

**1<sup>ST</sup> AMENDED MEMORANDUM OF AGREEMENT  
AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE DEMOLITION OF  
THE STATE OFFICE BUILDING and STATE OFFICE BUILDING ANNEX and  
CONSTRUCTION OF A NEW STATE OFFICE BUILDING  
NEW ORLEANS, 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 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), in response to damages to the Office Building, 325 Loyola Avenue, (NO-SOB) and the State Office Building Annex, 301 Loyola Avenue (Annex), caused by Hurricanes Katrina (DR-1603-LA) and Rita (DR-1607-LA), and FP&C proposed to demolish the NO-SOB and the Annex and construct a new State Office Building with this FEMA assistance (Undertaking); and

**WHEREAS**, FEMA consulted with the Louisiana State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), FP&C, GOHSEP, the National Trust for Historic Preservation (NTHP), and the Louisiana Chapter of Documentation and Conservation of Building Sites and Neighborhoods of the Modern Movement US (DOCOMOMO/NOLA), collectively known as the Consulting Parties, 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 the FEMA, the SHPO, the Louisiana Office of Homeland Security and Emergency Preparedness, and the Advisory Council on Historic Preservation (ACHP)*" executed in December 2004 (*2004 Statewide PA*) to develop a Memorandum of Agreement (MOA) to address the adverse effect of the proposed Undertaking; and

**WHEREAS**, the MOA for the Undertaking went into effect on June 20, 2008 following its execution by the Signatories and the Invited Signatory; 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 because the State of Louisiana has determined that a long-term lease on a redeveloped building located in downtown New Orleans is a more viable option than construction of a new State Office Building at this time due to the downturn in the national and regional economy, the volatility of the bond markets for government capital outlay projects, and for the need to quickly revitalize the downtown area of New Orleans, and FP&C requested that FEMA consult with the other Consulting Parties to terminate the MOA and develop a 1<sup>st</sup> Amended Memorandum of Agreement (1<sup>st</sup> AMOA); and

**WHEREAS**, FEMA, in consultation with the Consulting Parties, determined to develop this 1<sup>st</sup> AMOA to terminate and amend the MOA, and this 1<sup>st</sup> AMOA will fully supersede the terms of the MOA upon its execution by the Signatories and Invited Signatory; and

**WHEREAS**, FEMA has determined that FP&C, the Subgrantee, will continue to assume responsibilities to perform various actions described by this 1<sup>st</sup> AMOA, and FEMA invites FP&C to participate in this consultation and execute this 1<sup>st</sup> AMOA as an Invited Signatory; and

**WHEREAS**, FEMA invites GOHSEP and DOCOMOMO/NOLA that executed the MOA as Concurring Parties to participate in this consultation and execute this 1<sup>st</sup> AMOA as a Concurring Party; and

**WHEREAS**, all references to time periods in this 1<sup>st</sup> AMOA are in calendar days and all notices, requests for review, and other written communications may be submitted by e-mail; and

**NOW, THEREFORE**, FEMA, ACHP, SHPO and FP&C 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 ACHP, SHPO, FP&C, GOHSEP, and DOCOMOMO/NOLA, FEMA will require that the following measures are implemented:

### **I. RECORDATION TREATMENT MEASURE**

- A. FP&C provided the Draft Scope of Work (SOW) to FEMA and SHPO for review and comment on May 14, 2008. This SOW included a list of fifty-three (53) photographs documenting the exterior and interior of the NO-SOB and Annex. FEMA and SHPO provided comments on the SOW to FP&C on May 16, 2008. FP&C agreed to address these comments in the draft copy of the recordation materials. FEMA and SHPO reviewed the draft copy of the recordation materials and notified FP&C on December 18, 2008 that these materials met the requirements of the MOA.
- B. FP&C prepared three copies of the recordation materials and FEMA forwarded two copies to SHPO on February 6, 2009 for transmittal to the State Library and the State Archives. FP&C submitted the third copy of the recordation materials to the University of New Orleans, Orleans Earl K. Long Library, New Orleans, Louisiana. This completed FP&C's and FEMA's requirements under Stipulation I of the MOA.

## II. ADDITIONAL TREATMENT MEASURES

### A. Conrad Albrizio Mosaic Mural

1. FP&C contracted with a qualified art conservator possessing the appropriate specialty, in accordance with the American Institute of Conservation of Historic and Artistic Works Code of Ethics and Guidelines for Practice, to salvage, conserve, store, and reinstall the Conrad Albrizio mosaic mural.
2. The Albrizio mural was documented in its original location as part of the recordation required by Stipulation I of the MOA and was removed from the Annex in July 2008 by the qualified art conservator. The mural is currently undergoing restoration.
3. FP&C will notify FEMA and SHPO when it determines the location for the reinstallation of the mural and will have the mural reinstalled by the qualified art conservator in an interior space of an appropriate State facility before the expiration date of this 1<sup>st</sup> AMOA as set out in Stipulation IX.
4. FP&C will report on the status of the mural through the reports required in Stipulation VI.

### B. Salvage and Reuse of Building Materials

1. FP&C has salvaged and secured the granite and marble shown on Drawings A1, D11, MS11, MS12, and MS 13 of the Design Development Documents for the previously proposed new State Office Building.
2. FP&C will take steps to identify opportunities to reuse the salvaged granite and marble in other new or existing buildings owned by the State of Louisiana and will report on its efforts in the reports required by Stipulation VI.
3. FP&C has salvaged the commemorative materials listed below and completed the requirements of the MOA in Stipulation II.B.2 for the commemorative materials when it transferred these plaques, medallions, and cornerstones to the Louisiana Supreme Court:
  - a. Louisiana State Bar Association Bronze Plaque
  - b. Supreme Court of Louisiana 1958 Bronze Plaque
  - c. 8 Bronze State of Louisiana Medallions from elevators
  - d. Marble Cornerstone, State Office Building
  - e. Marble Cornerstone, Supreme Court Building (Annex)

f. Bronze Plaque State Office Building

**III. DESIGN REVIEW PROCESS**

- A. FEMA provided copies of the Schematic Designs to the Consulting Parties on March 10, 2008 as part of the consultation process to develop the MOA. Comments on the Schematic Design were considered during the consultation process and incorporated, where feasible, into the Design Development Drawings.
- B. FEMA ~~and~~ provided copies of the Design Development Drawings to the Consulting Parties on May 28, 2008 for a 14-day review and comment period as required by the MOA and received no substantive comments. This completed the design review process required by the MOA for the new State Office Building
- C. As required by Stipulation III.C of the MOA, FP&C notified GOHSEP and FEMA that it will not construct a new State Office Building to replace the demolished structures and that it will fill the voids left following the demolition of the buildings; cover the area with grass; and repair damage to the surface of the existing concrete paving. FP&C plans to retain ownership of the site and does not foresee that it will construct a new building on this site or a new State Office Building on any other site.
- D. FP&C will provide FEMA with a plan for the treatment of the site following the demolition to cover it with grass, repair damage to the surface of the existing concrete paving, and extend it into the open green space at Duncan Plaza. This plan will address the treatment of the Delesseps Morrison Memorial and the Avery Alexander sculpture. FEMA will forward electronic copies of the plan to the Signatories and Concurring Parties for review and comment. The Signatories and Concurring Parties will provide comments, if any, to FEMA on the proposed plan within 15-days. The 15-day review period starts on the day that FEMA sends an electronic copy of the plan to the Signatories and Concurring Parties by e-mail. FEMA will provide a copy of the plan to any Consulting Party that signs as a Concurring Party during the 15-day review period for review and comment, but the entry of such party as a Concurring Party will not extend the comment period. FEMA will review all comments submitted within the 15-day review period and notify GOHSEP and FP&C within 7-days if the proposed plan will cause additional adverse effects. If no comments are submitted by FEMA to FP&C within 28 days following FEMA's receipt of the plan, FP&C may finalize the proposed design.
- E. If FEMA determines that the proposed plan for the redevelopment of the site will cause additional adverse effects to historic properties, FEMA will notify ACHP, SHPO, GOHSEP, FP&C, and the Concurring Parties by e-mail within

28 days 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, the Signatories, and Concurring Parties during the review period outlined in Stipulation II.D regarding the additional adverse effects and any recommendations by these parties regarding alternatives that may avoid or minimize the additional adverse effects. If FP&C determines that it is not feasible to revise the proposed plan in response to FEMA's notification, FP&C will notify FEMA and GOHSEP in writing and describe why it was unable to incorporate some or all of the recommendations from FEMA, the Signatories, and Concurring Parties regarding alternatives that may avoid or minimize the additional adverse effects, and FEMA will forward this information to ACHP, SHPO, and the Concurring Parties. FEMA may request a meeting with ACHP, FP&C, GOHSEP, SHPO, and the Concurring Parties if FP&C is not able to take steps to minimize or avoid the additional adverse effects. The purpose of the meeting will be to identify any feasible alternatives to minimize or avoid the additional adverse effects. If FEMA does not request a meeting to discuss FP&C's response within 4-days of the e-mail detailing the additional adverse effects, FP&C may finalize the proposed plan.

#### **IV. PROTECTION OF ARCHAEOLOGICAL PROPERTIES THAT MAY BE PRESENT BELOW DUNCAN PLAZA**

- A. FEMA, SHPO, and the Mississippi Band of Choctaw Indians (MBCI) reviewed the Schematic Site Plan and the Staging Plan during the process to develop the MOA and concluded that it is unlikely that demolition activities will affect archaeological properties that may be present below Duncan Plaza.
- B. FEMA, in consultation with SHPO and MBCI, determined that there is some potential that archaeological properties may be encountered if FP&C demolishes and replaces the paved area to the south and east of the building site following its use as a heavy equipment staging area during demolition. FP&C plans to repair this paved area and will not remove concrete slabs unless they must be removed to make the area safe and walkable. FP&C will consult with the Louisiana Division of Archaeology to ensure that any actions by FP&C to demolish and replace concrete slabs in this paved area are in conformance with laws of the State of Louisiana.

#### **V. DISCOVERIES AND UNFORESEEN EFFECTS**

- A. If, in the course of the Undertaking, archaeological deposits are uncovered or unforeseen effects occur, FP&C 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 archaeological finds and/or to avoid or minimize further unforeseen effects. FP&C shall ensure that the archaeological findings are secured and access to the area of the discovery is restricted.

- B. FP&C will notify FEMA and GOHSEP of discoveries or unforeseen effects as soon as practicable, and will e-mail digital photographs of the discovery or unforeseen effect with the notification. FEMA will notify and consult with the SHPO to determine if further steps to evaluate the National Register eligibility and treatment of the property are necessary. FEMA will provide FP&C and GOHSEP with the opportunity to participate in this consultation.
- C. FEMA may, in consultation with the SHPO, assume that a newly discovered property is eligible for the National Register for purposes of this 1<sup>st</sup> AMOA.
- D. FEMA and the SHPO will conclude this consultation if the discovery does not contain human remains and FEMA and the SHPO determine that the discovery is not eligible for the National Register or if FEMA and the SHPO determine that the unforeseen effect will not adversely affect a historic property, and FEMA will notify GOHSEP that work may be resumed in the area of the discovery or unforeseen effect.
- E. If FEMA and the SHPO 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, 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. 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.
- F. If human skeletal remains are uncovered during the Undertaking, FP&C 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 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 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 take the lead in working with the SHPO, Indian tribes, the Louisiana Division of Archeology, FP&C, 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" or any subsequent Policy Statements that are issued after the execution of this MOA are followed.

## **VI. REPORTING**

- A. FP&C will provide a semiannual status report to FEMA and GOHSEP on or about January 31<sup>st</sup> and July 31<sup>st</sup> regarding the Albrizio mural; the disposition

of the salvaged granite and marble; and the treatment of the NO-SOB and Annex site.

- B. FEMA will forward copies of this report to the Signatories and Concurring Parties. The Signatories and Concurring Parties will provide comments on the status report within 15-days of receipt and FEMA will arrange a meeting, if requested by any of the Signatories or Concurring Parties during the 15 day review period, to discuss the status report. This meeting may be conducted via a conference call or in person at FEMA's discretion.
- C. The semiannual reports will be submitted by FP&C to FEMA and GOHSEP through the duration of this 1<sup>st</sup> AMOA as set out in Stipulation IX.

## VII. DISPUTE RESOLUTION

- A. Should any Consulting Party object to FEMA within the timeframes provided by this MOA 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, 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, that 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 such comment provided by the ACHP 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 the ACHP shall be understood to pertain only to the subject of the dispute, and FEMA's responsibilities to fulfill all actions that are not the 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 1<sup>st</sup> 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 Signatory, and Concurring Parties, in person or by telephone, to determine if the 1<sup>st</sup> AMOA must be amended or terminated, and proceed accordingly.
- B. Any Signatory or Invited Signatory may request in writing that the 1<sup>st</sup> AMOA be amended or terminated. Within 21-days of such a request, FEMA will convene a meeting of the Signatories, Invited Signatory, and Concurring Parties to consider this request. The Parties will make a good faith effort to amend the 1<sup>st</sup> AMOA prior to any Party taking steps to terminate it. The 1<sup>st</sup> AMOA may be amended only upon the written agreement of the Signatories, and the process will comply with 36 CFR §800.6(c)(7).
- C. If the 1<sup>st</sup> AMOA is not amended, the Signatories or Invited Signatory may terminate the 1<sup>st</sup> AMOA by providing a 30-day written notice to the 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 1<sup>st</sup> AMOA will require FEMA to comply with the Statewide Programmatic Agreement in effect at the time of the termination. This 1<sup>st</sup> AMOA may be terminated without further consultation by execution of a subsequent agreement that explicitly terminates or supersedes this 1<sup>st</sup> AMOA.

### **IX. DURATION**

Unless amended or terminated in accordance with Stipulation VIII., this 1<sup>st</sup> AMOA will remain in effect through December 31, 2012, 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 Signatory, and Concurring Parties by e-mail when it determines that this 1<sup>st</sup> AMOA has been fulfilled.

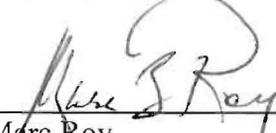
**X. EFFECTIVE DATE AND IMPLEMENTATION OF MOA**

This 1<sup>st</sup> AMOA shall become effective immediately upon signature by the Signatory Parties. FEMA shall provide each Signatory, Invited Signatory, and Concurring Party with a complete copy of the 1<sup>st</sup> AMOA including all executed signature pages.

**EXECUTION AND IMPLEMENTATION** of this 1<sup>st</sup> Amended Memorandum of Agreement evidences that FEMA has afforded ACHP a reasonable opportunity to comment on the Undertaking 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 applicable implementing regulations.

SIGNATORY PARTIES:

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

  
\_\_\_\_\_  
Marc Roy  
Environmental Liaison Officer  
Louisiana Transitional Recovery Office

Date: 8-20-09

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

  
\_\_\_\_\_  
John M. Fowler  
Executive Director

Date: 9/10/09

**LOUISIANA STATE HISTORIC PRESERVATION OFFICER**

  
\_\_\_\_\_  
Scott Hutcheson  
State Historic Preservation Officer

Date: 8-11-09

INVITED SIGNATORY:

**DIVISION OF ADMINISTRATION, FACILITY PLANNING & CONTROL**

  
\_\_\_\_\_

Date: 8/17/09

CONCURRING PARTIES:

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



\_\_\_\_\_  
Mark J. DeBoiser  
Assistant Deputy Director, Disaster Recovery

Date: Aug 17, 2009

**DOCOMOMO US/LOUISIANA CHAPTER (DOCOMOMO/NOLA)**

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Date: \_\_\_\_\_