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 Louisiana Department of Education, through its Recovery School District (RSD), 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) in response to RSD’s proposal to implement the School Facilities Master Plan for Orleans Parish and demolish the Thomy Lafon School, 2601 Seventh Street, New Orleans, LA (Undertaking); 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, 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 determined in Stipulation IX.B of the Secondary Programmatic Agreement among Federal Emergency Management Agency, State of Louisiana Division of Administration Office of Community Development, Louisiana State Historic Preservation Officer, Advisory Council on Historic Preservation, Louisiana Department of Education through its Recovery School District, and Orleans Parish School Board Regarding Implementation of School Facilities Master Plan for Orleans Parish, New Orleans, Louisiana (2PA) to address proposed adverse effects to the Thomy Lafon through the process set out in 36 CFR §800.6; and
WHEREAS, FEMA, in consultation with SHPO, has determined that the Area of Potential Effects (APE) shown in Attachment 1 includes the site of the Thomy Lafon School bounded by Magnolia Street, Seventh Street, Freret Street, and Sixth Street, and any area or areas where there will be ground disturbance associated with the proposed demolition and that will be used for staging when such areas are identified; and

WHEREAS, FEMA determined that the Main Classroom Building (Building C) and the Administration Building (Building A) of the Thomy Lafon School are eligible for inclusion in the National Register of Historic Places (NRHP) under Criterion A and C and that the Library (Building D) and the Cafeteria-Auditorium (Building B) are not eligible for inclusion in NRHP in a letter dated July 9, 2008 from FEMA to SHPO and the SHPO concurred with FEMA’s determinations in a letter to FEMA dated July 21, 2008; and

WHEREAS, FEMA plotted the latitudes and longitudes of the demolition location against the locations of previously recorded archaeological sites and overlaid this information onto historic maps. The Thomy Lafon Elementary School is located on the site of the former Locust Grove Cemetery #1 and #2. Locust Grove Cemetery #1 opened in 1859 and was located in the block bounded by Sixth, Seventh, Magnolia (now Freret Street) and Locust (now S. Robertson Street). Locust Grove Cemetery #2 was opened in 1877 and closed in 1879. It was located on the block bounded by Sixth, Harmony, Locust, and Magnolia Streets. While certain records indicate that the cemeteries may have been demolished prior to or as part of the construction of the second Lafon School in 1905, historic photographs showing the construction of the third Lafon School in 1952 and Orleans Parish School Board (OPSB) records from a construction project in 1984 - 1985 document that not all burials were removed and relocated in the early 20th Century; and

WHEREAS, FEMA consulted with SHPO in a letter dated June 16, 2009 and SHPO concurred, in a letter dated June 18, 2009, with FEMA’s determination that the demolition of the Thomy Lafon School 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 June 16, 2009 and the ACHP determined in a letter to FEMA dated June 30, 2009, that it will 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, ACHP, and SHPO are the Signatories to the MOA as defined in 36 CFR §800.6(c)(1); and

WHEREAS, FEMA consulted with GOHSEP, the Grantee, and RSD, the Subgrantee, that by virtue of Acts 2005, 1st Ex.Sess., No. 35, §1, (La. R.S. 17:1990) of the Louisiana Legislature, assumed all the rights and responsibilities of ownership regarding all land, building, facilities, and other property of many public school in Orleans Parish, and in
recognition that GOHSEP and RSD will assume responsibilities to perform various actions described by this MOA, FEMA has invited GOHSEP and RSD to participate in this consultation and execute this MOA as an Invited Signatories as defined in 36 CFR §800.6(c)(2); and

WHEREAS, FEMA notified the Orleans Parish School Board (OPSB), formerly responsible for the Lafon School; the City of New Orleans Historic District Landmarks Commission; the National Trust for Historic Preservation (NTHP); the Preservation Resource Center (PRC); the Louisiana Landmarks Society (LLS); Urban Strategies, Inc., Harmony Oaks Neighborhood Association, formerly known as the C.J. Peete Residents Association (HONA); McCormack Barron Salazar; the Louisiana Chapter of Documentation and Conservation of Building Sites and Neighbourhoods of the Modern Movement US (DOCOMOMO/NOLA); American Institute of Architects - New Orleans (AIA New Orleans); and Central City Partners about the Undertaking and the opportunity to participate in this consultation; and

WHEREAS, the Housing Authority of New Orleans (HANO) requested consulting party status as a result of notification by other consulting parties; and

WHEREAS, FEMA notified the Alabama Coushatta Tribe of Texas, Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, 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

WHEREAS, FEMA held a public meeting on September 23, 2009 to provide an opportunity for the public to comment on the Undertaking; to describe the Section 106 review process and explain the opportunities to become involved in the Section 106 review; and to notify the public of the opportunity to provide comments on the Department of Culture Recreation, and Tourism (CRT) website; and

WHEREAS, FEMA provided information to websites maintained by the NTHP, PRC, and the City of New Orleans regarding the opportunity for the public to comment on the Department of Culture, Recreation, and Tourism website or mail comments to FEMA and 59 responsive comments presenting a variety of opinions were posted on the website and reviewed by FEMA; and

WHEREAS, PRC; Urban Strategies, Inc.; HONA; DOCOMOMO/Louisiana; AIA New Orleans; Central City Partners, LLS, Housing Authority of New Orleans (HANO) have requested Consulting Party status, and each organization was invited by FEMA to participate in this consultation and sign this MOA as a Concurring Party as defined in 36 CFR §800.6(c)(3); and
WHEREAS, FEMA; SHPO; ACHP, RSD; GOHSEP; PRC; Urban Strategies, Inc.; HONA; DOCOMOMO/ Louisiana; AIA New Orleans; Central City Partners, LLS, and HANO constitute the Consulting Parties as defined in 36 CFR §800.2(c) that are referenced in this MOA; and

WHEREAS, FEMA held a second public meeting on October 21, 2010 to provide an opportunity for the public to comment on the interpretive memorial proposed for the site of the Thomy Lafon School; and

NOW THEREFORE, FEMA, SHPO, ACHP, RSD, GOHSEP, PRC, Urban Strategies, Inc., HONA, DOCOMOMO/ Louisiana, AIA New Orleans, Central City Partners, LLS, and HANO 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, ACHP, RSD, OPSB, GOHSEP, Urban Strategies, Inc., HONA, DOCOMOMO/NOLA, AIA New Orleans, Central City Partners, LLS, and HANO, FEMA will require that the following measures are implemented:

I. GENERAL PROVISIONS

A. 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.

B. FEMA will provide all Concurring Parties with the opportunity to review and comment on various documents and reports under the terms of the MOA. Determinations or Reviews that have been completed by FEMA under the terms of this MOA prior to the signature of a Concurring Party will not be reconsidered because the Concurring Party did not have the opportunity to review and comment.

C. The term, "burial artifact," as used in this MOA, means any item of human manufacture or use that is in an unmarked burial site, and the term, "human skeletal remains," as used in this MOA, means any part of the body of a deceased human being in any stage of decomposition, as provided by La. R.S. 8:673, the Definition Section of the Louisiana Unmarked Human Burials Site Preservation Act.

D. The Secretary of CRT, under the authority of the Louisiana Unmarked Human Burial Site Preservation Act, La. R.S. 8:671 et seq. (Burial Act), recognizes the Stipulations in this MOA as a provisional permit as provided for in §676(C).
E. All references to time periods in this MOA are in calendar days and notices and other written communications may be submitted by e-mail. If a review period included in this MOA ends on a Saturday, Sunday, or Federal holiday, the review period will be extended until the first business day following the Saturday, Sunday, or Federal holiday. Any electronic communication sent to FEMA or SHPO after 4:00 pm Central Time will be deemed to have been received on the next day. Comments by Signatories, Invited Signatories, or Concurring Parties on any plans or documents submitted for review under this MOA are timely if they are received by FEMA at any time on the last day of a review period.

II. CONSIDERATION OF FEASIBLE ALTERNATIVES TO DEMOLITION

The Consulting Parties considered the following three alternatives to demolition and determined that there are no feasible alternatives that will avoid or minimize the proposed adverse effect of demolition:

A. Cooperative Endeavor Agreement (CEA): As part of the Section 106 Consultation, the Consulting Parties requested that RSD provide Urban Strategies, Inc. with the opportunity to pursue a CEA to reuse the Lafon School building for an alternative use. Urban Strategies, Inc. has determined that it would not pursue a CEA and the Consulting Parties have determined that this Alternative is not feasible and RSD has no further responsibilities to consider this option.

B. Sale of Lafon School to a third party for rehabilitation and reuse: As part of the Section 106 Consultation, the Consulting Parties have determined that the Louisiana Cemetery Act, La. R.S.:8, effectively limits the potential to rehabilitate and reuse any of the buildings at the Lafon School since it requires all reuses to be consistent with cemetery use. The Consulting Parties also determined that the City of New Orleans Comprehensive Zoning Ordinance and the proposed New Orleans Master Plan limit the uses of the Lafon School property to residential and park uses and that the existing buildings are not suitable for these uses.

C. Relocation of Lafon School building to an alternate location: Based on information provided by Shaw E&I, RSD has determined that the deconstruction of the Main Classroom Building (Bldg. C) and/or the Administration Building (Bldg. A) at the Lafon School and their reconstruction on another site is not feasible based on the likely effects to the historic building materials; the constraints of relocating these comparatively large structures within a densely built urban area; and the likely costs of deconstruction; relocation and reconstruction. The Consulting Parties have reviewed these findings and agree with the conclusions.

III. RECORDATION

A. RSD has digitally photographed the Thomy Lafon School. The photographs
include the 37 photographs of the Main Classroom Building (Building C) and the Administration Building (Building A) listed in Attachment 2.

B. The digital photography was performed by a person or persons who meet 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.

C. FEMA has reviewed a copy of the digital photographs and provided RSD feedback. RSD has modified the recordation materials in response to FEMA’s comments and provided a copy of the photos for review before they are printed on archival materials.

D. FEMA has reviewed the final copies of the digital photography and determined it complies with the following requirements, from 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.

E. The archival photographic prints must comply with the requirements from the National Register Photo Policy Fact Sheet: http://www.nps.gov/history/nr/publications/guidance/Photo_Policy_final.doc.

1. The photographs must meet the "Acceptable Ink and Paper Combinations for Digital Images" guidelines and the 75-year permanence standard in the NPS Photo Expansion Policy and will be printed on 8” x 10” paper.

2. Images must include the following information printed directly on the photographs using archival quality ink:
   a. Name of the School and Address;
   b. Latitude/longitude in NAD83;
   c. Parish and state where the School is located;
   d. Date of photograph;
   e. Description of view including direction of camera; and
   f. Name of photographer.
F. The recordation materials will include a short narrative history of the 1952 Lafon School. This history will include the types of information required in Historic American Building Survey (HABS) Historical Reports: Outline form. A Graduate Student of the Tulane Architecture Department, representing DOCOMOMO, has prepared a draft National Register nomination for the Lafon School that includes an architectural description and a narrative history. FEMA will ensure the description and narrative will be further developed and finalized to meet the requirements of the HABS Historical Reports: Short form 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.

G. A Student of the Tulane Architecture Department, representing DOCOMOMO has conducted research and located certain historic drawings of the 1952 Thomy Lafon School at the University of New Orleans Library, including floor plans and elevations. FEMA will ensure three (3) archival photographic copies will be made of the existing drawings of Classroom Building (Building C) and the Administration Building (Building A). A list of these existing drawings is attached in Attachment 3.

H. FEMA will ensure three (3) archival photographic copies will be made of the historic photographs listed in Attachment 4, provided that it is feasible to obtain copyright or licensing to copy and archive the photos.

I. RSD will provide three (3) copies of the original March 1954 LIFE Magazine to be archived with the other recordation materials.

J. FEMA will review the final archival copies of the recordation materials to ensure that they include three (3) copies of the 37 photograph prints, CDs containing the 37 digital photographs, 18 historic drawings, and the historic photographs and conform to the requirements in Stipulation II.A, B, C, D, and E. FEMA will notify GOHSEP and RSD by e-mail within seven (7) days following FEMA’s receipt of the final archival copies of the recordation materials if the materials do not conform to the approved SOW.

K. FEMA shall forward two (2) archival copies of the recordation materials 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 (1) archival copy to the University of New Orleans, Orleans Earl K. Long Library, and Louisiana Special Collections in New Orleans, LA. FEMA will include copies of materials developed during the Section 106 consultation to develop this MOA with the recordation materials provided to UNO. These additional materials will also include recordings of the Section 106 consultation meetings, comment logs, and Section 106 consultation meeting minutes.
IV. DEMOLITION APPROACH

A. Comprehensive Demolition Plan

1. RSD will require the demolition contractor to prepare a comprehensive demolition document that is designed to avoid damage to the archaeological site beneath the buildings. The comprehensive demolition document will include the following measures to protect the burials within the APE (see Attachment 1).
   
a. A minimum of 6 inches of clean sand fill will be placed across all green space at the site prior to initiating demolition activities. The purpose in raising the grade is to confine demolition activity to imported fill material.

b. Demolition must be designed to insure that the roof and structural collapse does not penetrate the original subsurface.

c. The Lower Impact Demolition Stipulations (LIDS) set out in Stipulation IV.B.

2. RSD will provide the demolition contractor with a copy of this MOA prior to the preparation of the final comprehensive demolition document.

3. RSD will schedule a briefing with the demolition contractor, prior to commencement of demolition, for FEMA to discuss the terms of the MOA.

4. Should an archaeological discovery occur during the demolition activities, RSD must stop all work within the vicinity of the finding until it has been assessed, as set out in Stipulation VI and VII. RSD’s demolition contractor may continue demolition activities outside of the area of a discovery as long as a qualified Archaeological Monitor is present (as this term is defined in Stipulation V.A.).

5. RSD will provide a copy of the final comprehensive demolition document to GOHSEP and FEMA by e-mail prior to RSD’s approval of the final comprehensive demolition document.
   
a. FEMA will forward the final comprehensive demolition document to SHPO for a 15-day review and comment period. FEMA will review SHPO’s comments, if any, and determine if revisions to the final comprehensive demolition document are needed to avoid potential adverse effects to the archaeological site 16OR565 (Locust Grove Cemetery/Thomy Lafon School Site).

b. FEMA will provide comments, taking into account SHPO’s comments, if any, to RSD and will require that the approved final comprehensive demolition document is revised to adequately address the comments.
B. Lower Impact Demolitions Stipulations

1. RSD is responsible for ensuring that the demolition contractor adheres to the “Lower-Impact Demolition Stipulations” (LIDS) as prescribed by this MOA and the approved comprehensive demolition plan.

2. RSD shall ensure that LIDS are made explicit in contract documents. Failure to comply with LIDS may jeopardize RSD’s receipt of FEMA funding.

3. RSD will identify a Point-of-Contact (POC) that FEMA and SHPO representatives may contact with questions regarding the work or requests to access the site.

4. General Approach to LIDS:
   
   a. All ground disturbing activities will be monitored by an Archaeological Monitor(s) as described Stipulation VII.
   
   b. Major demolition activities, including placement of equipment, shall be confined to paved areas.
   
   c. When heavy equipment is not in use, it will be staged on paved surfaces.
   
   d. RSD will require that the demolition contract does not permit demolition work to go more than 6 inches below grade level (i.e. is confined to the clean sand fill), unless otherwise specified in this MOA.
   
   e. Structural features will be sheared off at the ground-surface so that soil disturbance is minimized. Subsurface foundations, pile caps, and grade beams will be left in place. Where necessary, hand removal of fragments may be required to prevent unnecessary soil disturbance.
   
   f. There shall be no salvage or recoupment of architectural materials from below-grade.
   
   g. During pickup and removal of material from the surface, the contractor will not cut into or scrape the surface; where necessary, hand removal of materials or the use of light equipment (e.g., small bobcats, hand tools, etc.) will be required to avoid effects.
   
   h. Excavation of on-site materials and burial of debris are not permitted.
   
   i. If necessary, site grading is limited to clean fill.
   
   j. RSD will disconnect and cap all underground utilities: water, sanitary sewer, storm lines, and connection to buildings. All disconnected utilities must be properly capped, and no work can go below grade. In cases where there are no shut-off valves, limited excavation within the utility rights-of-way shall be required to cap these service lines. To limit unnecessary ground disturbance, excavation shall be limited to the existing utility right-of-way to the greatest extent feasible and will...
be monitored by the Archaeological Monitor(s) and, if requested, FEMA, and SHPO monitors.

V. ARCHAEOLOGICAL MONITORING: QUALIFICATIONS, ROLES AND RESPONSIBILITIES

A. FEMA will ensure that the archaeological monitoring and fieldwork will be performed and/or observed by an archaeologist or archaeologists who qualify under the Secretary of the Interior's Professional Qualification Standards (48 FR 44716, Sept. 1983) previously published at 36 CFR Part 61 for archaeology or work directly under the supervision of an individual who meets the Standards for Archaeology. At least one member of the archaeological team will be a physical anthropologist/bioarchaeologist or equivalent. FEMA will provide SHPO with the opportunity to review and comment on the qualifications of the selected archaeologist(s) prior to the commencement of fieldwork.

B. FEMA will ensure that an Archaeological Monitor(s) is present during all ground disturbing activities and demolition activities that have a potential to result in ground disturbance. FEMA’s Archaeological Monitor(s) is not required to be present during the selective demolition/abatement of lead and asbestos.

C. FEMA’s Archaeological Monitor(s) will generate daily field notes recording the type of activity that occurred each day, what areas were worked in, and what, if any discoveries occurred.

D. FEMA and SHPO representatives may elect to observe ground-disturbing activities. RSD is not required to delay demolition, ground disturbance, or construction activities if a FEMA or a SHPO representative is not present, unless specific arrangements have been made by FEMA and/or SHPO. FEMA and/or SHPO representatives will notify the POC in advance to request access to the site to observe demolition or archaeological excavations. Notice to RSD’s POC may be requested by e-mail, by telephone, or in person. RSD’s POC will not deny a reasonable request by FEMA and/or SHPO to be present on the project site at any point during demolition. FEMA and/or SHPO may observe demolition activities from the public rights-of-ways at any time with no notice to RSD.

1. RSD and/or their demolition contractor will provide information to FEMA and SHPO representatives regarding any safety equipment, such as boots, hard hats, safety vests, and safety glasses that are required to gain access to the job site.

2. RSD will ensure that that all known and assumed asbestos containing buildings materials (regulated asbestos containing materials) are removed from the buildings prior to the physical demolition of the structures. RSD’s POC will notify all parties that will observe ground-disturbing activities associated with the demolition of the Lafon School if any of the
buildings proposed for demolition are discovered to contain additional asbestos materials.

E. If during archaeological monitoring, FEMA’s Archaeological Monitor observe violation(s) of LIDS, FEMA’s Archaeological Monitor shall request that the RSD’s on-site official cease demolition until the effects of the violation can be assessed. If FEMA and/or SHPO representatives observe a violation(s) of LIDS they shall notify FEMA’s Archaeological Monitor onsite and request steps be taken immediately to cease demolition until the effects of the violation can be assessed. RSD will ensure that the demolition contractors shall cease demolition upon request from FEMA’s Archaeological Monitor to the RSD onsite official.

F. If during the course of work, FEMA’s Archaeological Monitor and/or a FEMA or SHPO representative(s) observes archaeological deposits, human skeletal remains, or burial artifacts as a result of activities associated with the Undertaking, FEMA’s Archaeological Monitor shall request that the RSD’s on-site official cease demolition and require a findings assessment will be required as set forth in Stipulation VII.

G. The purpose of the archaeological monitoring in the Archaeological APE is to avoid effects to any burials or non-burial archaeological deposits located in the APE. Although the investigations will attempt to avoid or minimize potential effects to archaeological resources, FEMA’s Archaeological Monitor(s) are to identify and evaluate archaeological properties that may be exposed or affected by demolition activities or during the installation of the memorial (see Stipulation VII).

VI. COORDINATION WITH LOUISIANA UNMARKED HUMAN BURIAL SITE ACT, La. RS 8:671 et seq (Burial Act)

A. Archaeological reporting on monitoring and/or investigations and consultation described in Stipulations VII, and VIII, respectively, will meet the requirements of the Burial Act and the standard CRT, Division of Archaeology, Unmarked Human Burial Sites Permit particularly with regard to defining the scope for Disinterment, Study of Remains, and Reinternment.

B. The designation of City Squares 360 and 363 as cemeteries by Acts of New Orleans City Council and subsequent inadvertent discovery of human skeletal remains in 1952 and 1984 established these two city blocks as an unmarked cemetery.

C. The Louisiana Attorney General’s Opinion 08-0135 dated November 30, 2009, holds that an unmarked cemetery is under the regulatory authority of the Louisiana Division of Archaeology by virtue of the Burial Act and was cited in the Louisiana Attorney General’s Office letter to FEMA dated March 19, 2010, Opinion 10-0018, included as Attachment 5 to specifically address FEMA’s
concerns regarding the treatment of the Lafon School and the surrounding property.

D. FEMA will notify the State Archeologist prior to the commencement of structural demolition, and the State Archaeologist, representing the Louisiana Division of Archaeology, shall provide notification to the New Orleans Police Department and the Orleans Parish Coroner’s Office. This notice will be consistent with the process for reporting the discovery of human skeletal remains in La. R.S. 8:680.

E. The disposition of unmarked burial sites, human skeletal remains, and burial artifacts shall follow the priorities in conformance with the Burial Act.

F. FEMA shall require that the guidelines contained in the ACHP’s 2007 “Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects” are followed.

VII. DISCOVERIES AND UNFORSEEN EFFECTS: ARCHAEOLOGICAL IDENTIFICATION, EVALUATION, AND CONSULTATION

A. Human Skeletal Remains and/or Burial Artifacts in the Archaeological APE

1. If, in the course of demolition or site work to include installation of a memorial, human skeletal remains and/or burial artifacts are uncovered, FEMA will notify GOHSEP, and State Archaeologist as soon as possible, but no later than 24 hours, following the identification of human skeletal remains and/or burial artifacts. FEMA will forward this notice to the Signatories, Invited Signatories, and Indian tribes that may have concerns about human skeletal remains and/or burial artifacts no later than 72-hours after the discovery.

2. FEMA’s Archaeological Monitor will notify RSD’s onsite official to cease demolition or other ground disturbing work in the general vicinity of the human skeletal remains and/or burial artifacts immediately. Using standard, non-destructive, archaeological practice, FEMA’s Archaeological Monitor will determine intactness and ethnic affinity, if possible.

3. RSD shall ensure that its on-site official takes all reasonable measures to avoid or minimize harm to the human skeletal remains and/or burial artifacts.

4. Isolated Human Skeletal Remains: If FEMA’s Archaeological Monitor determines that the bone represents an isolated human skeletal remain, it will be collected and the location and context of the find recorded.
5. All bone materials recovered from the site will be analyzed at FEMA’s archaeological monitor’s laboratory at the end of every day where it will be washed and identified by a physical anthropologist/bioarchaeologist or equivalent. This analysis will be limited to non-destructive means unless the Signatories, Invited Signatories, and Indian tribes, that may have concerns about the human skeletal remains and/or burial artifacts, determine through the consultation described that it is appropriate to perform additional analysis.

6. **Human Skeletal Remains, Primary Burials:** If, upon investigation, FEMA’s Archaeological Monitor determines that the human skeletal remains may represent a primary human burial(s), FEMA will initiate consultation with the Signatories, Invited Signatories, and Indian tribes that may have concerns about the human skeletal remains and/or burial artifacts to consider if the Demolition Plan can be modified to avoid the unmarked human burial(s); or, if the human skeletal remains may be reinterred within the New Orleans City Squares 360 and 363, in accordance with the Burial Act.

7. If through consultation it is determined that the human skeletal remains cannot be avoided and will need to be removed and reinterred, FEMA’s Archaeological Monitor will produce a detailed research plan that identifies the excavation strategies, analytical methods, temporary storage practices, and final disposition for the remains.

8. FEMA will forward copies of the draft research plan for comment to the Signatories, Invited Signatories, and Indian tribes that may have concerns about the human skeletal remains and/or burial artifacts.

9. FEMA will take the necessary steps to ensure that the finalized research plan is implemented.

**B. Non-Burial Archaeological Deposits in the Archaeological APE**

1. If, in the course of demolition or site work to include installation of a memorial, non-burial archaeological deposits (*i.e.* concentrations of historic glass, ceramics, bricks, etc.) are discovered or identified, FEMA’s Archaeological Monitor will notify the RSD’s on-site official to stop mechanical work in the area of the discovery and FEMA’s Archaeological Monitor will record and sample the deposits.

2. Following the documentation of the archaeological discovery, FEMA’s Archaeological Monitor will work with RSD’s onsite official to determine if the archaeological discovery can be avoided during additional demolition and site work. If FEMA’s Archaeological Monitor determines that effects to the discovery may be avoided, the archaeologist will document the steps taken to avoid the discovery within the Monitoring Report.
3. If FEMA’s Archaeological Monitor recommends that the archaeological discovery may be affected by the proposed construction or site work, the archaeologist will evaluate the deposit for NRHP eligibility following the Louisiana Division of Archaeology’s Phase II field standards.

4. If FEMA’s Archaeological Monitor determines that the non-burial archaeological deposit is not eligible for the NRHP, then mechanical demolition or site work may continue in this location.

5. If FEMA’s Archaeological Monitor recommends that the non-burial archaeological discovery is eligible for the NRHP, FEMA and SHPO will notify SHPO by e-mail with review this recommendation and any necessary supporting documentation. FEMA in coordination with the SHPO will develop a draft data recovery plan, within seven (7) days, if feasible.

6. FEMA will take the necessary steps to ensure the finalized data recovery plan is implemented in order to resolve adverse effects to NRHP eligible archaeological properties.

7. All collected non-burial artifacts will be retained at FEMA’s Archaeological Monitor’s laboratory where they will be washed, analyzed, and prepared for curation according to the Louisiana Division of Archaeology’s Field and Report Standards.

C. No Human Skeletal Remains, Burial Artifacts, or Non-Burial Archaeological Deposits Identified during Demolition/Restoration Activities

1. If no human skeletal remains, burial artifacts, or non-burial archaeological deposits are encountered during the demolition and site work FEMA will follow the standard reporting guidelines as described in Stipulation VIII.

VIII. ARCHAEOLOGICAL MONITORING: REPORTING AND FINAL CONSULTATION

A. FEMA shall ensure that draft and final reports resulting from actions pursuant to this MOA will meet professional standards set forth by the Secretary of the Interior’s Standards for Archaeological Documentation (48 FR 44734-37) and will be prepared in accordance with the Louisiana Division of Archaeology Section 106 Investigations and Report Standards (http://www.crt.state.la.us/archaeology/homepage/report.shtml), and, if appropriate, will also follow the reporting requirements of the Louisiana Unmarked Human Burial Sites Preservation Act, in accordance with Stipulation VII.A. FEMA’s Archaeological Monitor will also submit a site update form that reports the results of the investigations to the Division of Archaeology.

B. FEMA will ensure two paper copies and one digital copy of the Draft Report is sent to the SHPO and Indian tribes, for a 30-day review and comment period.
C. Following receipt of comments from SHPO and Tribes, regarding the treatment of human skeletal remains, FEMA will finalize the report and forward two (2) bound copies and one (1) digital copy of the Final Report to SHPO.

IX. CURATION

A. Following completion of all analyses and the acceptance of the final report, FEMA will curate all artifacts, records, photographs, and field notes with: State of Louisiana, Department of Culture, Recreation and Tourism – Division of Archaeology, P.O. Box 44247, Baton Rouge, LA 70804 [(225) 342-8170] in the curation facility at: Galvez Building, Room B-023, 602 N. Fifth St., Baton Rouge, LA 70802 [(225) 342-4475].

B. Disposition of Human Skeletal Remains will be in accordance with the Burial Act (see Stipulation VI). It is anticipated that disposition will be in an on-site memorial.

C. FEMA will also provide a copy of the Monitoring Report to the University of New Orleans, Orleans Earl K. Long Library, and Louisiana Special Collections in New Orleans, LA for curation.

X. TREATMENT OF LAFON SCHOOL SITE

A. RSD and FEMA have invited the consulting parties to participate in working group meetings to develop an Interpretive Plan for a permanent memorial to be placed on the site of the Thomy Lafon School. RSD has determined it is feasible to retain the existing sculpture commemorating Thomy Lafon as part of the permanent memorial and will implement a stabilization plan for the sculpture. The permanent memorial will commemorate the existing Curtis and Davis School, Thomy Lafon, the history of the previous two schools that were constructed on or near the site, and the Locust Grove Cemetery. The Interpretive Plan was presented at a community meeting on October 14, 2010. Feedback from the consulting parties and the community meeting will influence the memorial at the site.

B. FEMA has requested the opinion of the Louisiana Attorney General regarding the proposed permanent memorial in a letter dated October 22, 2010. RSD will ensure that its decision regarding the treatment of the Lafon School site will meet the requirements and guidance contained in the Louisiana Attorney General’s response.

C. FEMA will provide the Signatories, Invited Signatories and Concurring Parties with the opportunity to review and comment on the plans for the permanent memorial and any reasonably foreseeable plans for the future use of the site immediately following demolition of the Thomy Lafon School. The Signatories and Concurring Parties will review these plans to determine if they may cause
additional adverse effects to historic properties, particularly the human remains that may still be interred on the school site. The Consulting Parties recognize that future uses of the Lafon School site will be limited by the Louisiana Cemetery Act and local zoning and that FEMA has no ongoing responsibility under Section 106 regarding the future use of the site once the compliance review described by this stipulation is completed.

XI. ANTICIPATORY DEMOLITION

FEMA will not grant assistance to RSD 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 RSD, and will complete consultation pursuant to 36 CFR §800.9(c).

XII. 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 RSD and GOHSEP and consult further with the objecting party, RSD, 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 seven (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 14-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).
XIII. PUBLIC OBJECTIONS

A. Should a member of the public object in writing to FEMA regarding the implementation of this MOA or a historic preservation issue pertaining to the undertaking, at any time during implementation of Stipulations III to X in this MOA, FEMA shall notify the RSD, GOHSEP, and SHPO of the objection, and consult with the objecting party, SHPO, RSD, and GOHSEP to resolve the objection. RSD is not required to cease work on activities unrelated to the objection while the objection is being reviewed and resolved.

B. If FEMA determines that the objection cannot be resolved within a reasonable time frame, as determined by FEMA, FEMA will seek guidance from the ACHP to resolve the objection. FEMA will forward all documentation relevant to the dispute, including FEMA’s proposed resolution to the objection, and request the recommendations of the ACHP.

C. The ACHP may advise FEMA that it concurs with FEMA’s resolution of the objection or provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the dispute. Any recommendation 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. If the ACHP does not respond to FEMA’s request within 14-days, FEMA may assume that the ACHP does not object to its proposed resolution to the objection and it shall proceed accordingly.

xiv. Amendments, Termination, and Noncompliance

A. If RSD determines that it is not feasible to complete the Undertaking or fulfill the requirements of this MOA, RSD 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 Signatories, 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 Signatories, and Concurring Parties 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 Signatories, and the process will comply with 36 CFR §800.6(c)(7).

C. If the MOA is not amended, a Signatory or Invited Signatory may terminate the MOA by providing a 30-day written notice to the other Signatories, Invited Signatories, and Concurring Parties. The Signatories, Invited Signatories, 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 Signatories, and Concurring Parties in writing of termination. Termination of the MOA will require FEMA to comply with the 2009 Statewide PA 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.

XV. DURATION

Unless amended or terminated in accordance with Stipulation XIII., this MOA will remain in effect through August 31, 2014 or until FEMA determines that it has been satisfactorily fulfilled. RSD 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 requirements of the MOA are met.

XVI. EFFECTIVE DATE AND IMPLEMENTATION OF MOA

This MOA shall become effective immediately upon its signature by the Signatories and Invited Signatories. 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 proposed Undertaking to demolish the Thomy Lafon School 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

[Signature]

Date: 12-14-10

Katherine Zeringue
Environmental Liaison Officer
Louisiana Recovery Office
LOUISIANA STATE HISTORIC PRESERVATION OFFICER

Date: _____________

Phil Boggan
Deputy State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Date: _____________

John M. Fowler
Executive Director

INVITED SIGNATORIES

GOVERNOR’S OFFICE OF HOMELAND SECURITY AND EMERGENCY PREPAREDNESS

Date: _____________

Mark DeBosier
Assistant Deputy Director
Governor’s Office of Homeland Security and Emergency Preparedness

LOUISIANA DEPARTMENT OF EDUCATION, through its RECOVERY SCHOOL DISTRICT

Date: _____________

Paul G. Pastorek
State Superintendent of Education
CONCURRING PARTIES:

PRESERVATION RESOURCE CENTER

[Signature] Date: 12/16/10

URBAN STRATEGIES, INC.

[Signature] Date: 12/9/10

HARMONY OAKS NEIGHBORHOOD ASSOCIATION

[Signature] Date: 12/8/10

DOCOMOMO/NOLA

Date: 

AIA NEW ORLEANS

Date: 

CENTRAL CITY PARTNERS

Date: 12/9/10

LOUISIANA LANDMARKS SOCIETY

Date: 

HOUSING AUTHORITY OF NEW ORLEANS

Date: 

Historic Property: **Thomy Lafon Elementary School**

Address: **2601 7th St. New Orleans, LA**

Coordinates: **29.561733 N; -90.053803 W**
Attachment 2

List of Photographs of Thomy Lafon Elementary School

RSD has digitally photographed the historic features of the School that may be demolished or altered by the Undertaking. The photographs shall include the 37 photographs of the Main Classroom Building (Building C) and the Administration Building (Building A) listed below.

EXTERIOR:

Main Classroom Building – Building C
1. View from Northwest
2. View from North
3. View from East
4. Oblique view from Northeast
5. Oblique view from Southeast
6. Oblique view from Southwest taken from the ramp to replicate the LIFE Magazine photo
7. View at ground level from NE end looking South
8. View at ground level from South looking NW
9. View at North end of 2nd level looking South
10. View at South end of 2nd level looking North
11. View of both the exterior and interior of the original stairwell

Ramp to 2nd Level Main Classroom Building and Sculpture
12. View from South
13. View from West
14. View from East
15. Sculpture from Southeast
16. Sculpture from Southwest
17. Sculpture from South
18. Sculpture from Northwest
19. Sculpture from the Southwest taken from the ramp to replicate the angle in the LIFE Magazine photo

Administration Building – Building A
20. View from Northwest
21. View from west
22. Oblique view from Southwest
23. View of the patio area looking East
24. Detail of toothing and concrete shelves on the north facing wall
25. View of patio looking North

Other
26. View of slate sidewalk leading underneath the main classroom building
27. View of brick walls in the play space under the main building
28. Detail of concrete planter, example in the green space on the Southwest corner of the site

INTERIOR:

Main Classroom Building – Building C
29. View of typical classroom interior
30. View of typical classroom interior facing the windows
31. Detail of original custodial sink

Administration Building – Building A
32. View of the intersecting hallway from the South
33. View of the intersecting hallway from the East
34. View of the old reading room capturing the windows on the North wall
35. View of the Vault/Safe
36. Detail including the name on the Vault/Safe
37. Detail of toothing, an example is in the old conference room in the north section of the building
Attachment 3

List of Historic Drawings that will be included in recordation materials:

i. Ground Floor Plan · Plot Plan · Landscaping, Area and Cubeage Indication, Preliminary Design Group 3, March 17, 1952, numbered “1” in upper right-hand corner.

ii. Second Floor Plan, Area and Cubeage Indication, Group 2, March 3, 1952, numbered “2” in upper right-hand corner.

iii. North Elevation · South Elevation · East Elevation · West Elevation, March 3, 1952, numbered “3” in upper right-hand corner.

iv. Transverse · Section · at · Administrative · Area · & · Class Room; Logitudinal · Section · at · Kindergarten; Part · Elevation · at · Kindergarten; Part · Floor · Plan · at · Kindergarten; Typical · Wall · Section · at · Class · Room; Group 2, March 3, 1952, numbered “4” in upper right-hand corner.

v. Typical Roof Framing; Typical Floor Framing; Typical Cafeteria Section; Typical Section; Section at Stairs; Detail “A”; Group 2, March 3, 1952, numbered “5” in upper right-hand corner.

vi. Transverse · Section · at · Class · Room; April 2, 1952, numbered “6” in upper right-hand corner.

vii. Incandescent Lighting; Classroom Fabricated Furniture, Equipment, Lighting; Elevation A; Elevation C; Preliminary Group 2, March 6, 1952, numbered “9” in upper right-hand corner.

viii. Second Floor Plan; II D Roof Over 1 Story Part (no date), numbered “11” in upper right-hand corner.


x. Unlabelled and Undated Freehand Isometric, numbered “14” in upper right-hand corner.


xii. Unlabelled and Undated Freehand Isometric of Administration Building, numbered “16” in upper right-hand corner.

xiii. Unlabelled and Undated Freehand Isometric, numbered “17” in upper right-hand corner.

xiv. Administrative, Cafeteria Clinic Library, Multi Purpose Room Plan, April 9, 1952, unnumbered.


xvi. Framing · Plan · At · Administration · Area · , unnumbered and undated.
· Typical Wall Sections, Section At Cafeteria, Section At Infirmary, Section At Office, unnumbered and undated.

Proposed Library Addition to Thomy Lafon Elementary School, Sicard-La Fleur and Associates Architects, undated.
Attachment 4

List of Historic Photographs to be archived

FEMA will ensure three (3) archival photographic copies will be made of the historic photographs listed below, provided that it is feasible to obtain copyright or licensing to copy and archive the photos.


B. Five (5) historic photos provided by Central City Partners. These origins of these photos are still unknown.
State of Louisiana
DEPARTMENT OF JUSTICE
PO. BOX 9455
BATON ROUGE
70810

MARCH 18, 2010
OPINION 10-0018

Mr. Mark H. Landry
Interim Director
Louisiana Transitional Recovery Office
Federal Emergency Management Agency
United States Department of Homeland Security
One Seine Court, Suite 1027
New Orleans, LA 70114

Dear Mr. Landry:

You have requested an opinion of this Office related to the interplay of certain provisions of general Louisiana cemetery law and the Louisiana Unmarked Human Burial Sites Preservation Act ("the Unmarked Burials Act"). Specifically, you have asked whether the demolition of a structure that is situated atop a cemetery site would be governed by the law related to the dedication of property to cemetery use ("the dedication provisions"), the Unmarked Burials Act, or some combination of both sets of law. In order to fully understand this question, a review of the factual context of your request is in order.

According to the information that you provided to this Office, the Federal Emergency Management Agency, along with several State and local partners, is currently faced with having to abate the Thomy Lafon School buildings in New Orleans — structures that were substantially damaged by Hurricane Katrina. The current Lafon School is the latest construction on top of the Locust Grove Cemetery #1 and Locust Grove Cemetery #2 sites. The Locust Grove cemeteries were nineteenth century potters’ fields or indigent cemeteries that have since been replaced by Holt Cemetery and portions of other cemeteries located in the City. As you indicate, human remains, caskets, and grave goods were encountered at the site during the 1950s construction as well as during

1. La. R.S. 8:304-306.
2. La. R.S. 8:671, et seq.
3. The first school was constructed on top of these cemeteries in 1889 and the current structures were constructed in 1952.