
489 of this documentation, FEMA will complete the Section 106 review.
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 - 491 3. If an Undertaking is not composed entirely of an allowance listed in Appendix B,
492 FEMA will conduct Section 106 review for the entire Undertaking.

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4. For an Undertaking that FEMA determines does not meet the allowance criteria, FEMA shall complete the Section 106 review process in accordance with Stipulation II.C, Standard Project Review, as applicable.
 5. Allowances may be revised and new allowances may be added to this Agreement in accordance with Stipulation IV.A.3, Amendments.

500 B. Expedited Review for Emergency Undertakings

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1. As part of the Disaster Declaration process, FEMA will 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 improved property. FEMA will conduct expedited review of emergency Undertakings from October 27, 2012, the beginning of the incident period, until January 27, 2013.
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512 2. Should FEMA determine that it is necessary to extend the expedited review period beyond January 27, 2012, FEMA will request in writing, prior to the expiration of the expedited review period, an extension of the period of applicability in 30-day increments in accordance with 36 CFR § 800.12(d).
 - 513 3. For all emergency Undertakings, FEMA will determine the following:
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516 a. If the Undertaking is an immediate rescue and salvage operations conducted in response to an event to preserve life and property, FEMA has no Section 106 review responsibilities in accordance with 36 CFR § 800.12(d); or
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521 b. If the Undertaking meets one or more of the Allowances in Appendix B of this Agreement, FEMA will complete the Section 106 review process pursuant to Stipulation II.A.1, Programmatic Allowances.
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532 c. If FEMA determines that the emergency Undertaking will adversely affect a historic property during this expedited review period, to the extent practicable FEMA may propose treatment measures that would address adverse effects during implementation, and request the comments of the SHPO and/or the affected Tribe(s) within 3 days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period. FEMA may elect to consult with the SHPO and/or the affected Tribe(s) regarding the emergency Undertaking at any point before or during the implementation of an emergency Undertaking if FEMA determines circumstances are appropriate for expedited consultation.

- 533 d. FEMA may provide this information through written requests, telephone
534 conversations, meetings, or electronic media. In all cases, FEMA will clarify that
535 an “expedited Undertaking review” is being requested.
536
- 537 e. FEMA will take into account any timely comments provided by SHPO and/or the
538 affected Tribe(s) and notify the parties of how their comments were taken into
539 consideration by FEMA, OEM, and subgrantee.
540
- 541 f. Should the SHPO and/or Participating Tribe(s) not comment within 7 days, FEMA
542 may fund the emergency Undertaking based on the available information. This
543 will complete the Section 106 review for the Undertaking.

544 C. Emergency Demolition and Debris Removal of Privately-Owned Properties

545 FEMA may need to carry out debris removal activities involving the demolition and
546 removal of buildings and structures that are damaged beyond repair or that are completely
547 collapsed and/or disassembled by the actions of the storm and therefore must be removed
548 for health and safety reasons. Damage to historic properties by the effects of natural
549 disasters to such a degree that demolition is required for health and safety reasons is not an
550 adverse effect as defined under Section 106 of NHPA. However, FEMA is required by
551 the NHPA to determine if its specific actions in response to disasters will cause adverse
552 effects to any historic properties. After FEMA Public Assistance Program (PA)
553 determines a property initially eligible for demolition, FEMA EHP will review these
554 projects using the following expedited emergency process outlined below.
555

- 556 1. FEMA EHP will evaluate all properties proposed for demolition to determine if
557 they are listed in the National Register or have previously been determined to be
558 eligible for the NRHP. If a property has not been previously evaluated for NRHP
559 eligibility, FEMA will make a determination whether or not the property is eligible
560 for the NRHP. Historic properties include both those above the ground (buildings
561 and structures) and below the ground (archaeological sites and artifacts).
562
- 563 2. FEMA's evaluation will include a data base/GIS review of SHPO information to
564 identify previously-identified historic properties, field review and photography,
565 and additional research of properties that are more than 45 years of age, including
566 archaeological analysis if necessary.
567
- 568 3. FEMA will conduct an analysis of effects for any historic property identified for
569 demolition or for any demolition that will affect other historic properties within an
570 Area of Potential Effects (APE) and will determine if the project will result in
571 adverse effects. The APE for historic properties that are not located within a
572 designated historic district, or within a geographic area that is eligible as a NRHP
573 district, will be the building footprint. For all others, FEMA will determine a
574 project-specific APE. FEMA will also provide information to the SHPO for these
575 properties that describes the specific nature of the damage to each property
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4. FEMA will document its findings concerning each property that is proposed for demolition and will submit a report to the SHPO and other consulting parties, as appropriate that includes two (2) photographs of each property (more if associated resources are present) and text that briefly but adequately explains FEMA’s determination of NRHP eligibility and effects. These reports will be submitted via the SHPO’s dedicated electronic mail account at femarecovery@parks.ny.gov.
 5. SHPO will review the reports, provide its concurrence or ask for more information via electronic mail within three (3) business days. If SHPO does not concur with FEMA’s finding for any property, both agencies will conduct further consultation as soon as possible to clarify FEMA’s determinations or to resolve any disagreements.
 6. To the extent practicable, demolition of every structure will be carried out following low impact protocols – limiting disturbance to the footprint of the existing structure, limiting the use of heavy equipment on the property, pushing all foundation materials into the building basement and emphasizing that the contractors make reasonable efforts to avoid or minimize harm to any archaeological deposits. In addition, FEMA’s PA Program does not fund the removal of slabs, further ensuring that these undertakings will likely have minimal impact on archaeological resources. In most instances FEMA will make the determination that no historic properties will be affected by the demolition.
 7. In cases where a demolition site is considered to be archaeologically sensitive, monitoring will be required by an archaeologist who meets the Secretary’s Professional Qualifications Standards. This determination will be made on a case-by case-basis by FEMA in consultation with the SHPO and other consulting parties. Eligibility determinations, assessment of effects and resolution of adverse effects will be made subsequent to identification of an archeological property.
 8. Demolition of eligible historic buildings/structures may be adverse and may require development of a Memorandum of Agreement (MOA) to mitigate any adverse effects. If FEMA determines that any property demolition is an Undertaking that will result in adverse effects, it will enter into consultation with the SHPO and other appropriate consulting parties to develop an MOA to mitigate the adverse effects as required under Section 106. FEMA may choose to identify, in consultation with the SHPO, standard treatment measures to mitigate adverse effects to multiple properties.
 9. This agreement only pertains to the residential structure itself and does not include the demolition or removal of any other infrastructure on these properties, including sidewalks, driveways, pools, retaining walls or similar structures that would not be eligible for FEMA Public Assistance funding.

620 D. Standard Project Review

621

622 For Undertakings not exempt from further Section 106 review, FEMA will ensure that the
623 following standard project review steps are implemented. In the interest of streamlining,
624 FEMA may combine some of these steps during consultation.
625

- 626 1. Consulting Parties: FEMA will consult as appropriate with the SHPO and affected
627 Tribe(s) to identify any other parties that meet the criteria to be consulting parties and
628 invite them to participate in the Section 106 review process. FEMA may invite others
629 to participate as consulting parties as the Section 106 review proceeds.
630
- 631 2. Area of Potential Effects: For standing structures, qualified staff shall define the APE
632 as the individual structure when the proposed Undertaking is limited to the repair or
633 rehabilitation (as defined in 36 CFR § 68.3(b)(6) and 36 CFR § 68.2(b)) of a structure
634 located outside of a National Register listed or eligible historic district. For all other
635 undertakings, qualified staff will determine the APE in consultation with the SHPO
636 and Participating Tribe(s). FEMA may also consider information provided by other
637 parties, such as local governments and the public, when establishing the APE.
638
- 639 3. Identification and Evaluation: Qualified staff shall determine, in consultation with the
640 SHPO and Participating Tribe(s) if the APE contains historic properties, including
641 archaeological sites or properties of religious or cultural significance, that are listed in
642 or potentially eligible for the National Register. This may include the review of
643 preliminary documentation collected by OEM or the subgrantee in coordination with
644 the SHPO.
645
 - 646 a. Archaeological Properties, FEMA may consult with the SHPO to determine the
647 level of effort and methodology necessary to identify and define the limits of
648 archaeological properties. For historic properties of religious and cultural
649 significance to Participating Tribe(s), FEMA shall consult with the Tribe(s) to
650 identify geographic areas where properties may be affected by an Undertaking in
651 order so that FEMA may determine the necessary level of effort required to avoid
652 or protect any such properties.
653
 - 654 b. National Historic Landmarks: When FEMA determines an Undertaking has the
655 potential to affect an NHL, FEMA shall notify the Secretary through the NHL
656 Program Manager in the NPS Northeast Regional Office in addition to the SHPO
657 and Participating Tribe(s).
658
 - 659 c. Determinations of Eligibility: FEMA shall review or determine National Register
660 eligibility based on identification and evaluation efforts, and consult with SHPO
661 and Participating Tribe(s) regarding these determinations. Should the SHPO or
662 Participating Tribe(s) disagree with the determination of eligibility, FEMA may
663 elect to either continue consultation, treat the property as eligible for the National
664 Register, or to obtain a determination of eligibility from the Keeper of the National
665 Register in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4(c)(2).
666
 - 667 d. Findings of No Historic Properties Affected: FEMA shall make a finding of “no

668 historic properties affected” if no historic properties are present in the APE; the
669 Undertaking is designed to avoid historic properties, including archaeological sites
670 or properties of religious or cultural significance to Participating Tribe(s); or the
671 Undertaking does not affect the character defining features of a historic property.
672

673 i. FEMA shall notify the SHPO, Participating Tribes(s), and any other consulting
674 parties of this finding and provide supporting documentation in accordance
675 with 36 CFR § 800.11(d) and applicable documentation standards. Unless the
676 SHPO or Participating Tribe(s) objects to the finding pursuant to the
677 appropriate timeframe outlined in Stipulation I.E.2 or I.E.3, Timeframes,
678 FEMA shall complete the Section 106 review.
679

680 ii. If the SHPO or Participating Tribe(s) objects to a finding of “no historic
681 properties affected”, FEMA may elect to consult with the objecting party to
682 resolve the disagreement. If the objection is resolved, FEMA may proceed with
683 the action in accordance with the resolution. FEMA also may elect to
684 reconsider effects on the historic property by applying the criteria of adverse
685 effect pursuant to Stipulation II.D.4, Application of the Criteria of Adverse
686 Effect. If FEMA is unable to resolve the disagreement, it will forward the
687 finding and supporting documentation to the ACHP and request that the ACHP
688 review FEMA’s finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A)
689 through 36 CFR § 800.4(d)(1)(iv)(C). FEMA will consider the ACHP’s
690 recommendation in making its final determination.
691

692 4. Application of the Criteria of Adverse Effect: If FEMA finds an Undertaking may
693 affect identified historic properties in the APE, including properties of religious or
694 cultural significance to Participating Tribe(s), or if a consulting party objects to the
695 finding of “no historic properties affected,” FEMA will apply the criteria of adverse
696 effect to historic properties within the APE(s), taking into account the views of the
697 consulting parties and public concerning effects in accordance with 36 CFR §
698 800.5(a).
699

700 a. If FEMA determines that an Undertaking does not meet the adverse effect criteria
701 or, for a standing structure, that the Undertaking meets the *Standards*, FEMA shall
702 propose a finding of “no adverse effect” in accordance with 36 CFR § 800.5(b).
703

704 b. FEMA shall notify the SHPO, Participating Tribe(s), and all other consulting
705 parties of its finding and provide supporting documentation pursuant to 36 CFR
706 §800.11(e) and applicable documentation standards. Unless a consulting party
707 objects within the appropriate timeframe, FEMA will proceed with its “no adverse
708 effect” determination and complete the Section 106 review.
709

710 c. If FEMA finds the Undertaking may have an adverse effect, FEMA shall request
711 through OEM that the subgrantee revise the scope of work to substantially
712 conform to the Standards for standing structures, or avoid or minimize adverse
713 effects for archaeological properties, in consultation with the SHPO, Participating

714 Tribe(s), and any other consulting parties. If the subgrantee modifies the scope of
715 work to address the adverse effect, FEMA shall notify the consulting parties, and
716 provide supporting documentation. Unless a consulting party makes a timely
717 objection, FEMA shall proceed with its “no adverse effect” determination and
718 complete the Section 106 review.
719

- 720 d. If a consulting party objects to a finding of “no adverse effect,” FEMA will elect to
721 consult with the objecting party to resolve the disagreement. If the objection is
722 resolved, FEMA will proceed with the undertaking in accordance with the
723 resolution, or;
- 724
- 725 e. If the objection cannot be resolved, FEMA will forward its findings and supporting
726 documentation to the ACHP and request that the ACHP review the findings in
727 accordance with 36 CFR. § 800.5(c)(3)(i-ii). FEMA will consider the ACHP’s
728 comments in making its final determination, or;
- 729
- 730 f. If an Undertaking cannot be modified to avoid adverse effects FEMA will initiate
731 consultation to resolve the adverse effect(s) in accordance with Stipulation II.D.5,
732 Resolution of Adverse Effects.
733

734 5. Resolution of Adverse Effects: If FEMA determines that an Undertaking will
735 adversely affect a historic property, it will notify the consulting parties of its decision
736 and provide documentation as required by 36 CFR § 800.11(e) and subject to the
737 confidentiality provisions of 36 CFR § 800.11(c), as well as provide the ACHP with
738 an adverse effect notice in accordance with 36 CFR § 800.6(a)(1). FEMA, in
739 consultation with the SHPO, OEM, Participating Tribe(s), subgrantee, ACHP, if
740 Participating, and any other consulting parties, shall resolve the effects of the
741 Undertaking by one of the following methods depending upon the nature and scale of
742 the adverse effect as well as the determination of the historic property’s significance
743 on a local, state or national level:
744

745 a. Abbreviated Consultation Process: After taking into consideration the nature of
746 the historic properties affected and the severity of the adverse effects, FEMA may
747 propose in writing to the consulting parties to resolve the adverse effects of the
748 Undertaking through the application of Treatment Measures outlined in Appendix
749 C as negotiated with the SHPO, OEM, and Participating Tribe(s). FEMA will not
750 propose to resolve adverse effects through the Abbreviated Consultation Process if
751 the Undertaking may affect an NHL. The use of these Treatment Measures will
752 not require the execution of a Memorandum of Agreement (MOA) or
753 Programmatic Agreement.
754

- 755 1. In consultation with the SHPO, OEM, Participating Tribe(s), and other
756 consulting parties, FEMA will put forth a written proposal for the
757 implementation of a specific Treatment Measure, or combination of Treatment
758 Measures with the intent of expediting the resolution of adverse effects. Unless
759 a consulting party objects within fifteen (15) days of receipt of FEMA’s

760 proposal, FEMA will proceed with the use of Treatment Measure(s) and will
761 complete the Section 106 review.
762

763 2. If any of the consulting parties objects within the 15 day review and comment
764 period to the resolution of adverse effects through the application of the
765 Abbreviated Consultation Process, FEMA shall consult further with the
766 consulting parties to explore options for resolution of the adverse effect(s). If
767 consultation is not successful after an additional 15 day period, FEMA shall
768 request that the ACHP arbitrate the consultation and help identify a final
769 resolution of the adverse effect(s). If no consensus is reached, FEMA shall
770 resolve the adverse effect(s) using procedures outlined below in Stipulation
771 II.E.5.b, Memorandum of Agreement.
772

773 3. Because funding and implementation details of Treatment Measure(s) for
774 specific Undertakings may vary by program, FEMA will provide written notice
775 to the consulting parties within sixty (60) days of the completion of the
776 Treatment Measure(s). This written notice will serve as confirmation that the
777 Treatment Measure(s) for a specific Undertaking have been implemented.
778 FEMA will also include information pertaining to the completion of Treatment
779 Measures in the annual report pursuant to Stipulation I.B.1,d, FEMA Roles and
780 Responsibilities.
781

782 b. Memorandum of Agreement (MOA): In consultation with the other consulting
783 parties, including the ACHP, if Participating, FEMA will develop an MOA in
784 accordance with 36 CFR § 800.6(c) to stipulate treatment measures to avoid,
785 minimize, and/or mitigate adverse effects on historic properties where an
786 Abbreviated Consultation Process is infeasible or is objected to by a consulting
787 party. The MOA may also include feasible treatment measures that serve an equal
788 or greater public benefit in promoting the preservation of historic properties in lieu
789 of more traditional treatment measures. Should the execution of an MOA not be
790 appropriate given the nature and significance of historic properties, scale of
791 adverse effects, or include one or more complex Undertakings, FEMA shall
792 resolve the adverse effects using the procedures outlined below in Stipulation
793 II.E.5.c, Programmatic Agreement.
794

795 c. Programmatic Agreement: FEMA, the SHPO, OEM, **Participating Tribe(s)**, the
796 ACHP, as appropriate, and any other consulting party may consult to develop a
797 Programmatic Agreement in accordance with 36 CFR § 800.14(b) to identify
798 programmatic conditions or treatment measures to govern the resolution of
799 potential or anticipated adverse effects from certain complex project situations for
800 an Undertaking or for multiple but similar Undertakings by a single subgrantee.
801

802 d. Objections: Should any signatory, consulting party, or member of the public
803 object within the timeframes established by this Agreement to any plans,
804 specifications, or actions pursuant to resolving an adverse effect, FEMA shall
805 consult further with the objecting party to seek resolution. If FEMA determines

806 the objection cannot be resolved, FEMA shall address in accordance with
807 Stipulation IV.B, Dispute Resolution.

808
809 e. National Historic Landmarks: When FEMA determines an Undertaking will
810 adversely affect an NHL, FEMA also will notify and invite the Secretary and
811 ACHP to participate in consultation, pursuant to 36 CFR § 800.10. When the
812 ACHP participates in consultation related to an NHL, the ACHP will report the
813 outcome of the consultation to the Secretary and the FEMA Administrator.

814 III. OTHER CONSIDERATIONS

815 A. Changes to an Approved Scope of Work: OEM is required to notify FEMA and will
816 require its subgrantees to notify it immediately when there are proposed changes to an
817 approved scope of work for an Undertaking. When notified by OEM of any proposed
818 substantive change to the approved scope of work for an Undertaking, FEMA may
819 authorize the OEM or subgrantee to proceed with the change once the required review is
820 completed.

821 B. Unexpected Discoveries: Upon notification by a subgrantee of an unexpected discovery in
822 accordance with Stipulation I.B.3.d, OEM Roles and Responsibilities, OEM will
823 immediately notify FEMA and require the subgrantee to:

- 824 1. Stop construction activities in the vicinity of the discovery; and,
- 825 2. Notify the local law enforcement office and coroner/medical examiner if human
826 remains are discovered, in accordance with applicable New York State statute(s);
- 827 3. Take all reasonable measures to avoid or minimize harm to the property until FEMA
828 has completed consultation with the SHPO, Participating Tribe(s), and any other
829 consulting parties. Upon notification by OEM of a discovery, FEMA will immediately
830 notify the SHPO, Participating Tribe(s), and any other consulting parties that may
831 have an interest in the discovery, and consult to evaluate the discovery for National
832 Register eligibility.
- 833 4. FEMA will consult with the consulting parties in accordance with the review process
834 outlined in Stipulation II, Project Review, to develop a mutually agreeable action plan
835 with timeframes to identify the discovery, take into account the effects of the
836 Undertaking, resolve adverse affects if necessary, and ensure compliance with
837 applicable Federal and State statutes.
- 838 5. In cases where discovered human remains are determined to be American Indian,
839 FEMA shall consult with the appropriate Tribal representatives and SHPO. In
840 addition, FEMA shall follow the guidelines outlined in the ACHP's *Policy Statement*
841 *Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects*
842 (2007).

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848 6. FEMA will coordinate with OEM and the subgrantee regarding any needed
849 modification to the scope of work for the Undertaking necessary to implement
850 recommendations of the consultation and facilitate proceeding with the Undertaking.

851 C. Curation

- 852
- 853 1. FEMA and OEM shall ensure that all records and materials (collections) produced
854 during the course of an archaeological survey, testing, and any data recovery
855 operations for the implementation of its Undertakings are curated at a facility,
856 preferably in-state, that meets the standards of, and in accordance with the applicable
857 provisions of 36 CFR Part 79, “Curation of Federally Owned and Administered
858 Archaeological Collections,” and applicable State law and guidelines.
859
- 860 2. In cases where the survey, testing, or data recovery are conducted on private land, any
861 recovered collections remain the property of the land owner and FEMA will return the
862 collections to them with the assistance of the SHPO. In such instances, FEMA and
863 OEM, in coordination with the SHPO or Participating Tribe(s), shall encourage land
864 owners to donate the collection(s) to an appropriate public or Tribal entity. In cases
865 where the property owner declines to accept responsibility for the collection(s) and
866 wishes to transfer ownership of the collection(s) to a public or Tribal entity, FEMA and
867 OEM will ensure curation of the collection(s) in accordance with Stipulation III.C.1
868 above.

869 D. Anticipatory Actions and After the Fact Review

- 870
- 871 1. FEMA shall specifically advise OEM and shall require that the OEM advise its
872 subgrantees in writing that they may not initiate the Undertaking for which they are
873 seeking Federal funding prior to compliance with this Agreement. OEM also shall
874 advise its subgrantees in writing that they may jeopardize Federal funding if activities
875 are initiated prior to compliance with this Agreement.
876
- 877 2. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a
878 subgrantee who, with intent to avoid the requirements of this Agreement or Section
879 106 of the NHPA, has intentionally significantly and adversely affected a historic
880 property to which the assistance would relate, or having legal power to prevent it,
881 allowed an adverse effect to occur. However, if after consultation with the SHPO,
882 Participating Tribes(s), and ACHP, FEMA determines that extraordinary
883 circumstances justify granting assistance despite the adverse effect created or
884 permitted by the subgrantee, FEMA shall complete consultation for the Undertaking
885 pursuant to the terms of this Agreement.
886
- 887 3. In circumstances where FEMA determines a subgrantee has initiated an Undertaking
888 without willful intent to avoid the requirements of this Agreement or Section 106 of
889 NHPA, FEMA will determine if the Undertaking would have required Section 106
890 review in accordance with Stipulation II.D, Standard Project Review.
891

- 892 4. If FEMA determines no Section 106 review or consultation with SHPO and
893 Participating Tribe(s) would have been required pursuant to Stipulation II.D, Standard
894 Project Review, FEMA will document this determination to the project files and
895 consider the project Section 106 compliant.
896
- 897 5. If FEMA determines the Undertaking would have required Section 106 review, FEMA
898 will coordinate with SHPO and Participating Tribe(s) to determine if consultation is
899 feasible.
- 900 a. If after coordination with the SHPO and affected Tribes, FEMA determines that
901 consultation is feasible, FEMA will review the Undertaking in accordance with
902 Stipulation II.D, Standard Project Review.
- 903 b. If after coordination with the SHPO and Participating Tribe(s), FEMA determines
904 that review is infeasible, FEMA will document that the project is noncompliant
905 with Section 106, and the FEMA program then will make a funding eligibility
906 decision.
- 907
- 908 6. FEMA will ensure that all Undertakings considered for after the fact review in
909 accordance with this stipulation are included in the bi-annual reports.
910

911 **IV. IMPLEMENTATION OF AGREEMENT**

912 **A. Amendments**

- 913
- 914
- 915 1. If any signatory to the terms of the Agreement determines that the Agreement cannot
916 be fulfilled, or that an amendment to the terms of this agreement must be made, the
917 signatories will consult for no more than 30 days to seek amendment of the
918 Agreement.
919
- 920 2. This Agreement may be amended only upon the written consensus of the signatories.
921 This Stipulation does not apply to amendments made to Appendices A, B, and C
922 pursuant to Stipulation IV.A.3, Amendments, below.
923
- 924 3. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances) and
925 Appendix C (Treatment Measures) may be amended at the request of FEMA or
926 another signatory party in the following manner:
927
- 928 a. FEMA, on its own behalf or on behalf of another signatory, shall notify all
929 signatory parties to this Agreement of the intent to add to or modify the current
930 Appendix or Appendices and shall provide a draft of the updated Appendix or
931 Appendices to all signatory parties.
932
- 933 b. If no signatory party objects in writing within 15 days of receipt of FEMA's
934 proposed addition or modification, FEMA will date and sign the amended
935 Appendix and provide a copy of the amended Appendix to all signatories.
936

937 B. Dispute Resolution

- 938
- 939 1. Should any signatory to this Agreement object in writing within 30 days to the terms
- 940 of this Agreement, FEMA will consult with the objecting party for not more than 30
- 941 days to resolve the objection.
- 942
- 943 2. If the objection is resolved within 30 days, FEMA shall proceed in accordance with
- 944 the resolution.
- 945
- 946 3. If FEMA determines within 30 days that the objection cannot be resolved, FEMA will
- 947 forward to ACHP all documentation relevant to the objection, including FEMA's
- 948 proposed resolution. Within 30 days of receipt, ACHP will:
- 949
- 950 a. Concur in FEMA's proposed resolution; or
- 951
- 952 b. Provide FEMA with recommendations, which FEMA will take into account in
- 953 reaching a final decision regarding the objection; or
- 954
- 955 c. Notify FEMA that the objection will be referred for comment in accordance with
- 956 36 CFR § 800.7(a)(4), and proceed to do so. FEMA will take the resulting
- 957 comment into account.
- 958
- 959 4. FEMA will take into account any ACHP recommendations or comments, and any
- 960 comments from the other signatories, in reaching a final decision regarding the
- 961 objection in accordance with 36 CFR § 800.7(c)(4). The signatories will continue to
- 962 implement all other terms of this Agreement that are not subject to objection.
- 963
- 964 5. Should ACHP not respond within 30 days, FEMA may assume ACHP has no
- 965 comment and proceed with its proposed resolution to the objection.
- 966
- 967 6. FEMA will provide the signatories with its final written decision regarding any
- 968 objection brought forth pursuant to this Stipulation.
- 969
- 970 7. FEMA may authorize any disputed action to proceed, after making its final decision.
- 971
- 972 8. At any time while this Agreement is in effect, should a member of the public object in
- 973 writing to implementation of its terms, FEMA will notify the other signatories in
- 974 writing and take the objection into consideration. FEMA will consult with the
- 975 objecting party and, if that party so requests, the other signatories, for not more than
- 976 21 days. In reaching its decision regarding the objection, FEMA will take into
- 977 consideration all comments from these parties. Within 15 days after closure of this
- 978 consultation period, FEMA will provide the other parties with its final decision in
- 979 writing.
- 980

981 9. Any dispute regarding National Register eligibility that is not resolved pursuant to this
982 Stipulation will be resolved in accordance with Stipulation II.D.3.c, Determinations of
983 Eligibility.
984

985 C. Severability and Termination
986

987 1. In the event any provision of this Agreement shall be deemed contrary to, or in
988 violation of, any applicable existing law or regulation of the United States of America
989 and/or the State New York, only the conflicting provision(s) shall be deemed null and
990 void, and the remaining provisions of the Agreement shall remain in effect.

991 2. FEMA, the SHPO, OEM, or Participating Tribe(s) may terminate this Agreement by
992 providing 30 days' written notice to the other signatory parties, provided that the
993 parties consult during this period to seek amendments or other actions that would
994 prevent termination. If this Agreement is terminated, FEMA will comply with 36 CFR
995 Part 800. Upon such determination, FEMA will provide all other signatories with
996 written notice of the termination of this Agreement.

997 3. A Participating Tribe may notify the other signatories that it is fully withdrawing from
998 participation in the Agreement. Following such a withdrawal, FEMA will review
999 undertakings that may affect historic properties of religious and cultural significance to
1000 the Tribe in accordance with 36 CFR §§ 800.3 through 800.7 or an applicable
1001 alternative under 36 CFR § 800.14. Withdrawal from this Agreement by a
1002 Participating Tribe does not terminate the Agreement. A Tribe that has withdrawn
1003 from the Agreement may at any time that this Agreement remains in effect notify
1004 FEMA, OEM, and SHPO in writing that it has rescinded its notice withdrawing from
1005 participation in the Agreement.

1006 4. This Agreement may be terminated by the implementation of a subsequent Agreement
1007 that explicitly terminates or supersedes this Agreement, or by FEMA's implementation
1008 of Alternate Procedures, pursuant to 36 CFR § 800.14(a).
1009

1010 D. Duration and Extension

1011 Unless terminated in accordance with Stipulation IV.C.2 or IV.C.4, Severability and
1012 Termination, this Agreement shall remain in effect until FEMA, in consultation with all other
1013 signatories, determines that all undertakings related to 4085-DR-NY have been completed.

1014 E. Execution and Implementation
1015

1016 1. This Agreement may be implemented in counterparts, with a separate page for each
1017 signatory, and will become effective on the date of the final signature. FEMA will
1018 ensure that each signatory party is provided with a complete copy.
1019

1020 2. Execution and implementation of this Agreement evidence that FEMA has afforded
1021 ACHP a reasonable opportunity to comment on FEMA's administration of all

1022 referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for
1023 all individual Undertakings of the Programs.
1024
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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 quickly respond to and recover 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 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 to individuals as well, such as the US Small Business Administration, Department of Agriculture, and Department of Labor and that this 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 Disaster Declaration. Activities may include buyouts, retrofits, relocations, elevations, and minor flood control projects.

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 and Participating Tribe(s) pursuant to Stipulation II.A.1, Programmatic Allowances.

The allowances consist of two tiers – Tier I and Tier II. Staff may apply Tier I allowances without meeting any professional historic preservation qualification standards, while only staff meeting the applicable Secretary’s Professional Qualifications Standards in accordance with Stipulation I.B.1.a of this Agreement may apply Tier II 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, and workmanship. The in-kind repair provided for in both Tiers I and Tier II allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures and in general should not be utilized when a building or structure has been substantially altered.

When referenced in the allowances, “previously disturbed soils” will refer to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing archaeological artifacts, features, and phenomena within their original depositional contexts.

Tier I Allowances

I. 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.

A. Debris and Snow Removal

1. Debris removal and collection, including removal of snow, uprooted trees, limbs and branches from public rights of way, public area and the transport and disposal of such waste to existing licensed waste facilities or landfills. This includes 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.
2. 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.

- 1110 3. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
1111
1112 4. Sediment removal from man-made drainage facilities, including retention/detention
1113 basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster
1114 condition. The sediment may be used to repair eroded banks or disposed of at an
1115 existing licensed or permitted spoil site.
1116
1117 5. Dewatering flooded developed areas by pumping.
1118

1119 **B. Temporary Structures and Housing**
1120

- 1121 1. Installation of temporary structures for uses such as school classrooms, offices, or
1122 shelters for essential public service agencies, such as police, fire, rescue and medical
1123 care, as well as temporary housing for disaster personnel and victims, at the following
1124 types of locations:
1125
1126 a. Single units on private residential sites when all utilities are installed above ground
1127 or tie into pre-existing utility lines.
1128
1129 b. Existing multi-family units.
1130
1131 c. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility
1132 hookups.
1133
1134 d. Paved areas, such as parking lots and paved areas at such facilities as
1135 conference centers, shopping malls, airports, business parks, military bases
1136 when all utilities are installed above ground or tie into pre-existing utility lines.
1137
1138 e. Sites that have been previously cleared and prepared for planned construction,
1139 such as land being developed for public housing, office buildings, city parks,
1140 ball fields, military bases, schools, etc. when all utilities are installed above-
1141 ground or tie into pre-existing utility lines.
1142
1143 f. Areas previously filled to depths of at least six feet so that subsurface utilities
1144 can be installed.
1145

1146 **C. Recreation and Landscaping**
1147

- 1148 1. Installation of temporary removable barriers.
1149
1150 2. In-kind repairs or replacement, and minor upgrades/mitigation of bollards and
1151 associated protective barriers when in previously disturbed areas.
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1153 **II. BUILDINGS**
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- 1155 **A. Repair or retrofit of buildings less than 45 years old.**

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- B.** Removal of water by physical or mechanical means.
- C.** Installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA).
- D.** Installation of security bars over windows on rear elevations.
- E.** E. Sheltering and Temporary Essential Power (STEP) Pilot Program: The STEP program provides essential power to affected residents and thereby reduces the demand for other shelter options by allowing individuals to return to or remain in their home while awaiting major repairs. STEP accomplishes this by 3 measures:
 1. Residential Meter Repairs: Repairs to exterior weather head, service cable, and meter box.
 2. Temporary Essential Electric Measures: Repairs to restore temporary power to residences where the utility will not turn the power back on due to damages in order to restore a minimal amount of power to allow heat and/or hot water and some power to targeted appliances, including installation of a temporary power supply, outlet panels, and other equipment that will be removed when permanent repairs are made.
 3. Rapid Temporary Exterior Repairs: Securing broken windows, covering damaged exterior walls and patching or otherwise securing damaged exterior doors. These repairs utilize raw, unfinished materials for temporary emergency repairs, such as plywood secured with a padlock.

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

- A. Roads and Roadways**
 1. 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.
 2. Construction of temporary emergency access roads in previously disturbed soils to allow for passage of emergency vehicles.
 3. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip.
 4. Re-establishment, armoring and/or upgrading of existing roadway ditches.
 5. In-kind repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, traffic surveillance systems.

- 1201 6. Installation and removal of temporary traffic control devices, including pre-formed
1202 concrete barriers and fencings.
1203
1204 7. In-kind repair or replacement of roadway safety elements such as barriers, guardrails,
1205 and impact-attenuation devices. In the case of guardrails, the addition of safety end
1206 treatments is allowed.
1207

1208 **B. Airports**
1209

- 1210 1. In-kind repair or replacement of existing runway surfaces and features (e.g. asphalt,
1211 concrete, gravel, and dirt) and associated air transportation safety components and
1212 systems (e.g. lighting bars, beacons, signage and weather sensors).
1213

1214 **C. Rail Systems**
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- 1216 1. In-kind repair or replacement of safety components.
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1218 2. In-kind repair or replacement of existing track system and passenger loading areas.
1219
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1221 **Tier II Allowances**
1222

- 1223 **I. GROUND DISTURBING ACTIVITIES AND SITE WORK**, when proposed activities
1224 described below substantially conform to the original footprint and/or are performed in
1225 previously disturbed soils, including the area where the activity is staged.
1226

1227 **A. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems**
1228

- 1229 1. In-kind repair, replacement, and reinforcement of footings, foundations, retaining
1230 walls, slopes, and slope stabilization systems (e.g., gabion baskets, crib walls, soldier
1231 pile and lag walls) if related ground disturbing activities are within the boundary of
1232 previously disturbed soils.
1233
1234 2. Installation of perimeter drainage (e.g. French drains) when performed in previously
1235 disturbed soils.
1236

1237 **B. Recreation and Landscaping**
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- 1239 1. In-kind repairs or replacement, and minor upgrades to recreational facilities and
1240 features (e.g. playgrounds, campgrounds, fire pits, dump stations and utility hook-ups,
1241 swimming pools, athletic fields and signage, batting cages, basketball courts, swing
1242 sets, pathways, simple wooden/wire stream crossings).
1243
1244 2. In-kind repair, replacements, and minor upgrades to landscaping elements (e.g.,
1245 fencing, free standing walls, paving, planters, irrigation systems, lighting elements,
1246 signs, flag poles, ramps, steps).

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

1. In-kind repair and replacement and minor upgrades to existing piers, docks, boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils.

D. Cemeteries

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

II. BUILDINGS

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

1. In-kind repair and replacement of floors, walls, stairs, ceilings, and/or trim. The allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster.
2. 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.
3. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.

B. Utilities and Mechanical, Electrical, and Security Systems

1. 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.
2. 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.
3. Replacement or installation 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, 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.
4. Installation of building communication and surveillance security systems, such as cameras, closed-circuit television, alarm systems, and public address systems,

1292 provided that installation of the system hardware does not damage or cause the
1293 removal of character defining architectural features and can be easily removed in the
1294 future.

- 1295
- 1296 5. Installation of building access security devices, such as card readers, enhanced locks,
1297 and security scanners (e.g., metal detectors), provided the device does not damage or
1298 cause the removal of character-defining architectural features and can be removed in
1299 the future without impacts to significant architectural features.

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1301 **C. Windows and Doors**

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1303 1. In-kind repair of damaged or severely deteriorated windows and window frames,,
1304 shutters, storm shutters, doors and door frames, and associated hardware, where
1305 profiles, elevations, details and materials match those of the originals.

1306 2. In-kind replacement of window panes. Clear plate, double, laminated or triple
1307 insulating glazing can be used, provided it does not result in altering the existing
1308 window material, tint, form, muntin profiles, or number of divided lights. This
1309 allowance does not apply to the replacement of existing intact archaic or decorative
1310 glass.

1311

1312 3. Replacement of exterior, utilitarian, non-character-defining metal doors and frames
1313 leading into non character-defining spaces with metal blast resistant doors and frames.

1314

1315 **D. Exterior Walls, Cornices, Porches, and Foundations**

1316 1. In-kind repainting of surfaces, provided that destructive surface preparation treatments
1317 are not used, such as water blasting, sandblasting, power sanding and chemical
1318 cleaning.

1319

1320 2. In-kind repair of walls, porches, foundations, columns, cornices, siding, balustrades,
1321 stairs, dormers, brackets, trim, and their ancillary components or in-kind replacement
1322 of severely deteriorated or missing or lost features, as long as the replacement pieces
1323 match the original in detail and material. Any ground disturbance will be limited to
1324 previously disturbed soils.

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1326 3. In-kind repair or replacement of signs or awnings.

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1328 4. Installation of temporary stabilization bracing or shoring, provided such work does not
1329 result in additional damage.

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1331 5. Anchoring of walls to floor systems, provided the anchors are embedded and
1332 concealed from exterior view.

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1334 6. In-kind repair of concrete and masonry walls, columns, parapets, chimneys, or
1335 cornices or limited in-kind replacement of damaged components including comparable
1336 brick, and mortar that matches the color, strength, content, rake, and joint width.

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7. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or reversible in the future.
 8. 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.
 9. 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.

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E. Roofing

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1. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character defining features.
 2. In-kind repair or replacement of roofing, of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components.
 3. Repairs to a flat roof cladding, including changes in roofing materials, where the repairs are not highly visible from the ground level.

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F. Weatherproofing and Insulation

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1. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
 2. In-kind repair or replacement of insulation systems, provided that existing interior plaster, woodwork, exterior siding, or exterior architectural detail is not altered.

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G. Structural Retrofits

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1. The 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.
 2. Replacement, repair or installation of lightning rods.

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III. 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.

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A. Roads and Roadways

1. 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.
2. In kind repair to historic paving materials for roads and walkways.
3. In-kind repair or replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided that the work substantially conforms to the existing footprint. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.
4. In-kind repair or replacement of road lighting systems, including period lighting fixture styles.
5. In-kind repair or replacement of road appurtenances such as curbs, berms, fences, and sidewalks.

B. Bridges

1. 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.
2. In-kind repair or replacement of bridges and bridge components (e.g. abutments, wing walls, piers, decks, and fenders in previously disturbed soils).

IV. 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.

A. General

1. 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.
2. Installation of new utilities and associated features within existing rights-of-way.

- 1425 3. Directional boring of new/replacement service line and related appurtenances
1426 involving boring or silt trenches within previously disturbed soils of rights-of-way or
1427 utility corridors.
1428
- 1429 4. In-kind repair or replacement, or minor upgrade of water towers provided activities
1430 take place within previously disturbed soils. Ground-level facilities may be added or
1431 expanded in previously disturbed areas. This allowance does not apply to masonry
1432 water towers.
1433

1434 **B. Generators and Utilities**
1435

- 1436 1. In-kind repair or replacement, or minor upgrades elevation, and/or installation of
1437 generators, HVAC systems, and similar equipment provided activities occur within
1438 previously disturbed soils and any roof mounted equipment is not visible from the
1439 ground level.
1440

1441 **C. Communication Equipment/Systems and Towers**
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- 1443 1. Acquisition, installation, or operation of communication and security
1444 equipment/systems that use existing distribution systems, facilities, or existing
1445 infrastructure right-of-way.
1446
- 1447 2. The collocation of communication and security equipment on existing towers and
1448 buildings/structures less than 45 year in age, provided that the work does not increase
1449 existing tower height or footprint by more than 10% and occurs within previously
1450 disturbed soils.
1451
- 1452 3. Enhancement, repair or replacement of existing communication towers and antenna
1453 structures provided the work does not increase existing tower height or footprint by
1454 more than 10% and occurs within previously disturbed soils.
1455
- 1456 4. Installation of new temporary (not to exceed 12 months) communications towers and
1457 antenna structures provided that the work occurs does not require modification of
1458 buildings/structures older than 45 years and occurs within previously disturbed soils.
1459
- 1460 5. Installation of new communication towers, less than 200 feet tall, in previously
1461 developed urban complexes when the work does not require modification of
1462 buildings/structures older than 45 years, occurs within previously disturbed soils and is
1463 not within 500 feet of the boundaries of a historic property.
1464

1465 **V. WATER RESOURCE MANAGEMENT AND CONTROLS**, when proposed activities
1466 substantially conform to the original footprint and/or performed in previously disturbed soils,
1467 including the area where the activity is staged.
1468

1469 **A. Canal Systems**
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1471 1. In-kind repairs or replacement to canal systems and associated elements.

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1473 **B. Breakwaters, Seawalls, Revetments, and Berms**

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1475 1. In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the
1476 work occurs in previously disturbed soils.

1477

1478 **C. Dams, Levees, and Floodwalls**

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1480 1. In-kind repair of dams, levees, floodwalls and related features, including spillways,
1481 tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.

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1483 **D. Fish Hatcheries**

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1485 1. In-kind repair or replacement of fish hatcheries and fish ladders.

1486

1487 **E. Waste-Water Treatment Lagoon Systems**

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1489 1. In-kind repair or replacement, or minor upgrades of waste-water treatment lagoon
1490 systems.

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1492 **VI. OTHER PROGRAM ACTIVITIES**

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1494 **A. Elevation, Demolition, and Reconstruction**

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1496 1. Activities related to the elevation, demolition and/or reconstruction of buildings or
1497 structures less than 45 years of age so long as the proposed activities substantially
1498 conform to the original footprint and/or are performed in previously disturbed soils
1499 including any staging area, and the buildings or structures are not located within or
1500 adjacent to a historic district.

1501

1502 **B. Safe Rooms**

1503

1504 1. Installation of individual safe rooms within the property limits of a residence where
1505 the installation will occur within an existing structure or building or previously
1506 disturbed soils.

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1508 **Appendix C**

1509 **Treatment Measures**

1510 [to be negotiated on a state-by-state basis]

1511 **The following Treatment Measures are suggested for the resolution of Adverse Effects:**

1512 If Undertakings result or will result in adverse effects, FEMA, the SHPO, OEM, and Participating
1513 Tribes(s), may develop a treatment measure plan that includes one or more of the following
1514 Treatment Measures, depending on the nature of historic properties affected and the severity of
1515 adverse effects. This Appendix may be amended in accordance with Stipulation IV.A.3 of this
1516 Agreement, Amendments.

1517 **A. Recordation Package**

1518 1. Digital Photography Package: Prior to project implementation, the designated responsible
1519 party shall oversee the successful delivery of a Digital Photography Package prepared by
1520 staff or contractors that meet the Secretary’s Professional Qualifications for Architectural
1521 History, History, Architecture, or Historic Architecture, as appropriate. The Digital
1522 Photography Package will meet the standards cited in the National Park Service’s
1523 *National Register of Historic Places Photographic Policy March 2010* or subsequent
1524 revisions (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>).

1525 a. The Digital Photography Package shall include a comprehensive collection of
1526 photographs of both interior and exterior views showing representative spaces and
1527 details of significant architectural features and typical building materials. Exterior
1528 photographs shall include full oblique and contextual images of each elevation.
1529 Exterior views shall be keyed to a site plan while interior views shall be keyed to a
1530 floor plan of the building/structure. The photographs shall be indexed according to the
1531 date photographed, site number, site name, site address, direction, frame number,
1532 subject matter and photographer’s name recorded on the reverse side in pencil.

1533 b. The Digital Photography Package shall include printed color copies of the digital
1534 photographs (on appropriate paper, per *NPS Photographic Policy*), a CD/DVD of the
1535 digital photographs, a completed state architectural inventory form, and a written site
1536 history of the historic property.

1537 c. The designated responsible party shall submit the Digital Photography Package to the
1538 SHPO and Participating Tribe(s) for review and approval. Once approved by the
1539 SHPO and Participating Tribe(s), the designated responsible party shall submit full
1540 copies of the approved Digital Photography Package to _____ for
1541 permanent retention.

- 1552 2. 35 mm Black and White Film Photography Package: Prior to project implementation, the
1553 designated responsible party shall oversee the successful delivery of a 35 mm Black and
1554 White Film Photography Package prepared by staff or contractors that meet the
1555 Secretary’s Professional Qualifications for Architectural History, History, Architecture, or
1556 Historic Architecture, as appropriate.
1557
- 1558 a. The 35 mm Black and White Film Photography Package shall include a
1559 comprehensive collection of photographs of both interior and exterior views showing
1560 representative spaces and details of significant architectural features and typical
1561 building materials. Exterior photographs shall include full oblique and contextual
1562 images of each elevation. Exterior views shall be keyed to a site plan while interior
1563 views shall be keyed to a floor plan of the building/structure. The photographs shall
1564 be indexed according to the date photographed, site number, site name, site address,
1565 direction, frame number, subject matter and photographer’s name recorded on the
1566 reverse side in pencil.
1567
- 1568 b. The 35 mm Black and White Film Photography Package shall include one (1) full set
1569 of 35mm film black and white photographs printed on acid free paper, the
1570 corresponding 35mm film negatives in acid free sleeves, a completed state
1571 architectural inventory form, and a written site history of the historic property.
1572
- 1573 c. The designated responsible party shall submit the 35 mm Black and White Film
1574 Photography Package to the SHPO and Participating Tribe(s) for review and approval.
1575 Once approved by the SHPO and Participating Tribe(s), the designated responsible
1576 party shall submit full copies of the approved 35 mm Black and White Film
1577 Photography Package to _____ for permanent retention.
1578
- 1579 3. Large Format Film Photography Package: Prior to project implementation, the designated
1580 responsible party shall oversee the successful delivery of a Large Format Film
1581 Photography Package prepared by staff or contractors that meet the Secretary’s
1582 Professional Qualifications for Architectural History, History, Architecture, or Historic
1583 Architecture, as appropriate.
1584
- 1585 a. The Large Format Film Photography Package shall include a comprehensive
1586 collection of photographs of both interior and exterior views showing representative
1587 spaces and details of significant architectural features and typical building materials.
1588 Exterior photographs shall include full oblique and contextual images of each
1589 elevation. Exterior views shall be keyed to a site plan while interior views shall be
1590 keyed to a floor plan of the building/structure. The photographs shall be indexed
1591 according to the date photographed, site number, site name, site address, direction,
1592 frame number, subject matter and photographer’s name recorded on the reverse side in
1593 pencil.
1594

1595 b. The Large Format Film Photography Package shall include one (1) full set of 4 x 5 or
1596 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5 x 7-
1597 inch negatives in acid free sleeves, a completed state architectural inventory form, and
1598 a written site history of the historic property.
1599

1600 c. The designated responsible party shall submit the Large Format Film Photography
1601 Package to the SHPO and Participating Tribe(s) for review and approval. Once
1602 approved by the SHPO and affected Tribe(s), the designated responsible party shall
1603 submit full copies of the approved Large Format Film Photography Package to
1604 _____ for permanent retention.
1605

1606 B. Design Review by SHPO and Participating Tribe(s)

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1608 Prior to project implementation, FEMA, the Grantee, and subgrantee shall work with the
1609 SHPO and Participating Tribe(s) to develop a historically compatible design. Plans and
1610 specifications will, to the greatest extent feasible, preserve the basic character of a
1611 building. Primary emphasis shall be given to the major street elevations that are visible.
1612 Significant contributing features (e.g. trim, windows, doors, porches) will be repaired or
1613 replaced with either in-kind materials or materials that come as close as possible to the
1614 original materials in basic appearance. Aesthetic camouflaging treatments such as use of
1615 veneers, paints, texture compounds and other surface treatments and/or use of sympathetic
1616 infill panels and landscaping features will be employed to the greatest extent feasible.
1617 Final construction drawings used in the bidding process will be submitted to the SHPO
1618 and Participating Tribe(s) for review and comment prior to the award of a construction
1619 contract and the initiation of construction activities.
1620

1621 C. Tribal Treatment Plan

1622
1623 FEMA shall work with the Participating Tribe(s) to develop a plan for the protection
1624 and treatment of, including but not limited to, Native American remains, funerary
1625 objects, cultural and religious landscapes, ceremonial items, traditional gathering areas
1626 and cultural items, for known sites and in the event that any are discovered in
1627 conjunction with the Undertaking, including archaeological studies, excavation,
1628 geotechnical investigations, grading, and all ground-disturbing activity. The plan will
1629 also formalize procedures for Tribal monitoring during archaeological studies,
1630 grading, and ground disturbing activities for the Undertaking. No photography of
1631 Native Americans human remains or funerary objects will be allowed. No
1632 photography of Native Americans human remains or funerary objects will be allowed.
1633

1634
1635 D. Public Interpretation

1636
1637 Prior to project implementation, FEMA, OEM, and the subgrantee will work with the
1638 SHPO and Participating Tribe(s) to design an educational interpretive plan. The plan may
1639 include signs, displays, educational pamphlets, websites, workshops and other similar
1640 mechanisms to educate the public on historic properties within the local community, state,

1641 or region. Once an interpretive plan has been agreed to by the parties, SHPO, Participating
1642 Tribe(s), and the designated responsible party will continue to consult throughout
1643 implementation of the plan until all agreed upon actions have been completed by the
1644 designated responsible party.

1645
1646 E. Historical Context Statements and Narratives

1647
1648 Prior to project implementation, FEMA, OEM, and the subgrantee will work with the
1649 SHPO and Participating Tribe(s) to determine the topic and framework of a historic
1650 context statement or narrative the designated responsible party shall be responsible for
1651 completing. The statement or narrative may focus on an individual property, a historic
1652 district, a set of related properties, or relevant themes as identified in the statewide
1653 preservation plan. Once the topic of the historic context statement or narrative has been
1654 agreed to, the designated responsible party shall continue to coordinate with the SHPO
1655 and Participating Tribe(s) through the drafting of the document and delivery of a final
1656 product. The SHPO and Participating Tribe(s) shall have final approval over the end
1657 product. The designated responsible party will use staff or contractors that meet the
1658 Secretary's Professional Qualifications for the appropriate discipline.

1659
1660 F. Oral History Documentation

1661
1662 Prior to project implementation, FEMA, OEM, and the subgrantee will work with the
1663 SHPO and Participating Tribe(s) to identify oral history documentation needs and agree
1664 upon a topic and list of interview candidates. Once the parameters of the oral history
1665 project have been agreed upon, the designated responsible party shall continue to
1666 coordinate with the SHPO and Participating Tribe(s) through the data collection, drafting
1667 of the document, and delivery of a final product. The SHPO and Participating Tribe(s)
1668 shall have final approval over the end product. The designated responsible party will use
1669 staff or contractors that meet the Secretary's Professional Qualifications for the
1670 appropriate discipline.

1671
1672 G. Historic Property Inventory

1673
1674 Prior to project implementation, FEMA, OEM, and the subgrantee will work with the
1675 SHPO and Participating Tribe(s) to establish the appropriate level of effort to accomplish
1676 a historic property inventory. Efforts may be directed toward the resurvey of previously
1677 designated historic properties and/or districts which have undergone change or lack
1678 sufficient documentation, or the survey of new historic properties and/or districts that lack
1679 formal designation. Once the boundaries of the survey area have been agreed upon, the
1680 designated responsible party shall continue to coordinate with the SHPO and Participating
1681 Tribe(s) through the data collection process. The designated responsible party will use
1682 SHPO and Participating Tribe(s) standards for the survey of historic properties and SHPO
1683 and Participating Tribe(s) forms as appropriate. The designated responsible party will
1684 prepare a draft inventory report, according to SHPO and Participating Tribe(s) templates
1685 and guidelines, and work with the SHPO and Participating Tribe(s) until a final property

1686 inventory is approved. The designated responsible party will use staff or contractors that
1687 meet the Secretary's Professional Qualifications for the appropriate discipline.
1688

1689 H. National Register and National Historic Landmark Nominations
1690

1691 Prior to project implementation, FEMA, OEM, and the subgrantee will work with the
1692 SHPO, and Participating Tribe(s) to identify the individual properties that would benefit
1693 from a completed National Register or National Historic Landmark nomination form.
1694 Once the parties have agreed to a property, the designated responsible party shall continue
1695 to coordinate with the SHPO and Participating Tribe(s) through the drafting of the
1696 nomination form. The SHPO and Participating Tribe(s) will provide adequate guidance to
1697 the designated responsible party during the preparation of the nomination form and shall
1698 formally submit the final nomination to the Keeper for inclusion in the National Register.
1699 The designated responsible party will use staff or contractors that meet the Secretary's
1700 Professional Qualifications for the appropriate discipline.
1701

1702 I. Geo-References of Historic Maps and Aerial Photographs
1703

1704 Prior to project implementation, FEMA, OEM, and the subgrantee will work with the
1705 SHPO and Participating Tribe(s) to identify the historic maps and/or aerial photographs
1706 for scanning and geo-referencing. Once a list of maps and/or aerial photographs have been
1707 agreed upon, the designated responsible party shall continue to coordinate with the SHPO
1708 and Participating Tribe(s) through the scanning and geo-referencing process and shall
1709 submit drafts of paper maps and electronic files to them for review. The SHPO and
1710 Participating Tribe(s) shall have final approval on the quality of the documentation
1711 provided by the designated responsible party. The final deliverable shall include a paper
1712 copy of each scanned image, a geo-referenced copy of each scanned image, and the
1713 metadata relating to both the original creation of the paper maps and the digitization
1714 process.
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1735 **APPENDIX D**
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1737 **TO THE PROGRAMMATIC AGREEMENT AMONG**
1738 **THE FEDERAL EMERGENCY MANAGEMENT AGENCY,**
1739 **THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,**
1740 **THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,**
1741 **THE LANDMARKS PRESERVATION COMMISSION,**
1742 **ADVISORY COUNCIL ON HISTORIC PRESERVATION,**
1743 **AND _____ TRIBE**
1744 **AS A RESULT OF HURRICANE SANDY**
1745

1746 **WHEREAS, as a result of Hurricane Sandy (DR-4085-NY) (Disaster**
1747 **Declaration),** the Federal Emergency Management Agency (FEMA) of the
1748 Department of Homeland Security, pursuant to the Robert T. Stafford Disaster
1749 Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as
1750 amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance
1751 Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection
1752 Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance
1753 Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing
1754 regulations contained in Title 44 of the Code of Federal Regulations (C.F.R.),
1755 proposes to provide assistance through the New York State Office of Emergency
1756 Management (OEM); and
1757

1758 **WHEREAS,** FEMA consulted with OEM, the New York State Historic
1759 Preservation Officer (SHPO), the Advisory Council on Historic Preservation
1760 (ACHP) and [insert others here] to develop and execute a Programmatic Agreement
1761 (PA) for its disaster recovery activities in [insert date of PA execution]; and
1762

1763 **WHEREAS,** [federal agency will fill in name, statutory authority, and
1764 undertaking]; and
1765

1766 **WHEREAS,** Stipulation [insert number here] of this PA allows other Federal
1767 agencies to fulfill their Section 106 responsibilities for their undertakings that
1768 projects addressed in this PA by fully accepting all the terms of the PA and
1769 executing this Addendum;
1770

1771 **NOW, THEREFORE**, [federal agency] has determined to accept the terms and
1772 conditions of the PA and thereby take into account the effects of its undertakings
1773 and satisfy its Section 106 responsibilities.

1774
1775 **EXECUTION AND IMPLEMENTATION** of this Addendum to the PA
1776 evidences that [federal agency] has taken into account the effects of its undertaking
1777 on historic properties, and that through the execution of this Addendum and
1778 implementation of the PA, the [federal agency] will satisfy its responsibilities under
1779 Section 106 of the National Historic Preservation Act and its implementing
1780 regulations for the referenced [program or undertaking].

1781
1782 **SIGNATORY PARTIES:**

1783
1784 **FEDERAL EMERGENCY MANAGEMENT AGENCY**

1785
1786
1787
1788 _____ Date: _____
1789 [name]
1790 [title]

1791
1792 **NEW YORK STATE HISTORIC PRESERVATION OFFICER**

1793
1794
1795
1796 _____ Date: _____
1797 [name]
1798 [title]

1799
1800 **ADVISORY COUNCIL ON HISTORIC PRESERVATION**

1801
1802
1803
1804 _____ Date: _____
1805 John M. Fowler
1806 Executive Director

1807
1808 **[OTHER FEDERAL AGENCY]**

1809
1810

1811
1812
1813
1814

[name]
[title]

Date: _____

DRAFT