

**FIRST AMENDED
MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY
AND THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE PARTIAL DEMOLITION, REPAIR, AND CONSTRUCTION
OF MAINTENANCE SHED
THE OLD CORRAL MAINTENANCE FACILITY, CITY PARK
NEW ORLEANS, LOUISIANA**

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 State of Louisiana, Division of Administration, Facility Planning and Control (FP&C), through the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), regarding the partial demolition, repair, and construction of a maintenance shed at the Old Corral Maintenance Facility (Old Corral), 1 Golf Club Drive, City Park, New Orleans, Louisiana in response to damages caused by Hurricanes Katrina (DR-1603-LA) and Rita (DR-1607-LA) to (Undertaking); and

WHEREAS, the Memorandum of Agreement (MOA) for the Undertaking went into effect on August 28, 2009 following its execution by the Signatories, Invited Signatories, and Concurring Parties and filing with the Advisory Council on Historic Preservation (ACHP) as required by 36 CFR §800.6(b)(1)(iv); and

WHEREAS, pursuant to Stipulation VIII.A of the MOA, FP&C notified FEMA that it is not feasible for FP&C to complete the Undertaking before the expiration of the MOA and requested that FEMA consult with the other Signatories, Invited Signatories, and Concurring Parties to develop an amendment to the MOA extending its duration; and

WHEREAS, FEMA, in consultation with the Consulting Parties, determined to develop a 1st Amended Memorandum of Agreement (1st AMOA) that will terminate the existing MOA; extend the duration date provided in the MOA to December 31, 2014; update the status of the reviews required by the MOA; and document that the mitigation measures required by the MOA have been completed; and this 1st AMOA will fully supersede the terms of the MOA upon its execution by the Signatories and Invited Signatories and filing with the ACHP; and

WHEREAS, FEMA has determined that FP&C, the Subgrantee, and City Park, FP&C's tenant, will continue to assume responsibilities to perform various actions described by this 1st AMOA, and FEMA invites FP&C and City Park to participate in this consultation and execute this 1st AMOA as Invited Signatories; and

WHEREAS, FEMA invites GOHSEP and PRC that executed the MOA as Concurring Parties to participate in this consultation and execute this 1st AMOA as Concurring Parties; and

WHEREAS, FEMA, SHPO, GOHSEP, FP&C, City Park, and PRC constitute the Consulting Parties to the MOA and the 1st AMOA; and

WHEREAS, FEMA has determined that the Area of Potential Effect (APE) for the Undertaking it identified in consultation with SHPO and incorporated as Attachment 1 to the MOA has not changed and it continues to be the Old Corral and the property immediately surrounding this facility that may be used for staging and other construction activities as shown in Attachment 1 to this 1st AMOA; and

WHEREAS, the scope of the Undertaking has been revised to eliminate the proposed construction of a maintenance shed but FEMA has determined, in consultation with SHPO, that the partial demolition of a portion of the Old Corral was an adverse effect and FEMA and the Consulting Parties have identified measures in the MOA to avoid, minimize, and mitigate any additional adverse effects that may be caused by the repair of the Old Corral and these measures continue to be appropriate to address the effects of the Undertaking; and

WHEREAS, all references to time periods in this 1st AMOA are in calendar days and notices and other written communications may be submitted by e-mail; and

NOW THEREFORE, FEMA, SHPO, FP&C, and City Park 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, FP&C, City Park, GOHSEP, and PRC, FEMA will require that the following measures are implemented:

I. DESIGN OF REPAIRS AND MAINTENANCE SHED

FE&C modified the design in the 90% Construction Documents to eliminate the construction of a new maintenance shed on the concrete slab behind the historic buildings and the Scope of Work now consists of the repair of the existing buildings at the Old Corral. The design of the repairs was determined by FEMA, in consultation with SHPO, following the Design Review Process described in Stipulation II. of the MOA that is documented in Stipulation II of this 1st AMOA to be responsive to the *Secretary of the Interior's Standards for the Treatment of Historic Properties (SOI Standards)*, http://www.nps.gov/history/hps/tps/standguide/rehab/rehab_standards.htm.

II. DESIGN REVIEW PROCESS

- A. FP&C provided Conceptual Designs dated 26 March 2009; revisions to the Conceptual Designs dated 28 March 2009; Photo Pages dated 12 March 2007; to FEMA and the Consulting Parties at the April 7, 2009 Section 106 consultation meeting for review and comment. FEMA forwarded a copy of these plans and specifications to ACHP on April 7, 2009. SHPO provided comments in an e-mail dated April 23, 2009, and FEMA forwarded these comments to FP&C, City Park, GOHSEP, and ACHP by e-mail on April 24, 2009. The other Consulting Parties did not provide comments.
- B. FP&C further developed the Conceptual Designs and provided Design Development Drawings, Photo Pages, and Specifications dated 19 June 2009 to FEMA and the Consulting Parties. SHPO provided comments in an e-mail dated June 26, 2009, and FEMA forwarded these comments to FP&C, City Park, GOHSEP, ACHP, and PRC by e-mail on June 26, 2009. The other Consulting Parties did not provide comments.
- C. FEMA notified FP&C and City Park on August 31, 2010 that the proposed 90% Construction Documents (Construction Drawings dated May 28, 2010 and Project Manual dated July 9, 2010) conform to the guidance in the *SOI Standards* and that the design review required by the MOA was complete.
- D. FP&C anticipates that it will be necessary to revise the reviewed 90% Construction Documents to meet the projected project budget. FP&C is committed to repair the exterior and will complete interior repairs and rehabilitation as funding allows. FP&C will mothball portions of the interior that it will not be able to repair or rehabilitate as part of the FEMA undertaking because of the projected project budget.
 1. FP&C will provide electronic copies of any proposed revisions to the 90% Construction Documents to FEMA and GOSHEP.
 2. FEMA will forward the electronic copies of the proposed revisions to the 90% Construction Documents to SHPO and the Concurring Parties. The SHPO and Concurring Parties will provide comments, if any, to FEMA on the revisions to the 90% Construction within 14-days. The 14-day review period starts on the day that FEMA sends an electronic copy of the plans to SHPO and the Concurring Parties by e-mail. FEMA will review all comments submitted within the 14-day review period and notify GOHSEP, FP&C, and City Park within 7-days following the time frame for review by SHPO and the Concurring Parties if the proposed design conforms to the guidance in the *SOI Standards*. If no comments are submitted by FEMA to GOHSEP, FP&C, and City Park within 28-days of FEMA's receipt of the

3. If FEMA determines that the work in the proposed revisions of the 90% Construction Documents will cause additional adverse effects to the Old Corral, FEMA will notify SHPO, FP&C, City Park, and the Concurring Parties by e-mail and clearly describe the issues that must be addressed to avoid the additional adverse effects. FEMA's notice will include any comments submitted by FEMA, SHPO, or the Concurring Parties regarding the additional adverse effects and any recommendations by these parties regarding alternatives that may avoid or minimize the additional adverse effects. FEMA, FP&C, City Park, and the Concurring Parties will consult to identify feasible measures to avoid, minimize, or mitigate the additional adverse effects.
4. FP&C and City Park recognize that any proposed work to repair, rehabilitate, stabilize, or mothball the Old Corral Maintenance Facility that is not funded with monies from FEMA is subject to review by the SHPO under state laws such as Louisiana RS 39:330.

III. CHANGES TO THE SCOPE OF WORK

- A. FP&C will notify GOHSEP and FEMA as soon as practicable of any substantial change that is part of the FEMA funded Undertaking, such as a change to the scope of work to construct a new maintenance shed on the property; any further revisions to the 90% Construction Documents to mothball a portion of the property; or revisions to the 90% Construction Documents that may adversely affect historic materials, such as the windows, exterior brick, and roofing material.
- B. FEMA will review the proposed changes, and if FEMA determines that the changes will result in additional adverse effects to the Old Corral, it will notify SHPO, FP&C, City Park, and the Concurring Parties by e-mail within 7-days and will consult with these parties to determine if there are feasible alternatives that may avoid or minimize the additional adverse effects. The SHPO and Concurring Parties agree to cooperate with FEMA and FP&C to discuss the feasibility of alternatives that may avoid or minimize the additional adverse effects within the time frame identified by FP&C. If FEMA determines that the proposed changes will not result in additional adverse effects, it will notify SHPO, FP&C, City Park, and the Concurring Parties of its determination that the proposed change will not result in additional adverse effects and the Undertaking may be completed with the proposed change.

IV. DISCOVERIES AND UNEXPECTED EFFECTS

- A. If, in the course of the Undertaking, archaeological deposits are uncovered, FP&C and/or City Park shall ensure that its contractor immediately stops work in the vicinity of the discovery and takes all reasonable measures to avoid or minimize harm to the finds. FP&C and/or City Park shall ensure that the archaeological findings are secured and access to the area of the discovery is restricted.
- B. FP&C and/or City Park 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 1st AMOA.
- C. 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. FEMA will notify FP&C and GOHSEP that the consultation is concluded and 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, FP&C, City Park, GOHSEP, and others, as appropriate, to agree on timeframes to determine ways to avoid, minimize, or mitigate any adverse effects to the discovery or the unforeseen effect to a historic property. FEMA will confirm the initial agreements of the parties regarding the timeframes for this consultation and any other agreements regarding the treatment of the discovery in an e-mail sent to GOHSEP, FP&C, City Park, SHPO, and any other consulting party. Any party to this consultation may request an on-site meeting to review the situation. At the conclusion of this consultation, FEMA will provide all parties that participated in the consultation with a written summary of the consultation and its resolution. This summary may be provided by e-mail. FP&C and/or City may resume work in the area of the discovery or unforeseen effect when all measures identified in FEMA's written summary describing the treatment of the property are completed.
- E. If human skeletal remains are uncovered during the Undertaking, FP&C and/or City Park 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. FP&C and/or City Park shall take all reasonable steps to ensure that any disturbance of the remains is photo-documented. FP&C and/or City Park 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-

- A. 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, FP&C, City Park, 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 Funerary Objects" is followed.

I. RECORDATION

FP&C has completed the photo-documentation of the Old Corral and its setting. FP&C prepared three (3) archival copies of the recordation materials and forwarded two (2) copies to FEMA on November 4, 2010. FEMA determined that these materials satisfied the SOW and FEMA transmitted two (2) copies of the completed recordation to SHPO on November 9, 2010. FP&C submitted one copy (1) of the completed recordation to the University of New Orleans, Orleans Earl K. Long Library, Louisiana Special Collections in New Orleans, LA on October 26, 2101 and notified FEMA and GOHSEP in writing.

II. ANTICIPATORY DEMOLITION

FEMA will not grant assistance to FP&C and/or City Park should it, with intent to avoid the requirements of this 1st AMOA 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 FP&C and/or City Park, and will complete consultation pursuant to 36 CFR §800.9(c).

III. DISPUTE RESOLUTION

- A. Should any Signatory, Invited Signatory, or Concurring Party object to FEMA within the timeframes provided by this 1st AMOA to any plans, specifications, or actions provided for review, FEMA shall notify FP&C and GOHSEP and consult further with the objecting party, FP&C, City Park, 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 FP&C determines that it is not feasible to complete the Undertaking or fulfill the requirements of this 1st AMOA, FP&C will immediately notify FEMA and GOHSEP in writing of this determination. Within 21-days of the notice, FEMA will meet with the Signatories, Invited Signatories, and Concurring Parties, in person or by telephone, to determine if the 1st AMOA must be amended or terminated, and proceed accordingly.
- B. Any Signatory or Invited Signatory may request in writing that the 1st AMOA 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 1st AMOA prior any Party taking steps to terminate it. The 1st AMOA 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 1st AMOA is not amended, the Signatories or Invited Signatories may terminate the 1st AMOA 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 1st AMOA will require FEMA to comply with the Statewide Programmatic Agreement in effect on the date of the termination. This 1st AMOA may be terminated without further consultation by execution of a subsequent agreement that explicitly terminates or supersedes this 1st AMOA.

IX. DURATION

Unless amended or terminated in accordance with Stipulation VIII., this 1st AMOA will remain in effect through December 31 2014, or until FEMA determines that it has been satisfactorily fulfilled. FP&C 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 this 1st AMOA has been fulfilled.

X. EFFECTIVE DATE AND IMPLEMENTATION OF MOA

This 1st AMOA shall become effective immediately upon FEMA's filing an original copy signed by the Signatories and Invited Signatories with the ACHP. The MOA is terminated and fully superseded by the execution of this 1st AMOA and its filing with the ACHP. FEMA shall provide each Signatory, Invited Signatory, and Concurring Party with a complete copy of the 1st AMOA including all executed signature pages.

EXECUTION AND IMPLEMENTATION of this 1st Amended Memorandum of Agreement evidences that FEMA has afforded ACHP a reasonable opportunity to comment on the Undertaking to partial demolition, repair, and construction of a maintenance shed at the Old Corral Maintenance Facility 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


Date: 12/30/2010
Katherine Zeringue *Tiffany Spann-Winfield for:*
Environmental Liaison Officer
Louisiana Recovery Office

LOUISIANA STATE HISTORIC PRESERVATION OFFICER


Date: 12-22-10
Phil Boggan
Deputy State Historic Preservation Officer

INVITED SIGNATORIES:

DIVISION OF ADMINISTRATION, FACILITY PLANNING AND CONTROL



Date: 12/28/10

CITY PARK



Date: 12/29/10

CONCURRING PARTIES:

**GOVERNOR'S OFFICE OF HOMELAND SECURITY AND EMERGENCY
PREPAREDNESS**



Date: 12-22-10

Mark J. DeBoiser
Assistant Deputy Director, Disaster Recovery

PRESERVATION RESOURCE CENTER



Date: 12.20.10

ATTACHMENT 1: AREA OF POTENTIAL EFFECT

