MEMORANDUM OF AGREEMENT  
BETWEEN  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY  
AND THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE DEMOLITION AND REPLACEMENT OF  
CHRISTIAN COMMUNITY YOUTH AGAINST DRUGS FOUNDATION  
FOUR (4) TREATMENT FACILITIES IN  
THE BYWATER NATIONAL REGISTER HISTORIC DISTRICT,  
NEW ORLEANS, ORLEANS PARISH, LA  

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security, pursuant to Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§5121-5206) and implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, proposes to provide Public Assistance to the Christian Community Youth Against Drugs Foundation of New Orleans (CCYACDF) through the Governor’s Office of Homeland Security and Emergency Preparedness (GOHSEP) in response to damages caused by Hurricanes Katrina (DR-1603-LA) and Rita (DR-1607-LA) to demolish and replace four drug treatment facilities located at 1540 Piety Street, 3155 N. Claiborne Avenue, 3216 N. Claiborne Avenue, and 3211-13 N. Robertson Street (Undertaking); and

WHEREAS, The historical address for N. Robertson Street facility is 3211-13 and will be referenced in this document as such; however the CCYADF will call the future facility 3211 N. Robertson Street; and

WHEREAS, FEMA consulted with the Louisiana State Historic Preservation Officer (SHPO) in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. §470f) (NHPA), its implementing regulations (36 CFR Part 800), and the “Programmatic Agreement among FEMA, the Louisiana State Historic Preservation Officer (SHPO), the Louisiana Governor’s Office of Homeland Security and Emergency Preparedness (GOHSEP), the Alabama-Coushatta Tribe of Texas, the Caddo Nation, the Chitimacha Tribe of Louisiana, the Choctaw Nation of Oklahoma, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, the Mississippi Band of Choctaw Indians, the Quapaw Tribe of Oklahoma, the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Tunica-Biloxi Tribe of Louisiana, and the Advisory Council on Historic Preservation” that was executed August 17, 2009 (2009 Statewide PA), and

WHEREAS, FEMA, in consultation with SHPO, has determined that the Areas of Potential Effect (APE) shown in Attachment 1 includes the structures within the view shed of each property and the APE for archaeology includes the footprint of the buildings, and in consultation with SHPO, has determined that three of the buildings; 3155 N. Claiborne Avenue, 3216 N. Claiborne Avenue, and 3211-13 N. Robertson Street are listed on the National Register of Historic Places (NRHP) as contributing properties to the Bywater National Register Historic District (Bywater NRHD) shown in Attachment 2; and
WHEREAS, the Undertaking is located within the Orleans Parish Moderate Probability Zone for historic archaeological sites. The soil type is Schriever Clay and Harahan Clay that is associated with poorly-drained areas in backswamps along the Mississippi River, and the likelihood of prehistoric sites is low. The 1878 Hardee map shows improvements at 3211-13 N. Robertson Avenue. The lot appears to have been fenced for livestock and gardens and was likely the equivalent to a later-day “Truck Farm.” It is likely that significant deposits, if any, from this earlier use were disturbed by the early twentieth century construction of the current dwelling. No structures or improvements are shown on the 1878 Hardee Map at the three other study properties. None of the four properties proposed for demolition are depicted on the 1908 Sanborn Fire Insurance Map. According to the Sanborn Maps, it appears that the current structure at 3211-13 N. Robertson Avenue was built after 1908 and before 1937. The 1937 and 1951 Sanborn maps cover the remaining three study areas and show the existing dwellings. Based on the archival map review, FEMA has determined that there is a low potential for intact archaeological resources that pre-date the early 20th century at the four properties; and

WHEREAS, FEMA consulted with SHPO and SHPO concurred, in a letter dated October 7, 2009, with FEMA’s determination that the Undertaking will adversely affect historic properties; and

WHEREAS, in accordance with Stipulation VIII.A of the 2009 Statewide PA and 36 CFR §800.6(a)(1), FEMA notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination in a letter dated September 28, 2009 and the ACHP determined in a letter to FEMA dated October 9, 2009, that it will not participate in the consultation to develop a Memorandum of Agreement (MOA) to avoid, minimize, and mitigate the adverse effects of this Undertaking; and

WHEREAS, FEMA consulted with CCYADF, the Subgrantee, and in recognition that CCYADF will assume responsibilities to perform various actions described by this MOA, FEMA has invited the CCYADF to participate in this consultation and execute this MOA as an Invited Signatory; and

WHEREAS, GOHSEP, the Grantee, was invited by FEMA to participate in this consultation and execute this MOA as a Concurring Party; and

WHEREAS, FEMA notified the Alabama Coushatta Tribe of Texas (ACTT), Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma (CNO), Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, Quapaw Tribe of Oklahoma, Seminole Nation of Oklahoma, Seminole Tribe of Florida, and Tunica Biloxi Tribe of Louisiana (collectively referenced as “Tribes”) and provided information regarding identified historic properties in the APE, information regarding the history and topography of the APE, and afforded the Tribes an opportunity to participate in the consultation, and the Tribes provided no comments to FEMA; and

WHEREAS, FEMA notified the City of New Orleans Historic District Landmarks Commission; the National Trust for Historic Preservation (NTHP); the Preservation
WHEREAS, PRC, a non-profit organization dedicated to promoting the preservation, restoration, and revitalization of New Orleans’ historic architecture and neighborhoods has requested Consulting Party status and is invited by FEMA to participate in this consultation and sign this MOA as Concurring Party; and

WHEREAS, FEMA provided information to websites of the NTHP, PRC, and the City of New Orleans regarding the opportunity for the public to comment using the Department of Culture, Recreation, and Tourism website or mail comments to FEMA and FEMA received no comments; and

WHEREAS, CCYADF has determined that due to the condition of the buildings, there are no other feasible alternatives besides demolition and replacement; and

WHEREAS, FEMA, SHPO, CCYADF, PRC, and GOHSEP constitute the Consulting Parties referenced in this MOA; and

WHEREAS, a Consulting Party will be recognized by FEMA as a Signatory, Invited Signatory, or a Concurring Party starting on the date the Consulting Party signs this MOA as a Signatory, Invited Signatory, or Concurring Party and provides FEMA with a record of this signature; and

WHEREAS, all references to time periods in this MOA are in calendar days and notices and other written communications may be submitted by e-mail; and

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

STIPULATIONS

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

I. RECORDATION

A. The buildings to be recorded are 3155 N. Claiborne Avenue, 3216 N. Claiborne Avenue, and 3211-13 N. Robertson Street.

B. Prior to the demolition of 3155 N. Claiborne Avenue, 3216 N. Claiborne Avenue, and 3211-13 N. Robertson Street, FEMA will ensure that digital photographs have been taken to record the facilities. FEMA is responsible for completing the recordation required by this MOA, and will ensure that the photographic
C. At a minimum the photographs will include a view of each façade, an oblique view taken from both angles of the façade, a context photo for each building showing at least three adjacent properties, and two views of the interior. These photographs are intended to reflect the current condition of the property, and no steps are required to clean the interiors prior to this photography. The digital photography must comply with the requirements from the Proposed Update Photographic Policy National Register of Historic Places (revised March 2008) including the National Archives and Records Administration’s (NARA’s) guidance to supplement requirements in 36 CFR §1228.270 for transferring permanent electronic records to NARA.

1. Image files must be saved as JPEG files using high quality compression settings at a minimum. These files must be transferred as first generation JPEG files that have not been degraded in quality by multiple revisions and re-saving. The image files must be saved on archival quality CD-R media.

2. Digital camera files must be captured as 6 megapixel files or greater with a minimum pixel array of 3,000 pixels by 2,000 pixels.

3. Color images must be produced in RGB (Red Green Blue) color mode as 24-bit or 48-bit color files.


1. The photographs must meet the NPS Photo Expansion Policy 75-year permanence standard.


3. Printed photographs must include:

   a. At least nine (9) different black-and-white archival photographs of each of the properties, 3155 N. Claiborne Avenue, 3216 N. Claiborne Avenue, and 3211-13 N. Robertson Street, will be printed from the digital photographs for a total of at least 27 different photographs; and
b. Labels that state the address including the Parish and State where the building is located; date of photograph; description of view including direction of camera; and name of photographer;

E. The recordation will include a short narrative history of the structures. This history will include the types of information required in Historic American Building Survey (HABS) Historical Reports: Short form. The narrative history will be prepared by or under the direct supervision of an individual who meets the Secretary of the Interior’s Professional Qualification Standards set out at 48 FR 44716, September 29, 1983, for History, Architectural History, or Historic Architecture. FEMA will provide SHPO with the opportunity to review and comment on these qualifications as part of the review of the SOW described in Stipulation I.F below.

F. FEMA will forward the SOW for the photographs and the narrative history to SHPO for a 15-day review and comment period. The SOW will include a list of nine (9) photographs that will be taken of each property, its context and setting. The SOW will also include the resumes of the individual or individuals that will perform or supervise the performance of the photographic recordation and that will prepare or supervise the preparation of the narrative history. FEMA will review SHPO’s comments, if any, and determine if revisions to the SOW are needed.

G. FEMA will ensure that the final archival copies of the recordation materials conform to the SOW, including any revisions to the SOW made by FEMA in response to SHPO’s comments.

H. FEMA will ensure that three (3) archival copies of the recordation materials are prepared. FEMA shall forward two (2) copies to SHPO, and SHPO will forward one (1) copy to the State Library and one (1) copy to the State Archives. FEMA shall submit one copy (1) to the University of New Orleans, Orleans Earl K. Long Library, and Louisiana Special Collections in New Orleans, LA.

II. DESIGN OF NEW TREATMENT FACILITIES

A. FEMA, SHPO, and GOHSEP met with CCYADF and its A&E firm as a part of the consultation to develop this MOA to discuss historic preservation issues that should be addressed during the design of the 4 treatment facilities. The CCYADF will provide a copy of the executed MOA to its A&E firm.

B. As part of the meeting with CCYADF and it’s A&E firm, FEMA and SHPO recommended that the exterior design, massing, materials, and the site plan of the four new treatment facilities be responsive to the Secretary of the Interior’s Standards for the Treatment of Historic Properties (SOI Standards), in particular, Standards #9 and #10 set out at: http://www.nps.gov/history/hps/tps/standguide/rehab/rehab_standards.htm. FEMA and SHPO also recommended that new construction not destroy the spatial...
relationships that characterize the Bywater NRHD and be compatible with the historic materials, features, size, scale and proportion, and massing of other historic properties located within the Bywater NRHD. FEMA and SHPO recommended that the design for the site plan for the four new treatment facilities consider the historic character of the setting of the Bywater NRHD and, to the extent feasible, retain and preserve the historic streetscape, including any existing trees, and maintain the average setback of other buildings on the block. In addition, FEMA and SHPO advised CCYADF that the design for the new facility may be contemporary or may reference design motifs from other historic buildings in the Bywater NRHD and should be compatible in terms of mass, materials, relationship of solids to voids, and color as provided in the Guidelines to the SOI Standards, http://www.nps.gov/history/hps/tps/standguide/rehab/rehab_approach.htm.

C. FEMA provided SHPO and PRC with an electronic copy of the Schematic Designs showing the site plans and exterior elevations of the four new treatment facilities on November 30, 2009 for a 15-day review period. SHPO and PRC provided no comments on these submitted plans and elevations and FEMA considers the proposed designs to be responsive to the SOI Standards and the requirements of this MOA.

III. DESIGN REVIEW OF CONSTRUCTION DOCUMENTS

A. CCYADF will provide an electronic copy of the Construction Documents of the new treatment facilities to GOHSEP and FEMA, and FEMA will forward a copy to SHPO and PRC within 7-days upon receipt of the Construction Documents. FEMA, SHPO, and PRC will review the Construction Documents to determine if the Construction Documents are responsive to the SOI Standards and consistent with the previously reviewed Schematic Designs.

B. SHPO and PRC will provide comments, if any, to FEMA on the proposed Construction Documents within 7-days. This 7-day review period starts on the day that FEMA sends an electronic copy of the Construction Documents to SHPO and PRC by e-mail.

C. If, after reviewing any comments by SHPO and/or PRC, FEMA determines that the proposed Construction Documents will cause adverse effects to historic properties, FEMA will notify SHPO, CCYADF, GOHSEP, and PRC by e-mail within the 7-days following SHPO’s and PRC’s review period and clearly describe the issues that must be addressed by CCYADF to avoid the adverse effects. FEMA’s notice will outline the steps, including a meeting, that must be taken to avoid, minimize, or mitigate these additional adverse effects, and include any comments submitted by SHPO, and/or PRC regarding the adverse effects.

D. If, after reviewing any comments by SHPO and/or PRC, FEMA determines that the proposed Construction Documents will not cause adverse effects to historic
E. If FEMA does not submit comments to GOHSEP and CCYADF within 14-days of FEMA’s receipt of Construction Documents from GOHSEP, the design review required by this Stipulation is completed.

IV. CHANGES TO THE SCOPE OF WORK

A. The Consulting Parties recognize that the City of New Orleans may request additional requirements on CCYADF to obtain a demolition permit or building permit. CCYADF will notify GOHSEP and FEMA if it determines that any of the City of New Orleans’ requirements are inconsistent with the requirements of this MOA and request that FEMA determine if it is necessary to amend the terms of this MOA pursuant to Stipulation VIII.

B. CCYADF will notify GOHSEP and FEMA by e-mail as soon as practicable of any substantial change, such as a change in location, height, or materials from the Construction Documents that were reviewed by FEMA, SHPO, and PRC pursuant to Stipulation III above.

C. FEMA will review the revised plans, and if FEMA determines that the changes will result in adverse effects to historic properties, it will notify GOHSEP, SHPO, and PRC by e-mail within 7-days of receiving the notice of the substantial change and take steps to consult with SHPO, GOHSEP, and PRC to determine if there are feasible alternatives that may avoid or minimize the additional adverse effects. SHPO, GOHSEP, and PRC agree to cooperate with FEMA and CCYADF to discuss the feasibility of alternatives that may avoid or minimize adverse effects within the time frames identified by CCYADF. If CCYADF is unwilling to revise the Construction Documents to incorporate alternatives identified during this consultation with SHPO, GOHSEP, and PRC to avoid or minimize adverse effects caused by the substantial change, FEMA will consult under Stipulation VII, Dispute Resolution, to resolve any remaining issues.

V. DISCOVERIES AND UNFORESEEN EFFECTS

A. FEMA will provide the CCYADF with an electronic copy of “Louisiana Archaeology Illustrated” (April 2006). The CCYADF will ensure that copies of this publication are provided to any contractor for this Undertaking that will be involved with ground disturbing activities to assist the contractor with the identification of archaeological deposits.

B. If, in the course of the Undertaking, archaeological deposits are uncovered or unforeseen effects occur, the CCYADF shall ensure that its contractor immediately stops work in the general vicinity of the discovery or unforeseen
C. The CCYADF will notify FEMA and GOHSEP of discoveries or unforeseen effects as soon as practicable. FEMA will notify and consult with the SHPO and others, as appropriate, including Tribes, to determine if further steps to evaluate the National Register eligibility and treatment of the property are necessary. FEMA may, in consultation with the SHPO, assume that a newly discovered property is eligible for the National Register for purposes of this MOA. FEMA and the SHPO and others, as appropriate, will conclude this consultation if the discovery does not contain human remains and FEMA and the SHPO and others, as appropriate, determine that the discovery is not eligible for the National Register or FEMA and the SHPO and others, as appropriate, determine that the unforeseen effect will not adversely affect a historic property, and FEMA will notify the CCYADF that work may be resumed in the area of the discovery or unforeseen effect.

D. If FEMA and the SHPO and others, as appropriate, determine that further steps are necessary to evaluate or treat the unforeseen effect or the newly discovered property and it does not contain human remains, FEMA shall work with SHPO, CCYADF, GOHSEP, and others, as appropriate, to agree on timeframes and determine ways to avoid, minimize, or mitigate any adverse effects. Any party to this consultation may request an on-site meeting to review the situation. Archaeological discoveries are the property of the landowner, unless state laws provide otherwise, and FEMA, SHPO, GOHSEP, and others will provide the landowner with the opportunity to curate and interpret the archaeological discovery or to donate the archaeological discovery to an appropriate curation facility as part of the consultation to determine the appropriate treatment of the discovery. At the conclusion of this consultation, FEMA will provide all parties that participated in the discovery consultation with a written summary of the consultation and its resolution. This summary may be provided by e-mail.

E. If human skeletal remains are uncovered during the Undertaking, the CCYADF shall immediately notify GOHSEP, FEMA, the New Orleans Police Department, and the Orleans Parish Coroner’s Office. The local law enforcement officials shall assess the nature and age of the human skeletal remains. The CCYADF shall ensure that the notice of the discovery required by Louisiana Unmarked Human Burial Sites Preservation Act (R.S. 8:671 et seq) is given to the Secretary of CRT or the Secretary’s designee by contacting the Louisiana Division of Archeology at 225-342-8170 within seventy-two (72) hours of the discovery. If the coroner determines that the human skeletal remains are older than 50 years of age, the Secretary, CRT has jurisdiction over the remains. FEMA shall work with the SHPO, Tribes, the Louisiana Division of Archeology, the CCYADF, and GOHSEP to ensure compliance with this State law, other applicable laws, and this MOA. In addition, FEMA shall require that the guidelines contained in the ACHP’s 2007 “Policy Statement Regarding Burial Sites, Human Remains, and
VI. ANTI shoulders
FEMA will not grant assistance to the CCYADF should it, with intent to avoid the requirements of this MOA or Section 106 of the NHPA, significantly adversely affect a historic property to which the assistance would relate, or having legal power to prevent it, allow such significant adverse effect to occur. After consultation with SHPO and ACHP, FEMA may determine that circumstances justify granting such assistance despite an adverse effect created or permitted by the CCYADF, and will complete consultation pursuant to 36 CFR §800.9(c).

VII. DISPUTE RESOLUTION

A. Should any Signatory, Invited Signatory, or Concurring Party object to FEMA within the timeframes provided by this MOA to any plans, specifications, or actions provided for review, FEMA shall notify the CCYADF and GOHSEP and consult further with the objecting party, the CCYADF, and GOHSEP to seek resolution.

B. If FEMA determines that the dispute cannot be resolved, FEMA shall forward FEMA’s proposed resolution of the dispute and all relevant documentation to the ACHP. Within 7-days after receipt of the documentation, the ACHP will:

1. Advise FEMA that it concurs with FEMA’s resolution of the dispute; or

2. Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the dispute; or

3. Notify FEMA that it shall comment pursuant to 36 CFR §800.7(c), and proceed to comment. Any comment provided shall be taken into account by FEMA in accordance with 36 CFR §800.7(c)(4) with reference to the subject of the dispute.

C. If the ACHP does not provide FEMA with comments or recommendations within 7-days, FEMA may assume that the ACHP does not object to its recommended approach and it shall proceed accordingly.

D. Any recommendation or comment provided by ACHP shall be understood to pertain only to the subject of the dispute, and FEMA’s responsibilities to fulfill all actions that are not subject of the dispute shall remain unchanged.

E. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with 36 CFR §800.4(c)(2).

VIII. AMENDMENTS, TERMINATION, AND NONCOMPLIANCE
A. If the CCYADF determines that it is not feasible to complete the Undertaking or fulfill the requirements of this MOA, the CCYADF will immediately notify FEMA and GOHSEP in writing, to include e-mail, of this determination. Within 21-days of receiving this notice, FEMA will meet with the Signatories, Invited Signatory, and Concurring Parties, in person or by telephone, to determine if the MOA must be amended or terminated, and proceed accordingly.

B. Any Signatory or Invited Signatory may request in writing that the MOA be amended or terminated. Within 21-days of such a request, FEMA will convene a meeting of the Signatories, Invited Signatory, and Concurring Parties in person or by telephone to consider this request. The Parties will make a good faith effort to amend the MOA prior any Party taking steps to terminate it. The MOA may be amended upon the written agreement of the Signatories and Invited Signatory, and the process will comply with 36 CFR §800.6(c)(7).

C. If the MOA is not amended, the Signatories or Invited Signatory may terminate the MOA by providing a 30-day written notice to the other Signatories, Invited Signatory, and Concurring Parties. The Signatories, Invited Signatory, and Concurring Parties will cooperate in good faith to seek amendments or other actions that would prevent termination during this 30-day time frame. Should consultation fail, FEMA will promptly notify the Signatories, Invited Signatory, and Concurring Parties in writing of termination. Termination of the MOA will require FEMA to comply with the Statewide Programmatic Agreement in effect on the date of the termination. This MOA may be terminated without further consultation by execution of a subsequent agreement that explicitly terminates or supersedes this MOA.

IX. DURATION

Unless amended or terminated in accordance with Stipulation VIII., this MOA will remain in effect through June 30, 2012 or until FEMA determines that it has been satisfactorily fulfilled. The CCYADF will notify GOHSEP and FEMA when the Undertaking is completed, and FEMA will notify the Signatories, Invited Signatories, and Concurring Parties by e-mail when it determines that the design review process described in Stipulations II and III; the recordation required by Stipulation I; and construction of the new facility is completed and opportunities for changes to the scope of work described in Stipulation IV or discoveries or unexpected events described in Stipulation VI are unlikely, thereby fulfilling the terms of this MOA.

X. EFFECTIVE DATE AND IMPLEMENTATION OF MOA

This MOA shall become effective immediately upon FEMA’s filing an original copy signed by the Signatories and the Invited Signatory with the ACHP. FEMA shall provide each Signatory, Invited Signatory, and Concurring Party with a complete copy of the MOA including all executed signature pages.
EXECUTION AND IMPLEMENTATION of this Memorandum of Agreement evidences that FEMA has afforded ACHP a reasonable opportunity to comment on the undertaking to demolish and replace the Treatment Facilities located at 1540 Piety Street, 3155 N. Claiborne Avenue, 3216 N. Claiborne Avenue, and 3211-13 N. Robertson Street and its effects on historic properties, that FEMA has taken into account the effects of the undertaking on historic properties, and that FEMA has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations.

SIGNATORY PARTIES:

FEDERAL EMERGENCY MANAGEMENT AGENCY

Cynthia Teeter
Acting Environmental Liaison Officer
Louisiana Transitional Recovery Office

LOUISIANA STATE HISTORIC PRESERVATION OFFICER

Scott Hutcheson
State Historic Preservation Officer

INVITED SIGNATORY

CHRISTIAN COMMUNITY YOUTH AGAINST DRUGS FOUNDATION

Patricia Taylor
President of the Board

CONCURRING PARTIES:

PRESERVATION RESOURCE CENTER

Date: 2-9-10

GOVERNOR'S OFFICE OF HOMELAND SECURITY AND EMERGENCY PREPAREDNESS

Mark J. DeBoiser
Deputy Director, Disaster Recovery
Attachment 1: Christian Community Youth Against Drugs Foundation, Treatment Facilities Area of Potential Effects
Attachment 2: Christian Community Youth against Drugs Foundation’s Treatment Facility locations within the Bywater National Register-listed Historic District and proposed extension.