

1 **PROGRAMMATIC AGREEMENT AMONG**
2 **THE FEDERAL EMERGENCY MANAGEMENT AGENCY,**
3 **THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND**
4 **THE NEVADA DIVISION OF EMERGENCY MANAGEMENT**
5

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

10 **WHEREAS**, FEMA makes assistance available to states, territories, commonwealths, local
11 governments, federally recognized Indian Tribes (Tribes), nonprofit organizations, institutions of
12 higher education, individuals, and other eligible entities through programs set forth in Appendix A
13 (Programs), pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296 (2002) (codified
14 as amended at 6 U.S.C. § 101 *et seq.*); Robert T. Stafford Disaster Relief and Emergency Assistance
15 Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*, (Stafford Act);
16 the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (codified as amended at 42
17 U.S.C. § 4001 *et seq.*); the Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No.
18 109-295 (2006) (codified as amended at 6 U.S.C. § 741 *et seq.*); implementing regulations contained
19 in Title 44 of the Code of Federal Regulations (CFR), Executive Order 13407, *Public Alert and*
20 *Warning System*, (2006), and such other acts, executive orders, or implementing regulations as are
21 enacted from time to time; and
22

23 **WHEREAS**, FEMA has determined that implementing its Programs may result in Undertakings,
24 as defined by 54 U.S.C. § 300320 and 36 CFR § 800.16(y), that may affect properties listed in or
25 eligible for listing in the National Register of Historic Places (National Register) pursuant to 36
26 CFR Part 60 (historic properties), and FEMA has consulted with the Nevada State Historic
27 Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act
28 (NHPA), Pub. L. No. 89-665 (1966) (codified as amended at 54 U.S.C. § 306108), and the
29 regulations implementing Section 106 of the NHPA (Section 106) at 36 CFR Part 800 (Protection
30 of Historic Properties); and
31

32 **WHEREAS**, FEMA, the Advisory Council on Historic Preservation (ACHP), and the National
33 Conference of State Historic Preservation Officers (NCSHPO) have determined that FEMA's
34 Section 106 requirements can be more effectively and efficiently implemented and delays to the
35 delivery of FEMA assistance minimized if a programmatic approach is used to stipulate roles and
36 responsibilities, exempt certain Undertakings from Section 106 review, establish protocols for
37 consultation, facilitate identification and evaluation of historic properties, and streamline the
38 assessment and resolution of adverse effects; and
39

40 **WHEREAS**, FEMA has developed a Prototype Programmatic Agreement (FEMA Prototype
41 Agreement) pursuant to 36 CFR § 800.14(b)(4) in consultation with the ACHP and NCSHPO to
42 serve as a basis for negotiation of a State/Tribal specific Programmatic Agreement (Agreement)
43 with the SHPO, State/Tribal Emergency Management Agency, and/or participating Tribe(s); and
44

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 the State of Nevada (Recipient) that may provide monies and other assistance to eligible Subrecipients, and as such, FEMA has invited the Nevada Division of Emergency Management (NDEM), the Recipient responsible for administering funds provided under these Programs to execute this Agreement as an Invited Signatory; 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 Nevada, 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 has invited Tribes that have sites of religious and cultural significance to enter into the terms of this Agreement as invited Signatories in accordance with 36 CFR § 800.14(f). Although no Tribes responded, 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, and the SHPO (Signatories) agree that FEMA Programs in the State for Nevada 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, FEMA shall ensure that the following measures are implemented:

I. GENERAL

A. Applicability

1. The execution of this Agreement supersedes the terms of the 2016 Section 106 Programmatic Agreement in the State Nevada, which expired on January 15, 2023, but remains effective for Declarations made prior to its expiration in order to minimize delays in delivery of FEMA assistance.
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 July 31, 2020 ([Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification | Advisory Council on Historic Preservation \(achp.gov\)](#)). The approval of funding for the FEMA Undertaking shall be conditioned upon the compliance of the Subrecipient with the 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 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. FEMA may perform this work directly, or through a mission assignment (MA), may direct appropriate federal agencies to perform the work pursuant to Titles IV and V of the Stafford Act and 44 CFR Part 206. This Agreement shall apply to such federal assistance undertaken by or directed by FEMA.
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 five (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; and
- 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 such activities by accepting and complying in writing with the terms of this Agreement.

- a. Other federal agencies may include states, Tribes, and units of 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 regarding its Section 106 compliance responsibilities. Resumes of staff who meet the Secretary of the Interior's (Secretary's) *Professional Qualification Standard(s)* shall be provided to FEMA and the SHPO for approval. Approved staff will review Second Tier projects in accordance with Appendix B of this Agreement, and determinations shall be provided to FEMA and the SHPO.

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. 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

174 expenses (pursuant to 44 CFR § 206.110(m)), is exempt from the provisions of
175 Section 106).

176 i. However, FEMA shall conduct Section 106 review for ground disturbing
177 activities, and construction related to 44 CFR §§ 206.117(b)(1)(ii) (temporary
178 housing), 206.117(b)(3) (replacement housing), 206.117(b)(4) (permanent
179 housing construction), 206.117(b)(2)(iii)(F) (repair of a structure's access and
180 egress, including privately owned access roads and privately owned bridges),
181 and repair of multi-family housing units.

182
183 b. Administrative actions such as personnel actions, travel, procurement of services,
184 supplies (including vehicles and equipment) for the support of day-to-day and
185 emergency operational activities, and the temporary storage of goods provided
186 storage occurs within existing facilities or on previously disturbed soils.

187
188 c. Granting of variances, and actions to enforce Federal, Tribal, State, or local codes,
189 standards or regulations.

190
191 d. Monitoring, data gathering, and reporting in support of emergency and disaster
192 planning, response and recovery, and hazard activities.

193
194 e. Research and development of hazard warning systems, hazard mitigation plans,
195 codes and standards, and education/public awareness programs.

196
197 f. Funding provided for planning, studies, and design and engineering costs that
198 involve no commitment of resources other than staffing.

199
200 g. Assistance provided for training, management and administration, exercises, and
201 mobile/portable equipment purchases, with the exception of potential ground-
202 disturbing activities and modification of existing structures.

203
204 h. Community Disaster Loans for funding to perform governmental functions for any
205 eligible jurisdiction in a designated disaster area that has suffered a substantial loss
206 of tax and other revenue pursuant to Section 417 of the Stafford Act.

207
208 i. Funding for acquisition or lease of existing facilities where planned uses conform to
209 past use or local land use requirements.

210
211 j. Funding the administrative action of acquiring properties in acquisition projects,
212 including the real estate transaction.

213
214 k. Labor, equipment, and materials used to provide security in the Declaration area,
215 including lease, rental, purchase, or repair of equipment or vehicles and payment for
216 staff and contract labor.

- l. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
 - m. Unemployment assistance pursuant to Section 410 of the Stafford Act.
 - n. Food coupon distribution pursuant to Section 412 of the Stafford Act.
 - o. Legal services pursuant to Section 415 of the Stafford Act.
 - p. Crisis counseling pursuant to Section 416 of the Stafford Act.
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 Federal Register 44716-01 (September 29, 1983), as amended (Qualified), in applying Second Tier Programmatic Allowances listed in Appendix B, completing identification and evaluation of historic properties, and making determinations of effects. FEMA shall review any National Register eligibility determination and make its own findings of effects 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 with religious and cultural significance to them.
- b. FEMA alone shall conduct all Section 106 consultation with Tribe(s). In accordance with 36 CFR § 800.2(c)(4), FEMA may authorize the Recipient, or a Subrecipient through the Recipient, 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 effects 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 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 to provide guidance to Subrecipients on in-kind repair and techniques to avoid or minimize adverse effects to historic properties pursuant to 36 CFR Part 68 *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 2017 or the most current version (Secretary's Standards).
- d. FEMA shall provide the other Signatories and the ACHP with an annual report for the previous calendar year by June 30 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 any recommended actions or revisions to be considered, including updates to the appendices.
- e. FEMA shall confer annually and as necessary with the other Signatories within sixty (60) days after issuance of the annual report, to review the report and/or discuss issues and concerns in greater detail. This review shall occur in person or by telephone, as determined by FEMA.
- f. FEMA shall notify the SHPO and affected Tribe(s), 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 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. SHPO:

- a. The SHPO shall review FEMA's determination of the Area of Potential Effects (APE), National Register eligibility determinations, and FEMA's 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, or 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 staff or consultants 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 the SHPO has occurred, FEMA shall provide a written summary of the consultation via e-mail or regular mail to the 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 who 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 delegated responsibilities, and related implementing procedures. The SHPO shall formally document these decisions for concurrence by 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 (State of Nevada) 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, of the effectiveness of this Agreement in accordance with Stipulation I.B.1(e).

3. Recipient:

- a. The Recipient 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 shall participate in an initial scoping meeting for a Declaration.

- c. The Recipient 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 shall notify FEMA as soon as possible of any proposed change to the approved scope of work. The Recipient shall direct their Subrecipient not to implement the changes to the proposed scope of work until any and all review required by this Agreement is complete.
- e. The Recipient shall ensure that its Subrecipients are made aware that in the event of an unexpected 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, Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects.
- f. The Recipient 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 historic properties and human remains and ensure notification protocols for unexpected discoveries or unexpected effects to historic properties and human remains are followed.

C. Tribal Consultation

1. For FEMA Undertakings on Tribal lands or affecting properties of religious and cultural significance, and where no Tribe-specific consultation agreements or protocols are in place, FEMA shall consult with affected Tribe(s) in accordance with 36 CFR Part 800. In determining the specific Tribe(s) affected, 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, Tribe(s), any State Tribal Agency, and access any 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) (16 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, and 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, or businesses.

2. FEMA may consult with the Recipient, Subrecipient, SHPO, 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 for involving the public developed for an Undertaking in consultation with the SHPO and participating Tribe(s), FEMA shall identify the appropriate stages to seek 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 FEMA's implementing policies set forth in DHS Directive No. 023-01, *Implementation of the National Environmental Policy Act* (Oct. 31, 2014); DHS Instruction No. 023-01-001-01, *Implementation of the National Environmental Policy Act* (Nov. 6, 2014); FEMA Directive No. 108-1, *Environmental Planning and Historic Preservation Responsibilities and Program Requirements* (Oct. 10, 2018); FEMA Instruction No. 108-1-1, *Instruction on Implementation of the Environmental Planning and Historic Preservation Responsibilities and Program Requirements* (Oct. 10, 2018); and/or Executive Orders 11988, *Floodplain Management*, and 11990, *Protection of Wetlands*, relating to floodplains and wetlands, as set out in 44 C.F.R. Part 9, and 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 other 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 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 other Signatories and the public 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 shall be a maximum of fifteen (15) days of receipt, or in accordance with temporary timelines established by FEMA on a Declaration-by-Declaration basis.
 - c. For the Hazard Mitigation Grant Program (HMGP) and all non-disaster Programs, the response time for each request for concurrence shall be a maximum of thirty (30) days of receipt.
3. The consulting parties may send and accept official notices, comments, requests for further information, and other communications required by this Agreement by e-mail. FEMA and/or the Recipient shall send all requests for consultation and project documentation to the SHPO in hard copy.

II. PROJECT REVIEW

A. Programmatic Allowances

1. If FEMA determines an Undertaking conforms to one or more allowances in Appendix B of this Agreement, 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 Pacific West Regional Office (currently Ms. Elaine Jackson-Retondo, 333 Bush Street, Suite 500, San Francisco, CA 94104-2828, 415-623-2368) 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 thirty (30)-day increments, as needed, notify in writing the ACHP, the SHPO, the Recipient, 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).
- 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.

- 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 the SHPO and participating Tribe(s) in making a decision on how to proceed.
- iv. Should the SHPO and participating Tribe(s) not comment within three (3) 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 that are not exempt from further Section 106 review, FEMA shall ensure that the following standard project review steps are implemented. In the interest of streamlining, FEMA may combine some 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), in order to identify any other parties that meet the criteria to be consulting parties 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 § 68.2(b)).
 - b. For all other Undertakings, Qualified staff shall determine the APE in consultation with the SHPO and participating Tribe(s). When establishing the APE, FEMA may consider information provided by other parties, such as local governments and the public.

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 such properties that may be affected by an Undertaking and determine the necessary level of effort to identify and evaluate or avoid 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 Pacific West 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 an Undertaking that FEMA may later 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 as described in 36 CFR § 800.4, and consult with the 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: FEMA shall make a finding of “no historic properties affected” under the following circumstances:
- a. If no historic properties are present in the APE; or
 - b. 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

- c. The Undertaking does not affect the character defining features of a historic property.
 - d. FEMA shall notify the SHPO, participating Tribes(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) object(s) 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.
 - e. If the SHPO or participating Tribe(s) object(s) 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 may either 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) and consider any 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, 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) 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 Secretary’s 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 the adverse effect(s), 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 Tribes, and other consulting parties. The use of these Treatment Measures shall not require the execution of a 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.

ii. If any of the consulting parties or the ACHP objects to the resolution of adverse effects through the application of the Abbreviated Consultation Process within the fifteen (15)-day review and comment period, 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: 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), 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 notice under the Abbreviated Consultation Process of this Agreement. 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 adverse effects 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 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 the Recipient immediately, whenever 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 Secretary's 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, immediately notify the SHPO, the local law enforcement office, and coroner or medical examiner, in accordance with Nevada Revised Statutes (NRS) Chapters 259, 383, and 451, and protect the remains from any harm, including possible removal from the site of the burial or the discovery. 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, account for 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.
 - ii. In cases where discovered human remains are determined to be American Indian, FEMA shall consult with the appropriate Tribal representatives and the SHPO. In addition, FEMA shall follow the guidelines outlined in the ACHP's *Policy Statement on Burial Sites, Human Remains, and Funerary Objects* (2023). For discoveries made on private and state land, all materials shall remain at the site of the discovery until the SHPO has been notified and the requirements of NRS 383.170 are implemented.

C. Curation

1. In cases where archaeological survey and testing are conducted on private land, any recovered collections remain the property of the landowner. In such instances, FEMA and the Recipient, in coordination with the SHPO and affected Tribe(s), shall encourage landowners 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, the SHPO, and affected Tribe(s), in accordance with applicable state or Tribal guidelines.

2. When an Undertaking will adversely affect a National Register listed or eligible archaeological site, FEMA may resolve the adverse effect 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 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's 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 in Nevada, in accordance with the provisions of 36 CFR Part 79, *Curation of Federally Owned and Administered Archaeological Collections*, or Tribal requirements for resources located on Tribal land.

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, adversely affected a historic property to which the assistance would relate, or allowed an adverse effect to occur having the legal authority to prevent it. However, if after consultation with the SHPO, appropriate Tribes(s), 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, 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 may still be feasible.
 - i. If after coordination with the SHPO and appropriate Tribe(s), 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 Federal Preservation Officer (FPO) of the outcome, and 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) 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), and Appendix C (Treatment Measures) 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 Signatories of the intent to modify the current Appendix or Appendices and shall provide a draft of any updated section 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 it 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 the ACHP not respond within thirty (30) days, FEMA may assume the 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. FEMA, the SHPO, ACHP, or Recipient(s) 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.
3. A participating Tribe may notify the other Signatories that it is fully withdrawing from participation in the Agreement. Withdrawal from this Agreement by a Tribe does not terminate 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. A Tribe that has withdrawn from the Agreement may notify FEMA, the Recipient, and the SHPO in writing that it has rescinded its notice to withdraw from participation in the 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 seven (7) 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 to minimize delays in delivery of FEMA assistance.

2. Provided that the original Agreement has not expired, the Signatories may collectively agree to extend this Agreement to cover additional calendar years, or portions thereof, through an amendment per Stipulation IV.A.

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 and the SHPO.
2. When the relevant Tribe has signed the Agreement, the Agreement shall go into effect regarding Undertakings occurring on Tribal lands or affecting historic properties on Tribal lands.
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 is 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.

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND
THE NEVADA DIVISION EMERGENCY MANAGEMENT**

SIGNATORY PARTY

FEDERAL EMERGENCY MANAGEMENT AGENCY, REGION IX

By: ROBERT J FENTON JR Digitally signed by ROBERT J FENTON JR
Date: 2023.09.05 20:13:04 -10'00' Date: _____

Robert J. Fenton Jr.
Regional Administrator
Region IX

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND
THE NEVADA DIVISION EMERGENCY MANAGEMENT**

SIGNATORY PARTY

NEVADA STATE HISTORIC PRESERVATION OFFICER

By: Rebecca L. Palmer Date: 09/06/2023

Rebecca L. Palmer
State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER, AND
THE NEVADA DIVISION EMERGENCY MANAGEMENT**

SIGNATORY PARTY

NEVADA DIVISION OF EMERGENCY MANAGEMENT

By: **David Wm.** Digitally signed by David Wm.
Fogerson Fogerson Date: _____
Date: 2023.08.31 15:55:03 -07'00'
David W. Fogerson
Chief
Nevada Division of Emergency Management

Appendix A

FEMA Program Summaries

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

Disaster Programs

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

Advance of Nonfederal Share

The Stafford Act and its implementing regulations authorize FEMA to advance or loan to a state, tribal government, local government, or applicant the portion of PA for which the state or tribal government is responsible pursuant to the cost-sharing provisions of the Stafford Act.

Community Disaster Loan Program

The Stafford Act authorizes FEMA to make community disaster loans to help local governments that have incurred significant revenue losses due to a presidentially declared major disaster if necessary for a local government to perform its governmental functions.

Fire Management Assistance Grant Program (FMAG)

The FMAG is available to State, Tribal, and local governments for the mitigation, management, and control of fires on publicly or privately owned lands.

Hazard Mitigation Grant Program (HMGP)

The HMGP provides grants to States, Territories, Tribes, local governments, and private nonprofit organizations to implement long-term hazard mitigation measures after a Declaration.

Individual Assistance Programs (IA)

The Stafford Act authorizes a wide variety of direct and financial assistance to individual and households affected by a Declaration, and FEMA has implemented these authorities under the umbrella of its Individual Assistance Program, which include crisis counseling (Section 416); disaster legal services (Section 415); unemployment assistance (Section 410); food coupons (Section 412); case management (Section 426); and funeral services, minor home repairs, 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, including the U.S. Small Business Administration, U.S. Department of Agriculture, and U.S. Department of Labor, but these other assistance programs are not subject to the terms of this Agreement.

Public Assistance Program (PA)

The Stafford Act authorizes federal assistance for state, territorial, tribal, and local governments and certain private non-profit entities to respond to emergencies and to respond to and recover from major disasters. FEMA has administratively combined these authorities under the umbrella of its Public Assistance Program. The Public Assistance Program provides a broad range of assistance. First, it provides direct services and financial assistance for emergency assistance, such as

emergency evacuation, sheltering, and debris removal. Second, it provides financial assistance for the permanent restoration of disaster-damaged facilities. Third, it includes emergency transportation and emergency communications assistance.

Resilience Programs – Mitigation

Community Assistance Program – State Services Support Elements (CAP-SSSE)

The CAP-SSSE Program provides financial assistance to states to provide technical assistance to communities in the National Flood Insurance Program (NFIP) and to evaluate community performance in implementing NFIP floodplain management activities.

Cooperating Technical Partners Program (CTP)

The CTP Program provides financial assistance to states, local and Tribal governments, institutions of higher education, and other organizations to build upon and enhance the existing capabilities of these entities to increase local involvement in, and ownership of flood hazard identification, flood map maintenance, risk assessment, and risk communication to encourage responsible floodplain management and support their jurisdictional responsibilities as participating members of the NFIP.

Flood Mitigation Assistance Program (FMA)

The FMA Program provides grants to States, Territories, Tribal entities, and local governments for planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance under the NFIP.

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 planning, buyouts, retrofits, relocations, elevations, minor flood control projects, and vegetative fuels reduction.

National Earthquake Hazard Reduction Program (NEHRP)

The NEHRP provides financial assistance to certain organizations to mitigate earthquake losses in the United States through basic and directed research and implementation activities.

National Public Infrastructure Pre-Disaster Hazard Mitigation Program (aka Building Resilient Infrastructure and Communities (BRIC))

Authorized by Section 1234 of the Disaster Recovery Reform Act, this Program is funded as a six (6) percent set aside from disaster expenses, to provide support to states, local communities, Tribes and territories a greater investment in a broad range of eligible hazard mitigation activities before a disaster. Guiding principles of the BRIC Program are supporting communities through capability- and capacity-building; encouraging and enabling innovation; promoting partnerships; enabling large projects; maintaining flexibility; and providing consistency.

Safeguarding Tomorrow Revolving Loan Fund (STORM Act)

The STORM Act Program provides capitalization grants to states, eligible federally recognized Tribes, Puerto Rico and the District of Columbia to establish revolving loan funds that provide hazard mitigation assistance for local governments to reduce risks from natural hazards and disasters.

Resilience Programs - Preparedness

Assistance to Firefighters Grant Program (AFG)

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

Emergency Management Performance Grants (EMPG)

The purpose of the EMPG is to provide federal funds to states to assist state, local, territorial, and tribal governments in preparing for all hazards emergency preparedness capabilities.

Homeland Security Grant Program (HSGP)

The HSGP plays an important role in the implementation of the National Preparedness System by providing funding to states and urban areas to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other threats. HSGP is comprised of three interconnected grant Programs: (1) the State Homeland Security Program (SHSP), (2) the Urban Areas Security Initiative (UASI), and (3) 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, management, and administration.

State Homeland Security Program (SHSP)

The SHSP supports state, tribal, territorial, and local preparedness activities that address high priority preparedness gaps across all core capabilities that support terrorism preparedness.

Urban Areas Security Initiative (UASI) Program

The UASI Program assists high-threat, high-density Urban Areas in efforts to build, sustain, and deliver the capabilities necessary to prevent, protect against, mitigate, respond to, and recover from acts of terrorism.

Operation Stonegarden (OPSG)

The OPSG Program supports enhanced cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and federal, state, local, Tribal, and territorial law enforcement agencies. The OPSG Program provides funding to support joint efforts 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.

Intercity Bus Security Grant Program (IBSGP)

The IBSGP provides funding to strengthen the Nation's critical infrastructure against risks associated with potential terrorist attacks. IBSGP provides funding for critical infrastructure hardening and other physical security enhancements to support transit operators serving the Nation's highest-risk metropolitan areas.

Intercity Passenger Rail – Amtrak (IPR) Program

Provides funds to protect critical surface transportation infrastructure and the traveling public from acts of terrorism and increase the resilience of the Amtrak rail system.

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 with significantly powerful signals for this purpose, and FEMA is responsible for upgrading, maintaining, and managing the agency installed and owned auxiliary fuel systems at each of these radio transmission sites.

National Dam Safety Program (NDSP)

The NDSP provides financial assistance to states to strengthen their dam safety programs, to include activities such as dam safety training, increasing dam inspections, increasing the submission and testing of emergency action plans, coordinating with state preparedness officials, identification of dams to be repaired or removed, and conducting dam safety awareness workshops. NDSP also administers the Rehabilitation of High Hazard Potential Dams (HHPD) Grant Program which provides technical, planning, design, and construction assistance in the form of grants for rehabilitation of eligible high hazard potential dams.

Nonprofit Security Grant Program (NSGP)

NSGP provides funding to integrate the preparedness activities of nonprofit organizations that are at high risk of a terrorist attack with broader state and local preparedness efforts.

Port Security Grant Program (PSGP)

The PSGP provides funding to port authorities, facility operators, and State and local agencies for activities associated with implementing Area Maritime Security Plans (AMSPs), facility security plans and other port-wide risk management efforts. PSGP funds are intended to improve port-wide maritime security risk management; enhance maritime domain awareness; support maritime security training and exercises; and maintain or reestablish maritime security mitigation protocols that support port recovery and resiliency capabilities with a focus on weapons of mass destruction, cybersecurity, and attacks on soft targets.

Staffing for Adequate Fire and Emergency Response Grant Program (SAFER)

The SAFER Program provides financial assistance to fire departments and volunteer firefighter interest organizations to help them increase or maintain the number of training front line firefighters available in their communities.

1230

1231 *Transit Security Grant Program (TSGP)*

1232 The TSGP provides funds to eligible public transportation systems (which include intra-city bus,
1233 ferries and all forms of passenger rail) for the protection of critical transportation infrastructure and
1234 the travelling public from acts of terrorism and to increase the resilience of transit infrastructure.

1235

1236 *Tribal Homeland Security Grant Program (THSGP)*

1237 THSGP provides funding directly to eligible Tribes to support the building, sustainment, and
1238 delivery of core capabilities to enable Tribes to strengthen their capacity to prevent, protect against,
1239 mitigate, respond to, and recover from potential terrorist attacks.

1240

Appendix B

Programmatic Allowances

This list of Programmatic Allowances enumerates FEMA-funded activities which, based on FEMA experience, have no or minimal effect on historic properties if implemented as specified in this Appendix and will not require review by the SHPO and participating Tribe(s).

The Programmatic Allowances consist of two tiers – First Tier and Second Tier. Staff may apply First Tier allowances regardless of whether staff are Qualified, while only Qualified staff, in accordance with Stipulation I.B(1)(a) of this Agreement, may apply Second Tier allowances.

When referenced in the Programmatic 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.

When referenced in the allowances, “previously disturbed soils” shall refer to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing historic properties within their original depositional contexts in the area and to the depth to be excavated.

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 areas where activities are 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, 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 does not include the creation of new or temporary access roads.

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 to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed at an existing licensed or permitted spoil site. This allowance does not apply to historic canals or canal structures.

e. Dewatering flooded, developed areas by pumping.

2. Temporary Structures and Housing

a. 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:

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

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

iii. 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.

iv. Sites that have been previously 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.

v. Areas previously filled to depths of at least six (6) feet, so that subsurface utilities can be installed.

3. Temporary Removable Barriers and Bollards

a. Installation of temporary removable barriers.

b. In-kind repairs, installation, or replacement, and minor upgrades or mitigation of bollards and associated protective barriers in previously disturbed areas.

4. Borrow Material

- a. Borrow material from a commercial source or a stock tank berm, dug-outs, or reclaimed ditch, provided the original surface of the ground is not impacted by the removal method.

B. BUILDINGS AND STRUCTURES

1. Repair or retrofit of buildings less than 45 years old.
2. Removal of water muck, mud, sand, sewage, and/or debris by physical or mechanical means.
3. Installation of exterior security features and early warning devices on existing light poles or other permanent utilities.
4. Hardening or modification of mobile or manufactured buildings or structures, regardless of age, without ground disturbance. The intent of hardening is to make the mobile or manufactured building or structure less susceptible to damage or destruction from fire. Examples of hardening actions might include changes to all or part of a roof, exterior wall cladding or skirt, or doors, windows or skylights. However, roof shape and locations, and size of doors and windows, will be maintained and not changed.

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. Repair and replacement of metal and concrete culverts no greater than forty-two (42) inches in diameter, with no headwalls or concrete headwalls, when culverts are returned to pre-disaster size and location. This allowance does not allow for upgrades.
 - c. Construction of temporary emergency access roads in previously disturbed soils to allow for passage of emergency vehicles.
 - d. Repairs to road slips and landslides that do not require grading of undisturbed soils on the uphill side of the slip.

- e. Re-establishment, armoring, or upgrading of existing roadway ditches.
- e. In-kind repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, and 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.

2. Airports

- a. 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).

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.

D. FEES AND SERVICES

- 1. Reimbursement of a Subrecipient's insurance deductible, not to exceed \$2,500.

II. Second Tier Allowances

A. GROUND DISTURBING ACTIVITIES AND SITE WORK, when proposed activities described below substantially conform to the original footprint 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.

2. Recreation and Landscaping

a. In-kind repair or replacement, and minor upgrades to recreational facilities and features (e.g., playgrounds, campgrounds, fire pits, dump stations and utility hook-ups, swimming pools, athletic fields and signage, batting cages, basketball courts, swing sets, pathways, and simple wooden/wire stream crossings).

b. In-kind repair, replacements, and minor upgrades to landscaping elements (e.g., fencing, free standing walls, paving, planters, irrigation systems, lighting elements, signs, flag poles, ramps, and steps).

3. Piers, Docks, Boardwalks, Boat Ramps, and Dune Crossovers

a. 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. Cemeteries

a. Removal of woody debris such as branches and limbs, from cemeteries, provided that heavy equipment and other machinery are not operated or staged on areas potentially containing human remains.

b. In-kind repair of historic gravestones, monuments, fences, and other historic components.

5. Geotechnical Coring investigations for engineering and design purposes

- a. Geotechnical coring investigations within the existing, disturbed roadbed and/or within the footprint of a damaged facility. The Allowance does not apply to shovel testing, trenching, clearing, grubbing, or installation of new access routes or establishment of new staging locations. Geotechnical cores for engineering and design are typically 4 inches in diameter.
- b. Geotechnical coring investigations at locations determined to have low potential for the presence of archaeological deposits or cultural resources, or within previously disturbed soils as determined by a Qualified archaeologist including review of NVCRIS records, geological information, and/or other information such as Government Land Office (GLO) plats, historic aerials, and historic topographic maps. The Allowance does not apply to trenching, clearing, grubbing, or installation of new access routes or establishment of new staging locations.

B. BUILDINGS AND STRUCTURES

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

- a. In-kind repair and replacement of floors, walls, stairs, ceilings, or trim. The allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster and/or any other character defining interior feature of a National Register listed or eligible resource that may require highly specialized study or skills for the purpose of repair or replacement.
- b. 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.
- c. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.
- d. Replacement of damaged vinyl floor tile (including floor tile containing asbestos) with contemporary floor tile of the same dimension and thickness, and similar texture or pattern.
- e. Use of portable de-humidification systems provided no changes are made to character-defining features (specifically for mold remediation).
- f. Abatement of lead and asbestos in unfinished basements and historically unfinished upper floors and attics.

2. Building Contents

- a. Repair or replacement of building contents including furniture, movable partitions, computers, cabinetry, supplies, and equipment, or any other moveable item which is not a character-defining feature of a historic property.

3. Utilities and Mechanical, Electrical, and Security Systems

- a. In-kind repair, replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning), electrical, and plumbing systems. This allowance does not provide for the installation of new exposed ductwork.
- b. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment, provided it is placed in a location that is not 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. New fire detection systems with exposed electric conduit are allowed in unfinished basements and historically unfinished upper floors and attics.
- 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 and is installed so that it has minimal impact on historic character. New wiring will be sub-surface to the greatest extent possible or where exposed will be enclosed in conduit that is painted to match the existing surface.
- e. Installation of building access security devices, such as card readers, enhanced locks, door alarms, 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. New wiring will be sub-surface to the greatest extent possible or where exposed will be enclosed in conduit that is painted to match the existing surface.
- f. New exposed ductwork, air handler units and electric conduit in unfinished basements and historically unfinished upper floors and attics.
- g. In-kind repair, replacement, or limited upgrading of escalators, elevators, or other mechanical conveyance systems.

- h. Installation of exterior security features and early warning devices on exiting light poles or other permanent utilities. New wiring must be sub-surface to the greatest extent possible or, where exposed, enclosed in conduit that is painted to match the existing surface.

4. Windows and Doors

- a. In-kind repair of damaged or severely deteriorated windows, window frames, shutters, storm shutters, doors, door frames, or associated hardware where profiles, elevations, details, and materials match the original(s). Whenever possible, original materials should be retained for repair, reuse, or future information.
- b. In-kind replacement of windowpanes. 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 intact decorative glass.
- c. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non-character-defining spaces with metal blast-resistant doors and frames.
- d. Installation of security bars over windows on rear elevations and the installation of metal grating at basement window wells.
- e. Installation or application of safety or security window film on windowpanes, provided that there is no alteration of the existing tint, reflectivity, or appearance of the pane. This allowance does not apply to the application of film on existing intact or decorative glass.

5. Exterior Walls, Cornices, Porches, and Foundations

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

- e. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view.
- 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.

7. Weatherproofing and Insulation

- a. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
- b. In-kind repair or replacement of insulation systems, provided that existing interior plaster, woodwork, exterior siding, or exterior architectural detail is not altered.

8. Structural Retrofits

- a. The installation of the following retrofits or 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 shutoff valves. In masonry structures, bolts will be required to be installed through the mortar and not the stone or brick, as applicable.

b. Replacement, repair or installation of lightning rods.

c. Earthquake bracing used on refrigerators and against-the-wall shelving in schools and other public facilities.

9. Americans with Disabilities Act (ADA) Compliance

a. Installation of grab bars and other such minor interior modifications.

10. Safe Rooms

a. Installation of individual safe rooms within the property limits of a residence where the installation would occur within the existing building or structure or in previously disturbed soils.

11. Elevation, Demolition, and Reconstruction

a. Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than forty-five (45) years of age provided 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 historic districts listed or eligible for listing in the National Register.

C. TRANSPORTATION FACILITIES, when proposed activities substantially conform to the original footprint or are 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 improvements to meet current codes 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, replacement, or minor upgrades 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, parking lots, storm drains, catch basins, fire hydrants and sidewalks, and parking meters.
- f. Installation of speed bumps and/or enhanced curbs. This allowance does not apply to any work in historic districts listed or eligible for listing in the National Register.
- g. Stabilization of hazardous slopes within transportation rights-of-way. Stabilization methods include the installation of retaining walls and systems such as gabion baskets, crib walls, and soldier pile and lag walls. Work must not exceed the limits of the previously disturbed rights-of-way and must not take place within the viewshed of any historic property listed or eligible for listing in the National Register.

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 or are performed in previously disturbed soils, including the area where the activity is staged.

1. General

- a. In-kind repair or replacement, 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 rights-of-way, except when in close proximity to known archeological sites or within viewsheds of a historic property or historic districts eligible or listed in the National Register.
- c. Directional boring of new or replacement service lines and related appurtenances involving boring or slit trenches within previously disturbed soils of rights-of-way or utility corridors.
- d. In-kind repair, replacement, or minor upgrade of water towers 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.
- e. Temporary storage of supplies and equipment (poles, cable spools, pedestals, etc.) where no ground disturbance will occur. This allowance does not include construction of temporary access routes.

2. Generators and Utilities

- a. In-kind repair, replacement, minor upgrades, elevation, 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.
- b. Repair of metal utilitarian structures to house or protect utilities such as pump house and electrical transformer houses, as well as related elements such as oil tanks and exposed pipelines, except when located within a historic district listed or eligible for listing in the National Register.
- c. Underground cable replacements of any length, where the replacement cable is placed within three feet of the same trench as an existing or failed cable, except when in proximity (one hundred (100) meters or three hundred (300) feet) to a known archeological site.
- d. Replacement of power poles in pre-existing locations is allowed, including increase in the pole diameter. Relocation or construction of new poles are allowed in: (1) urban or suburban settings between the edge of roadway and the sidewalk, (2) rural settings along roadway shoulders, and (3) in off-road alignment settings in the existing utility corridor, except in close proximity (one hundred (100) meters or three hundred (300) feet) to a known archaeological site or within the viewshed of a historic property or historic district listed or eligible for listing in the National Register, or where the poles themselves are historic components of an eligible utility line.
- e. New construction of a single pole overhead line is permissible when the auguring, pole placement, and line placement is conducted from within the previously

disturbed public or private rights-of-way, or when the lines will not pass within or through any areas known or suspected to contain human remains, archeological resources, or any other historic properties except when in close proximity (one hundred (100) meters or three hundred (300) feet) to a known archaeological site or within the viewshed of a historic property or historic district listed or eligible for listing in the National Register.

- f. Replacement, relocation or installation of solar panels on the roofs of buildings less than forty-five (45) years of age except when located within a historic district listed or eligible for listing in the National Register.
- g. Directional boring for replacement/new service lines and related appurtenances, where ground disturbance would involve no greater than ten (10) square-foot excavation units for directional boring equipment to be placed. These units would be placed in areas for directional drilling to begin and end or where needed to complete boring.

3. Communication Equipment or Systems and Towers

- a. Acquisition, installation, or operation of communication and security equipment systems that use existing distribution systems, facilities, or existing rights-of-way for infrastructure.
- b. The collocation of communication and security equipment on existing towers and buildings/structures less than forty-five (45) years in age, provided that the work does not increase the existing tower height or footprint by more than ten (10) percent and occurs within previously disturbed soils.
- c. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase the existing tower height or footprint by more than ten (10) percent and occurs within previously disturbed soils.
- d. Installation of temporary (not to exceed twelve (12) months) communications towers and antenna structures provided that the work does not require modification of buildings or structures forty-five (45) years or older and occurs within previously disturbed soils.
- e. Installation of new communication towers, less than two hundred (200) feet tall, in previously developed urban complexes when the work does not require modification of buildings or structures forty-five (45) years or older, occurs within previously disturbed soils, and is not within one thousand (1,000) feet of the boundaries of a historic property.

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

1. Canal Systems

- a. In-kind repair or replacement of canal systems and associated elements. This allowance does not apply to historic canals or canal structures.

2. Dams, Levees, Locks, and Floodwalls

- a. In-kind repair of dams, levees, locks, floodwalls, and related features, including spillways, tide gates, and fuse plugs, provided the work occurs in previously disturbed soils.

3. Bulkheads, Breakwaters, Seawalls, Revetments, and Berms

- a. In-kind repair or replacement of breakwaters, seawalls, bulkheads, berms, jetties, sand dunes, and revetments, provided the work occurs in previously disturbed soils and there are no known shipwrecks within the project's APE.

4. Fish Hatcheries

- a. In-kind repair or replacement of fish hatcheries and fish ladders.

5. Waste-Water Treatment Lagoon Systems

- a. In-kind repair, replacement, or minor upgrades of waste-water treatment lagoon systems.

6. Outfall Systems

- a. In-kind repair, replacement, or minor upgrades to outfall pipes along beaches or inland waterways.

F. WILDFIRE RECOVERY AND MITIGATION

1. Reseeding

- a. Aerial seeding by fixed or rotary wing aircraft to re-establish vegetative ground cover after a wildfire.
- b. Hydro-seeding or placement of jute matting or other similar measures as appropriate and limited to heavily sloped or erodible areas, with minimal potential ground disturbance (limited to surface soils only).

2. Creation of Defensible Space by Limited Vegetative Fuels Reduction or Thinning

This Allowance is for the creation of defensible space around private or public structures in the wildland interface through selective, limited vegetation removal. Its purpose is to assist firefighters to have a defensible space to stage and defend structures from fires and provide residents with safe fire evacuation routes.

a. Creation of defensible space around private and public structures in the wildland interface through selective vegetation removal including limbing low branches, brush thinning and removal, clearing of leaves and pine needles on the ground surface, and limited thinning of small understory trees using hand-held tools. The defensible space zone typically extends approximately 100 feet from the structure, but no more than approximately 200 feet in steep sloped areas. Trees must be cut in place using a chainsaw or hand tools, and lifted and removed from the property by hand, not dragged across the ground surface, to a debris stockpile area for use as firewood, chipped, or hauled to and disposed of at an approved solid waste facility. No root balls or roots will be removed. Dragging means pushing or pulling vegetation or equipment across the surface or subsurface of the ground. Equipment, inclusive of any vehicles, will be staged and accessed on improved surfaces and treatment areas from existing hard packed parking areas, roads, or driveways.

b. Creation of defensible space within ten (10) feet of an existing roadway through selective vegetation removal including limbing low branches, brush thinning and removal, and limited thinning of small understory trees using hand-held tools. Equipment, inclusive of any vehicles, must be staged and accessed on improved (paved or hard packed) existing surfaces to the maximum extent possible.

c. Chipping and broadcasting of vegetative debris on site beyond the defensible space zone.

3. Authorizing the installation of devices to protect human or animal life that could involve minimal potential ground disturbance and limited to surface soils only. Examples of this include small rain or other monitoring gauges and temporary sediment catchment devices in waterways for fire-affected landscapes. Installation of any devices would not involve vehicular or equipment use off of existing roadways.

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 Recipient, Subrecipient, the 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: FEMA will consult with the SHPO to determine the level and format of recordation required for the affected historic property or properties. FEMA shall ensure that the recordation is submitted to the SHPO for review and approval prior to project implementation. This recordation may include, but is not necessarily limited to, one or more of the following components:

1. Digital Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a digital photography package prepared by Qualified staff or Qualified contractors in the disciplines of Architectural History, History, Architecture, or Historic Architecture, as appropriate. The digital photography package will meet the standards cited in the NPS National Register *Photo Policy Factsheet updated 5/15/2013* Interim National Register Photo Policy Factsheet (nps.gov), or subsequent revisions.

- 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. However, interior photographs will only be subject to this requirement if a request for access is approved by the property owner and/or lessee. 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 digital photography package shall include printed color copies of the digital photographs (on appropriate paper, per the NPS *National Register Photo Policy Factsheet updated 5/15/2013*, a CD/DVD of the digital photographs, a completed state architectural inventory form, and a written site history of the historic property.

- c. The designated responsible party shall submit the digital photography package to the SHPO and participating Tribe(s), for review and approval. Once approved by the

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

- a. The 35 mm 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. However, interior photographs will only be subject to this requirement if a request for access is approved by the property owner and/or lessee. 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 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 to the SHPO and participating Tribe(s) for review and approval. Once approved by the SHPO and 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.

3. Large Format Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a large format photography package prepared by Qualified staff or Qualified contractors in the disciplines of Architectural History, History, Architecture, or Historic Architecture, as appropriate.

- a. The large format 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. However, interior photographs will only be subject to this requirement if a request for access is approved by the property owner and/or lessee. 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 large format film photography package shall include one (1) full set of 4 x 5 or 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5 x 7-inch 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 large format film photography package to the SHPO and participating Tribe(s) for review and approval. Once approved by the SHPO and 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 Recipient, and Subrecipient shall work with the SHPO and 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, 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.

C. Historical Context Statements and Narratives

Prior to project implementation, FEMA, the Recipient, and Subrecipient shall work with the SHPO and participating Tribe(s) to determine the topic and framework of a historic context statement or narrative that 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 upon, 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 Qualified staff or Qualified contractors with the discipline appropriate for the historic property.

D. Oral History Documentation

Prior to project implementation, FEMA, the Recipient, and Subrecipient shall work with the SHPO and 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 determined, the designated responsible party shall continue to coordinate with the SHPO and participating Tribe(s) through data collection, drafting of the document, and

delivery of a final product. The designated responsible party shall use Qualified staff or Qualified contractors with the discipline appropriate for the historic property.

E. Historic Property Inventory

Prior to project implementation, FEMA, the Recipient, and Subrecipient shall work with the SHPO and 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 or districts that have undergone previous change(s) or previously lacked sufficient documentation, or the toward the survey of new historic properties 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 participating Tribe(s) through the data collection process. The designated responsible party shall use the SHPO's and participating Tribe(s) standards for the survey of historic properties and the SHPO's and participating Tribe(s) forms, as appropriate. The designated responsible party shall prepare a draft inventory report, according to the SHPO's and participating Tribe(s) templates and guidelines, and work with the SHPO and participating Tribes until a final property inventory is approved. The designated responsible party shall use Qualified staff or Qualified contractors with the discipline appropriate for the historic property.

F. National Register and National Historic Landmark Nominations

Prior to project implementation, FEMA, the Recipient, and Subrecipient shall work with the SHPO and participating Tribe(s), 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 participating Tribe(s) through the drafting of the nomination form. The SHPO and 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 qualified staff or qualified contractors with the discipline appropriate for the historic property.

G. Geo-References of Historic Maps and Aerial Photographs

Prior to project implementation, FEMA, the Recipient, and Subrecipient shall work with the SHPO and participating Tribe(s) to identify the historic maps or aerial photographs for scanning and geo-referencing. Once a list of maps and/or aerial photographs has been agreed upon, the designated responsible party shall continue to coordinate with the SHPO and participating Tribes through the scanning and geo-referencing process and shall submit drafts of paper maps and electronic files to the SHPO and participating Tribe(s) for review. The SHPO and participating Tribe(s) shall have final approval on the quality of the documentation provided by the designated responsible party. The final deliverable produced by the designated responsible party shall include a paper copy of each scanned image, a

2047 geo-referenced copy of each scanned image, and the metadata relating to both the original
2048 creation of the paper maps and the digitization process.