PROGRAMMATIC AGREEMENT AMONG THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER, THE ILLINOIS EMERGENCY MANAGEMENT AGENCY AND PARTICIPATING TRIBES

WHEREAS, the mission of the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards; and

WHEREAS, FEMA makes assistance available to States, Territories, Commonwealths, communities, Federally recognized Indian Tribes (Tribes) and other eligible entities through programs (Programs) set forth in Appendix A, pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296 (2002) (codified as amended at 6 U.S.C. § 101 *et seq*.); Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq*.) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); the Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295 (2006) (as amended); the Sandy Recovery Improvement Act, Pub. L. No. 113-2 (2013); implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR), Executive Order 13407 (2006), and such other acts, executive orders, implementing regulations, or Congressionally authorized programs as are enacted from time to time; and

WHEREAS, FEMA has determined that implementing its Programs may result in Undertakings (as defined by 54 U.S.C. § 300320 and 36 CFR § 800.16(y)) that may affect properties listed in or eligible for listing in the National Register of Historic Places (National Register) pursuant to 36 CFR Part 60 (historic properties), and FEMA has consulted with the Illinois State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act (NHPA), Pub. L. No. 89-665 (1966) (codified as amended at 54 U.S.C. § 306108), and the regulations implementing Section 106 of the NHPA (Section 106) at 36 CFR Part 800; and

WHEREAS, as used herein, the term "SHPO" means the official appointed or designated pursuant to section 101(b)(1) of the NHPA, as amended (54 U.S. Code § 302301(1)), to administer the State historic preservation program or a representative designated to act for the State historic preservation officer (see 36 CFR § 800.16(v)); and

WHEREAS, the Illinois State historic preservation program presently resides within the Illinois Department of Natural Resources (IDNR), and the current Director of IDNR, Wayne A. Rosenthal, is the duly designated SHPO; and

WHEREAS, FEMA, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that FEMA's Section 106 requirements can be more effectively and efficiently implemented and delays to the delivery of FEMA assistance minimized if a programmatic approach is used to stipulate roles and responsibilities, exempt certain Undertakings from Section 106 review,

establish protocols for consultation, facilitate identification and evaluation of historic properties, and streamline the assessment and resolution of adverse effects; and

WHEREAS, FEMA has developed a Prototype Programmatic Agreement (FEMA Prototype Agreement) pursuant to 36 CFR § 800.14(b)(4) in consultation with the ACHP and NCSHPO to serve as a basis for negotiation of a State/Tribal specific Programmatic Agreement (Agreement) with the SHPO, State/Tribal Emergency Management Agency, and/or participating Tribe(s); and

WHEREAS, this Agreement conforms to the FEMA Prototype Agreement as designated by the ACHP on December 17, 2013, and therefore does not require the participation or signature of the ACHP; and

WHEREAS, in order to implement its Programs, FEMA will provide assistance to State of Illinois and/or Tribes (Recipient(s)) that may provide monies and other assistance to eligible subrecipients, and as such, the Illinois Emergency Management Agency and Tribal Emergency Management Agencies that are typically responsible for administering funds provided under these Programs, have participated in this consultation, and FEMA has invited the Illinois Emergency Management Agency and Tribal Emergency Management Agencies to execute this Agreement as Signatories; and

WHEREAS, FEMA also may directly perform its own Undertakings pursuant to this Agreement; and

WHEREAS, in anticipation or in the immediate aftermath of an event, impacted communities and the State of Illinois and/or affected Tribes may conduct critical preparedness, response and recovery activities to safeguard public health and safety and/or to restore vital community services and functions before, during, and or following an event. Some of these activities may become Undertakings requiring Section 106 review subject to the terms of this Agreement, and FEMA shall coordinate the appropriate review as warranted; and

WHEREAS, FEMA has determined that its Programs may result in Undertakings with the potential to affect historic properties having religious and cultural significance to Tribes, including sites that may contain human remains and/or associated cultural items; and

WHEREAS, FEMA recognizes that the following Tribes may recognize sites as having religious and cultural significance in Illinois:

- Citizen Potawatomi Nation
- Cherokee Nation
- Delaware Nation
- Eastern Shawnee Tribe of Oklahoma
- Forest County Potawatomi Community of Wisconsin
- Hannahville Indian Community
- Ho–Chunk Nation
- Iowa Tribe of Kansas & Nebraska
- Iowa Tribe of Oklahoma
- Kaw Nation
- Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
- Kickapoo Tribe of Oklahoma
- Miami Tribe of Oklahoma
- Osage Nation

- Peoria Tribe of Indians of Oklahoma
- Ponca Tribe of Indians of Oklahoma
- Ponca Tribe of Nebraska
- Prairie Band of Potawatomi Nation
- Sac and Fox Nation
- Sac and Fox Nation of Missouri in Kansas and Nebraska
- Sac and Fox Tribe of the Mississippi in Iowa
- Winnebago Tribe of Nebraska

and in meeting its Federal trust responsibility, FEMA has engaged in government-to-government consultation with the Tribes, and pursuant to 36 CFR § 800.2 (c)(2)(ii)(E) has invited the Tribes to enter into an agreement that specifies how FEMA will carry out Section 106 responsibilities, including the confidentiality of information; and

WHEREAS, notwithstanding the aforementioned invitation to enter into an agreement, FEMA has invited the Iowa Tribe of Kansas and Nebraska and the Osage Nation to enter into this Agreement as a signatory party to fulfill the requirements of Section 106; and

WHEREAS, FEMA may invite additional Tribes that have sites of religious and cultural significance to enter into the terms of this Agreement as invited signatories or concurring parties in accordance with 36 CFR § 800.14(f), and nothing in this Agreement prevents a Tribe from entering into a separate Programmatic Agreement or other agreement with FEMA for administration of FEMA Programs; and

WHEREAS, the terms of this Agreement shall not apply to Undertakings on or affecting Tribal lands without prior execution of the Agreement by the affected Tribe(s); and

WHEREAS, for the review of specific Undertakings under this Agreement, FEMA may invite other agencies, organizations, and individuals to participate as consulting parties; and

NOW, THEREFORE, FEMA, the Recipient(s), SHPO, and participating Tribe(s) (Signatories) agree that FEMA Programs in the State of Illinois and/or on Tribal lands within the State of Illinois shall be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 and Section 110 responsibilities for all resulting Undertakings and effectively integrate historic preservation compliance considerations into the delivery of FEMA assistance. FEMA will not authorize implementation of an individual Undertaking until Section 106 review is completed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with other Signatories and Invited Signatories, FEMA shall ensure that the following measures are implemented:

I. GENERAL

A. Applicability

1. The execution of this Programmatic Agreement supersedes the terms of any previously executed FEMA Agreements governing Section 106 compliance in the State of Illinois.

2. For FEMA Undertakings that also are within the jurisdiction of the Federal Communications Commission (FCC) and within the scope of its Section 106 Programmatic Agreements for communication facilities, FEMA defers Section 106 review in accordance with the ACHP Program Comment as amended on September 24, 2015 (http://www.ach.gov/docs/pc-wireless-communication.pdf), and as it may be amended from time to time. The approval of funding for the FEMA Undertaking shall be conditioned upon the compliance of the subrecipient with FCC's applicable Section 106 review, including any required consultation with Tribes. FEMA shall notify the SHPO/THPO when it applies the ACHP Program Comment to an Undertaking. FEMA remains responsible for any FEMA Undertakings it determines are outside the jurisdiction of FCC.

3. In the event of a Stafford Act major disaster or emergency declaration (Declaration), State, Tribal, Territorial, and local governments may lack the capability to perform or to contract for emergency work, and instead request that the work be accomplished by a Federal agency. Through a mission assignment (MA), FEMA may direct appropriate Federal agencies to perform the work. This Agreement shall apply to such Federal assistance undertaken by or funded by FEMA pursuant to Titles IV and V of the Stafford Act and 44 CFR Part 206.

4. FEMA may utilize this Agreement to fulfill its Section 106 responsibilities and those of other Federal agencies that designate FEMA as the lead Federal agency pursuant to 36 CFR § 800.2(a)(2) with appropriate notification to the other Signatories and the ACHP regarding Undertakings that fall within the scope of this Agreement. When FEMA is not designated as the lead Federal agency, all Federal agencies, including FEMA, remain individually responsible for their compliance with Section 106. This provision does not prevent FEMA from recognizing another Federal agency as lead Federal agency for specific Undertakings as appropriate.

5. If another Federal program or Federal agency has concluded Section 106 consultation review and approved an Undertaking within the past 5 years, FEMA

has no further requirement for Section 106 review regarding that Undertaking provided that FEMA:

a. confirms that the scope and effect [as defined by 36 CFR § 800.16(i)] of its Undertaking are the same as that of the Undertaking reviewed by the previous agency, and;

b. determines that the previous agency complied with Section 106 appropriately.

c. adopts the findings and determinations of the previous agency;

FEMA shall document these findings in its project file in order to confirm that the requirements of Section 106 have been satisfied. Should FEMA, in consultation with SHPO and participating Tribe(s), determine that the previous Section 106 review was insufficient or involved interagency disagreements about eligibility, effect, and/or treatment measures, FEMA shall conduct additional Section 106 consultation in accordance with the terms of this Agreement.

6. With the written concurrence of the Signatories, other Federal agencies providing financial assistance for the type of activities covered under the terms of this Agreement as outlined in Appendix A may satisfy their Section 106 responsibilities for the same type of activities by accepting and complying in writing with the terms of this Agreement.

   a. Other Federal Agencies may include States, Tribes, Territories, and units of general local government who have assumed environmental responsibilities of the U.S. Department of Housing and Urban Development and, acting as the Responsible Entity pursuant to 24 CFR Part 58, are responsible for environmental review, decision-making and action.

   b. In such situations, the other Federal Agency shall notify the Signatories in writing of its intent to use this Agreement to achieve compliance with its Section 106 requirements, and consult with the Signatories and Invited Signatories regarding its Section 106 compliance responsibilities. Resumes of staff who meet the Secretary of the Interior's (Secretary's) Professional Qualification Standards (Professional Qualifications) and will review Second Tier projects in accordance with Appendix B of this Agreement shall be provided to FEMA and the SHPO/THPO.

7. FEMA has determined that the following types of activities have limited or no potential to affect historic properties and FEMA has no further Section 106 responsibilities with regards to them, pursuant to 36 CFR § 800.3(a)(1):

   a. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households provided under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act, including funding for owner occupied home repair, content replacement,

personal property, transportation, and healthcare expenses, is exempt from the provisions of Section 106.

b. Administrative actions such as personnel actions, travel, procurement of services, supplies (including vehicles and equipment) for the support of day-to-day and emergency operational activities, and the temporary storage of goods provided storage occurs within existing facilities or on previously disturbed soils.

c. Granting of variances and other administrative actions to enforce Federal, State, or local codes, standards or regulations.

d. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.

e. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.

f. Assistance provided for planning, studies, design, and engineering costs that involve no commitment of resources other than staffing and associated funding.

g. Assistance provided for training, management and administration, exercises, and mobile/portable equipment purchases; with the exception of potential ground-disturbing activities and modification of existing structures.

h. Community Disaster Loans for funding to perform administrative governmental functions for any eligible jurisdiction in a designated disaster area that has suffered a substantial loss of tax and other revenue.

i. Funding the administrative action of acquisition or lease of existing facilities where planned uses conform to past use or past local land use requirements.

j. Funding the administrative action of acquiring properties in acquisition projects, including the real estate transaction.

k. Labor, equipment, and materials used to provide security in the Declaration area, including lease, rental, purchase or repair of equipment or vehicles and payment for staff and contract labor.

l. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.

m. Unemployment assistance.

n. Distribution of food coupons.

o. Legal services.

p. Crisis counseling.

8. Any FEMA Programs authorized by the United States Congress in the future may be included in this Agreement in accordance with Stipulation IV.A, Amendments. Any change in the FEMA name, Programs, or organizational structure shall not affect this Agreement.

B. Roles and Responsibilities of the Signatories

1. FEMA:

   a. FEMA shall use Federal, Tribal, State, subrecipient, or contractor staff whose qualifications meet the Secretary's Professional Qualifications set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended (Qualified), in completing identification and evaluation of historic properties, making determinations of effects, identifying the area of potential effects, and applying Tier II Programmatic Allowances as outlined in Appendix B. FEMA shall review any National Register eligibility determination and make its own findings of effect resulting from the performance of these activities prior to submitting such determinations to the SHPO and participating Tribe(s).

      i. FEMA acknowledges that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and cultural significance to them. Tribal leaders, and as appropriate, their representatives, shall decide who meets qualifications/standards as defined by their Tribes for review of Undertakings affecting properties that may have religious and cultural significance to them.

   b. FEMA alone shall conduct all Section 106 consultation with Tribes. In accordance with 36 CFR § 800.2(c)(4), FEMA may authorize the Recipient(s), or a subrecipient through the Recipient(s), to initiate the Section 106 process with the SHPO and other consulting parties, assist in identifying other consulting parties with a demonstrated interest in the Undertaking, and prepare any necessary analyses and documentation, but FEMA shall remain responsible for determinations of National Register eligibility and findings of effect recommended by the authorized party. FEMA shall follow the process set forth in Stipulation I.B.1(a), FEMA Roles and Responsibilities, and notify the SHPO in writing when a Recipient or subrecipient has been authorized to initiate consultation on FEMA's behalf.

   c. Prior to authorizing the release of funds for individual Undertakings requiring grant conditions pursuant to this Agreement, FEMA shall inform the Recipient(s) of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to the subrecipient. FEMA shall work in partnership with the Recipient(s) to provide subrecipients with guidance on in-kind repair pursuant to *The Secretary of the Interior's Standards for the Treatment of Historic Properties 2017* (*Standards*), 36 CFR Part 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties.

d. FEMA shall provide the Signatories, Invited Signatories, and the ACHP with an annual report for the previous calendar year by March 31 of each year that this Agreement is in effect. This annual report will summarize the actions taken to implement the terms of this Agreement, statistics on Undertakings reviewed, and recommend any actions or revisions to be considered, including updates to the appendices.

e. Upon the request of any Signatory or Invited Signatory to this Agreement, FEMA will schedule a meeting or telephone conference subsequent to the issuance of the annual report to review the report and/or discuss issues in greater detail.

f. FEMA shall notify the SHPO and affected Tribes, as soon as practicable, following a Declaration to provide specific points of contact and other pertinent information about the Declaration.

g. FEMA may convene an initial scoping meeting with the Signatories, Invited Signatories, and other interested parties as soon as practicable after each Declaration to address Declaration-specific issues and procedures.

h. FEMA shall ensure that all documentation resulting from Undertakings reviewed pursuant to this Agreement is consistent with applicable SHPO and Tribal guidelines and the confidentiality provisions of 54 U.S.C. § 307103 and 36 CFR § 800.11(c).

2. State Historic Preservation Officer (SHPO):

a. SHPO shall review FEMA's determination of the Area of Potential Effects (APE), National Register eligibility determinations, and effect findings and respond within timeframes required by this Agreement.

b. Upon request, the SHPO shall provide FEMA and/or its designee(s) with available information about historic properties (such as access to online systems or site files, GIS data, survey information, geographic areas of concern). Such data sharing may be memorialized in an agreement. Only Qualified FEMA staff and/or designee(s) shall be afforded access to protected historic property information.

c. The SHPO shall identify consultants who meet the Secretary's Professional Qualifications or other staff to assist FEMA staff with their Section 106 responsibilities, and identify, in coordination with FEMA, those activities within the Section 106 review process that SHPO may perform for specific Undertakings as agreed in writing with FEMA.

d. As requested, SHPO staff shall be reasonably available as a resource and for consultation through site visits**,** written requests, telephone conversations, or electronic media. In those instances where consultation with SHPO has

occurred, FEMA shall provide a written summary via e-mail or regular mail to SHPO, including any decisions that were reached.

e. The SHPO may delegate some or all of its responsibilities under this Agreement to one or more Liaisons to serve as a dedicated point of contact for consultation with FEMA. The SHPO shall confer with FEMA about the selection of any Liaisons, the scope of responsibilities delegated and related implementing procedures. SHPO shall formally document these decisions for FEMA. Liaisons are not required to be members of the SHPO staff.

f. The SHPO shall participate in an initial scoping meeting for a Declaration.

g. The SHPO may assist local jurisdictions and/or the Recipient(s) in the State of Illinois with advance planning efforts to consider historic properties in the context of homeland security considerations, including disaster preparedness, response, recovery, and mitigation programs for which FEMA funding may be requested.

h. The SHPO shall coordinate with FEMA, to identify consulting parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.

i. The SHPO shall participate in annual reviews convened by FEMA to review the effectiveness of this Agreement in accordance with Stipulation I.B.1(e).

3. Recipient(s):

a. The Recipient(s) shall ensure that their subrecipients understand and acknowledge conditions and potential requirements that may be placed upon Undertakings as a result of Section 106 consultation and the provisions of this Agreement.

b. The Recipient(s) shall participate in an initial scoping meeting for a Declaration.

c. The Recipient(s) shall ensure that their subrecipients understand that failure to comply with any project-specific conditions that have been placed on their grants could jeopardize FEMA funding.

d. The Recipient(s) shall notify FEMA as soon as possible of any proposed change to the approved scope of work. The Recipient(s) shall direct their subrecipient not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.

e. The Recipient(s) shall ensure that its subrecipients are made aware that in the event of an inadvertent discovery involving an Undertaking that has affected a previously unidentified historic property or human remains, or affected a known historic property in an unanticipated manner, the subrecipient will

comply with Stipulation III.B, Inadvertent Discoveries, Previously Unidentified Properties, or Unexpected Effects.

f. The Recipient(s) shall ensure that in its subgrant agreements, any scope of work involving ground disturbance, and resultant contracts to execute said work, provide for the protection of and notification protocols for inadvertent discoveries or unexpected effects to historic properties and human remains.

g. If a Signatory Tribe assumes the role of Recipient for projects on Tribal lands, the Tribe shall assume the same responsibilities as outlined in Stipulation I.B.3 of this Agreement, Roles and Responsibilities of the Signatories.

C. Tribal Consultation

1. For FEMA Undertakings on Tribal lands or potentially affecting properties of religious and cultural significance to Tribes, and where no tribe-specific consultation agreements or protocols are in place, FEMA shall consult with affected Tribe(s) or in accordance with 36 CFR Part 800. In determining who the affected Tribe(s) may be, FEMA will first establish that it is a type of Undertaking with potential to affect historic properties with religious and cultural significance and may consult with the SHPO and Tribe(s), and may access the National Park Service (NPS) Native American Consultation Database or other tools to identify geographic tribal interests.

2. To the extent permitted by Section 304 of the NHPA, Section 9(a) of the Archeological Resources Protection Act (ARPA) (54 U.S.C. §470aa – 470mm), and any other applicable laws, FEMA shall ensure it withholds information protected by such laws from public disclosure.

3. FEMA shall invite affected Tribe(s) to participate in the initial scoping meeting within their geographic area of interest for each Declaration.

D. Public Participation

1. FEMA recognizes that the views of the public are essential to informed decision making throughout the Section 106 consultation process. FEMA shall notify the public of proposed Undertakings in a manner that reflects the nature, complexity, significance of historic properties likely affected by the Undertaking, the likely public interest given FEMA's specific involvement, and any confidentiality concerns of Tribe(s), private individuals, and businesses.

2. FEMA may consult with the Recipient(s), subrecipient, SHPO, and participating Tribe(s), and other consulting parties to determine if there are individuals or organizations with a demonstrated interest in historic properties that should be included as a consulting party for the Undertaking in accordance with 36 CFR § 800.2(c)(5). If such parties are identified or identify themselves to FEMA, FEMA shall provide them with information regarding the Undertaking and its effects on

historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c).

3. In accordance with the outreach strategy developed for an Undertaking in consultation with the SHPO and participating Tribe(s) for involving the public, FEMA shall identify the appropriate stages for seeking public input during the Section 106 consultation process. FEMA shall consider all views provided by the public regarding an Undertaking.

4. FEMA may also provide public notices and the opportunity for public comment or participation in an Undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 40 CFR Parts 1500-1508, and/or Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 CFR Part 9, and, if applicable, Executive Order 12898, Environmental Justice, provided such notices specifically reference Section 106 as a basis for public involvement.

5. Should a member of the public object in writing to implementation of the Agreement's terms, FEMA will notify the Signatories and Invited Signatories in writing and take the objection into consideration. FEMA shall consult with the objecting party and, if that party so requests, the other Signatories and Invited Signatories, for not more than thirty (30) days. In reaching its decision regarding the objection, FEMA shall take into consideration all comments from these parties. Within fifteen (15) days after closure of this consultation period, FEMA shall provide the other parties with its final decision in writing.

E. Timeframes and Communications

1. All time designations shall be in calendar days unless otherwise stipulated. If any Signatory does not object to FEMA's finding or determination related to an Undertaking within an agreed upon timeframe, FEMA may proceed to the next step in the consultation process as described in Stipulation II, Project Review.

2. Due to the varied nature of Undertakings, the individual response times to FEMA's requests for comment/concurrence will vary. These response times are contingent upon FEMA ensuring that its findings and determinations are made by Qualified staff and supported by documentation as required by 36 CFR § 800.11(d) and 36 CFR § 800.11(e), and consistent with FEMA guidance.

   a. For Emergency Undertakings as outlined in Stipulation II.B, Expedited Review of Emergency Undertakings, the SHPO and participating Tribe(s) shall respond to any FEMA request for comments within three (3) days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period.

   b. For Undertakings associated with the Individual Assistance (IA) and Public Assistance (PA) programs, the response time for each request for concurrence

while the Joint Field Office (JFO) is open shall be a maximum of ten (10) days, or in accordance with temporary timelines established by FEMA on a Declaration by Declaration basis. FEMA will call the THPOs and consulting Tribe(s) to inform them the notice and documentation has been sent and this is an expedited review.

c. For the Hazard Mitigation Grant Program (HMGP), all non-disaster programs, IA, and PA undertakings to be reviewed after the JFO is closed, the response time for each request for concurrence shall be a maximum of thirty (30) days.

3. The consulting parties may send and accept official notices, comments, requests for further information and documentation, and other communications required by this Agreement by e-mail.

II. PROJECT REVIEW

A. Programmatic Allowances

1. If FEMA determines that the entire scope of an Undertaking conforms to one or more allowances in Appendix B of this Agreement, with determinations for Tier II Allowances being made by SOI-qualified staff, FEMA shall complete the Section 106 review process by documenting this determination in the project file, without SHPO review or notification.

2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify the SHPO, participating Tribe(s), and the NPS NHL Program Manager of the NPS Midwest Regional Office that the Undertaking conforms to one or more allowances. FEMA shall provide information about the proposed scope of work for the Undertaking and the allowance(s) enabling FEMA's determination.

3. If FEMA determines any portion of an Undertaking's scope of work does not conform to one or more allowances listed in Appendix B, FEMA shall conduct expedited or standard Section 106 review, as appropriate, for the entire Undertaking in accordance with Stipulation II.B, Expedited Review for Emergency Undertakings, or Stipulation II.C, Standard Project Review.

4. Allowances may be revised and new allowances may be added to this Agreement in accordance with Stipulation IV.A.3, Amendments.

B. Expedited Review for Emergency Undertakings

1. Determine Expedited Review

a. As part of the Declaration process, FEMA shall define the time interval during which the disaster causing incident occurs (the incident period, as defined in 44 CFR § 206.32(f)). FEMA may approve direct Federal assistance and/or funding for emergency work (as defined in 44 CFR § 206.201(b)) that occurs during the incident period, including work already completed, in response to

an immediate threat to human health and safety or property. Pursuant to 36 CFR § 800.12(d), FEMA may conduct expedited review of emergency Undertakings for thirty (30) days from the beginning of the incident period.

b. Should FEMA determine that it is necessary to extend the expedited review period for emergency Undertakings beyond the initial thirty (30) days, FEMA shall, in 30-day increments, as needed, notify in writing the ACHP, Recipient, SHPO and participating Tribe(s).

2. Conduct Expedited Reviews

a. If the emergency Undertaking is an immediate rescue and salvage operation conducted in response to an event to preserve life and property, FEMA has no Section 106 consultation responsibilities in accordance with 36 CFR § 800.12(d); or

b. If the emergency Undertaking meets one or more of the Allowances in Appendix B of this Agreement, FEMA shall complete the Section 106 review process pursuant to Stipulation II.A.1, Programmatic Allowances.

c. If FEMA determines that the emergency Undertaking would adversely affect a historic property during this expedited review period:

i. To the extent practicable, FEMA will propose treatment measures that would address adverse effects during implementation, and request the comments of the SHPO and participating Tribe(s) within three (3) days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period. FEMA will call the THPOs and consulting Tribe(s) to inform them the notice and documentation has been sent and this is an expedited review.

ii. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA shall clarify that an "expedited review" is being requested for the Undertaking.

iii. FEMA shall take into account any timely comments provided by SHPO and/or participating Tribe(s) in making a decision on how to proceed.

iv. Should the SHPO and/or participating Tribe(s) not comment within three (3) calendar days, FEMA shall complete Section 106 consultation for the Undertaking based on the available information.

v. FEMA shall notify the SHPO and participating Tribe(s) of the final decision, indicating how any comments received were considered in reaching that decision.

C. Standard Project Review: For Undertakings not exempt from further Section 106 review, including ground disturbing activities, and construction related to 44 CFR §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement

housing), 206.117(b)(4) (permanent housing construction), 206.117(c)(1)(vi) (repair or replacement of privately owned access routes), and repair of multi-family housing units, FEMA shall ensure that the following standard project review steps are implemented. In the interest of streamlining, FEMA may combine some or all of these steps during consultation in accordance with 36 CFR § 800.3(g).

1. *Consulting Parties:* FEMA shall consider all written requests of individuals and organizations to participate as consulting parties, and consult with the SHPO and participating Tribe(s) to identify any other parties that meet the criteria to be consulting parties and invite them to participate in the Section 106 process. FEMA may invite others to participate as consulting parties as the Section 106 consultation proceeds. FEMA shall invite any individual or organization that will assume a specific role or responsibility outlined in a Memorandum of Agreement (MOA) or Programmatic Agreement to participate as an invited signatory to the agreement.

2. *Area of Potential Effects:*

    a. For standing structures not adjacent to or located within the boundaries of a National Register listed or eligible district, Qualified staff may define the APE as the individual structure when the proposed Undertaking is limited to its repair or rehabilitation (as defined in 36 CFR § 68.3(b)).

    b. For all other Undertakings, Qualified staff shall determine the APE in consultation with the SHPO and participating Tribe(s). FEMA may consider information provided by other parties, such as local governments and the public, when establishing the APE.

3. *Identification and Evaluation:* Qualified staff shall determine, in consultation with the SHPO and participating Tribe(s) if the APE contains historic properties, including properties of religious and cultural significance. This may include the review of documentation provided by the Recipient or subrecipient in coordination with the SHPO.

    a. *Level of Effort:* FEMA shall make a reasonable and good faith effort to identify historic properties in accordance with 36 CFR § 800.4(b)(1). FEMA may consult with the SHPO to determine the level of effort and methodology necessary to identify and evaluate a variety of historic property types. For properties of religious and cultural significance to affected Tribe(s), FEMA shall consult with the affected Tribe(s) to determine geographical areas containing them that may be affected by an Undertaking and determine the necessary level of effort to identify and evaluate or avoid any such historic properties.

    b. *National Historic Landmarks:* When FEMA identifies an Undertaking with the potential to affect an NHL, FEMA shall contact the NPS NHL Program Manager of the appropriate NPS Regional Office in addition to the SHPO, participating Tribe(s), and other consulting parties. The purpose of this

notification is to ensure early coordination for the Undertaking which FEMA later may determine adversely affects the NHL as outlined in Stipulation II.C.6.

c. *Determinations of Eligibility:* FEMA shall review or determine National Register eligibility based on identification and evaluation efforts, and consult with SHPO, participating Tribe(s), and other consulting parties regarding these determinations. Should the SHPO, participating Tribe(s), or another consulting party disagree with the determination of eligibility, FEMA shall either:

   i. Elect to consult further with the objecting party until the objection is resolved;

   ii. Treat the property as eligible for the National Register; or

   iii. Obtain a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4(c)(2).

4. *Findings of No Historic Properties Affected:*

   a. FEMA shall make a finding of "no historic properties affected" under the following circumstances:

      i. If no historic properties are present in the APE;

      ii. The Undertaking is designed to avoid effects to historic properties, including National Register listed or eligible properties of religious or cultural significance to participating Tribe(s); or

      iii. The Undertaking does not affect the character defining features of a historic property.

   b. FEMA shall notify the SHPO, participating Tribe(s), and any other consulting parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d). Unless the SHPO or participating Tribe(s) objects to the finding within the applicable timeframe outlined in Stipulation I.E, Timeframes and Communications, the Section 106 review of the Undertaking will have concluded. For reviews with 10-day response times per paragraph I.E.2(b) conducted while the JFO is open, FEMA will call the THPOs and consulting Tribe(s) to inform them the notice and documentation has been sent and this is an expedited review.

   c. If the SHPO or participating Tribe(s) objects to a finding of "no historic properties affected," FEMA shall consult with the objecting party to resolve the disagreement.

      i. If the objection is resolved, FEMA either may proceed with the Undertaking in accordance with the resolution or reconsider effects on the

historic property by applying the criteria of adverse effect pursuant to Stipulation II.C.5, Application of the Criteria of Adverse Effect, below.

ii. If FEMA is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review FEMA's finding in accordance with 36 CFR § 800.4(d)(1)(iv)(A) through 36 CFR § 800.4(d)(1)(iv)(C). FEMA shall consider the ACHP's recommendation in making its final determination. If FEMA's final determination is to reaffirm its "no historic properties affected" finding, the Section 106 review of the Undertaking will have concluded. Otherwise, FEMA will proceed to Stipulation II.C.5., below.

5. *Application of the Criteria of Adverse Effect:* If FEMA finds an Undertaking may affect historic properties in the APE, including those of religious or cultural significance to affected Tribe(s), FEMA shall apply the criteria of adverse effect to historic properties within the APE(s), taking into account the views of the consulting parties and the public concerning effects in accordance with 36 CFR § 800.5(a).

   a. If FEMA determines that an Undertaking does not meet the adverse effect criteria, FEMA shall propose a finding of "no adverse effect" in accordance with 36 CFR § 800.5(b).

      i. FEMA shall notify the SHPO or participating Tribe(s), and all other consulting parties of its finding and provide supporting documentation pursuant to 36 CFR §800.11(e).

      ii. Unless a consulting party objects within the applicable timeframe outlined in Stipulation I.E, Timeframes and Communications, FEMA will proceed with its "no adverse effect" determination and conclude the Section 106 review.

      iii. If a consulting party objects to a finding of "no adverse effect," FEMA will consult with the objecting party to resolve the disagreement.

         1) If the objection is resolved, FEMA shall proceed with the Undertaking in accordance with the resolution, or;

         2) If the objection cannot be resolved, FEMA shall request that the ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. FEMA shall consider the ACHP's comments in making its final determination.

   b. If FEMA finds the Undertaking may adversely affect historic properties, FEMA shall request through the Recipient that the subrecipient revise the scope of work to substantially conform to the *Standards* for standing

structures, or avoid or minimize adverse effects for National Register listed or eligible archaeological properties.

i. If the subrecipient modifies the scope of work to avoid the adverse effect(s), FEMA shall notify the SHPO, participating Tribe(s), and all other consulting parties, and provide supporting documentation. Unless a consulting party makes a timely objection in accordance with the applicable timeframe outlined in Stipulation I.E, Timeframes and Communications, FEMA shall proceed with its "no adverse effect" determination, including any conditions, and conclude the Section 106 review.

ii. If an Undertaking is not modified to avoid adverse effects, FEMA shall initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.C.6, Resolution of Adverse Effects.

6. *Resolution of Adverse Effects:* If FEMA determines that an Undertaking may adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with the SHPO, Recipient, subrecipient, participating Tribe(s), the ACHP, if participating, and other consulting parties, by one of the following methods depending upon the severity of the adverse effect(s) as well as determination of the historic property's significance on a local, state or national level. When FEMA determines an Undertaking will adversely affect an NHL, FEMA shall notify and invite the Secretary and ACHP to participate in consultation in accordance with 36 CFR § 800.10. When the ACHP participates in consultation related to an NHL, the ACHP shall report the outcome of the consultation to the Secretary and the FEMA Administrator.

a. *Abbreviated Consultation Process:* After taking into consideration the significance of the historic properties affected, the severity of the adverse effect(s), and avoidance or minimization of the adverse effect(s), FEMA may propose in writing to the consulting parties to resolve the adverse effects of the Undertaking through the application of one or more Treatment Measures outlined in Appendix C as negotiated with the SHPO, participating Tribe(s), and other consulting parties. The use of these Treatment Measures shall not require the execution of an (MOA or Programmatic Agreement.

i. In consultation with the SHPO, participating Tribe(s), and other consulting parties, FEMA shall propose in writing the implementation of a specific Treatment Measure, or combination of Treatment Measures, with the intent of expediting the resolution of adverse effects, and provide documentation as required by 36 CFR § 800.11(e) and subject to the confidentiality provisions of 36 CFR § 800.11(c). Unless a consulting party or the ACHP objects within fifteen (15) days of receipt of FEMA's proposal, FEMA shall proceed with the implementation of the Treatment Measure(s) and will conclude the Section 106 review. For reviews with 10-day response times per Stipulation I.E.2(b) conducted while the JFO is

open, FEMA will call the THPOs and consulting Tribe(s) to inform them that the notice and documentation has been sent and in accordance with an expedited resolution of adverse effects.

ii. If any of the consulting parties or the ACHP objects within the fifteen (15) day review and comment period to the resolution of adverse effects through the application of the Abbreviated Consultation Process, FEMA shall resolve the adverse effect(s) using procedures outlined below in Stipulation II.C.6(b), MOA or Stipulation II.C.6.(c), Programmatic Agreement.

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

b. *Memorandum of Agreement*: FEMA shall provide the ACHP with an adverse effect notice in accordance with 36 CFR § 800.6(a)(1) if it has not already provided such under the Abbreviated Consultation Process of this Agreement, if a consulting party or the ACHP objects in accordance with Stipulation II.C.6(a)(ii), or if FEMA, in consultation with the SHPO, participating Tribe(s), and other consulting parties, has determined that an MOA would be more appropriate to resolve the adverse effect(s). In consultation with the SHPO, participating Tribe(s), and other consulting parties, including the ACHP (if participating), FEMA shall develop an MOA in accordance with 36 CFR § 800.6(c) to agree upon treatment measures to avoid, minimize, and/or mitigate the adverse effect(s) on historic properties. The MOA may also include treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of more traditional treatment measures.

c. *Programmatic Agreement*: Should the execution of an MOA be inappropriate given the similar nature of effects on historic properties, the inability to determine effects prior to approval of an Undertaking, or where other circumstances warrant, FEMA, shall consult with the SHPO, participating Tribe(s), the ACHP, if participating, and any other consulting parties to develop a Programmatic Agreement in accordance with 36 CFR § 800.14(b) and identify programmatic conditions or treatment measures to govern the resolution of potential or anticipated adverse effects from certain complex project situations for an Undertaking or for multiple but similar Undertakings proposed by a single subrecipient.

7. *Objections:* Should any signatory or consulting party object within the timeframes established by this Agreement to any plans, specifications, or actions taken pursuant to resolving an adverse effect, FEMA shall consult further with the objecting party to seek resolution. If FEMA determines the objection cannot be resolved, FEMA shall address the objection in accordance with Stipulation IV.B, Dispute Resolution.

III. OTHER CONSIDERATIONS

A. Changes to an Approved Scope of Work: The Recipient shall notify FEMA and shall require a subrecipient to notify it immediately when a subrecipient proposes changes to an approved scope of work for an Undertaking.

1. If FEMA determines the change meets a Programmatic Allowance or has no effect on the property, FEMA shall approve the change.
2. If the change can be modified to meet a Programmatic Allowance, or conform to any applicable SOI Standards, FEMA shall conclude its Section 106 review responsibilities.
3. If FEMA determines that the change does not meet an Allowance, FEMA shall initiate consultation pursuant to Stipulation II.C, Standard Project Review.

B. Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects:

1. Upon notification by a subrecipient of an unexpected discovery, or if it appears that an Undertaking has affected a previously unidentified property or affected a known historic property in an unanticipated manner, in accordance with Stipulation I.B.3(e), Recipient Roles and Responsibilities, the Recipient shall immediately notify FEMA and require the subrecipient to:

   a. Stop construction activities in the vicinity of the discovery.

   b. Take all reasonable measures to avoid or minimize harm to the property until FEMA has completed consultation with the SHPO, participating Tribe(s), and any other consulting parties. Upon notification by the Recipient of a discovery, FEMA shall immediately notify the SHPO, participating Tribe(s), and other consulting parties that may have an interest in the discovery, previously unidentified property or unexpected effects, and consult to evaluate the discovery for National Register eligibility and/or the effects of the Undertaking on historic properties.

   c. If human remains are discovered, notify the local law enforcement office and coroner/medical examiner in accordance with applicable State statute(s), and protect the remains from any harm. Discoveries of human remains on Federal or Tribal lands shall be subject to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001-3013, 18 U.S.C. § 1170) and ARPA, as applicable.

d. Assist FEMA in completing the following actions, as required:

i. FEMA shall consult with the SHPO, participating Tribe(s), and other consulting parties in accordance with the consultation process outlined in Stipulation II, Project Review, to develop a mutually agreeable action plan with timeframes to identify the discovery or previously unidentified property, take into account the effects of the Undertaking, resolve adverse effects if necessary, and ensure compliance with applicable Federal, State, and local statutes.

ii. FEMA shall coordinate with the Recipient and the subrecipient regarding any needed modification to the scope of work for the Undertaking necessary to implement recommendations of the consultation and facilitate proceeding with the Undertaking.

iii. In cases where discovered human remains are determined to be Native American, FEMA shall consult with the appropriate Tribal representatives and SHPO. In addition, FEMA shall follow the guidelines outlined in the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects* (2007) and 20 ILCS 3440 / Human Skeletal Remains Protection Act (http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=376&ChapterID=5).

C. Curation

1. In cases where archaeological survey and testing are conducted on private land, any recovered collections remain the property of the land owner. In such instances, FEMA and the Recipient, in coordination with the SHPO, and affected Tribe(s), shall encourage land owners to donate the collection(s) to an appropriate public or Tribal entity. In cases where the property owner wishes to transfer ownership of the collection(s) to a public or Tribal entity, and in the case of artifacts recovered from public lands, FEMA and the Recipient shall ensure that recovered artifacts and related documentation are curated in a suitable repository as agreed to by FEMA, SHPO, and affected Tribe(s), and following applicable State or Tribal guidelines.

2. When an Undertaking will adversely affect a National Register listed or eligible archaeological site, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery. FEMA shall consult with the SHPO, participating Tribe(s), and other consulting parties to prepare a research design (data recovery plan), including a specific plan for curation. This plan will incorporate any relevant curation provisions contained in the SHPO's *Guidelines for Conducting Archaeological Studies,* ACHP's "*Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*" published in the Federal Register (64 Federal Register 27085-27087 (May 18, 1999)), or other provisions agreed to by

the consulting parties. No excavation should be initiated before FEMA acceptance and approval of the curation plan.

a. As stipulated in the curation plan, artifacts, as well as field and laboratory records sufficient to document the collection, shall be curated at a facility, preferably in-state, that meets the standards of, and in accordance with the provisions of 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections," and applicable State or Tribal requirements.

D. Review of Undertakings Initiated Before Initiation or Completion of Section 106 Review

1. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a subrecipient who, with intent to avoid the requirements of this Agreement or Section 106 of the NHPA, has intentionally significantly and adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed an adverse effect to occur. However, if after consultation with the SHPO, appropriate Tribes(s), Recipient, and ACHP, FEMA determines that extraordinary circumstances justify granting assistance despite the adverse effect created or permitted by the subrecipient, FEMA shall complete consultation for the Undertaking pursuant to the terms of this Agreement.

2. FEMA shall specifically advise the Recipient and shall require that the Recipient advise its subrecipients in writing that they may jeopardize Federal funding if work is performed without all required local, State, and Federal licenses, permits, and/or approvals, including the completion of the Section 106 process. FEMA also shall document this requirement in its Record of Environmental Consideration, as applicable, as well as all project approval documents specifying the project scope and limits, and containing all conditions and caveats.

3. In circumstances where FEMA determines a subrecipient has initiated an Undertaking without willful intent to avoid the requirements of this Agreement or Section 106 of NHPA, FEMA shall proceed as follows:

   a. Determine if the Undertaking is of a type for which FEMA has no further Section 106 responsibilities, namely:

      i. An Undertaking listed in Stipulation I.A.7; or

      ii. An immediate rescue and salvage operation in accordance with 36 CFR § 800.12(d); or

      iii. A Programmatic Allowance as described under Stipulation II.A.

   b. In any such cases listed in Stipulation III.D.3.a., above, FEMA shall document this determination in the project files, and consider the Undertaking Section 106 compliant.

c. If FEMA determines the Undertaking would have required Section 106 review, FEMA shall coordinate with the SHPO and appropriate Tribe(s) to determine if consultation is feasible.

   i. If after coordination with the SHPO and appropriate Tribes, FEMA determines that consultation is feasible, FEMA shall review the Undertaking in accordance with Stipulation II.C, Standard Project Review.

   ii. If after coordination with the SHPO and appropriate Tribe(s), FEMA determines that review is infeasible, FEMA shall document the outcome to the Section 106 review process and inform the FPO of the outcome. The applicable FEMA program shall take the outcome into account before making a decision whether to fund the Undertaking. FEMA shall provide written notification of its funding decision to the SHPO, appropriate Tribe(s), Recipient, and the ACHP.

4. FEMA shall ensure that all Undertakings considered for after the fact review in accordance with this stipulation are included in the annual report.

IV. IMPLEMENTATION OF AGREEMENT

A. Amendments

1. If any Signatory determines that an amendment to the terms of this Agreement must be made, the Signatories shall consult for no more than thirty (30) days to seek amendment of the Agreement.

2. An amendment to this Agreement, exclusive of the appendices, shall be effective only when it has been signed by all the Signatories. An amendment shall be effective for Undertakings occurring on or affecting historic properties on Tribal lands only when the Tribe has signed the Agreement and its amendment.

3. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances), Appendix C (Treatment Measures), Appendix D (Workflow Diagrams), and any other appendices may be amended at the request of FEMA or another Signatory in the following manner:

   a. FEMA, on its own behalf or on behalf of another Signatory, shall notify the other Signatories of the intent to modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all signatory parties.

   b. If no other Signatory objects in writing within thirty (30) days of receipt of FEMA's proposed modification, FEMA shall date and sign the amended Appendix and provide a copy of the amended Appendix to the other Signatories. Such an amendment shall go into effect on the date FEMA transmits the amendment to the other Signatories.

B. Dispute Resolution

1. Should any Signatory object in writing to the terms of this Agreement, FEMA shall consult with the objecting party for not more than thirty (30) days to resolve the objection.
2. If the objection is resolved within thirty (30) days, FEMA shall proceed in accordance with the resolution.
3. If FEMA determines within thirty (30) days that the objection cannot be resolved, FEMA shall forward to ACHP all documentation relevant to the objection, including FEMA's proposed resolution. Within thirty (30) days of receipt, ACHP will:
   a. Concur in FEMA's proposed resolution; or
   b. Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the objection; or
   c. Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so.
4. FEMA shall take into account any ACHP recommendations or comments, and any comments from the other Signatories, in reaching a final decision regarding the objection. FEMA shall provide in writing to the ACHP and Signatories a summary of its final decision before authorizing any disputed action to proceed. The Signatories shall continue to implement all other terms of this Agreement that are not subject to objection.
5. Should ACHP not respond within thirty (30) days, FEMA may assume ACHP has no comment and proceed with its proposed resolution to the objection after providing the ACHP and Signatories a written summary of its final decision.

C. Severability and Termination

1. In the event any provision of this Agreement is deemed by a Federal court to be contrary to, or in violation of, any applicable existing law or regulation of the United States of America, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the Agreement shall remain in effect.
2. A participating Tribe may notify the other Signatories that it is fully withdrawing from participation in the Agreement. Following such a withdrawal, FEMA shall review undertakings that may affect historic properties of religious and cultural significance to the Tribe, and Undertakings that occur on the Tribal lands of the relevant Tribe, in accordance with 36 CFR §§ 800.3 through 800.7, 36 CFR § 800.8(c), or an applicable alternative under 36 CFR § 800.14. Withdrawal from this Agreement by a Tribe does not terminate the Agreement. At any time that this Agreement remains in effect, a Tribe that has withdrawn from the Agreement may

notify FEMA, the Recipient, and SHPO in writing that it has rescinded its notice withdrawing from participation in the Agreement.

3. The ACHP and Signatories other than participating Tribes may terminate this Agreement by providing thirty (30) days written notice to the other Signatories, provided that the Signatories consult during this period to seek amendments or other actions that would prevent termination. If this Agreement is terminated, FEMA shall comply with Section 106 through other applicable means pursuant to 36 CFR Part 800. Upon such determination, FEMA shall provide all other Signatories and the ACHP with written notice of the termination of this Agreement.
4. This Agreement may be terminated by the implementation of a subsequent Agreement, pursuant to 36 CFR § 800.14(b), that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

D. Duration and Extension

1. This Agreement shall remain in effect from the date of execution for a period not to exceed five (5) years unless otherwise extended pursuant to Stipulation IV.D.2 below, or terminated pursuant to Stipulation IV.C.2 or IV.C.4, Severability and Termination. The Agreement shall remain in effect for Declarations made prior to expiration of the Agreement in order to minimize delays in delivery of FEMA assistance.
2. The Signatories may collectively agree to extend this Agreement to cover additional calendar years, or portions thereof, through an amendment per Stipulation IV.A., provided that the original Agreement has not expired.

E. Execution and Implementation

1. This Agreement may be executed in counterparts, with a separate page for each Signatory, and shall become effective on the date of the final signature of FEMA, the SHPO, and participating Tribes.
2. The Agreement shall go into effect regarding Undertakings occurring, or affecting historic properties, on Tribal lands only when the relevant Tribe has signed the Agreement.
3. FEMA shall ensure that each Signatory is provided with a complete copy of the Agreement, including an original set of signatures.
4. Execution and implementation of this Agreement evidence that FEMA has afforded ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of its referenced Programs.

FEDERAL EMERGENCY MANAGEMENT AGENCY
SIGNATORY

Janet M. Odeshoo
Deputy Regional Administrator

May 16, 2018
Date

ILLINOIS EMERGENCY MANAGEMENT AGENCY
SIGNATORY

William P. Robertson
Acting Director

5/30/18
Date

ILLINOIS STATE HISTORIC PRESERVATION OFFICER SIGNATORY

Wayne A. Rosenthal
Director, Illinois Department of Natural Resources,
and Illinois State Historic Preservation Officer

6/5/18
Date

APPROVED FOR EXECUTION
Date: 5 June 2018
Legal Counsel: D. Brensing

IOWA TRIBE OF KANSAS AND NEBRASKA
INVITED SIGNATORY

Lance Foster
Tribal Historic Preservation Officer

6/8/18
Date

LANDMARKS ILLINOIS
CONCURRING PARTY

Bonnie McDonald

Bonnie McDonald
Executive Director

6/1/2018
Date

Appendix A

FEMA Program Summaries

As noted in the second clause of the Agreement, additional funding programs may be authorized by Congress from time to time. For that reason all funding programs administered by FEMA may not be included in this list.

On Tuesday, January 29, 2013, President Obama signed the Sandy Recovery Improvement Act of 2013, that included a provision amending the Stafford Act to provide Federally recognized Tribal governments the option to choose whether to make a request directly to the President for a Federal emergency or major disaster declaration, or to seek assistance, as they do presently, under a declaration for a State. Federally recognized Tribal governments, therefore, may function as Recipients under specific disaster declarations.

This Appendix may be amended in accordance with Stipulation IV.A, Amendments, and will be updated, if necessary, as part of the annual reporting requirements noted in paragraph I.B(1)(d).

Disaster Response and Recovery Programs

The following programs are authorized under Titles IV and V of the Stafford Act.

Fire Management Assistance Grant Program (FMAG)

The FMAG is available to State, Tribal, Territory, and local governments for the mitigation, management, and control of fires on publicly or privately owned lands. Eligible costs may include expenses for field camps, equipment use, repair and replacement, materials and supplies, and mobilization and demobilization activities.

Hazard Mitigation Grant Program (HMGP)

The HMGP provides grants to States, Territories, Tribes, local governments, and eligible private non-profits to implement long-term hazard mitigation measures after a Declaration. Activities may include safe rooms, buyouts, retrofits, relocations, elevations, and minor flood control projects.

Individual Assistance Programs (IA)

These programs help to ensure that individuals and families that have been affected by disasters have access to the full range of FEMA assistance including: crisis counseling (Section 416), disaster legal services (Section 415), essential assistance (Section 403), emergency sheltering assistance (Section 403), transportation (Section 419), funeral services, minor home repairs (Section 408), and temporary housing assistance (Section 408). It should be noted that other Federal agencies provide disaster assistance programs, services, and activities to individuals as well, such as the U.S. Small Business Administration, U.S. Department of Agriculture, and U.S. Department of Labor, but such assistance is not subject to the terms of this Agreement.

Public Assistance Program (PA)

This program assists States, Tribal, Territory, and local governments, and certain types of private nonprofit organizations quickly respond to and recover from major disasters or emergencies declared by the President. Grants are provided for debris removal (Category A), emergency protective measures (Category B), and the repair, replacement, or restoration of disaster-damaged, publicly owned and certain private non-profit facilities (Categories C-G).

Non-Disaster Programs

Assistance to Firefighters Grant Program

The AFG program provides funding for purchase of equipment and retrofit or construction of fire stations to improve first responder capabilities.

Buffer Zone Protection Program (BZPP)

The BZPP provides funding to increase the preparedness capabilities of jurisdictions responsible for the safety and security of communities surrounding high-priority pre-designated Tier 1 and Tier 2 critical infrastructure and key resource (CIKR) assets, including chemical facilities, financial institutions, nuclear and electric power plants, dams, stadiums and other high-risk/high-consequence facilities, through allowable planning and equipment acquisition.

Citizen Corps Program (CCP)

The Citizen Corps mission is to bring community and government leaders together to coordinate community involvement in emergency preparedness, planning, mitigation, response and recovery.

Driver's License Security Grant Program

The purpose of the Driver's License Security Grant Program is to prevent terrorism, reduce fraud, and improve the reliability and accuracy of personal identification documents that States and territories issue.

Emergency Management Performance Grants (EMPG)

The purpose of the EMPG program is to assist State and local governments in enhancing and sustaining all-hazards emergency management capabilities.

Emergency Operations Center (EOC) Grant Program

The EOC grant program is intended to improve emergency management and preparedness capabilities by supporting flexible, sustainable, secure, and interoperable Emergency Operations Centers (EOCs) with a focus on addressing identified deficiencies and needs. This program provides funding for construction or renovation of a State, Tribal, Territory, or local governments' principal EOC. Fully capable emergency operations facilities at the State Tribal, Territory, and local levels are an essential element of a comprehensive national emergency management system and are necessary to ensure continuity of operations and continuity of government in major disasters caused by any hazard.

Homeland Security Grant Program (HSGP)

The HSGP plays an important role in the implementation of the National Preparedness System (NPS) by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal (NPG) of a secure and resilient Nation. HSGP is comprised of three interconnected grant programs including (1) the State Homeland Security Program (SHSP), (2) the Urban Areas Security Initiative (UASI) and the Operation Stonegarden (OPSG). Together, these grant programs and other future projects that may be included under the HSGP fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration.

Integrated Public Alert and Warning System (IPAWS)

The Integrated Public Alert and Warning System (IPAWS) was established by Executive Order 13407 in 2006. In the event of a national emergency, the President may use IPAWS to send a message to the American people quickly and simultaneously through multiple communications pathways. FEMA has identified several radio transmission sites across the nation which provide significantly powerful signals for this purpose, and is responsible for upgrading, maintaining, and managing the agency installed and owned auxiliary fuel systems at each of these radio transmission sites.

Interoperable Emergency Communications Grant Program (IECGP)

IECGP provides governance, planning, training and exercise and equipment funding to States, territories, and local and Tribal governments to carry out initiatives to improve interoperable emergency communications, including communications in collective response to natural disasters, acts of terrorism and other man-made disasters. According to the legislation that created IECGP, all proposed activities must be integral to interoperable emergency communications and must be aligned with the goals, objectives, and initiatives identified in the recipient's approved statewide Communication Interoperability Plans (SCIP). IECGP will also advance DHS near-term priorities that are deemed critical to improving interoperable emergency communications and are consistent with goals and objectives of the National Emergency Communications Plan.

Flood Mitigation Assistance Program (FMA)

The FMA provides planning, project, or technical assistance grant funds to assist States and communities implement measures that reduce or eliminate the long-term risk of flood damage to buildings and other structures insurable, which may include elevations and buyouts, under the National Flood Insurance Program.

Freight Rail Security Grant Program (FRSGP)

The FRSGP funds security training for frontline employees, the completion of vulnerability assessments, the development of security plans within the freight rail industry and GPS tracking systems for railroad cars transporting toxic inhalation materials.

Intercity Bus Security Grant Program (IBSGP)

The IBSGP provides funding to create a sustainable program for the protection of intercity bus systems and the traveling public from terrorism. The program seeks to assist operators of fixed-route intercity and charter bus services in obtaining the resources required to support security measures such as enhanced planning, facility security upgrades and vehicle and driver protection.

Intercity Passenger Rail (Amtrak)

The purpose of the Intercity Passenger Rail (IPR) is to create a sustainable, risk-based effort to protect critical surface transportation infrastructure and the traveling public from acts of terrorism, major disasters and other emergencies within the Amtrak rail system.

Metropolitan Medical Response System (MMRS) Program

The MMRS program supports the integration of emergency management, health, and medical systems into a coordinated response to mass casualty incidents caused by any hazard. Successful MMRS recipients reduce the consequences of a mass casualty incident during the initial period of a response by having augmented existing local operational response systems before the incident occurs.

Nonprofit Security Grant Program (NSGP)

NSGP provides funding support for target-hardening activities to nonprofit organizations that are at high risk of a terrorist attack and are located within one of the specific UASI-eligible urban areas.

Operation Stonegarden (OPSG)

The intent of OPSG is to enhance cooperation and coordination among local, State and Federal law enforcement agencies in a joint mission to secure the United States borders along routes of ingress from international borders to include travel corridors in States bordering Mexico and Canada, as well as States and territories with international water borders.

Port Security Grant Program (PSGP)

The PSGP provides grant funding to port areas for the protection of critical port infrastructure from terrorism. PSGP funds are primarily intended to assist ports in enhancing maritime domain awareness, enhancing risk management capabilities to prevent, detect, respond to and recover from attacks involving improvised explosive devices (IEDs), weapons of mass destruction (WMDs) and other non-conventional weapons, as well as training and exercises and Transportation Worker Identification Credential (TWIC) implementation.

Pre-Disaster Mitigation Program (PDM)

The PDM program provides competitive grants to States, Territories, Tribes, and local governments for hazard mitigation planning and the implementation of mitigation projects prior to a disaster event. Activities may include safe rooms, planning, buyouts, retrofits, relocations, elevations, minor flood control projects, and vegetative fuels reduction.

State Homeland Security Program (SHSP)

This core assistance program provides funds to build capabilities at the state and local levels and to implement the goals and objectives included in state homeland security strategies and initiatives in the State Preparedness Report.

State Homeland Security Program Tribal (SHSP Tribal)

To provide supplemental funding to directly eligible tribes to help strengthen the nation against risks associated with potential terrorist attacks. Pursuant to the 9/11 Act, “a directly eligible tribe applying for a grant under section 2004 [SHSP] shall designate an individual to serve as a tribal

liaison with [DHS] and other Federal, state, local, and regional government officials concerning preventing, preparing for, protecting against and responding to acts of terrorism."

Transit Security Grant Program (TSGP)

The TSGP provides grant funding to the nation's key high-threat urban areas to enhance security measures for their critical transit infrastructure including bus, ferry and rail systems.

Trucking Security Program (TSP)

TSP funding will be awarded to eligible applicants to implement security improvement measures and policies deemed valuable by DHS as indicated in the *Security Action Items* publication of June 26, 2008. These items are primarily focused on the purchase and installation or enhancement of equipment and systems related to tractor and trailer tracking systems. Additionally, the TSP will provide funding to develop a system for DHS to monitor, collect and analyze tracking information; and develop plans to improve the effectiveness of transportation and distribution of supplies and commodities during catastrophic events.

Urban Areas Security Initiative (UASI) Program

The UASI program focuses on enhancing regional preparedness in major metropolitan areas. The UASI program directly supports the National Priority on expanding regional collaboration in the National Preparedness Guidelines and is intended to assist participating jurisdictions in developing integrated regional systems for prevention, protection, response and recovery.

Appendix B

Programmatic Allowances

This list of allowances enumerates FEMA funded activities that based on FEMA experience have no or limited effect on historic properties if implemented as specified in this Appendix and will not require review by the SHPO.

The allowances consist of two tiers – First Tier and Second Tier. Staff may apply First Tier allowances without meeting any professional historic preservation qualification standards, while only staff meeting the applicable SOI Professional Qualifications Standards may apply Second Tier allowances.

When referenced in the allowances, "in-kind" shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including form, color, and workmanship. The in-kind repair provided for in both First and Second Tier allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures.

The phrase "previously disturbed soils" typically refers to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing archaeological artifacts, and features within their original depositional contexts. For the purpose of applying these allowances, "previously disturbed soils" will show obvious evidence of extensive ground disturbance, such as previous construction activities, utilities burials, road, or ditch construction, or the presence of artificial fill that extends below the depth of ground disturbance for the project under consideration. Based on this description, agricultural fields are not considered previously-disturbed areas. Any substantial workspaces, access routes, or staging areas for these activities should be placed in previously disturbed or archaeologically surveyed areas, or protective mats or other measures should be used where appropriate to minimize ground disturbance.

I. First Tier Allowances

A. GROUND DISTURBING ACTIVITIES AND SITE MODIFICATION, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils, including the area where the activity is staged.

1. Debris and Snow Removal

a. Debris removal and collection, including removal of snow, uprooted trees, limbs and branches from public rights of way and public areas and areas as well as the transport and disposal of such waste to existing licensed waste facilities or landfills. This includes the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads. This allowance does not include the removal of uprooted trees from cemeteries and burial grounds.

b. Removal of debris from private property provided that buildings are not affected, ground disturbance is minimal, and in-ground elements, such as driveways, walkways or swimming pools are left in place.

c. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.

d. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.

e. Dewatering flooded developed areas of up to three acres by pumping.

2. **Temporary Structures and Housing:** Installation and removal of temporary structures for use as school classrooms, offices, or temporary shelters for essential public service agencies, such as police, fire, rescue and medical care, as well as temporary housing for disaster personnel and survivors at the following types of locations:

   a. Single units on private residential sites when all utilities are installed above ground or tie into pre-existing utility lines.

   b. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility hookups;

   c. Paved areas, such as parking lots and paved areas at such facilities as conference centers, shopping malls, airports, industrial port facilities business parks, and military bases when all utilities are installed above ground or tie into pre-existing utility lines.

   d. Sites that have been previously cleared and prepared for planned construction, such as land being developed for public housing, office buildings, city parks, ball fields, schools, etc., when all utilities are installed above-ground or tie into pre-existing utility lines.

   e. Areas previously filled below the depth of proposed subsurface utility installation.

3. **Recreation and Landscaping Elements**

   a. Installation of scaffolding, temporary barriers (e.g., chain link fences, etc.), polyethylene sheeting, or tarps, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.

   b. In-kind repairs, installation, or replacement, and minor upgrades/mitigation of bollards and associated protective barriers when in previously disturbed areas and not in front of historic structures. This allowance does not apply to installations in historic districts.

c. In-kind repair or replacement of landscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.

d. The establishment of defensible space around existing buildings by pruning trees and clearing vegetation, woody debris and other flammable materials.

B. BUILDINGS AND STRUCTURES

1. Repair or retrofit of buildings less than 45 years old, including for hazard mitigation purposes such as flood proofing, seismic retrofits and wind proofing.
2. Removal of water by physical or mechanical means.
3. Installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA), provided that the installation is not located on historic architectural finishes such as decorative plaster trim, or plaster substrates for decorative materials such as murals, gold leaf, etc.
4. Installation of security bars over windows on rear elevations.
5. Installation of exterior security features and early warning devices on existing light poles or other permanent utilities.
6. Substantially in-kind repair or replacement of metal, wooden or masonry utilitarian structures (e.g., pump houses, flag poles, bleachers, dugouts, concession stands, etc.), including major exposed pipelines. Modern materials may be used, provided their finish is compatible with the context of the site. Structures such as bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this allowance.
7. Residential safe rooms constructed within the footprint of a residence currently being built or within any building less than 45 years old.

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

1. Roads and Roadways

a. Paving and repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders medians, clearances, curbs, and side slopes. This allowance does not include improvement to existing roadways and appurtenances.

b. Construction of temporary emergency access roads in previously disturbed soils to allow for passage of emergency vehicles.

c. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip.

d. Re-establishment and/or armoring of existing roadway ditches.

e. In-kind repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, or traffic surveillance systems.

f. Installation and removal of temporary traffic control devices, including pre-formed concrete barriers and fencings.

g. In-kind repair or replacement of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. In the case of guardrails, the addition of safety end treatments is permitted.

h. In-kind repair or replacement of driveways, parking lots, trails, and walkways.

2. **Airports and Helipads:** In-kind repair or replacement of existing runway surfaces and features (e.g., asphalt, concrete, gravel, and dirt) and associated air transportation safety components and systems (e.g., lighting bars, beacons, signage and weather sensors), including those not on airport property as long as no new access is required.

3. **Rail Systems**

a. In-kind repair or replacement of safety components.

b. In-kind repair or replacement of existing track system and passenger loading areas.

c. Repair of railroad crossings to pre–disaster conditions.

d. In-kind replacement of existing bolt connected railroad tracks and wood ties.

D. WARNING SIRENS

1. In-kind replacement of existing sirens at their current locations.
2. Installation of new sirens on existing poles or on buildings that are less than 45 years old.

E. VECTOR CONTROL: Application of pesticides or herbicides in conformance with state or Tribal regulations to reduce adverse public health effects, including aerial and truck mounted spraying.

II. Second Tier Allowances

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

1. **Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems**

a. In-kind repair, replacement, and reinforcement of footings, foundations, retaining walls, slopes, and slope stabilization systems (e.g., gabion baskets, crib walls, soldier pile and lag walls) if related ground disturbing activities are within the boundary of previously disturbed soils.

b. Installation of perimeter drainage (e.g., French drains) when performed in previously disturbed soils.

c. Grading of the top 2-3 inches of soil in the immediate vicinity of a demolished structure to clean up debris and/or re-seeding of properties where demolition has occurred.

d. Vegetation management, including installation of natural wind breaks, living snow fences, shoreline stabilization, natural dune restoration using native vegetation and sand-fencing, urban-forest practices and landslide stabilization.

2. Recreation and Landscaping Elements

a. In-kind repair or replacement, and minor upgrades to landscaping elements (e.g., fencing, free standing walls, paving, planters, irrigation systems, lighting elements, signs, flag poles, ramps, steps). This allowance includes minor mitigation measures or upgrades that do not affect character-defining features, for example, hardening below-grade foundations, or replacing contemporary fixtures with similar though not identical models when no additional ground disturbance is required or work is done in previously disturbed soils.

b. In-kind repair or replacement of recreational facilities and features (e.g., gazebos, playgrounds, campgrounds, fire pits, dump stations and utility hook-ups, swimming pools, athletic fields and signage, batting cages, basketball courts, swing sets, pathways, simple wooden/wire stream crossings). This allowance includes minor mitigation measures or upgrades that do not affect character-defining features, for example, adding interior bracing to structures, minor upgrades to athletic field equipment and appurtenances, or replacing contemporary equipment with similar though not identical models when no additional ground disturbance is required or in previously disturbed soils.

3. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers: In-kind repair and replacement and minor upgrades to existing piers, docks, boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils.

4. Tree Removal: Removal of significantly damaged trees by cutting the stump flush with the ground. If the disaster incident has damaged or uprooted trees such that the root ball is exposed, causing an immediate hazard and making it impossible to cut flush with the ground, the stump may be pulled and the resulting hole filled. Note: trees located in cemeteries, burial grounds, previously recorded archaeological sites, archaeologically sensitive areas, historic landscapes, and sites of significance to Tribes are not covered by this allowance.

5. Cemeteries

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

b. Removal of uprooted trees in portions of cemeteries and burial grounds that the Applicant and an SOI qualified FEMA staff have determined to be free of human remains or that are considered unlikely to possess human remains.

c. Removal of uprooted trees in areas near known or suspected cemeteries and burial grounds that have been field inspected by an SOI qualified archaeologist and have been found to be devoid of human remains, funerary items, and artifacts or features associated with past human activity.

d. In-kind repair of gravestones, monuments, fences, and other cemetery components.

6. **Equipment Access:** Temporary access route formed using loose surfacing materials (e.g., gravel or mulch) to provide equipment access necessary to repair existing facilities. This allowance applies only to routes that are outside of previously recorded archaeological sites or archaeologically sensitive areas and are established without cutting the surface. Any tree removal necessary is achieved by cutting the stump flush to the ground. Surfacing materials must be reclaimed and the site restored to its previous condition for this allowance to apply. Note: this allowance does not apply to temporary access in cemeteries, burial grounds, previously recorded archaeological sites, historic landscapes and sites of significance to Tribes.

B. BUILDINGS AND STRUCTURES

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

a. In-kind repair and replacement of floors, walls, stairs, ceilings, and/or trim, including suspended or glued ceiling tiles. The allowance does not apply to decorative finishes, including, but not limited to, murals, glazed paint, gold leaf, or ornamental plaster.

b. Replacement of heavily damaged plaster and lath with drywall where the plaster is not a character–defining detail. The decision to replace or repair shall be made on a room-by-room basis.

c. Interior cleaning of surfaces using a weak solution of household bleach and water, mold remediation, or mold removal. The allowance applies to interior finishes, including plaster and wallboard, provided the cleaning is restricted to damaged areas and does not affect adjacent materials.

d. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.

2. **Building Contents:** Repair or replacement of building contents including furniture, movable partitions, computers, cabinetry, supplies, and equipment and any other moveable items which are not character defining features of a historic property.

3. Utilities and Mechanical, Electrical, and Security Systems

a. In-kind repair or replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning), electrical, and

plumbing systems, including the replacement of fixtures such as toilets, sinks and stoves, with the exception of historic fixtures. This allowance does not provide for the installation of new exposed ductwork except for interior exhaust systems in fire stations, garages, or similar buildings.

b. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment as long as it is placed or located where it is not highly visible from the street.

c. Installation or replacement of interior fire detection, fire suppression, or security alarm systems. The allowance does not apply to surface mounted wiring, conduits, piping, etc., unless previously existing, provided that installation of the system hardware does not damage or cause the removal of character-defining architectural features and can be easily removed in the future.

d. Installation of communication and surveillance security systems, such as cameras, closed-circuit television, alarm systems, and public address systems, provided that installation of the system hardware does not damage or cause the removal of character defining architectural features and can be easily removed in the future.

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

f. Replacement of damaged materials used in composting or sewerage treatment.

4. Windows and Doors

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

b. In-kind replacement of window panes. Clear plate, double, laminated, or triple insulating glazing can be used, provided it does not result in altering the existing window material, tint, form, muntin profiles, or number of divided lights. This allowance does not apply to the replacement of existing intact archaic or decorative glass. This allowance does not apply to the installation of low-e glass or tinted film.

c. Installation of removable clear window film to historic windows or glazing.

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

5. Exterior Walls, Cornices, Porches, and Foundations

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

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

c. In-kind repair or replacement of signs or awnings.

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

e. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view, such as in the Hilti systems, and disturbed historic fabric is restored in kind.

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

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

h. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in-kind, including mortar that matches the color, content, strength, rake, and joint width where occurring.

i. Repairs to and in-kind replacement of elements of curtain wall assemblies or exterior cladding that is hung on the building structure, usually from floor to floor, and when the color, size reflectivity, materials, and visual patterns are unaltered.

6. Roofing

a. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character defining features.

b. In-kind repair, replacement, or strengthening of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components.

c. Repairs to flat roof cladding, including changes in roofing materials, where the repairs are not highly visible from the ground level.

d. Replacement of shingled roofing with metal roofing on buildings less than 45 years in age to meet state or local code requirements. This allowance does not apply to buildings listed in or eligible for listing in the National Register or any buildings located in historic districts.

e. Replacement of metal roofs with in-kind materials. If the roofing material to be replaced is character defining, the replacement must be in kind, not just a form of metal roofing.

f. Installation or replacement of roof sprinklers which are less than 10 inches in height, require no associated plumbing or water storage facilities visible from a public way, and affect no character-defining features of residences more than 45 years old. This allowance includes establishing defensible space by pruning trees and clearing vegetation, woody debris and other flammable materials from around the building.

g. In-kind replacement of greenhouse glass panels.

7. Weatherproofing and Insulation

a. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.

b. In-kind repair, replacement or installation of insulation systems, provided that existing interior plaster, woodwork, exterior siding, or exterior architectural detail is not altered. This allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities.

8. Seismic Upgrades and Structural Retrofits

a. The installation of the following retrofits/upgrades, provided that such upgrades are not visible on the exterior: attic bracing, cross bracing on pier and post foundations; fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical, and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.

b. Replacement, repair, or installation of lightning rods.

9. Safe Rooms: Residential safe rooms may be constructed as follows. For exterior safe rooms, after FEMA or SHPO staff, using the appropriate archaeological database, must first verify that no part of any documented archaeological site lies within the boundary of the parcel on which the safe room is to be constructed.

a. Residential safe rooms constructed within the footprint of an existing structure more than 45 years old must meet one of the following criteria:

i. Basement (below-grade) construction that does not involve cutting holes in foundation walls, but may include removal of sections of the concrete slab floor in order to properly anchor new safe room walls.

ii. Above-grade, interior construction of safe rooms if construction is limited to the footprint of existing bathrooms or closets.

iii. Construction of any safe room within an addition less than 45 years old.

b. Below-grade construction of residential safe rooms on a parcel on which a private residence is located, and involving an area of ground disturbance not exceeding 300 square feet (approximately 13' by 23') and does not extend more than 10' deep. This allowance includes construction of safe rooms in crawl spaces and beneath the floors of utility structures, such as garages.

c. Above-grade construction of residential safe rooms constructed on the same parcel as a residential structure that is less than 45 years old, and that do not include more than 45 square feet of usable floor space (approximately 7' by 7').

10. Elevation, Demolition, and Reconstruction: Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than 45 years of age so long as the proposed activities substantially conform to the original footprint and/or are performed in previously disturbed soils, including any staging area, and the buildings or structures are not located within or adjacent to a National Register listed or eligible historic district.

11. Utilitarian Structures: Substantially in-kind repair or replacement of metal, wooden, or masonry utilitarian structures (e.g., pump houses, flag poles, bleachers, dugouts, concession stands) more than 45 years old, including major exposed pipelines. For structures that are part of a complex of buildings, materials and workmanship must be in-kind. Structures such as bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this allowance.

C. TRANSPORTATION FACILITIES, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

1. Roads and Roadways

a. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches.

b. In-kind repair to historic paving materials for roads and walkways.

c. In-kind repair or replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard

mitigation or to meet current codes and standards, provided that the work substantially conforms to the existing footprint. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.

d. In-kind repair or replacement of road lighting systems, including period lighting fixture styles.

e. In-kind repair or replacement of road appurtenances such as curbs, berms, fences, and sidewalks.

2. Bridges

a. Installation of a temporary (Bailey-type) bridge over an existing structure or at a previously disturbed location, such as a former bridge location, to allow passage of emergency vehicles.

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

D. UTILITIES, COMMUNICATIONS SYSTEMS AND TOWERS, when proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.

1. General

a. In-kind repair or replacement, hardening or minor upgrading, small scale realignment, and elevation of utilities and associated features and structures within previously disturbed soils, of rights-of-way or utility corridors.

b. Installation of new utilities and associated features within existing, previously-disturbed rights-of-way.

c. In off-road alignments, relocations of poles in existing holes or within substantially disturbed areas, within 5 feet of damaged poles.

d. The addition of 1-4 new poles per mile in existing utility corridors in substantially disturbed areas, if the impacted area is 8 miles or less in length.

e. Directional boring of new/replacement service line and related appurtenances involving boring or slit trenches within previously disturbed soils of rights-of-way or utility corridors, or beneath streams provided the ground disturbance at each bore hole does not disturb an area greater than approximately 10' by 10', and is in line with the original utility trench.

f. In-kind repair or replacement, or minor upgrade of water towers less than 45 years old provided activities take place within previously disturbed soils. Ground-level facilities may be added or expanded in previously disturbed areas. This allowance does not apply to masonry water towers.

2. **Generators and Utilities:** In-kind repair or replacement, or minor upgrades, elevation, and/or installation of generators, HVAC systems, and similar equipment provided activities occur within previously disturbed soils, and any roof mounted equipment is not visible from the ground level.

3. **Communication Equipment/Systems and Towers**

   a. Warning Sirens

      i. Installation of a siren on a replacement utility pole that does not increase the height or width of the existing pole by more than 20% and that is installed within 15 feet of the existing pole's location, provided that review of the SHPO's online mapping system by FEMA or SHPO staff does not show an inventoried archaeological site in the immediate vicinity of the project.

      ii. Installation of a new utility pole and associated siren within an existing utility pole corridor, road right-of-way or in previously-disturbed ground, provided that the height of the new pole is within 20% of that of existing poles in the corridor and that review of SHPO's online mapping system by FEMA or SHPO staff does not show an inventoried archaeological site in the immediate vicinity of the project.

   b. Acquisition, installation, or operation of communication and security equipment/systems that use existing distribution systems, facilities, or existing infrastructure rights-of-way.

   c. The collocation of communication and security equipment on existing towers and buildings/structures less than 45 year in age, provided that the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils,.

   d. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils,.

   e. Installation of new temporary (not to exceed 12 months) communications towers and antenna structures provided that the work occurs does not require modification of buildings/structures 45 years or older and occurs within previously disturbed soils.

   f. Installation of new communication towers, less than 200 feet tall, in previously developed urban complexes when the work does not require modification of buildings/structures 45 years or older, occurs within previously disturbed soil, and is not within 500 feet of the boundaries of a historic property.

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

1. **Canal Systems:** In-kind repairs or replacement to canal systems and associated elements.
2. **Breakwaters, Seawalls, Revetments, and Berms:** In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the work occurs in previously disturbed soils.
3. **Dams, Levees, and Floodwalls:** In-kind repair of dams, levees, floodwalls and related features, including spillways, tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.
4. **Fish Hatcheries:** In-kind repair or replacement of fish hatcheries and fish ladders.
5. **Waste-Water Treatment Lagoon Systems**: In-kind repair or replacement, or minor upgrades of waste-water treatment lagoon systems.

Appendix C

Treatment Measures

When avoidance or minimization of adverse effects is not appropriate, the following Treatment Measures are suggested for the resolution of adverse effects:

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

A. Recordation

1. *Digital Photography Package*: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a digital photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The digital photography package will meet the standards cited in the NPS' *National Register of Historic Places Photographic Policy March 2010* or subsequent revisions (http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm).

   a. The digital photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.

   a. The digital photography package shall include printed color copies of the digital photographs (on appropriate paper, per *NPS Photographic Policy*), a CD/DVD of the digital photographs, a completed state architectural inventory form, and a written site history of the historic property.

   b. The designated responsible party shall submit the digital photography package to the SHPO, participating Tribe(s) for review and approval. Once approved by the SHPO or participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive, and/or library for permanent retention.

2. *Reports:* Narrative reports following the HABS Level I, II, or III formats; historic structural analyses; historic structure reports; or other types of documentation as warranted by the resource type and condition.

3. *Drawings:* Development of drawings, including site plans and floor plans, illustrating the current condition of the resource, at a variety of levels of detail as warranted by the resource type and condition.

4. *35mm Black and White Photography Package:* Prior to project implementation, the designated responsible party shall oversee the successful delivery of a 35 mm film black and white film photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.

    a. The 35 mm film black and white film photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.

    b. The 35 mm film black and white film photography package shall include one (1) full set of 35mm film black and white photographs printed on acid free paper, the corresponding 35mm film negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.

    c. The designated responsible party shall submit the 35 mm black and white film photography package the SHPO and/or participating Tribe(s) for review and approval. Once approved by the SHPO, participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to a state or local historical society, archive,and/or library for permanent retention.

B. Public Interpretation

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to design an educational interpretive plan. The plan may include signs, displays, educational pamphlets, websites, workshops and other similar mechanisms to educate the public on historic properties within the local community, state, or region. Once an interpretive plan has been agreed to by the parties, SHPO and/or participating Tribes, the designated responsible party shall continue to consult throughout implementation of the plan until all agreed upon actions have been completed by the designated responsible party.

D. Historical Context Statements and Narratives

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and participating Tribe(s) to determine the topic and framework of a historic context statement or narrative the designated responsible party shall be responsible for completing. The statement or narrative may focus on an individual property, a historic district, a set of related properties, or relevant themes as identified in the statewide preservation plan. Once the topic of the historic context statement or narrative has been agreed to, the designated

responsible party shall continue to coordinate with the SHPO and participating Tribe(s) through the drafting of the document and delivery of a final product. The designated responsible party shall use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

E. Oral History Documentation

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to identify oral history documentation needs and agree upon a topic and list of interview candidates. Once the parameters of the oral history project have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and/or participating Tribe(s) through the data collection, drafting of the document, and delivery of a final product. The designated responsible party shall use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

F. Historic Property Inventory

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s to establish the appropriate level of effort to accomplish a historic property inventory. Efforts may be directed toward the resurvey of previously designated historic properties and/or districts which have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation. Once the boundaries of the survey area have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and/or participating Tribe(s) through the data collection process. The designated responsible party shall use SHPO and/or participating Tribe(s) standards for the survey of historic properties and SHPO and/or participating Tribe(s) forms as appropriate. The designated responsible party shall prepare a draft inventory report, according to SHPO and/or participating Tribe(s) templates and guidelines, and work with the SHPO and/or participating Tribes until a final property inventory is approved. The designated responsible party shall use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

G. National Register and National Historic Landmark Nominations

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribes to identify the individual properties that would benefit from a completed National Register or National Historic Landmark nomination form. Once the parties have agreed to a property, the designated responsible party shall continue to coordinate with the SHPO and/or participating Tribes through the drafting of the nomination form. The SHPO and/or participating Tribe(s) shall provide adequate guidance to the designated responsible party during the preparation of the nomination form and shall formally submit the final nomination to the Keeper for inclusion in the National Register. The designated responsible party shall use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

H. Geo-References of Historic Maps and Aerial Photographs

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to identify the historic maps and/or aerial photographs for scanning and geo-referencing. Once a list of maps and/or aerial photographs have been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and/or participating Tribes through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to the SHPO, and/or participating Tribe(s) for review. The final deliverable produced by the designated responsible party shall include a paper copy of each scanned image, a geo-referenced copy of each scanned image, and the metadata relating to both the original creation of the paper maps and the digitization process.

I. Geographical Information Systems Data Layer

Prior to project implementation, FEMA, the Grantee(s), and subgrantee shall work with the SHPO and/or participating Tribe(s) to identify data regarding historic structures that may be useful for included in GIS systems maintained by the SHPO, Tribal or local governments. Potential uses of such data include facilitating the preparation of environmental review documents, assisting in the preparation of grant applications, and promoting public awareness and appreciation of historic properties. Typical data included in such layers may include, but is not limited to, properties listed on the National Register, those listed in state or local inventories, and data about these properties (construction dates, architectural styles, materials, etc.). The project may focus on preparing new data for inclusion in an existing system or updating existing data.

Once the type of data and repository have been identified, the designated responsible party shall continue to coordinate with the SHPO and/or participating Tribes and/or appropriate local governments to develop a data layer suitable for use in the target system. The SHPO and/or participating Tribe(s) shall have right of final approval on the quality of the data provided by the designated responsible party. The final deliverable shall include a copy of the data layer on disk, printed copies of data for representative records, and a statement from the owner of the target system indicating 1) when the data will be made available and 2) a brief description regarding plans for ongoing maintenance of the new data layer.

Appendix D

Workflow Diagrams

The following workflow diagrams represent the responsibilities of the Signatories to this Agreement in the following situations. References to the applicable authorities, including this Agreement, are noted.

I. Declarations

II. Expedited Emergency Reviews

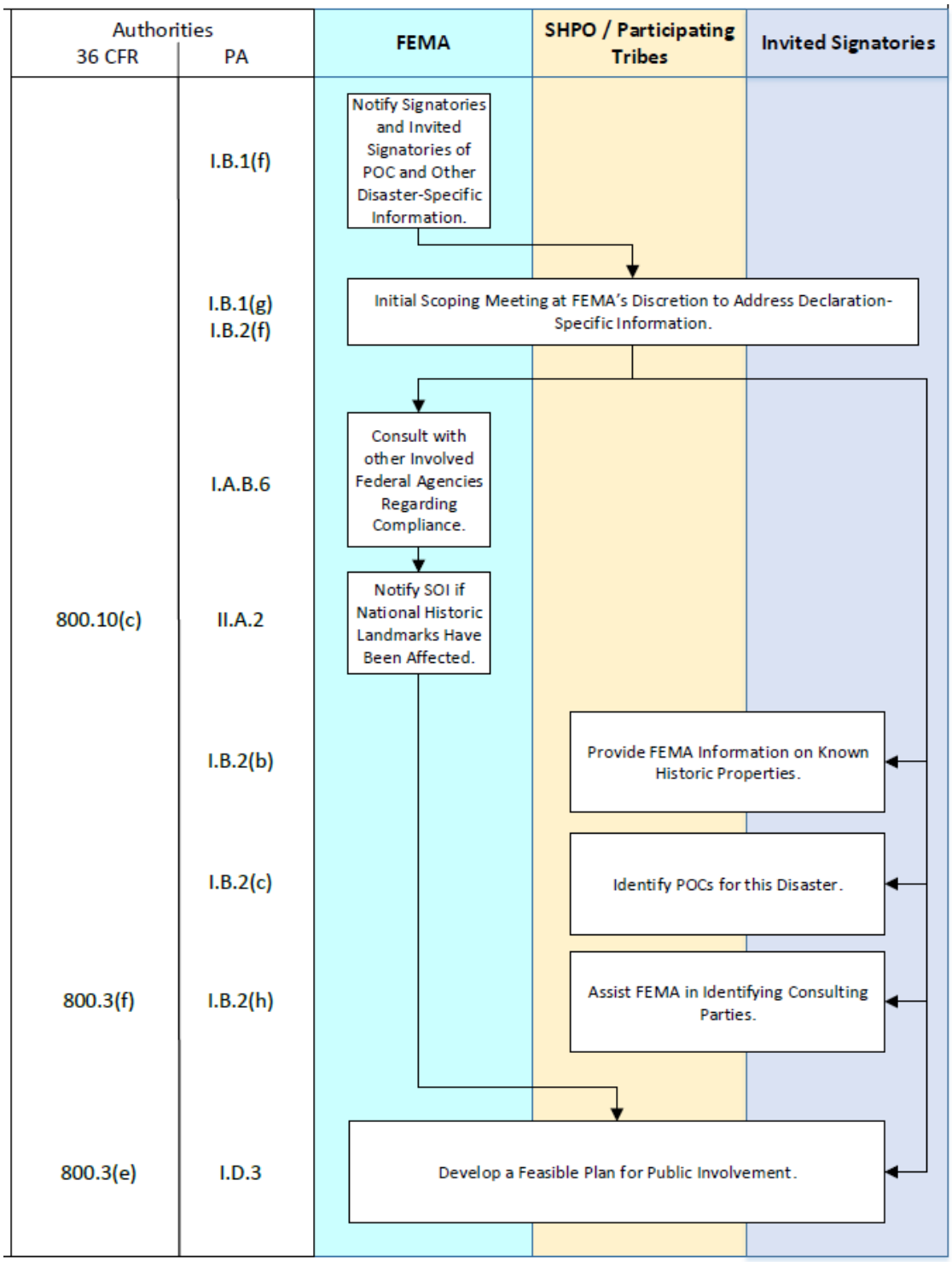
III. Disaster Recovery Reviews

IV. Reviews with Authorized Recipients

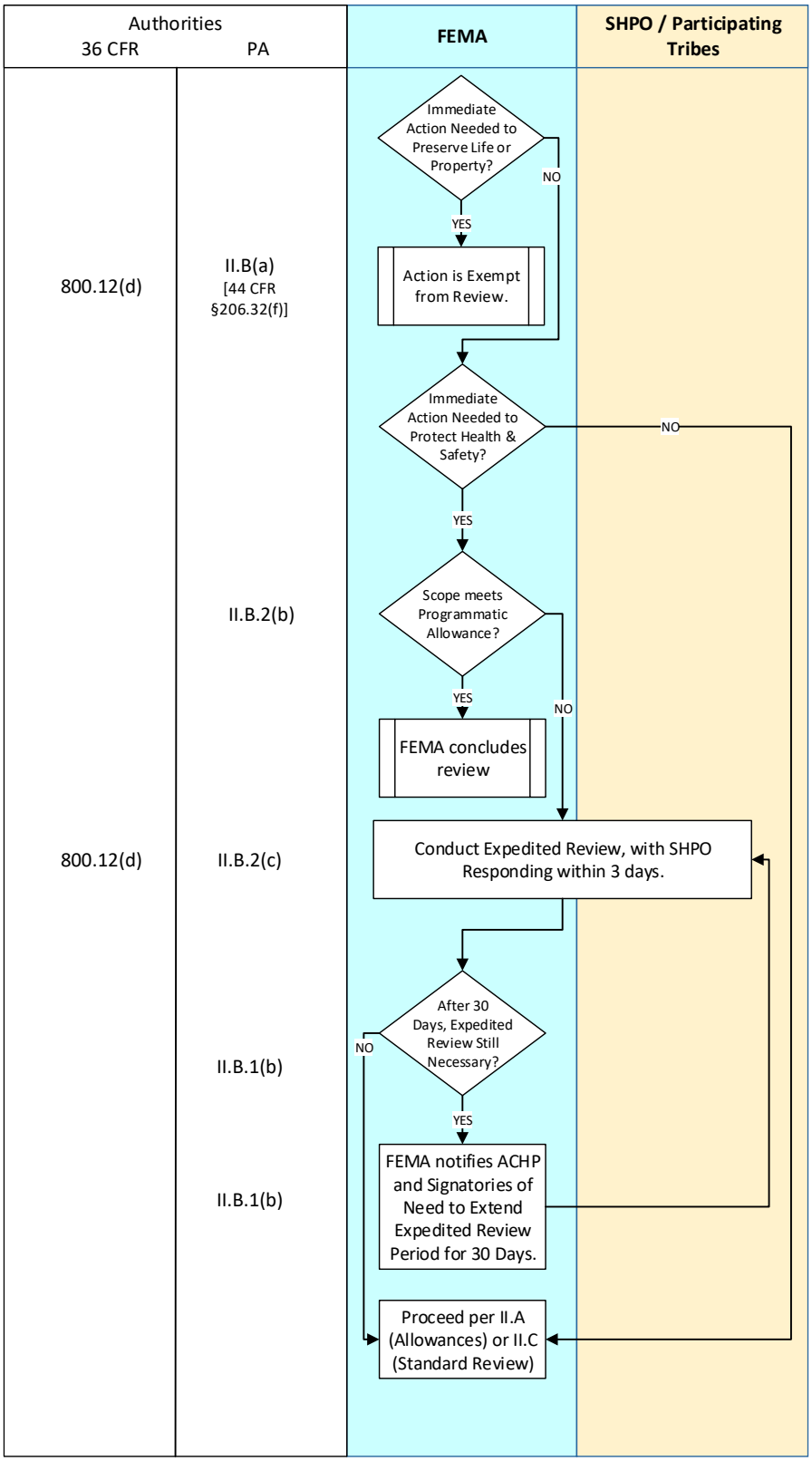
V. Changes to Scope of Work

This Appendix may be amended in accordance with Stipulation IV.A, Amendments.

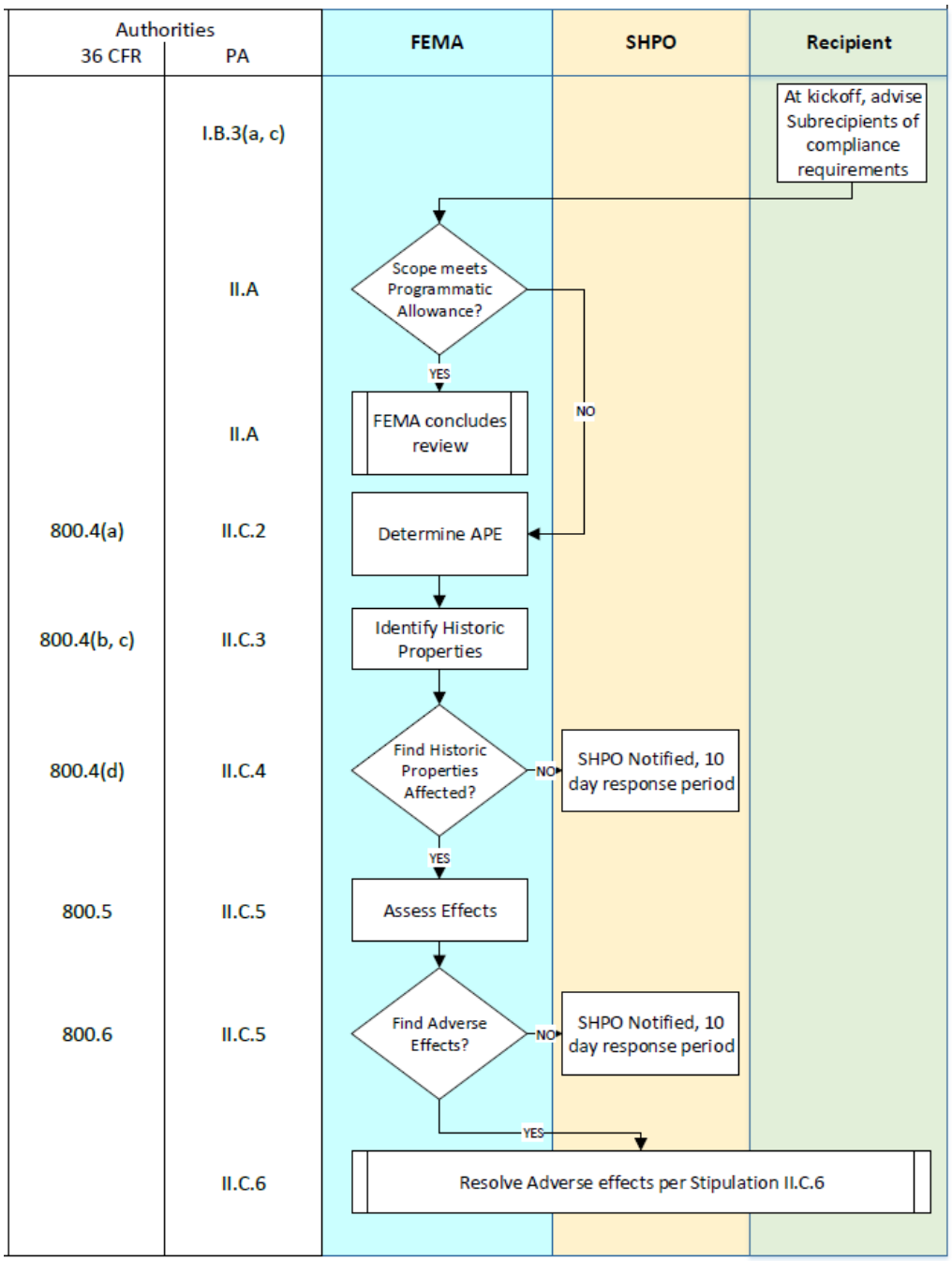
I. Declarations



II. Expedited Emergency Reviews

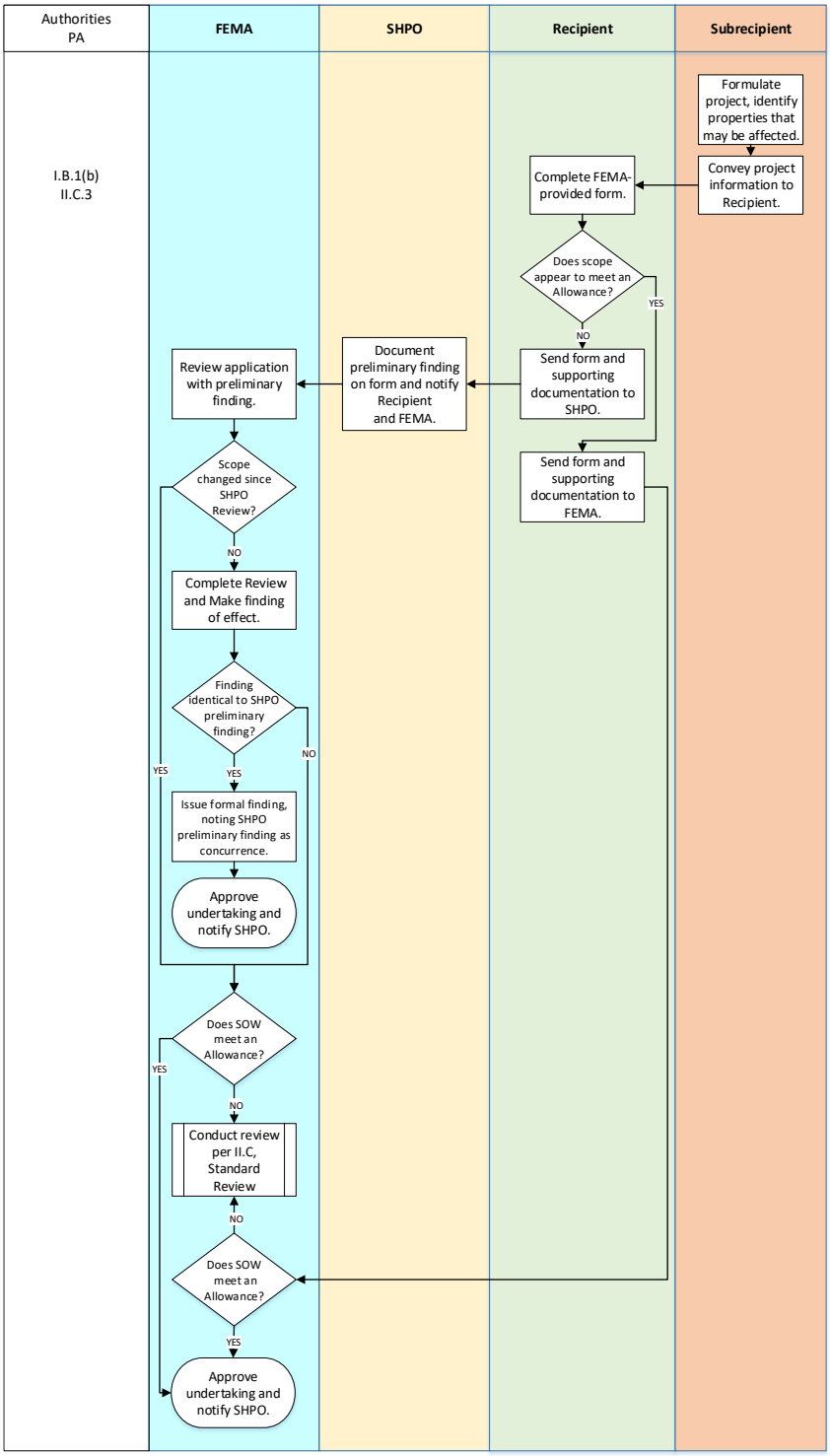


III. Disaster Recovery Reviews[1]



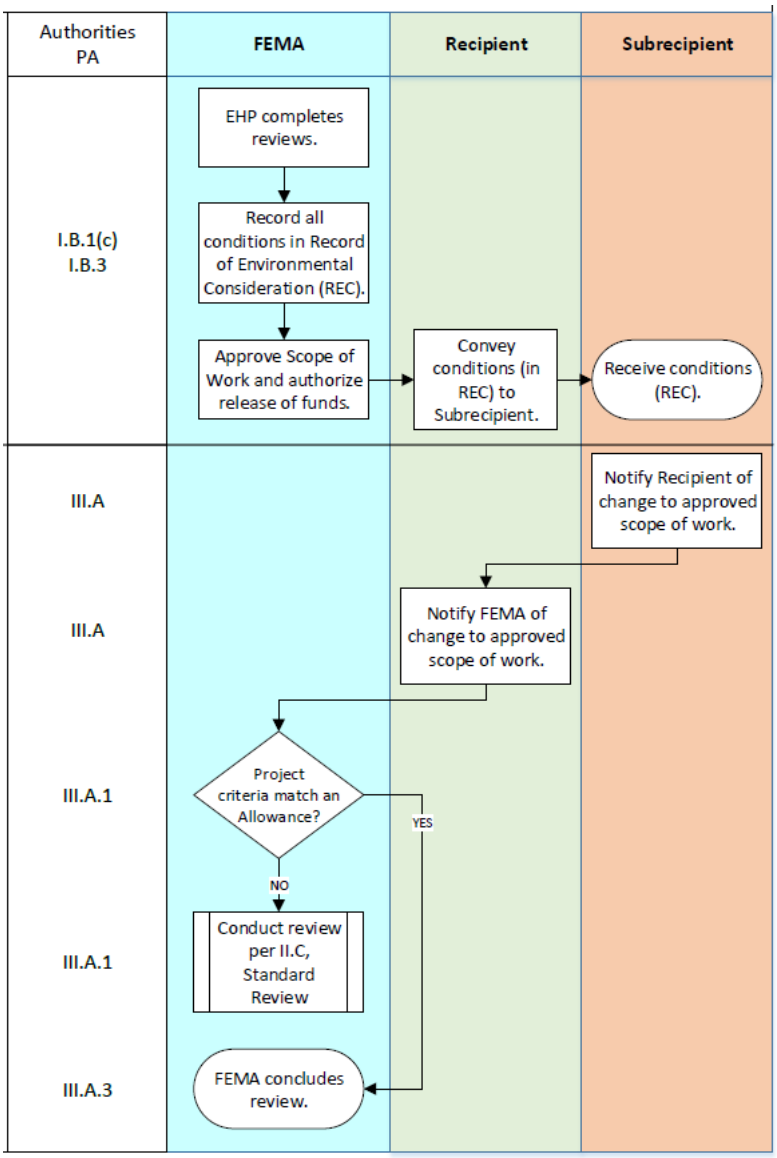
[1] The 10-day response time indicated here is only for consultations conducted while the Joint Field Office is open. See Stipulation I.E.2(b) for details.

IV. Reviews with Authorized Recipients[2]



[2] Per I.B.1(b), FEMA will notify the SHPO in writing when a recipient or subrecipient has been authorized to initiate consultation on FEMA's behalf. All consultations with federally-recognized Tribes will be conducted only by FEMA.

V. Changes to Approved Scope of Work[3]



[3] Note that if there is no Subrecipient, the responsibility for notifying FEMA of a change to an approved Scope of Word is wholly the Recipient's.