

with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

Section 13.10 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 ("E.O. 150"), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: Administration for Children's Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute

materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency's plans developed pursuant to E.O. 150.

14. MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix C.

Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except _____.

Full name of Proposer or Bidder *[below]*

Address _____
City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorships
SOCIAL SECURITY NUMBER _____
- B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER _____
- C - Corporation
EMPLOYER IDENTIFICATION NUMBER _____

By _____
Signature

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix C, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]

[Name of authorized officer (typewritten)]

[Title of authorized officer (typewritten)]

[Contact Phone Number for Broker (typewritten)]

[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of _____, 201_

NOTARY PUBLIC

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except _____.

Full name of Proposer or Bidder *[below]*

Address _____
City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorships
SOCIAL SECURITY NUMBER _____
- B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER _____
- C - Corporation
EMPLOYER IDENTIFICATION NUMBER _____

By _____
Signature

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.
* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

APPENDIX D

WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

1. In accordance with Section 12-113 of the New York City Administrative Code,

(a) Any subcontractor of the Subrecipient under this Agreement whose subcontract exceeds \$100,000 (a "Covered Subcontractor") shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the City's Public Advocate or the Comptroller, or (iii) the City Chief Procurement Officer, OMB Chief Contracting Officer ("OMB ACCO") or OMB Commissioner.

(b) If any of a Covered Subcontractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subsection (a) above, he or she shall be entitled to bring a cause of action against the Covered Subcontractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the OMB ACCO or OMB Commissioner of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the City, any public agency or other public entity, or the Subrecipient, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

(c) Officers and employees of the Subrecipient are subject to and protected by Section 12-113b.1 and e.1 of the New York City Administrative Code.

2. In accordance with Section 6-132 of the New York City Administrative Code, the Subrecipient and Covered Subcontractors shall post a notice in the form provided by the City in a prominent and accessible place on any site where work by it pursuant to this Agreement or covered subcontract hereunder, respectively, is performed that contains information about:

(a) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with this Agreement or such subcontract; and

(b) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with this Agreement or such subcontract.

3. For the purposes of this Section, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

4. The Subrecipient shall include the above applicable provisions in all subcontracts with a value in excess of \$100,000.

WHISTLEBLOWER PROTECTION NOTICE FORM (ATTACHED)



REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

**Department of Investigation (DOI) Complaint Bureau
212-825-5959**

**or by mail or in person at:
DEPARTMENT OF INVESTIGATION
80 MAIDEN LANE, 17th FLOOR
NEW YORK, NEW YORK 10038
Attention: COMPLAINT BUREAU**

**or file a complaint on-line at:
www.nyc.gov/doi**

All communications are confidential.

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.

- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.

**Get the Worms Out
of the Big Apple.**

APPENDIX E

NOTICE TO BIDDERS

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip. In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

In order to obtain subcontractor approval under section 3.02 of Appendix C or Article 17 of the Standard Construction Contract and PPB Rule § 4-13 Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

FIRST AMENDMENT AGREEMENT

This FIRST AMENDMENT AGREEMENT (this "Amendment") is entered into as of July 25, 2013 by and between THE CITY OF NEW YORK (the "City"), a municipal corporation of the State of New York, acting by and through its Office of Management and Budget ("OMB"); and the NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, a New York not-for-profit corporation ("Subrecipient", and together with City, the "Parties" and each individually, a "Party").

RECITALS

WHEREAS, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.), the City received major disaster declarations as a result of Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013;

WHEREAS, pursuant to the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013), as amended ("Act"), Congress appropriated \$16,000,000,000 for the Community Development Block Grant Disaster Recovery ("CDBG-DR") program;

WHEREAS, it is expected that a grant agreement will be entered into between the City and the U.S. Department of Housing and Urban Development in connection with the CDBG-DR program (the "Grant Agreement");

WHEREAS, the City and Subrecipient entered into a Subrecipient Agreement dated as of June 24, 2013 (the "SRA");

WHEREAS, the Parties anticipate that the conditions to the effectiveness of the SRA will be satisfied following the date hereof, including the execution, delivery and effectiveness of the Grant Agreement; and

WHEREAS, in connection with the Subrecipient's further implementation of various elements of the Scopes of Work (as defined in the SRA) certain revisions and updates to the SRA are appropriate and accordingly the City and Subrecipient desire for the SRA to be amended upon becoming effective, as more particularly set forth below.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Definitions and Rules of Interpretation. Except as may otherwise be provided in this Amendment, capitalized terms used herein have the meanings assigned to them in the SRA and the rules of interpretation set forth in the SRA shall apply to this Amendment.

2. Effective Date. Following the full execution and delivery of this Amendment, this Amendment shall automatically become effective as of the Effective Date of the SRA. Promptly after the Effective Date of the SRA, a true, complete and correct copy of this Amendment, as so executed, shall be attached to the SRA at Schedule VII thereto pursuant to Section 3(f)(ii) below.

3. Amendments.

(a) Table of Contents. The table of contents to the SRA is hereby amended by deleting the phrase "Schedule V Required Program Records" in its entirety and inserting the following text in replacement thereof:

- “Schedule V Scope of Work, Environmental Services
- Schedule V-A Budget, Environmental Services
- Schedule VI Required Program Records
- Schedule VII Amendments to this Agreement”

(b) Preamble. The Preamble to the SRA is hereby deleted in its entirety and replaced with the following:

“This SUBRECIPIENT AGREEMENT, dated as of June 24, 2013 by and between the CITY OF NEW YORK, a New York municipal corporation (the “City”), acting by and through its Office of Management and Budget (“OMB”); and the NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, a New York not-for-profit corporation (“Subrecipient”, and together with City, the “Parties” and each individually, a “Party”), as amended by the First Amendment to Subrecipient Agreement, dated as of July 25, 2013, a copy of which is attached hereto at Schedule VII (this “Agreement”).”

(c) Definitions. The definitions set forth in the SRA are hereby amended as follows by:

(i) deleting the definition of “Agreement” in its entirety and replacing it with the following:

““Agreement” means this Subrecipient Agreement including the Schedules and Appendices attached hereto.”

(ii) Deleting the definition of “Administrative Services in its entirety and replacing it with the following:

““Administrative Services” means the administrative services to be provided by the Subrecipient as described in the Scopes of Work.”

(iii) deleting, from the definition of “Eligible Costs” the term “Scope of Services” in its entirety and inserting the term “Scopes of Work” in replacement thereof;

(iv) deleting the definition of “Client” in its entirety and replacing it with the following:

““Client” means any Person (other than Contractors) that directly or indirectly receives Program Funds from Subrecipient in connection with one or more of the Programs.”

(v) adding the following definition immediately below the definition of “Grant Agreement”:

““Grantee” means the City.”

(vi) deleting the definition of “Scopes of Work” in its entirety and replacing it with the following:

““Scopes of Work” means scopes of work attached hereto as Schedules I through V, which shall be supplemented from time to time as provided therein, and shall otherwise be revised by mutual agreement between OMB and Subrecipient from time to time, as required, to provide additional details for each phase of implementation of each Program.”

(d) Section 9. Section 9 of the SRA is hereby amended by deleting the last sentence from Section 9.3(c) in its entirety and inserting the following in replacement thereof:

“Each Subcontract shall comply with and include the provisions required to be included in such Subcontract pursuant to Section 3.02 of Appendix C; provided, that if any such provisions conflict with any provisions of the Master Contract, then the provisions of the Master Contract shall take precedence.”

(e) Section 13. Section 13 of the SRA is hereby amended as follows by:

(i) deleting, from Section 13.5, the text “10.5,” in its entirety; and

(ii) adding the following new Section 13.15 immediately below

Section 13.14.

“13.15 Amendments. No provision of this Agreement may be amended, amended and restated, supplemented or otherwise modified except by written instrument signed by the Parties.”

(f) Schedules and Appendices. The Schedules and Appendices to the SRA are hereby amended as follows by:

(i) deleting all of the text in Schedule I through Schedule IV-A that is below the first heading in each such Schedule in its entirety and replacing such text with the applicable substitute text included in this Amendment at Exhibit A (Updated Text to Schedules);

(ii) re-numbering Schedule V to Schedule VI;

(iii) adding, as a new Schedule V and a new Schedule V-A to the SRA, the schedules attached hereto at Exhibit B (New Schedules V and V-A);

(iv) adding, as a new Schedule VII to the SRA, the schedule attached hereto at Exhibit C (New Schedule VII) and attaching thereto a true, complete and correct copy of this Amendment, as fully executed; and

(v) inserting the following text immediately above the table of contents to Appendix C:

“NOTICE

SHOULD ANY PROVISIONS OF THIS APPENDIX C CONFLICT WITH THE PROVISIONS OF NYCEDC'S MASTER CONTRACT WITH THE CITY, THEN THE PROVISIONS OF NYCEDC'S MASTER CONTRACT WITH THE CITY SHALL TAKE PRECEDENCE.”

4. Miscellaneous.

(a) Ratification. Except as otherwise provide herein, all terms and conditions set forth in the SRA are hereby ratified and reaffirmed in their entirety and shall remain valid and in full force and effect.

(b) Entire Agreement. This Amendment constitutes the entire agreement between the City and the Subrecipient with respect to the matters contemplated herein and supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Subrecipient regarding such matters.

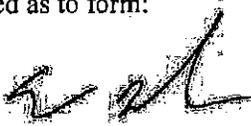
(c) Amendments. No provision of this Amendment may be amended, amended and restated, supplemented or otherwise modified except by a written instrument signed by both Parties.

(d) Counterparts. This Amendment may be executed in one or more counterparts which, when taken together, shall constitute one and the same instrument.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, this Amendment has been executed by the duly authorized
Representatives of the Parties as of the date set forth in the preamble above.

Approved as to form:


By: _____
Acting Corporation Counsel

The CITY OF NEW YORK, acting through its
Office of Management and Budget

By: _____
Name:
Title:

AUG 15 2013

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

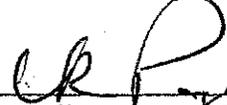
By: _____
Name:
Title:

IN WITNESS WHEREOF, this Amendment has been executed by the duly authorized
Representatives of the Parties as of the date set forth in the preamble above.

Approved as to form:

The CITY OF NEW YORK, acting through its
Office of Management and Budget

By: _____
Acting Corporation Counsel

By:  _____
Name: *MARA HABER*
Title: *Dire*

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

By: _____
Name:
Title:

IN WITNESS WHEREOF, this Amendment has been executed by the duly authorized Representatives of the Parties as of the date set forth in the preamble above.

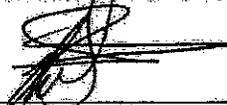
Approved as to form:

The CITY OF NEW YORK, acting through its Office of Management and Budget

By: _____
Acting Corporation Counsel

By: _____
Name:
Title:

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

By:  _____
Name: *David Eisenberg*
Title: *EVP.*

UPDATED TEXT FOR SCHEDULES

Updated Text For Schedule I *(Substitute text follows)*

“General

The activities under this program will be managed by the Subrecipient, which may in its discretion procure Contractor(s) if it deems it necessary to implement any aspect of such program activities. Consistent with the requirements of this Agreement, the Subrecipient shall be reimbursed for any Eligible Costs incurred in carrying out program activities within eligible budget amounts.

The program activities include providing grants and/or loans to qualified real property owners the proceeds of which shall be used for physical investments to improve resiliency to severe weather. To the extent required by CDBG Rules and Requirements of Law, the activities under this program shall be subject to prior approval by HUD. With respect to each activity, Subrecipient and its contractor(s) shall implement the activity in accordance with applicable CDBG Rules and Requirements of Law.

In order to implement the foregoing, Subrecipient will carry out the activities described in the Action Plan for Business Resiliency Investment of grants and/or loans to eligible businesses and shall prepare the following deliverables:

- a scope of work with benchmark timelines
- policies and procedures for grants and/or loans
- any needed RFPs for Contractor support
- a line item budget to support this Scope of Work

Each of the above deliverables shall constitute a supplement to this Schedule I upon submission of each such deliverable by Subrecipient to OMB and OMB’s written approval, which shall not be withheld based on programmatic preferences. If OMB does not provide its approval, it will work in good faith with Subrecipient to modify the deliverable, on terms mutually acceptable to Subrecipient and OMB, in order to implement the Program. To accomplish the work covered by each such deliverable, and to be in compliance with CDBG Rules, Subrecipient shall prepare and provide OMB with line item budgets delineating the costs to carry out each of the four items of work identified above. Upon approval of each such budget by OMB, the approved budget shall constitute a supplement to and a part of this Agreement authorizing Subrecipient to incur costs to carry out the plan and program development.”

Updated Text For Schedule I-A (Substitute text follows)

“ The following represents the maximum allocations related to eligible program and planning and administration amounts, but no reimbursement shall occur or be authorized until Subrecipient provides a line item budget to sufficiently delineate proposed expenditures to be consistent with HUD regulations 24 CFR 570.503 and HUD requirements for measurable audit standards to assure eligibility of such expenses approved by OMB.

General

Program	\$90,000,000
Planning and Administration	\$8,000,000 ¹
Total	<u>\$98,000,000</u>

To accomplish the Scope of Work described in Schedule I, and to be in compliance with CDBG Rules, as more fully described in Schedule I Subrecipient shall prepare and provide OMB with additional line item budgets further delineating the costs to carry out certain elements of such Scope of Work. Upon written approval of each such line item budget by OMB, it shall constitute a supplement to and a part of this Agreement authorizing Subrecipient to incur Program costs to carry out the element of the Scope of Work covered by such line item budget. Notwithstanding the foregoing, it is acknowledged that (i) pursuant to Section 2.1 of this Agreement, the City authorizes the Subrecipient to incur costs for activities undertaken in accordance with this Agreement prior to the Effective Date of this Agreement, including pre-award costs, incurred in compliance with 24 CFR section 570.200(h)(1) and the HUD CDBG-DR Allocation rules published in the Federal Register on March 5, 2013 and (ii) pursuant to Section 5.1(c) of this Agreement Subrecipient shall be reimbursed for general administrative costs and planning costs incurred in connection with work performed pursuant to this Agreement. ”

¹ Any unexpended amounts shall be available to be used for Eligible Costs in connection with the Programs.

Updated Text For Schedule II (Substitute text follows)

“ General

The activities under this program will be managed by the Subrecipient, which may in its discretion procure Contractor(s) if it deems it necessary to implement such program activities. Consistent with the requirements of this Agreement, the Subrecipient shall be reimbursed for any Eligible Costs incurred in carrying out program activities within eligible budget amounts.

Program activities are focused on jump-starting economic activity in the five key areas - the East and South Shores of Staten Island, Southern Manhattan, Southern Brooklyn, the Brooklyn and Queens East River Waterfront, and South Queens (collectively, the “Impact Areas”) by allocating, through “Race-to-the-Top”-style competitions, grants to the most innovative and effective investment ideas for spurring long-term economic growth. Possible ideas could include attraction of growing companies and/or companies of significant size; attraction of companies that serve the needs of underserved populations, including those with disabilities; or other transformative investments in the Impact Areas.

To the extent required by CDBG Rules and Requirements of Law, the activities under this program described below shall be subject to prior approval by HUD. With respect to each activity, Subrecipient and its contractor(s) shall implement the activity in accordance with applicable CDBG Rules and Requirements of Law. Pursuant to 24 CFR 570.503 the following steps shall constitute the scope of work and measurable budget performance benchmarks for the Activity described.

- Subrecipient shall administer the Neighborhood Game-Changer Investment Competition (the “Competition”). As a first step in launching the Competition, the Subrecipient shall, in compliance with HUD requirements, issue a Request for Proposals (the “RFP”) intended to harness the best ideas to enhance the vitality, connectivity and economic strength of the Impact Areas. The RFP will invite organizations, businesses, and institutions (each a “Respondent”) to submit proposals (each a “Proposal”) to execute a “game changing” project and/or program that will catalyze significant long-term economic growth in an Impact Area.
- Proposals will be evaluated based on their ability to generate substantial economic activity in the Impact Areas, create new jobs, demonstrate significant investment on the part of the respondent, bring permanent investment to an Impact Area, increase accessibility of the Impact Areas, leverage CDBG-DR Funds to attract additional public or private investment, and build physical and/or human capital that will make the Impact Areas more resilient, with a preference for Low-Moderate Income (“LMI”) areas. Proposals should generate meaningful economic growth both directly, through new job creation, and indirectly, by anchoring new or existing institutions and/or industries and catalyzing significant secondary benefits to the local economies.

- Each Proposal will be reviewed to determine if it is responsive to the RFP criteria and to determine if the activities described in such Proposals are eligible under CDBG Rules.
- Subrecipient shall enter into Subcontracts with the award recipients which Subcontracts shall comply with all applicable CDBG Rules and Requirements of Law.
- Subrecipient shall be responsible for the implementation of the Subcontract provisions including draw down of funds.
- Subrecipient shall be responsible for all required compliance monitoring steps for the Subcontracts.

In order to implement the foregoing, Subrecipient will carry out the activities described in the Action Plan for the Neighborhood Game-Changer Competition and in addition to the foregoing shall prepare the following deliverables:

- a scope of work with benchmark timelines
- policies and procedures for the competition
- any needed RFPs for Contractor support
- a line item budget to support this Scope of Work

Each of the above deliverables shall constitute a supplement to this Schedule II upon submission of the details of each aspect of such work by Subrecipient to OMB and OMB's written approval, which shall not be withheld based on programmatic preferences. If OMB does not provide its approval, it will work in good faith with Subrecipient to modify the deliverables, on terms mutually acceptable to Subrecipient and OMB, in order to implement the Program. To accomplish the work covered by each such deliverable, and to be in compliance with CDBG Rules, Subrecipient shall prepare and provide OMB with line item budgets delineating the costs to carry out each of the four items of work identified above. Upon approval of each such budget by OMB, the approved budget shall constitute a supplement to and a part of this Agreement authorizing Subrecipient to incur costs to carry out the plan and program development.

Pre-Approved Work Tasks

Draft and Release of Neighborhood Game-Changer Investment Program RFP; Receipt and Evaluation of Proposals. ”

Updated Text For Schedule II-A (Substitute text follows)

“ The following represents the maximum allocations related to eligible program and planning and administration amounts, but no reimbursement shall occur or be authorized until Subrecipient provides a line item budget to sufficiently delineate proposed expenditures to be consistent with HUD regulations 24 CFR 570.503 and HUD requirements for measurable audit standards to assure eligibility of such expenses approved by OMB.

Program	\$90,000,000
Planning and Administration	\$8,000,000 ²
Total	<u>\$98,000,000</u>

To accomplish the Scope of Work described in Schedule II, and to be in compliance with CDBG Rules, as more fully described in Schedule II Subrecipient shall prepare and provide OMB with additional line item budgets further delineating the costs to carry out certain elements of such Scope of Work. Upon written approval of each such line item budget by OMB, it shall constitute a supplement to and a part of this Agreement authorizing Subrecipient to incur Program costs to carry out the element of the Scope of Work covered by such line item budget. Notwithstanding the foregoing, it is acknowledged that (i) pursuant to Section 2.1 of this Agreement, the City authorizes the Subrecipient to incur costs for activities undertaken in accordance with this Agreement prior to the Effective Date of this Agreement, including pre-award costs, incurred in compliance with 24 CFR section 570.200(h)(1) and the HUD CDBG-DR Allocation rules published in the Federal Register on March 5, 2013 and (ii) pursuant to Section 5.1(c) of this Agreement Subrecipient shall be reimbursed for general administrative costs and planning costs incurred in connection with work performed pursuant to this Agreement.

Pre-Approved Budget Line Items

1. (a) Approved Work Task: Draft and Release of Neighborhood Game-Changer Investment Program RFP; Receipt and Evaluation of Proposals.

² Any unexpended amounts shall be available to be used for Eligible Costs in connection with the Programs.

(b) Approved Budget for Work Task:

Estimated Costs: Neighborhood Game Changer Program RFP

Title	Department	Salary	% of Time on Game Changers	No. of Hours	Start Month	End Month	# Months	Monthly Salary	Salary Applied to Game Changers
Executive Vice President	RETS	\$ 156,600	12%	211.20	February	December	11	\$ 13,050.00	\$ 17,226.00
Senior Vice President	RETS	\$ 125,000	30%	528.00	February	December	11	\$ 10,416.67	\$ 34,375.00
Assistant General Counsel	Legal	\$ 160,000	10%	160.00	March	December	10	\$ 13,333.33	\$ 13,333.33
Assistant General Counsel	Legal	\$ 160,000	10%	160.00	March	December	10	\$ 13,333.33	\$ 13,333.33
TOTAL SENIOR MANAGEMENT:				1059.20					\$ 78,267.67
Vice President	Development	\$ 60,000	10%	144.00	April	December	9	\$ 5,000.00	\$ 4,500.00
Vice President	RETS	\$ 82,000	50%	560.00	June	December	7	\$ 6,833.33	\$ 23,916.67
Assistant Vice	RETS	\$ 68,000	20%	352.00	February	December	11	\$ 5,666.67	\$ 12,466.67
Project Manager	RETS	\$ 58,000	40%	640.00	March	December	10	\$ 4,833.33	\$ 19,333.33
New RETS PM (starting July 1)	RETS	\$ 58,000	50%	480.00	July	December	6	\$ 4,833.33	\$ 14,500.00
Marketing Manager	Marketing	\$ 53,000	15%	168.00					
Special Projects Manager	GovCo	\$ 65,000			June	December	7	\$ 4,416.67	\$ 4,637.50
Assistant Vice President	Contracts	\$ 72,000	10%	2344.00	April	December	7	\$ 6,000.00	\$ 4,200.00
TOTAL OTHER STAFF:									\$ 83,554.17
Salary Subtotal									\$ 161,821.83
Fringe									\$ 48,546.55
Total									\$ 210,368.38

		No. of Hours
TOTAL SENIOR MANAGEMENT:	\$ 78,267.67	1059.20
TOTAL OTHER STAFF:	\$ 83,554.17	2344.00
TOTAL:	\$ 161,821.83	
Fringe	\$ 48,546.55	
Total	\$ 210,368.38	3403.20

Updated Text For Schedule III (Substitute text follows)

“ General

Program activities consist of “Race-to-the-Top”-style competitions, in compliance with HUD procurement rules and regulations governing RFPs for competitive selections of Subcontracts, to allocate grants to the most innovative and cost-effective measures to improve building and infrastructure resiliency. The proposed activities must comply with all applicable CDBG Rules and Requirements of Law, including meeting a National Objective of either serving Low-Moderate Income Residents or addressing an Urgent Need resulting from a direct impact from Hurricane Sandy. Grants will be allocated pursuant to a two-track program to identify technologies and measures that improve the resiliency of (1) critical infrastructure networks and (2) building systems consistent with a National Objective.

In order to implement the foregoing, Subrecipient will carry out the activities described in the Action Plan for the Infrastructure and Building Resiliency Technologies Competitions and shall prepare the following deliverables:

- a scope of work with benchmark timelines
- policies and procedures for the competition
- any needed RFPs for Contractor support
- a line item budget to support this Scope of Work

Each of the above deliverables shall constitute a supplement to this Schedule III upon submission of each such deliverable by Subrecipient to OMB and OMB’s written approval, which shall not be withheld based on programmatic preferences. If OMB does not provide its approval, it will work in good faith with Subrecipient to modify the deliverable , on terms mutually acceptable to Subrecipient and OMB, in order to implement the Program. To accomplish the work covered by each such deliverable, and to be in compliance with CDBG Rules, Subrecipient shall prepare and provide OMB with line item budgets delineating the costs to carry out the four items of work identified above. Upon approval of each such budget by OMB, the approved budget shall constitute a supplement to and a part of this Agreement authorizing Subrecipient to incur costs to carry out the plan and program development.

To the extent required by CDBG Rules and Requirements of Law, the activities under this program described below shall be subject to prior approval by HUD. With respect to each activity, Subrecipient and its contractor(s) shall implement the activity in accordance with applicable CDBG Rules and Requirements of Law. Pursuant to 24 CFR 570.503 the following steps shall constitute the scope of work and measurable budget performance benchmarks for the Activity described. Notwithstanding the above requirements, Subrecipient is authorized to proceed with procurement of a Contractor consultant consistent with CDBG Rules governing procurement under the following terms for a specific line item budget in total of \$300,000.

Pre-Approved Work Tasks

1. Subrecipient shall release an RFP and enter into a Subcontract for consultant support to Subrecipient for preparing and launching the Activity.

- The Subrecipient shall administer The Infrastructure and Building Resiliency Technologies Competition (the "Competition"). The Subrecipient shall procure a consultant (the "Consultant") in accordance with HUD requirements to assist the Subrecipient with the project design, development framework, project marketing, and competition processing of the Competition, as more specifically described herein.
- The Consultant will assist the Subrecipient to develop the structure, guidelines, terms, and conditions for the Competition that meet the requirements outlined in the Hurricane Sandy Allocation. At a minimum, such proposal shall include the Consultant's approach for assisting Subrecipient with the following: 1. Competition design; 2. Participation eligibility for Applicants; 3. Competition awards and appropriate amounts for Project grant funding; 4. Judging process, and 5. Selection criteria and submittals by which submissions will be reviewed and selected. Each of these components will be approved in writing by Subrecipient before implementation.
- The Consultant shall assist the Subrecipient to promote and market the Competition, including utilizing their network of contacts, institutions and organizations in order to reach a broad audience domestically and internationally and garner participation from a diverse range of entities. The Consultant will be responsible for designing, developing and hosting a Competition website that will provide: 1. Guidelines, rules and a timeline for Competition submissions; 2. A means for Applicants to submit their Application Packages online; 3. Marketing visibility for the Competition; and 4. Contact information for questions.

Consultant will also be responsible for the following tasks:

- Consultant shall develop a list of twenty (20) to thirty (30) candidates to serve on the judging panels for the Competition. The Subrecipient will compile and approve the final list of judges.
- Candidates should possess the expertise in infrastructure and building systems required to evaluate the wide range of existing and emerging technologies proposed.
- The Consultant shall assist Subrecipient in conducting outreach efforts to recruit the panels of expert judges.
- The Consultant shall respond to questions about the Competition via the website, email and phone.
- The Consultant shall conduct the submission intake process.
- The Consultant shall assist Subrecipient to plan and implement awards ceremonies for presentation of winning submissions.

- The Consultant shall perform such other tasks with respect to the Competition as required by the Subrecipient.

The Consultant will work in close collaboration with Subrecipient staff on all aspects of the Competition, providing general project management support on an as-needed basis, mainly in the areas outlined in this scope. ”

Updated Text For Schedule III-A (Substitute text follows)

“ The following represent the maximum allocations related to eligible program and planning and administration amounts, but no reimbursement shall occur or be authorized until Subrecipient provides a line item budget to sufficiently delineate proposed expenditures to be consistent with HUD regulations 24 CFR 570.503 and HUD requirements for measurable audit standards to assure eligibility of such expenses approved by OMB.

General	\$40,500,000
Planning and Administration	\$3,600,000 ³
Total	<u>\$44,100,000</u>

To accomplish the Scope of Work described in Schedule III, and to be in compliance with CDBG Rules, as more fully described in Schedule III Subrecipient shall prepare and provide OMB with additional line item budgets further delineating the costs to carry out certain elements of such Scope of Work. Upon written approval of each such line item budget by OMB, it shall constitute a supplement to and a part of this Agreement authorizing Subrecipient to incur Program costs to carry out the element of the Scope of Work covered by such line item budget. Notwithstanding the foregoing, it is acknowledged that (i) pursuant to Section 2.1 of this Agreement, the City authorizes the Subrecipient to incur costs for activities undertaken in accordance with this Agreement prior to the Effective Date of this Agreement, including pre-award costs incurred in compliance with 24 CFR section 570.200(h)(1) and the HUD CDBG-DR Allocation rules published in the Federal Register on March 5, 2013 and (ii) pursuant to Section 5.1(c) of this Agreement Subrecipient shall be reimbursed for general administrative costs and planning costs incurred in connection with work performed pursuant to this Agreement.

Pre-Approved Budget Line Items:

1. Approved Work Task: RFP and Subcontract for consultant support to Subrecipient for preparing and launching the Activity.

(a) Approved Budget for Work Task: \$300,000 for this work task is within the Total to be assigned to cost category by OMB based on eligibility of specific work tasks. The timeline benchmarks for completion of each work task set forth in the Subcontract with the consultant will be deemed added to the payment schedule upon execution of the Subcontract and as such shall become part of this agreement for compliance and performance purposes. The Specific Work Tasks performed by consultant shall be as follows:

³ Any unexpended amounts shall be available to be used for Eligible Costs in connection with the Programs.

Consultant's Work Tasks	Maximum Payment
Task 1 – Design and Launch the Competition	\$45,000.00
Task 2 – Perform Competition Marketing and Outreach	\$100,000.00
Task 3 – Recruit Technical Advisory Panel and Competition Judges	\$8,500.00
Task 4 – Manage Entrant Submissions, Questions, Submissions Screening and Judging	\$85,000.00
Task 5 – Manage Logistics for Awards Ceremony	\$33,500.00
Task 6 – Provide Project Management Support, Monitor and Report on Post-Award Implementation and Evaluate the Competition's Impact	\$28,000.00
Total Amount	\$300,000.00 ”

Updated Text For Schedule IV *(Substitute text follows)*

“ General

The Subrecipient shall provide support and technical assistance to the City Department of Small Business Services and OMB, design the loan and grant program to ensure both compliance with CDBG requirements and usability for small business recipients.

Pre-Approved Work Tasks

To that end, the Subrecipient will help facilitate the work to develop policies and procedures to govern the administration of the program in areas including but not limited to: recipient eligibility, underwriting criteria, loan and grant sizing and servicing and conformance with CDBG requirements including but not limited to: environmental review, historic preservation, public noticing and communication, and insurance coverage. The Subrecipient shall provide support and technical assistance to the City's Department of Small Business Services in establishing subrecipient agreements with NYBDC Local Development Corporation and with one or more CDFIs for delivery of the loan and grant program.

Once the loan and grant is fully launched, Subrecipient shall continue to provide planning support and technical assistance. ”

Updated Text For Schedule IV-A (Substitute text follows).

“ To accomplish the Scope of Work describe in Schedule IV, and to be in compliance with CDBG Rules, as more fully described in Schedule IV Subrecipient shall prepare and provide OMB with additional line item budgets further delineating the costs to carry out certain elements of such Scope of Work. Upon written approval of each such line item budget by OMB, it shall constitute a supplement to and a part of this Agreement authorizing Subrecipient to incur Program costs to carry out the element of the Scope of Work covered by such line item budget. Notwithstanding the foregoing, it is acknowledged that (i) pursuant to Section 2.1 of this Agreement, the City authorizes the Subrecipient to incur costs for activities undertaken in accordance with this Agreement prior to the Effective Date of this Agreement, including pre-award costs, incurred in compliance with 24 CFR section 570.200(h)(1) and the HUD CDBG-DR Allocation rules published in the Federal Register on March 5, 2013 and (ii) pursuant to Section 5.1(c) of this Agreement Subrecipient shall be reimbursed for general administrative costs and planning costs incurred in connection with work performed pursuant to this Agreement.

Planning, Support and Technical Assistance Services:

\$250,000 ”

EXHIBIT B
To Amendment

NEW SCHEDULES V AND V-A

(attached hereto)

SCHEDULE V
To Subrecipient Agreement

Scope of Work, Environmental Services

General

In connection with undertaking the Scopes of Work described in Schedules I, II III and IV and other work which may be agreed to by the Parties from time to time, the Subrecipient shall perform environmental analysis support and technical assistance services ("Environmental Services") for the City as Subrecipient to help ensure compliance with CDBG environmental requirements.

Pre-Approved Work Tasks

In performing such Environmental Services, as more fully described below, the Subrecipient shall:

1. Undertake environmental analysis services for the City, including:
 - a. preparing and releasing a request for proposals "RFP") to identify one or more Contractor consultants to perform Environmental Services for the Subrecipient (each, an "Environmental Consultant");
 - b. evaluating proposals submitted by prospective Environmental Consultants
 - c. retain one or more Environmental Consultants on a "retainer" or "on call" basis in a manner consistent with Subrecipient's customary practices and applicable CDBG Rules governing retainer-type contracts;
 - d. with the assistance of such Environmental Consultant(s), completing environmental analysis services in connection with proposed Program projects covered under the Action Plan to be undertaken by Clients using Program Funds, including physical investments, capital improvements, and building and infrastructure resiliency improvements (collectively, "Projects"); and
 - e. undertaking other tasks and performing other services in connection with the foregoing or with other approved programs and/or activities covered under the Action Plan, where such other approved programs and/or activities are or become a part of services to be performed by Subrecipient under this Agreement or another subrecipient agreement with the City.

2. In performing the tasks described in item 1 above, Subrecipient will issue an RFP for one or more Environmental Consultant(s) to provide comprehensive environmental analysis services for Subrecipient and the City in connection with proposed Projects. Subrecipient will cause the selected Environmental Consultant(s) to determine the level of clearance required for all Projects and conduct the environmental reviews (including required publication of notices) and perform associated services, including:
 - a. coordination with oversight/regulatory agencies,
 - b. assisting Subrecipient and the City with responding to public comments,
 - c. coordinating with Subrecipient and the City on disaster recovery activities,

- d. supporting reporting of key Project information by Subrecipient and the City to HUD, and
- e. providing technical assistance, program administration services, and performing any other job duty that relates to 24 CFR Part 58 HUD environmental review on an as-needed basis.

The document(s) and/or reports prepared by the selected Environmental Consultant(s) in connection with the foregoing environmental review would be a joint National Environmental Policy Act ("NEPA"), New York State Environmental Quality Review Act ("SEQRA") and New York City Environmental Quality Review ("CEQR") document and/or report. The proposed actions described above are expected to be funded with CDBG-DR Program Funds and are therefore subject to NEPA, and would require federal approval from HUD in accordance with 24 CFR Part 58-Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. The environmental assessment would also need to satisfy requirements of SEQR (6 NYCRR 617.8) and CEQR (Sections 6-08 and 6-12 of Executive Order No. 91 of 1977), which requires that state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects.

SCHEDULE V-A
To Subrecipient Agreement

Budget, Environmental Services

The following represents the estimated allocations related to the performance, by Subrecipient and/or its Contractor(s) of the Environmental Services, but no reimbursement shall occur or be authorized until Subrecipient provides a line item budget to sufficiently delineate proposed expenditures to be consistent with HUD regulations 24 CFR 570.503 and HUD requirements for measurable audit standards to assure eligibility of such expenses approved by OMB.

Environmental Services for the Scope of Work described in <u>Schedule I</u>	\$3,200,000
Environmental Services for the Scope of Work described in <u>Schedule II</u>	\$3,200,000
Environmental Services for the Scope of Work described in <u>Schedule III</u>	\$1,440,000
Environmental Services for the Scope of Work described in <u>Schedule IV</u>	\$7,000
Total:	<u>\$7,847,000⁴</u>

To accomplish the Environmental Services described in Schedule V, and to be in compliance with CDBG Rules, prior to entering into a contract to retain an Environmental Consultant, Subrecipient shall prepare and provide OMB with an additional line item budget relating to such contract which further delineates the costs to carry out certain elements of the Environmental Services to be performed pursuant to such contract. For the avoidance of doubt, such additional line item budget will not be required to specifically itemize the costs for each Project and/or each task order issued by NYCEDC under such contract but will instead outline the anticipated categories of costs that are expected to become payable to the relevant Environmental Consultant under such contract upon the full performance by the Environmental Consultant of the applicable services to which such costs relate. With respect to work performed by an Environmental Consultant that relates to a specific category of costs, the total payments to such Environmental Consultant for performing such work shall not exceed the amount specified in the applicable line item budget for the applicable cost category.

Upon written approval of each such line item budget by OMB, it shall constitute a supplement to and a part of this Agreement authorizing Subrecipient to incur Program costs to carry out the element of the Scope of Work covered by such line item budget. Notwithstanding the foregoing, it is acknowledged that (i) pursuant to Section 2.1 of this Agreement, the City authorizes the Subrecipient to incur costs for activities undertaken in accordance with this Agreement prior to the Effective Date of this Agreement, including pre-award costs, incurred in compliance with 24 CFR section 570.200(h)(1) and the HUD CDBG-DR Allocation rules published in the Federal Register on March 5, 2013 and (ii) pursuant to Section 5.1(c) of this Agreement Subrecipient shall be reimbursed for general administrative costs and planning costs incurred in connection with work performed pursuant to this Agreement.

⁴ Any unexpended amounts shall be available to be used for Eligible Costs in connection with the Programs.

EXHIBIT C
To Amendment

NEW SCHEDULE VII

(attached hereto)

SCHEDULE VII
To Subrecipient Agreement

AMENDMENTS TO THIS AGREEMENT

1. First Amendment to Subrecipient Agreement, dated as of July 25, 2013 - *[attached hereto]*

Exhibit 2
to Appendix M

2013 Programmatic Agreement

(attached hereto)

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

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

WHEREAS, as a result of Hurricane Sandy (DR-4085-NY) (Disaster Declaration), FEMA proposes to administer Federal disaster assistance programs set forth in Appendix A (Programs), pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR).

WHEREAS, FEMA has determined that implementation of its Programs may result in Undertakings (as defined by 16 U.S.C. § 470w and 36 CFR § 800.16(y)) that may affect properties listed in or eligible for listing in the National Register of Historic Places (National Register) pursuant to 36 CFR Part 60 (historic properties), and FEMA has consulted with the New York State Historic Preservation Officer (SHPO), the New York State Office of Emergency Management (OEM), the New York City Landmarks Preservation Commission (LPC), the Delaware Nation, the Delaware Tribe of Indians, the Shinnecock Nation, the Stockbridge-Munsee Community Band of Mohicans (Participating Tribe[s]) and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act (NHPA), Pub. L. No. 89-665 (1966) (codified as amended at 16 U.S.C. § 470f) and Section 110 of NHPA (codified as amended at 16 U.S.C. §470h-2), and the Section 106 implementing regulations at 36 CFR Part 800; and

WHEREAS, FEMA, ACHP, and SHPO have determined that FEMA's Section 106 requirements can be more effectively and efficiently implemented and delays to the delivery of FEMA

assistance minimized if a programmatic approach is used to stipulate roles and responsibilities, exempt certain Undertakings from Section 106 review, establish protocols for consultation, facilitate identification and evaluation of historic properties, and streamline the assessment and resolution of adverse effects; and

WHEREAS, in order to implement its Programs, FEMA will provide assistance to the State of New York that may provide monies and other assistance to eligible subgrantees, and as such, the New York Office of Emergency Management (OEM) that is typically responsible for administering funds provided under these Programs, has participated in this consultation, and has been invited to enter into this Agreement as an invited signatory party; and

WHEREAS, LPC is the agency responsible for identifying and designating New York City's landmarks and historic districts, regulates changes to designated buildings, and by law, issues permits under the LPC law (Charter of the City of New York §§ 3020 et seq. and the Administrative Code of the City of New York §§25-301 et seq.) for LPC designated properties in the City of New York, and therefore any FEMA Undertaking affecting such a property shall require an LPC permit prior to commencement of work or demolitions, LPC has participated in this consultation and has been invited to enter into this Agreement as a concurring party; 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 Indian Tribes, including sites that may contain human remains and/or associated cultural items; and

WHEREAS, FEMA recognizes that the Participating Tribe(s) may have sites of religious and cultural significance on or off Tribal lands, and in meeting its Federal trust responsibility, FEMA has engaged in government-to-government consultation with the Participating Tribe(s), and pursuant to 36 CFR § 800.2 (c)(2)(ii)(E) has invited the Participating Tribe(s) to enter into an agreement that specifies how FEMA and the Participating Tribe(s) will carry out Section 106 responsibilities, including the confidentiality of information. The agreement may grant the Participating Tribe(s) additional rights to participate or concur in FEMA decisions in the Section 106 review process beyond the ones outlined in 36 CFR Part 800; and

WHEREAS, notwithstanding the aforementioned invitation to enter into an agreement, FEMA has invited the Participating Tribe(s) to enter into this Agreement each as an invited signatory party to fulfill the requirements of Section 106; and

WHEREAS, FEMA may invite additional Tribes that may have sites of religious and cultural significance to enter into the terms of this Agreement; and

WHEREAS, FEMA may perform direct Undertakings in order to implement its Programs; and

WHEREAS, in anticipation or in the immediate aftermath of the Disaster Declaration, impacted communities in the State of New York and/or affected Tribe(s) may conduct critical preparedness and response and recovery activities to safeguard public health and safety and to restore vital community services and functions. 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

NOW, THEREFORE, FEMA, ACHP, SHPO, (as the signatories) OEM, Participating Tribe(s) (invited signatories), and LPC(concurring party) agree that the Programs in the State of New York shall be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 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 of the project is completed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with the other signatories, FEMA will require that the following measures be implemented:

I. GENERAL

A. Applicability

1. This Agreement applies immediately for this Disaster Declaration after execution by all signatory parties and will remain in effect for the duration of the period that the Disaster Declaration remains open for FEMA funding.
2. For FEMA undertakings that also are within the jurisdiction of the Federal Communications Commission's (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 of October 23, 2009. The approval of funding for the FEMA Undertaking will be conditioned on the compliance of the subgrantee with FCC's applicable Section 106 review, including any required consultation with affected Tribe(s). FEMA will notify the SHPO when it applies the ACHP Program Comment to an Undertaking.
3. Other Federal agencies providing financial assistance for the type of Program activities covered under the terms of this Agreement may, with the concurrence of ACHP, FEMA, SHPO satisfy their Section 106 responsibilities by accepting and complying with the terms of this Agreement. "Other Federal Agencies" may include municipalities providing funds and acting as the Responsible Entity pursuant to 24 CFR Part 58. In such situations, the Federal Agency shall notify FEMA, SHPO and ACHP and other consulting parties to the PA, including participating tribes in writing of their intent to use this Agreement to achieve compliance with Section 106 requirements, and consult with those agencies regarding its section 106 compliance. Resumes of staff that meet the Secretary's Professional Qualifications and will review Tier II projects will be included with the notification. The Federal agency may utilize this Agreement to satisfying its Section 106 responsibilities by executing the

Addendum included in Appendix D. The Agreement will be effective for the Federal agency on the date the Addendum is executed by SHPO, FEMA and ACHP.

4. This Agreement may apply to Undertakings involving multiple Federal agencies and where some or all of the Federal agencies involved in the Undertaking may designate FEMA as the lead Federal agency pursuant to 36 CFR § 800.2(a)(2) with appropriate notification to the ACHP. FEMA will act on the collective behalf of the agencies to fulfill all Section 106 responsibilities. Federal agencies that do not designate FEMA as the lead Federal agency will be responsible for doing a separate consultation pursuant to Section 106 and 36 CFR Part 800.
5. As a result of the Disaster 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. Through a mission assignment (MA), FEMA may direct appropriate Federal agencies to perform the work. This Agreement will apply to such Federal assistance undertaken by or funded by FEMA pursuant to Titles IV and V of the Stafford Act and 44 CFR Part 206.
6. If SHPO has reviewed and approved an Undertaking submitted by a subgrantee that was the result of damage from Hurricane Sandy before FEMA has established an Undertaking for that same project, and FEMA confirms that the scope and effect [as defined by 36 CFR § 800.16(i)] of the Undertaking as reviewed by the SHPO has not changed, and SHPO/Tribal concurrence is documented, FEMA shall document these findings to the project files in order to confirm that the requirements of Section 106 have been satisfied.
7. If another Federal program or Federal agency has reviewed and approved an Undertaking under Section 106 of the NHPA within the past five years, FEMA has no further requirement for Section 106 review provided that it confirms that the scope and effect [as defined by 36 CFR § 800.16(i)] of the Undertaking as reviewed by the previous agency has not changed, and SHPO/Tribal concurrence is documented. FEMA shall document these findings to the project files in order to confirm that the requirements of Section 106 have been satisfied.
8. Should FEMA, in consultation with SHPO and Participating Tribe(s), determine that the previous Section 106 review was insufficient or involved interagency disagreements on eligibility, effect, or mitigation, FEMA shall conduct additional Section 106 review in accordance with the terms of this Agreement.
9. Pursuant to 44 CFR § 206.110(m), assistance to individuals and households provided under 44 CFR Part 206, Subpart D and Section 408 of the Stafford Act, including funding for owner occupied home repair and replacement, content replacement, personal property, transportation and healthcare expenses, is exempt from the provisions of Section 106. For ground disturbing activities, and construction related to 44 CFR §§ 206.117(b)(1)(ii) (temporary housing), 206.117(b)(3) (replacement

housing), 206.117(b)(4) (permanent housing construction), and 206.117(c)(1)(vi) (privately owned access routes), FEMA will conduct Section 106 review.

10. 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, pursuant to 36 CFR § 800.3(a)(1):

- b. Administrative actions such as personnel actions, travel, procurement of services, supplies (including vehicles and equipment) for the support of day-to-day and emergency operational activities, and the temporary storage of goods provided storage occurs within existing facilities or on previously disturbed soils.
- c. Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents.
- c. Granting of variances, and actions to enforce Federal, State, or local codes, standards or regulations.
- d. Monitoring, data gathering, and reporting in support of emergency and disaster planning, response and recovery, and hazard activities.
- e. Research and development of hazard warning systems, hazard mitigation plans, codes and standards, and education/public awareness programs.
- f. Assistance provided for planning, studies, design and engineering costs that involve no commitment of resources other than staffing and associated funding.
- g. Assistance provided for training, management and administration, exercises, and mobile/portable equipment purchases; with the exception of potential ground-disturbing activities and modification of existing structures.
- h. Community Disaster Loans for funding to perform governmental functions for any eligible jurisdiction in a designated disaster area that has suffered a substantial loss of tax and other revenue.
- i. Acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements.
- j. Funding the administrative action of acquiring properties in buyout projects e.g., surveys, legal fees, non-destructive abatement activities), excluding the real estate transaction and demolition. Per Item III.D, OEM shall advise its subgrantees 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.

- k. Reimbursement of a subgrantee's insurance deductible, when the deductible is the total FEMA eligible cost for the project.
 - l. Labor, equipment and materials used to provide security in the Disaster Declaration area, including lease, rental, purchase or repair of equipment or vehicles and payment for staff and contract labor.
 - m. Application of pesticides to reduce adverse public health effects, including aerial and truck-mounted spraying.
 - n. Unemployment assistance.
 - o. Distribution of food coupons.
 - p. Legal services.
 - q. Crisis counseling.
11. The terms of this Agreement will not apply to Undertakings on Tribal (reservation lands) unless the affected Tribe(s) have concurred in writing.

12. 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 will not affect this Agreement.

B. Roles and Responsibilities of FEMA, SHPO, OEM, and LPC

1. FEMA:

- a. FEMA will use Federal, Tribal, State, subgrantee, or contractor staff whose qualifications meet the Secretary of the Interior's (Secretary's) Professional Qualifications Standards (Professional Qualifications) set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), as amended (Qualified), in completing identification and evaluation of historic properties and in making determinations of effects. FEMA will review any National Register eligibility determination and make its own findings of effect resulting from the performance of these activities prior to submitting such determinations to the SHPO and Participating Tribe(s).
- i. FEMA acknowledges that Tribe(s) possess special expertise in assessing the National Register eligibility of properties with religious and/or cultural significance to them. Tribal leaders and, as appropriate, their representatives shall decide who meets qualifications/standards as defined by their Tribe(s) for review of undertakings affecting properties with religious and/or cultural significance to Tribe(s).

- b. FEMA will coordinate with the LPC to help LPC ensure that subgrantees apply for permits.
- i. If an Undertaking as defined by 36 CFR § 800.5 has the potential to adversely affect an LPC designated property or one calendared for designation, then FEMA will provide LPC with the same documentation that is provided to SHPO and Participating Tribe(s).
 - ii. When LPC notifies FEMA that an Undertaking is subject to further LPC review and permitting, FEMA EHP may approve the project and will notify the Grantee that the subgrantee is responsible for obtaining a permit from LPC.
 - iii. FEMA will request LPC to be a consulting party on any Memorandum of Agreement (MOA) that is written to resolve adverse effects to buildings that are LPC designated or proposed landmarks.
- c. FEMA alone shall conduct all project consultation with participating Tribes. In accordance with 36 CFR § 800.2(c)(4), FEMA may authorize the Grantee, or a subgrantee through the Grantee, 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 will remain legally responsible for determinations of National Register eligibility and findings of effect recommended by the authorized party. FEMA shall follow the process set forth in Stipulation I.B.1.a, FEMA Roles and Responsibilities, above and notify the SHPO in writing when a Grantee or subgrantee has been authorized to initiate consultation on FEMA's behalf.
- d. Prior to authorizing the release of funds for individual undertakings requiring grant conditions pursuant to this Agreement, FEMA will inform OEM of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to subgrantees. FEMA will work in partnership with OEM to provide subgrantees with guidance on in-kind repair pursuant to The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 (Standards), 36 CFR Part 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties.
- e. FEMA shall provide the signatories and invited signatories with bi-annual reports for the previous six months by July 1st and December 31st of each year that this Agreement is in effect. This annual report will summarize the actions taken to implement the terms of this Agreement, statistics on Undertakings reviewed, and recommend any actions or revisions to be considered, including updates to the appendices.
- f. FEMA will confer bi-annually and as necessary with signatories and invited signatories to this Agreement within 30 days after issuance of the annual report, to review the report and/or discuss issues and concerns in greater detail.

g. FEMA shall convene the an initial scoping meeting with the signatories and invited signatories as soon as practicable following the Disaster Declaration and provide specific points of contact and other pertinent information about the Disaster Declaration.

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

2. SHPO:

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

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

c. The SHPO will identify staff or consultants to assist FEMA staff with its Section 106 responsibilities, and identify, in coordination with FEMA, specific activities that SHPO may perform for specific undertakings as agreed in writing with FEMA.

d. As requested, SHPO staff will be available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation with SHPO has occurred, a written notice (via e-mail or regular mail) will be sent to SHPO to confirm any decisions that were reached.

e. FEMA and the SHPO may agree to delegate some or all of the SHPO's responsibilities under this Agreement to supplementary SHPO staff assigned to FEMA-DR-4085-NY that are physically located in FEMA's Joint Field Office or SHPO offices in order to help expedite project review or other responsibilities under this Agreement. FEMA, SHPO and OEM will consult about the selection of the supplementary SHPO staff, the scope of responsibilities delegated, and the implementing procedures related to the actions and decisions delegated. FEMA and SHPO shall formally document their agreement regarding the supplementary SHPO staff.

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

g. The SHPO may assist local jurisdictions or OEM with advance planning efforts to consider historic properties related to their preparedness, homeland security, response, recovery, and mitigation programs, for which FEMA funding may be requested.

h. The SHPO will 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.

3. LPC

a. LPC will review FEMA Undertakings that have the potential to adversely affect an LPC designated property or one calendared for designation using FEMA consultation documents that are provided to SHPO and Participating Tribe(s) so that LPC may notify FEMA whether or not an LPC property may be affected by the Undertaking and will require a LPC permit.

b. LPC understands that if it does not respond to FEMA's submittal of Undertakings to them within the timeframes outlined in Stipulation I.E, i.e. within 4 days under emergency conditions, 15 days for IA and PA Undertakings and 30 days for HMGP Undertakings, FEMA will assume that none of the Undertakings are subject to LPC review and permitting and will proceed with the Undertaking.

4. OEM:

a. OEM shall ensure that its subgrantees 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. Subgrantee government and private non-profit agencies are advised in OEM applicant briefings and program materials that FEMA funding may be jeopardized unless all local, State and Federal permits, licenses and approvals are received. NYC LPC reviews and permits were discussed in briefings held for NYC agencies and private non-profits. The official notice to a subgrantee that an Undertaking is subject to further LPC review will be the project approval document specifying the project scope and limits, and containing all conditions and caveats, including an approved Project Worksheet (PW) for a Public Assistance project, and an approved Application for an HMGP project.

c. OEM will participate in an initial scoping meeting for the Disaster Declaration.

d. OEM shall ensure that subgrantees understand that failure to comply with the terms of this Agreement and any project-specific conditions could jeopardize FEMA funding.

- e. OEM will notify FEMA as soon as possible of any proposed change to the approved scope of work and direct the subgrantee not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
- f. OEM shall ensure that its subgrantees are made aware that in the event of an unexpected discovery involving an Undertaking that has affected a previously unidentified historic property, human remains, or affected a known historic property in an unanticipated manner, the subgrantee will comply with Stipulation III.B, Unexpected Discoveries.
- g. When issued as a FEMA condition, OEM shall ensure that in its subgrant agreements, any scope of work involving ground disturbance, and resultant contracts to execute said work, provide for the protection of and notification protocols for unexpected discoveries of cultural material and human remains.
- h. If the Tribe assumes the role of Grantee for projects on Tribal lands, it will assume the same responsibilities as outlined in Stipulation I.B.3 of this Agreement, Roles and Responsibilities of the Signatories.

C. Tribal Consultation

1. For Tribes that have assumed the responsibilities of the SHPO through appointment of a Tribal Historic Preservation Officer (THPO) per Section 101 of the NHPA, FEMA shall consult with the THPO in lieu of the SHPO for undertakings occurring on or affecting tribal lands.
2. Where no Tribal-specific consultation agreements or protocols are in place, FEMA shall consult with affected Tribe(s) in accordance with 36 CFR Part 800. In determining who the affected Tribe(s) may be, FEMA will first establish that an Undertaking has the potential to affect historic properties with religious or cultural importance. FEMA may consult with the SHPO, affected Tribe(s), any State Tribal Agency, and access the National Park Service (NPS) Native American Consultation Database to identify Tribal geographic interests.
3. FEMA shall ensure that its consultations with other consulting parties shall not include the dissemination of information, when advised of data sensitivity by the affected Tribe(s), that might risk harm to an American Indian site or property of religious or cultural significance or that might impede the use of such a site by the affected Tribe(s) in accordance with Section 304 of the NHPA and other applicable laws. Information provided is exempt from public knowledge and disclosure under the Freedom of Information Act (FOIA) by both Section 304 of the NHPA and Section 9 of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. §470aa - 470mm).

D. Public Participation

1. FEMA recognizes that the views of the public are essential to informed decision making throughout the Section 106 review process. FEMA will notify the public of proposed Undertakings in a manner that reflects the nature, complexity, and effect(s) of the Undertaking, the likely public interest given FEMA's specific involvement, and any confidentiality concerns of affected Tribe(s), and private individuals and businesses.
2. FEMA will consult with OEM, the subgrantee, SHPO, and Participating Tribe(s), to determine if there are individuals or organizations with a demonstrated interest in historic properties that should be made aware of an Undertaking. If such parties are identified or identify themselves to FEMA, FEMA will provide them with information regarding the Undertaking and its effect on historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c).
3. In accordance with the outreach strategy developed for an Undertaking in consultation with the SHPO and Participating Tribe(s), for involving the public, FEMA will identify the appropriate stages for seeking public input during the Section 106 process.
4. FEMA will consider all views provided by the public regarding an Undertaking and will consider all written requests of individuals and organizations to participate as consulting parties, and in consultation with the SHPO and Participating Tribe(s), determine which should be consulting parties. FEMA will invite any individual or organization that will assume a specific role or responsibility outlined in a Section 106 agreement document to participate as an invited signatory party in that agreement document.
5. FEMA also may provide public notices and the opportunity for public comment or participation in an Undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 44 CFR Part 10, and/or Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 CFR Part 9, and Executive Order 12898, Environmental Justice, provided such notices specifically reference Section 106 as a basis for public involvement.

E. Timeframes

All time designations will be in calendar days unless otherwise stipulated. If any signatory or invited signatory does not object to FEMA's determination related to a proposed action within an agreed upon timeframe, FEMA may proceed to the next step in the review process as described in Stipulation II, Project Review. Due to the varied nature of Undertakings, the individual response times to FEMA's requests for comment/concurrence will vary.

1. Under emergency conditions, the SHPO and Participating Tribe(s) will 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.
2. For Undertakings associated with the Individual Assistance (IA) and Public Assistance (PA) programs, the review time shall be a maximum of fifteen (15) days for delineation of the Area of Potential Effect (APE), determinations of National Register eligibility and findings of effect.
3. For the Hazard Mitigation Grant Program (HMGP), the response time for each request for concurrence shall be a maximum of thirty (30) days.

II. PROJECT REVIEW

A. Programmatic Allowances

1. If FEMA determines an Undertaking conforms to one or more of the allowances in Appendix B of this Agreement, FEMA will complete the Section 106 review process by documenting this determination in the project file, without SHPO and Tribal review or notification.
2. If the Undertaking involves a National Historic Landmark (NHL), FEMA shall notify the SHPO and Participating Tribe(s) and the NHL Program Manager in the NPS Northeast Regional Office that the Undertaking conforms to one or more allowances. FEMA will provide information about the proposed scope of work for the Undertaking and the allowance(s) enabling FEMA's determination.
3. If an Undertaking is not composed entirely of an allowance listed in Appendix B, FEMA will conduct Section 106 review for the entire Undertaking.
4. For an Undertaking that FEMA determines does not meet the allowance criteria, FEMA shall complete the Section 106 review process in accordance with Stipulation II.C, Standard Project Review, as applicable.
5. 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. As part of the Disaster Declaration process, FEMA will 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 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 improved property. FEMA will conduct expedited review of emergency Undertakings from October 27, 2012, the beginning of the incident period, until January 27, 2013.
2. Should FEMA determine that it is necessary to extend the expedited review period beyond January 27, 2012, FEMA will request in writing, prior to the expiration of the expedited review period, an extension of the period of applicability in 30-day increments in accordance with 36 CFR § 800.12(d).
3. For all emergency Undertakings, FEMA will determine the following:
 - a. If the Undertaking is an immediate rescue and salvage operations conducted in response to an event to preserve life and property, FEMA has no Section 106 review responsibilities in accordance with 36 CFR § 800.12(d); or
 - b. If the Undertaking meets one or more of the Allowances in Appendix B of this Agreement, FEMA will complete the Section 106 review process pursuant to Stipulation II.A.1, Programmatic Allowances.
 - c. If FEMA determines that the emergency Undertaking will adversely affect a historic property during this expedited review period, to the extent practicable FEMA may propose treatment measures that would address adverse effects during implementation, and request the comments of the SHPO and/or the affected Tribe(s) within 3 days of receipt of this information unless FEMA determines the nature of the emergency warrants a shorter time period. FEMA may elect to consult with the SHPO and/or the affected Tribe(s) regarding the emergency Undertaking at any point before or during the implementation of an emergency Undertaking if FEMA determines circumstances are appropriate for expedited consultation.
 - d. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA will clarify that an "expedited Undertaking review" is being requested.
 - e. FEMA will take into account any timely comments provided by SHPO and/or the affected Tribe(s) and notify the parties of how their comments were taken into consideration by FEMA, OEM, and subgrantee.

- f. Should the SHPO and/or Participating Tribes not comment within 7 days, FEMA may fund the emergency Undertaking based on the available information. This will complete the Section 106 review for the Undertaking.

C. Emergency Demolition and Debris Removal of Privately-Owned Properties

FEMA may need to carry out debris removal activities involving the demolition and removal of buildings and structures that are damaged beyond repair or that are completely collapsed and/or disassembled by the actions of the declared event and therefore must be removed for health and safety reasons. Damage to historic properties by the effects of natural disasters to such a degree that demolition is required for health and safety reasons is not an adverse effect as defined under Section 106 of NHPA. However, FEMA is required by the NHPA to determine if its specific actions in response to disasters will cause adverse effects to any historic properties. After FEMA Public Assistance Program (PA) determines a property initially eligible for demolition, FEMA EHP will review these projects using the following expedited emergency process outlined below.

1. FEMA EHP will evaluate all properties proposed for demolition to determine if they are listed in the National Register or have previously been determined to be eligible for the National Register. If a property has not been previously evaluated for National Register eligibility, FEMA will make a determination whether or not the property is eligible for the National Register. Historic properties include both those above the ground (buildings and structures) and below the ground (archaeological sites and artifacts).
2. FEMA's evaluation will include a data base/GIS review of SHPO information to identify previously-identified historic properties, field review and photography, and additional research of properties that are more than 45 years of age, including archaeological analysis if necessary.
3. FEMA EHP will evaluate all properties proposed for demolition to determine if they are LPC designated or calendared for designation. This will include a database review at <http://geo.nycnet.doit/nycgovmap/> for designated properties and <http://a810-bisweb.nyc.gov/bisweb/bsqpm01.jsp> (New York City Buildings Department) for calendared properties.
4. FEMA will conduct an analysis of effects for any historic property identified for demolition or for any demolition that will affect other historic properties within an Area of Potential Effects (APE) and will determine if the project will result in adverse effects. The APE shall include properties within the view shed of the Undertaking that are LPC designated or calendared. The APE for historic properties that are not located within a designated National Register or LPC historic district, or within a geographic area that is eligible as a National Register district, will be the building footprint. For all others, FEMA will determine a project-specific APE. FEMA will also provide information to the SHPO for these properties that describes the specific nature of the damage to each property

5. FEMA will document its findings concerning each property that is proposed for demolition and will submit a report to the SHPO and other consulting parties, as appropriate that includes two (2) photographs of each property (more if associated resources are present) and text that briefly but adequately explains FEMA's determination of National Register eligibility and effects. These reports will be submitted via the SHPO's dedicated electronic mail account at femarecovery@parks.ny.gov.
6. SHPO will review the reports, provide its concurrence or ask for more information via electronic mail within three (3) business days. If SHPO does not concur with FEMA's finding for any property, both agencies will conduct further consultation as soon as possible to clarify FEMA's determinations or to resolve any disagreements.
7. To the extent practicable, demolition of every structure will be carried out following low impact protocols – limiting disturbance to the footprint of the existing structure, limiting the use of heavy equipment on the property, pushing all foundation materials into the building basement and emphasizing that the contractors make reasonable efforts to avoid or minimize harm to any archaeological deposits. In addition, FEMA's PA Program does not fund the removal of slabs, further ensuring that these undertakings will likely have minimal impact on archaeological resources. In most instances FEMA will make the determination that no historic properties will be affected by the demolition.
8. In cases where a demolition site is considered to be archaeologically sensitive monitoring will be required by an archaeologist who meets the Secretary's Professional Qualifications Standards. This determination will be made on a case-by case-basis by FEMA in consultation with the SHPO and other consulting parties. Eligibility determinations, assessment of effects and resolution of adverse effects will be made subsequent to identification of an archeological property. Uprooted trees and exposed stumps will be removed in accordance with the Stump Removal Policy in Appendix E.
9. Demolition of eligible historic buildings/structures may be adverse and may require development of a Memorandum of Agreement (MOA) to mitigate any adverse effects. If FEMA determines that any property demolition is an Undertaking that will result in adverse effects, it will enter into consultation with the SHPO and other appropriate consulting parties to develop an MOA to mitigate the adverse effects as required under Section 106. FEMA may choose to identify, in consultation with the SHPO, standard treatment measures to mitigate adverse effects to multiple properties.

10. This agreement only pertains to the residential structure itself and does not include the demolition or removal of any other infrastructure on these properties, including sidewalks, driveways, pools, retaining walls or similar structures that would not be eligible for FEMA Public Assistance funding.

D. Standard Project Review

For Undertakings not exempt from further Section 106 review, FEMA will ensure that the following standard project review steps are implemented. In the interest of streamlining, FEMA may combine some of these steps during consultation.

1. Consulting Parties: FEMA will consult as appropriate with the SHPO and affected Tribe(s) to identify any other parties that meet the criteria to be consulting parties and invite them to participate in the Section 106 review process. FEMA may invite others to participate as consulting parties as the Section 106 review proceeds.
2. Area of Potential Effects: For standing structures, qualified staff shall define the APE as the individual structure when the proposed Undertaking is limited to the repair or rehabilitation (as defined in 36 CFR § 68.3(b)(6) and 36 CFR § 68.2(b)) of a structure located outside of a National Register listed or eligible historic district. For all other undertakings, qualified staff will determine the APE in consultation with the SHPO and Participating Tribes. FEMA may also consider information provided by other parties, such as local governments, LPC, local preservation advocacy organizations, and the public, when establishing the APE.
3. Identification and Evaluation: Qualified staff shall determine, in consultation with the SHPO and Participating Tribes if the APE contains historic properties, including archaeological sites or properties of religious or cultural significance, that are listed in or potentially eligible for the National Register, or LPC designated and calendared properties. This may include the review of preliminary documentation collected by OEM or the subgrantee in coordination with the SHPO.
 - a. Archaeological Properties, FEMA may consult with the SHPO to determine the level of effort and methodology necessary to identify and define the limits of archaeological properties. For historic properties of religious and cultural significance to Participating Tribe(s), FEMA shall consult with the Tribe(s) to identify geographic areas where properties may be affected by an Undertaking in order so that FEMA may determine the necessary level of effort required to avoid or protect any such properties. FEMA may also consult with LPC regarding identification and treatment of archaeological properties.
 - b. National Historic Landmarks: When FEMA determines an Undertaking has the potential to affect an NHL, FEMA shall notify the Secretary through the NHL Program Manager in the NPS Northeast Regional Office in addition to the SHPO and Participating Tribe(s).

- c. Determinations of Eligibility: FEMA shall review or determine National Register eligibility based on identification and evaluation efforts, and consult with SHPO and Participating Tribe(s) regarding these determinations. Should the SHPO or Participating Tribe(s) disagree with the determination of eligibility, FEMA may elect to either continue consultation, treat the property as eligible for the National Register, or to 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).
- d. Findings of No Historic Properties Affected: FEMA shall make a finding of "no historic properties affected" if no historic properties are present in the APE; the Undertaking is designed to avoid historic properties, including archaeological sites or properties of religious or cultural significance to Participating Tribe(s); or the Undertaking does not affect the character defining features of a historic property.
- i. 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) and applicable documentation standards. Unless the SHPO or Participating Tribe(s) objects to the finding pursuant to the appropriate timeframe outlined in Stipulation I.E.2 or I.E.3, Timeframes, FEMA shall complete the Section 106 review.
- ii. If the SHPO or Participating Tribe(s) objects to a finding of "no historic properties affected", FEMA may elect to consult with the objecting party to resolve the disagreement. If the objection is resolved, FEMA may proceed with the action in accordance with the resolution. FEMA also may elect to reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation II.D.4, Application of the Criteria of Adverse Effect. 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 will consider the ACHP's recommendation in making its final determination.
4. Application of the Criteria of Adverse Effect: If FEMA finds an Undertaking may affect identified historic properties in the APE, including properties of religious or cultural significance to Participating Tribe(s), or if a consulting party objects to the finding of "no historic properties affected," FEMA will apply the criteria of adverse effect to historic properties within the APE(s), taking into account the views of the consulting parties and 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 or, for a standing structure, that the Undertaking meets the *Standards*, FEMA shall propose a finding of "no adverse effect" in accordance with 36 CFR § 800.5(b).

- b. 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) and applicable documentation standards. Unless a consulting party objects within the appropriate timeframe, FEMA will proceed with its "no adverse effect" determination and complete the Section 106 review.
 - c. If FEMA finds the Undertaking may have an adverse effect, FEMA shall request through OEM that the subgrantee revise the scope of work to substantially conform to the Standards for standing structures, or avoid or minimize adverse effects for archaeological properties, in consultation with the SHPO, Participating Tribe(s), and any other consulting parties. If the subgrantee modifies the scope of work to address the adverse effect, FEMA shall notify the consulting parties, and provide supporting documentation. Unless a consulting party makes a timely objection, FEMA shall proceed with its "no adverse effect" determination and complete the Section 106 review.
 - d. If a consulting party objects to a finding of "no adverse effect," FEMA will elect to consult with the objecting party to resolve the disagreement. If the objection is resolved, FEMA will proceed with the undertaking in accordance with the resolution, or;
 - e. If the objection cannot be resolved, FEMA will forward its findings and supporting documentation to the ACHP and request that the ACHP review the findings in accordance with 36 CFR. § 800.5(c)(3)(i-ii). FEMA will consider the ACHP's comments in making its final determination, or;
 - f. If an Undertaking cannot be modified to avoid adverse effects FEMA will initiate consultation to resolve the adverse effect(s) in accordance with Stipulation II.D.5, Resolution of Adverse Effects.
5. Resolution of Adverse Effects: If FEMA determines that an Undertaking will adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with the SHPO, OEM, participating Tribes, subgrantee, ACHP, if participating, and any other consulting parties, by one of the following methods depending upon the nature and scale of the adverse effect as well as the determination of the historic property's significance on a local, state or national level:
- a. Abbreviated Consultation Process: After taking into consideration the nature of the historic properties affected and the severity of the adverse effect(s), FEMA may propose to resolve the adverse effect(s) of the Undertaking through the application of Treatment Measures outlined in Appendix C as negotiated with the SHPO, OEM, and Participating Tribe(s). FEMA will not propose use the Abbreviated Consultation Process if the Undertaking may affect an NHL. The application of these Treatment Measures will not require the execution of a Memorandum of Agreement (MOA) or Programmatic Agreement.

1. FEMA will notify the consulting parties in writing of its proposed use 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), as well as provide the ACHP with an adverse effect notice in accordance with 36 CFR §800.6(a)(1) and notify them of FEMA's intent to apply the Treatment Measure(s). Unless a consulting party or the ACHP objects within fifteen (15) days of receipt of FEMA's proposal, FEMA will proceed with the use of Treatment Measure(s) and will complete Section 106 review.
 2. If any of the consulting parties or the ACHP objects within the 15 day review and comment period to the resolution of adverse effects through the application of the Abbreviated Consultation Process, FEMA shall consult further with the consulting parties to explore options for resolution of the adverse effect(s). If consultation is not successful after an additional 15 day period, FEMA shall request that the ACHP arbitrate the consultation and help identify a final resolution of the adverse effect(s). If no consensus is reached, FEMA shall resolve the adverse effect(s) using procedures outlined below in Stipulation II.E.5.b, Memorandum of Agreement.
 3. Because funding and implementation details of Treatment Measure(s) for specific Undertakings may vary by program, FEMA will 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 will also 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 (MOA): If the Abbreviated Consultation Process is determined infeasible or is objected to by any of the consulting parties, FEMA, in consultation with the other consulting parties, will develop an MOA in accordance with 36 CFR § 800.6(c) to stipulate treatment measures to avoid, minimize, and/or mitigate adverse effects on historic properties. If the ACHP was not previously notified of the adverse effect, FEMA will provide the documentation outlined in 36 CFR §800.6(e), and the ACHP will have 15 days to review the undertaking and determine if its participation is necessary to complete the consultation process. The MOA may also include feasible treatment measures that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of more traditional treatment measures. Should the execution of an MOA not be appropriate given the nature and significance of historic properties, scale of adverse effects, or include one or more complex Undertakings, FEMA shall resolve the adverse effects using the procedures outlined below in Stipulation II.E.5.c, Programmatic Agreement.

- c. **Programmatic Agreement:** FEMA, the SHPO, OEM, Participating Tribe(s), the ACHP, as appropriate, and any other consulting party may consult to develop a Programmatic Agreement in accordance with 36 CFR § 800.14(b) to 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 subgrantee.
- d. **Objections:** Should any signatory, invited signatory, consulting party, or member of the public object within the timeframes established by this Agreement to any plans, specifications, or actions 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 in accordance with Stipulation IV.B, Dispute Resolution.
- e. **National Historic Landmarks:** When FEMA determines an Undertaking will adversely affect an NHL, FEMA also will notify and invite the Secretary and ACHP to participate in consultation, pursuant to 36 CFR § 800.10. When the ACHP participates in consultation related to an NHL, the ACHP will report the outcome of the consultation to the Secretary and the FEMA Administrator.

III. OTHER CONSIDERATIONS

- A. **Changes to an Approved Scope of Work:** OEM is required to notify FEMA and will require its subgrantees to notify it immediately when there are proposed changes to an approved scope of work for an Undertaking. When notified by OEM of any proposed substantive change to the approved scope of work for an Undertaking, FEMA may authorize the OEM or subgrantee to proceed with the change once the required review is completed.
- B. **Unexpected Discoveries:** Upon notification by a subgrantee of an unexpected discovery in accordance with Stipulation I.B.3.d, OEM Roles and Responsibilities, OEM will immediately notify FEMA and require the subgrantee to:
 - 1. Stop construction activities in the vicinity of the discovery; and,
 - 2. Notify the local law enforcement office and coroner/medical examiner if human remains are discovered, in accordance with applicable New York State statute(s);
 - 3. 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 OEM of a discovery, FEMA will immediately notify the SHPO, Participating Tribe(s), and any other consulting parties that may have an interest in the discovery, and consult to evaluate the discovery for National Register eligibility.
 - 4. FEMA will consult with the consulting parties in accordance with the review process outlined in Stipulation II, Project Review, to develop a mutually agreeable action plan

with timeframes to identify the discovery, take into account the effects of the Undertaking, resolve adverse effects if necessary, and ensure compliance with applicable Federal and State statutes.

5. In cases where discovered human remains are determined to be American Indian, FEMA shall consult with the appropriate Tribal representatives and SHPO. In addition, FEMA shall follow the guidelines outlined in the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects* (2007).
6. FEMA will coordinate with OEM and the subgrantee 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.

C. Curation

1. FEMA and OEM shall ensure that all records and materials (collections) produced during the course of an archaeological survey, testing, and any data recovery operations for the implementation of its Undertakings are curated at a facility, preferably in-state, that meets the standards of, and in accordance with the applicable provisions of 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections," and applicable State law and guidelines.
2. In cases where the survey, testing, or data recovery are conducted on private land, any recovered collections remain the property of the land owner and FEMA will return the collections to them with the assistance of the SHPO. In such instances, FEMA and OEM, in coordination with the SHPO or Participating Tribe(s), shall encourage land owners to donate the collection(s) to an appropriate public or Tribal entity. In cases where the property owner declines to accept responsibility for the collection(s) and wishes to transfer ownership of the collection(s) to a public or Tribal entity, FEMA and OEM will ensure curation of the collection(s) in accordance with Stipulation III.C.1 above.

D. Anticipatory Actions and After the Fact Review

1. OEM shall advise its subgrantees 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, including an approved Project Worksheet (PW) for a Public Assistance project, and an approved Application for an HMGP project.
2. In accordance with Section 110(k) of the NHPA, FEMA shall not grant assistance to a subgrantee who, with intent to avoid the requirements of this Agreement or Section 106 of the NHPA, has intentionally significantly and adversely affected a historic

property to which the assistance would relate, or having legal power to prevent it, allowed an adverse effect to occur. However, if after consultation with the SHPO, Participating Tribes(s), and ACHP, FEMA determines that extraordinary circumstances justify granting assistance despite the adverse effect created or permitted by the subgrantee, FEMA shall complete consultation for the Undertaking pursuant to the terms of this Agreement.

3. In circumstances where FEMA determines a subgrantee has initiated an Undertaking without willful intent to avoid the requirements of this Agreement or Section 106 of NHPA, FEMA will determine if the Undertaking would have required Section 106 review in accordance with Stipulation II.D, Standard Project Review.
4. If FEMA determines no Section 106 review or consultation with SHPO and Participating Tribe(s) would have been required pursuant to Stipulation II.D, Standard Project Review, FEMA will document this determination to the project files and consider the project Section 106 compliant.
5. If FEMA determines the Undertaking would have required Section 106 review, FEMA will coordinate with SHPO and Participating Tribe(s) to determine if consultation is feasible.
 - a. If after coordination with the SHPO and affected Tribes, FEMA determines that consultation is feasible, FEMA will review the Undertaking in accordance with Stipulation II.D, Standard Project Review.
 - b. If after coordination with the SHPO and Participating Tribe(s), FEMA determines that review is infeasible, FEMA will document that the project is noncompliant with Section 106, and the FEMA program then will make a funding eligibility decision.
6. FEMA will ensure that all Undertakings considered for after the fact review in accordance with this stipulation are included in the bi-annual reports.

IV. IMPLEMENTATION OF AGREEMENT

A. Amendments

1. If any signatory or invited signatory to the terms of the Agreement determines that the Agreement cannot be fulfilled, or that an amendment to the terms of this agreement must be made, the signatories and the invited signatories will consult for no more than 30 days to seek amendment of the Agreement.
2. This Agreement may be amended only upon the written consensus of the signatories. This Stipulation does not apply to amendments made to Appendices A, B, and C pursuant to Stipulation IV.A.3, Amendments, below.

3. Appendix A (FEMA Programs), Appendix B (Programmatic Allowances) and Appendix C (Treatment Measures) may be amended at the request of FEMA, a signatory party, or an invited signatory party in the following manner:

- a. FEMA, on its own behalf or on behalf of another signatory or invited signatory, shall notify all signatory and invited signatory parties to this Agreement of the intent to add to or modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all signatory and invited signatory parties.
- b. If no signatory or invited signatory object in writing within 15 days of receipt of FEMA's proposed addition or modification, FEMA will date and sign the amended Appendix and provide a copy of the amended Appendix to all signatory and invited signatory parties.

B. Dispute Resolution

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

6. FEMA will provide the signatories and invited signatories with its final written decision regarding any objection brought forth pursuant to this Stipulation.
7. FEMA may authorize any disputed action to proceed, after making its final decision.
8. At any time while this Agreement is in effect, should a member of the public object in writing to implementation of its terms, FEMA will notify the other signatories and invited signatories in writing and take the objection into consideration. FEMA will consult with the objecting party and, if that party so requests, the other signatories and invited signatories, for not more than 21 days. In reaching its decision regarding the objection, FEMA will take into consideration all comments from these parties. Within 15 days after closure of this consultation period, FEMA will provide the other parties with its final decision in writing. FEMA's decision will be final.
9. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with Stipulation II.D.3.c, Determinations of Eligibility.

C. Severability and Termination

1. In the event any provision of this Agreement shall be deemed contrary to, or in violation of, any applicable existing law or regulation of the United States of America and/or the State New York, 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, OEM, or Participating Tribe(s) may terminate this Agreement by providing 30 days' written notice to the other signatory and invited signatory parties, provided that the parties consult during this period to seek amendments or other actions that would prevent termination. If this Agreement is terminated, FEMA will comply with 36 CFR Part 800. Upon such determination, FEMA will provide all other signatories and invited signatories with written notice of the termination of this Agreement.
3. A Participating Tribe may notify the other signatories and invited signatories that it is fully withdrawing from participation in the Agreement. Following such a withdrawal, FEMA will review undertakings that may affect historic properties of religious and cultural significance to the Tribe in accordance with 36 CFR §§ 800.3 through 800.7 or an applicable alternative under 36 CFR § 800.14. Withdrawal from this Agreement by a Participating Tribe does not terminate the Agreement. A Tribe that has withdrawn from the Agreement may at any time that this Agreement remains in effect notify FEMA, OEM, and SHPO in writing that it has rescinded its notice withdrawing from participation in the Agreement.
4. This Agreement may be terminated by the implementation of a subsequent Agreement 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

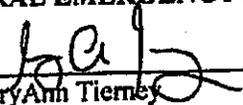
- 1. Unless terminated in accordance with Stipulation IV.C.2 or IV.C.4, Severability and Termination, this Agreement shall remain in effect until FEMA, in consultation with all other signatories, determines that all undertakings related to 4085-DR-NY have been completed.**
- 2. If another federally-declared disaster occurs within the State of New York while this PA is effective, the signatories and invited signatories will consult to determine whether it would be appropriate to extend the PA. If the parties agree that the extension of this PA is an acceptable mechanism for reviewing undertakings as a result of the new disaster, its duration shall be extended pursuant to Stipulation IV.A.**

E. Execution and Implementation

- 1. This Agreement may be implemented in counterparts, with a separate page for each signatory, invited signatory and concurring party and will become effective on the date of the final signature, and will become effective on the date of signature by FEMA, SHPO, and ACHP. FEMA will ensure that each signatory, invited signatory and concurring party is provided with a complete copy.**
- 2. Execution and implementation of this Agreement evidence that FEMA has afforded ACHP a reasonable opportunity to comment on FEMA's administration of all referenced Programs, and that FEMA has satisfied its Section 106 responsibilities for all individual Undertakings of the Programs.**

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

Signatory:
FEDERAL EMERGENCY MANAGEMENT AGENCY

By:  Date: 5/6/13
By: MaryAnn Tierney
Acting Regional Administrator, Region II

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

Signatory:

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: Ruth Pierpont

Date: 5/3/13

By: Ruth Pierpont

New York Deputy Commissioner/New York Deputy State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

Signatory:
ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 5/10/13
John M. Fowler
Executive Director

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
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THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

Invited Signatory:

NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT

By: *Jerome M. Hauer*
Commissioner

Date: 9/1/13

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
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THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

Invited Signatory:
THE DELAWARE NATION

By: _____ Date: _____
C. J. Watkins
Vice President

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
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THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

**Invited Signatory:
THE DELAWARE NATION**

By: _____ **Date:** _____
Paula Pechonick
Chief

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
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THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

Invited Signatory:

THE SHINNECOCK NATION

By: [name]
[title]

Date: _____

By: [name]
[title]

Date: _____

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

Invited Signatory:

THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS

By: Robert Chicks
President of Tribal Council

Date: _____

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

Concurring Party:

NEW YORK CITY LANDMARKS PRESERVATION COMMISSION

Date: _____

By: Robert B. Tierney
Chair, The New York City Landmarks Preservation Commission

Appendix A

FEMA Program Summaries

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

Disaster Response and Recovery Programs

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

Public Assistance Program (PA)

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

Individual Assistance Programs (IA)

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

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. Eligible costs may include expenses for field camps, equipment use, repair and replacement, materials and supplies, and mobilization and demobilization activities.

Hazard Mitigation Grant Program (HMGP)

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

Appendix B

Programmatic Allowances

This list of Allowances enumerates FEMA funded activities that based on FEMA experience have no effect or limited effect on historic properties if implemented as specified in this Appendix and will not require review by the SHPO and Participating Tribe(s) pursuant to Stipulation II.A.1, Programmatic Allowances.

The allowances consist of two tiers – Tier I and Tier II. Staff may apply Tier I allowances without meeting any professional historic preservation qualification standards, while only staff meeting the applicable Secretary's Professional Qualifications Standards in accordance with Stipulation I.B.1.a of this Agreement may apply Tier II allowances.

When referenced in the allowances, "in-kind" shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including form, color, and workmanship. The in-kind repair provided for in both Tiers I and Tier II allowances in Appendix B should be limited to pre-existing architectural features and physical components of buildings and structures and in general should not be utilized when a building or structure has been substantially altered.

When referenced in the allowances, "previously disturbed soils" will refer to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing archaeological artifacts, features, and phenomena within their original depositional contexts.

Tier I Allowances

- I. **GROUND DISTURBING ACTIVITIES AND SITE WORK**, when proposed activities described below substantially conform to the original footprint and/or are performed in previously disturbed soils and the area proposed to be disturbed does not exceed the previous disturbance in depth or footprint, including the area where the activity is staged.

A. Debris and Snow Removal

1. Debris removal and collection, including removal of snow, uprooted trees, limbs and branches from public rights of way, public area and the transport and disposal of such waste to existing licensed waste facilities or landfills. Uprooted trees and exposed stumps must be removed in accordance with the stump removal policy in Appendix E. This includes the temporary establishment and expansion of non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or existing hard-topped or graveled surfaces (e.g. parking lots, roads, athletic courts) but not the creation of new or temporary access roads.
2. 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.
3. Chipping and disposal of woody debris by broadcasting within existing rights-of-way.
4. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and canals, in order to restore the facility to its pre-disaster condition. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site.
5. Dewatering flooded developed areas by pumping.

B. Temporary Structures and Housing

1. Installation of temporary structures for uses such as school classrooms, offices, or shelters for essential public service agencies, such as police, fire, rescue and medical care, as well as temporary housing for disaster personnel and victims, at the following types of locations:
 - a. Single units on private residential sites when all utilities are installed above ground or tie into pre-existing utility lines.
 - b. Existing multi-family units.
 - c. Existing RV/Mobile Home Parks and campgrounds with pre-existing utility hookups.
 - d. Paved areas, such as parking lots and paved areas at such facilities as conference centers, shopping malls, airports, business parks, military bases when all utilities are installed above ground or tie into pre-existing utility lines.
 - e. Sites that have been previously cleared and prepared for planned construction, such as land being developed for public housing, office buildings, city parks, ball fields, military bases, schools, etc. when all utilities are installed above-ground or tie into pre-existing utility lines.

- f. Areas previously filled to depths of at least six feet so that subsurface utilities can be installed.

C. Recreation and Landscaping

1. Installation of temporary removable barriers.
2. In-kind repairs or replacement, and minor upgrades/mitigation of bollards and associated protective barriers when in previously disturbed areas.

II. BUILDINGS

- A. Repair or retrofit of buildings less than 45 years old.
- B. Removal of water by physical or mechanical means.
- C. Installation of grab bars and other such minor interior modifications required for compliance with the Americans with Disabilities Act (ADA).
- D. Installation of security bars over windows on rear elevations.
- E. Sheltering and Temporary Essential Power (STEP) Pilot Program: The STEP program provides essential power to affected residents and thereby reduces the demand for other shelter options by allowing individuals to return to or remain in their home while awaiting major repairs. STEP accomplishes this by 3 measures:
 1. Residential Meter Repairs: Repairs to exterior weather head, service cable, and meter box.
 2. Temporary Essential Electric Measures: Repairs to restore temporary power to residences where the utility will not turn the power back on due to damages in order to restore a minimal amount of power to allow heat and/or hot water and some power to targeted appliances, including installation of a temporary power supply, outlet panels, and other equipment that will be removed when permanent repairs are made.
 3. Rapid Temporary Exterior Repairs: Securing broken windows, covering damaged exterior walls and patching or otherwise securing damaged exterior doors. These repairs utilize raw, unfinished materials for temporary emergency repairs, such as plywood secured with a padlock.

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

A. Roads and Roadways

1. 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.
2. Construction of temporary emergency access roads in previously disturbed soils to allow for passage of emergency vehicles.
3. Repairs to road slips and landslides that do not require grading of undisturbed soils on the up-hill side of the slip.
4. Re-establishment, armoring and/or upgrading of existing roadway ditches.
5. In-kind repair or replacement of traffic control devices such as traffic signs and signals, delineators, pavement markings, traffic surveillance systems.
6. Installation and removal of temporary traffic control devices, including pre-formed concrete barriers and fencings.
7. 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 allowed.

B. Airports

1. 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).

C. Rail Systems

1. In-kind repair or replacement of safety components.
2. In-kind repair or replacement of existing track system and passenger loading areas.

Tier II Allowances

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

A. Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems

1. 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.

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

B. Recreation and Landscaping

1. In-kind repairs 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, simple wooden/wire stream crossings).
2. 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, steps).

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

1. In-kind repair and replacement and minor upgrades to existing piers, docks, boardwalks, boat ramps and dune crossovers in areas of previously disturbed soils.

D. Cemeteries

1. Removal of woody debris such as branches, limbs, and uprooted trees from cemeteries, provided that heavy equipment and other machinery are not operated or staged on areas potentially containing human remains. Uprooted trees and exposed stumps must be removed in accordance with the stump removal policy in Appendix E. If this condition does not adequately protect human remains, then monitoring will be required by an archaeologist who meets the Secretary's Professional Qualifications Standards to oversee stump removal.

II. BUILDINGS

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

1. In-kind repair and replacement of floors, walls, stairs, ceilings, and/or trim. The allowance does not apply to decorative finishes, including murals, glazed paint, gold leaf, or ornamental plaster.
2. 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.
3. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos) or for assessment of hidden damages.

B. Utilities and Mechanical, Electrical, and Security Systems

1. In-kind repair or 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.
2. Elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment as long as it is placed or located where it is not highly visible from the street.
3. Replacement or installation 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.
4. Installation of building 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.
5. Installation of building access security devices, such as card readers, enhanced locks, and security scanners (e.g., metal detectors), provided the device does not damage or cause the removal of character-defining architectural features and can be removed in the future without impacts to significant architectural features.

C. Windows and Doors

1. In-kind repair of damaged or severely deteriorated windows and window frames,, shutters, storm shutters, doors and door frames, and associated hardware, where profiles, elevations, details and materials match those of the originals.
2. In-kind replacement of window panes. Clear plate, double, laminated or triple insulating glazing can be used, provided it does not result in altering the existing window material, tint, form, muntin profiles, or number of divided lights. This allowance does not apply to the replacement of existing intact archaic or decorative glass.
3. 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. Exterior Walls, Cornices, Porches, and Foundations

1. In-kind repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding and chemical cleaning.
2. In-kind repair of walls, porches, foundations, columns, cornices, siding, balustrades, stairs, dormers, brackets, trim, and their ancillary components or in-kind replacement of severely deteriorated or missing or lost features, as long as the replacement pieces match the original in detail and material. Any ground disturbance will be limited to previously disturbed soils.
3. In-kind repair or replacement of signs or awnings.
4. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view.
6. 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.
7. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or reversible in the future.
8. 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.
9. 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.

E. Roofing

1. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character defining features.
2. In-kind repair or replacement of roofing, of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components.
3. Repairs to a flat roof cladding, including changes in roofing materials, where the repairs are not highly visible from the ground level.

F. Weatherproofing and Insulation

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

G. Structural Retrofits

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

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

A. Roads and Roadways

1. Repair of roads to pre-disaster geometric design standards and conditions using in-kind materials, shoulders, medians, clearances, curbs, and side slopes. This allowance permits minor improvement to meet current code and standards or hazard mitigation measures, such as those designed to harden exposed surfaces, including the application of gravel armoring to side slopes and ditches.
2. In kind repair to historic paving materials for roads and walkways.
3. In-kind repair or replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including provision of headwalls, riprap and any modest increase in capacity for the purposes of hazard mitigation or to meet current codes and standards, provided that the work substantially conforms to the existing footprint. For stone or brick culverts or arches beneath roadways, this allowance only applies to in-kind repair.
4. In-kind repair or replacement of road lighting systems, including period lighting fixture styles.
5. In-kind repair or replacement of road appurtenances such as curbs, berms, fences, and sidewalks.

B. Bridges

1. 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.
2. In-kind repair or replacement of bridges and bridge components (e.g. abutments, wing walls, piers, decks, and fenders in previously disturbed soils).

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

A. General

1. 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.
2. Installation of new utilities and associated features within existing rights-of-way.
3. Directional boring of new/replacement service line and related appurtenances involving boring or silt trenches within previously disturbed soils of rights-of-way or utility corridors.
4. In-kind repair or 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.

B. Generators and Utilities

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

C. Communication Equipment/Systems and Towers

1. Acquisition, installation, or operation of communication and security equipment/systems that use existing distribution systems, facilities, or existing infrastructure right-of-way.
2. The collocation of communication and security equipment on existing towers and buildings/structures less than 45 year in age, provided that the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.

3. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase existing tower height or footprint by more than 10% and occurs within previously disturbed soils.
4. Installation of new temporary (not to exceed 12 months) communications towers and antenna structures provided that the work occurs does not require modification of buildings/structures older than 45 years and occurs within previously disturbed soils.
5. Installation of new communication towers, less than 200 feet tall, in previously developed urban complexes when the work does not require modification of buildings/structures older than 45 years, occurs within previously disturbed soils and is not within 500 feet of the boundaries of a historic property.

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

A. Canal Systems

1. In-kind repairs or replacement to canal systems and associated elements.

B. Breakwaters, Seawalls, Revetments, and Berms

1. In-kind repair or replacement of breakwaters, seawalls, and revetments, provided the work occurs in previously disturbed soils.

C. Dams, Levees, and Floodwalls

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

D. Fish Hatcheries

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

E. Waste-Water Treatment Lagoon Systems

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

VI. OTHER PROGRAM ACTIVITIES

A. Elevation, Demolition, and Reconstruction

1. Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than 45 years of age so long as the proposed activities substantially

conform to the original footprint and/or are performed in previously disturbed soils including any staging area, and the buildings or structures are not located within or adjacent to a National Register or LPC historic district.

B. Safe Rooms

1. Installation of individual safe rooms within the property limits of a residence where the installation will occur within an existing structure or building that is less than 45 years of age and has been determined by FEMA not to be significant under Criterion G, or within previously disturbed soils.

Appendix C

Treatment Measures

[to be negotiated on a state-by-state basis]

The following Treatment Measures are suggested for the resolution of Adverse Effects:

If Undertakings result or will result in adverse effects, FEMA, the SHPO, OEM, 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. If an Undertaking will adversely affect a LPC designated or calendared properties, LPC may participate in development of a treatment measure plan. This Appendix may be amended in accordance with Stipulation IV.A.3 of this Agreement, Amendments.

A. Recordation Package

1. **Digital Photography Package:** Prior to project implementation, the designated responsible party shall oversee the successful delivery of a Digital Photography Package prepared by staff or contractors that meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The Digital Photography Package will meet the standards cited in the National Park Service's *National Register of Historic Places Photographic Policy March 2010* or subsequent revisions (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>).
 - a. The Digital Photography Package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.
 - b. The Digital Photography Package shall include printed color copies of the digital photographs (on appropriate paper, per *NPS Photographic Policy*), a CD/DVD of the digital photographs, a completed state architectural inventory form, and a written site history of the historic property.
 - 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 full copies of the approved Digital Photography Package to _____ for permanent retention.

2. 35 mm Black and White Film 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 staff or contractors that meet the Secretary's Professional Qualifications for 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. 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 full copies of the approved 35 mm Black and White Film Photography Package to _____ for permanent retention.
3. Large Format Film Photography Package: Prior to project implementation, the designated responsible party shall oversee the successful delivery of a Large Format Film Photography Package prepared by staff or contractors that meet the Secretary's Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
- a. The Large Format Film Photography Package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.

b. The 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 affected Tribe(s), the designated responsible party shall submit full copies of the approved Large Format Film Photography Package to _____ for permanent retention.

B. Design Review by SHPO and Participating Tribe(s)

Prior to project implementation, FEMA, the Grantee, and subgrantee shall work with the SHPO and Participating Tribe(s) to develop a historically compatible design. Plans and specifications will, to the greatest extent feasible, preserve the basic character of a building. Primary emphasis shall be given to the major street elevations that are visible. Significant contributing features (e.g. trim, windows, doors, porches) will be repaired or replaced with either in-kind materials or materials that come as close as possible to the original materials in basic appearance. Aesthetic camouflaging treatments such as use of veneers, paints, texture compounds and other surface treatments and/or use of sympathetic infill panels and landscaping features will be employed to the greatest extent feasible. Final construction drawings used in the bidding process will be submitted to the SHPO and Participating Tribe(s) for review and comment prior to the award of a construction contract and the initiation of construction activities.

C. Tribal Treatment Plan

FEMA shall work with the Participating Tribe(s) to develop a plan for the protection and treatment of, including but not limited to, Native American remains, funerary objects, cultural and religious landscapes, ceremonial items, traditional gathering areas and cultural items, for known sites and in the event that any are discovered in conjunction with the Undertaking, including archaeological studies, excavation, geotechnical investigations, grading, and all ground-disturbing activity. The plan will also formalize procedures for Tribal monitoring during archaeological studies, grading, and ground disturbing activities for the Undertaking. No photography of Native Americans human remains or funerary objects will be allowed. No photography of Native Americans human remains or funerary objects will be allowed.

D. Public Interpretation

Prior to project implementation, FEMA, OEM, and the subgrantee will 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, SHPO, Participating

Tribe(s), and the designated responsible party will continue to consult throughout implementation of the plan until all agreed upon actions have been completed by the designated responsible party.

E. Historical Context Statements and Narratives

Prior to project implementation, FEMA, OEM, and the subgrantee will work with the SHPO and Participating Tribe(s) to determine the topic and framework of a historic context statement or narrative the designated responsible party shall be responsible for completing. The statement or narrative may focus on an individual property, a historic district, a set of related properties, or relevant themes as identified in the statewide preservation plan. Once the topic of the historic context statement or narrative has been agreed to, the designated responsible party shall continue to coordinate with the SHPO and Participating Tribe(s) through the drafting of the document and delivery of a final product. The SHPO and Participating Tribe(s) shall have final approval over the end product. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

F. Oral History Documentation

Prior to project implementation, FEMA, OEM, and the subgrantee will 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 agreed upon, the designated responsible party shall continue to coordinate with the SHPO and Participating Tribe(s) through the data collection, drafting of the document, and delivery of a final product. The SHPO and Participating Tribe(s) shall have final approval over the end product. The designated responsible party will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

G. Historic Property Inventory

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

H. National Register and National Historic Landmark Nominations

Prior to project implementation, FEMA, OEM, and the subgrantee will 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) will 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 will use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

I. Geo-References of Historic Maps and Aerial Photographs

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

APPENDIX D

TO THE PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY

WHEREAS, as a result of Hurricane Sandy (DR-4085-NY) (Disaster Declaration), the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. § 5121 *et seq.*) (Stafford Act); the National Flood Insurance Act of 1968, Pub. L. No. 90-448 (1968) (as amended); the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234 (1973) (as amended); the National Flood Insurance Reform Act of 1994, Pub. L. No. 103-325 (1994) (as amended); and implementing regulations contained in Title 44 of the Code of Federal Regulations (C.F.R.), proposes to provide assistance through the New York State Office of Emergency Management (OEM); and

WHEREAS, FEMA consulted with OEM, the New York State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP) and the New York City Landmarks Preservation Commission (LPC) to develop and execute a Programmatic Agreement (Agreement) for its disaster recovery activities, executed on May 9, 2013; and

WHEREAS, under the Disaster Relief Appropriations Act of 2013 (Public Law 113-2, January 29, 2013), the U.S. Department of Housing and Urban Development (HUD) allocated funds for disaster recovery activities to New York State and New York City, each of which is executing a separate Appendix D Addendum to the Agreement; and

WHEREAS, New York City Office of Management & Budget (NYCOMB) as the Responsible Entity for New York City has assumed HUD's environmental responsibilities and is responsible for environmental review, decision-making and action, pursuant to Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR Part 58, and proposes to administer Community Development Block Grant - Disaster Recovery (CDBG-DR) funds pursuant to the Disaster Relief Appropriations Act of 2013 (Public Law 113-2, January 29, 2013); and

WHEREAS, the CDBG-DR funds will support activities that fall within the scope of programs authorized under the terms of this Agreement and Appendix A (Program activities); and

WHEREAS, to efficiently and expeditiously deliver disaster recovery assistance to those affected by Hurricane Sandy, there is an opportunity to coordinate and align Section 106 reviews of disaster recovery projects that may have multiple funding sources; and

WHEREAS, Stipulation I.A.3. of this Agreement allows other Federal agencies to fulfill their Section 106 responsibilities for those types of undertakings addressed in this Agreement by fully accepting all the terms of the Agreement and executing this Addendum; and

WHEREAS, in keeping with the attached 1986 Memorandum of Agreement, or subsequent revision, regarding Section 106 identification and evaluation of historic properties, NYCOMB will designate the New York City Landmarks Preservation Commission (LPC) as Qualified Staff to participate in Identification and Evaluation per Stipulation II. D.3; and

WHEREAS, NYCOMB will ensure that staff who meet the Secretary's Professional Qualification Standard will review Tier II projects and will provide resumes of such staff to the signatories to this Addendum;

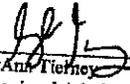
NOW, THEREFORE, NYCOMB agrees to assume the federal agency role and accept the terms and conditions of the Agreement, as appropriate under HUD's authorizing legislation and regulations, and thereby take into account the effect of its undertakings and satisfy its Section 106 responsibilities for the CDBG-DR program for activities in New York City.

EXECUTION AND IMPLEMENTATION This Addendum to the Agreement may be implemented in counterparts, with separate signature pages, and will become effective on the date of the final signature of the Signatory Parties. Execution and Implementation of this Addendum to the Agreement evidences that New York City Office of Management & Budget (NYCOMB) has taken into account the effects of its undertakings on historic properties, and that through the execution of this Addendum and implementation of the Agreement, NYCOMB will satisfy its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations for the referenced CDBG-DR program for activities in New York City.

APPENDIX D

PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY

Signatory:
FEDERAL EMERGENCY MANAGEMENT AGENCY

By: 
By Mary Ann Tierney
Acting Regional Administrator, Region II

Date: 6/24/13

APPENDIX D

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY**

Signatory:
NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: Ruth Pierpont Date: 6/25/13
By: Ruth Pierpont
New York Deputy Commissioner/New York Deputy State Historic Preservation Officer

APPENDIX D

PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY

Signatory:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

By: John M. Fowler
Executive Director

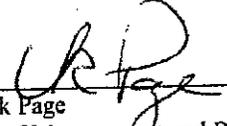
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0/26/13

APPENDIX D

PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY

Signatory:
NEW YORK CITY OFFICE OF MANAGEMENT AND BUDGET

By: 
By: Mark Page
Director of Management and Budget

Date: 6/25/13

APPENDIX D

PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
THE NEW YORK STATE OFFICE OF EMERGENCY MANAGEMENT,
THE DELAWARE NATION,
THE DELAWARE TRIBE OF INDIANS,
THE SHINNECOCK NATION,
THE STOCKBRIDGE-MUNSEE COMMUNITY BAND OF MOHICANS,
THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AS A RESULT OF HURRICANE SANDY

Concurring Party:

NEW YORK CITY LANDMARKS PRESERVATION COMMISSION

By: Robert B. Tierney
By: Robert B. Tierney
Chair, The New York City Landmarks Preservation Commission

Date: 6/21/13

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004



MEMORANDUM OF AGREEMENT

WHEREAS, the City of New York, New York (City), has determined that the proposed implementation of its Community Development Block Grant Program, Urban Development Action Grant Program, Rental Rehabilitation Program, and Housing Development Grant Program (Programs), with funds from the Department of Housing and Urban Development (HUD), will have an effect on properties included in or eligible for inclusion in the National Register of Historic Places and has requested the comments of the Advisory Council on Historic Preservation (Council) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800),

WHEREAS, the City's Unsafe Building Demolition and Seal-Up Program is covered under a separate Memorandum, and

WHEREAS, this Memorandum of Agreement will supercede previous Memoranda ratified February 9, 1981, and July 28, 1981,

NOW, THEREFORE, the City, the New York State Historic Preservation Officer (SHPO), and the Council agree that the Programs shall be implemented in accordance with the following stipulations in order to take into account the effect of the programs on historic properties.

Stipulations

The City will ensure that the following measures are carried out.

1. Long Range Identification.

A comprehensive survey of the City will be continued to identify districts, sites, buildings, structures, and objects (hereafter "properties") that may meet the Criteria for listing in the National Register of Historic Places (36 CFR Section 60.6). The survey will be conducted in accordance with the "Guidelines for the Location and Identification of Historic Properties Containing Scientific, Prehistoric, Historical, or Archeological Data" (36 CFR Part 66, Appendix B). The New York City Landmarks Preservation Commission (LPC) will keep a comprehensive record of all properties surveyed.

(a) Upon completion of the survey, LPC, on behalf of the City and in consultation with the New York SHPO, will apply the National Register Criteria to the properties identified in the survey.

(b) If there is any question concerning the eligibility of a property, the City sponsoring agency will submit the matter to the Secretary of the Interior for a determination of eligibility for inclusion in the National Register, in accordance with 36 CFR 63.2

(c) Properties which have been determined to meet the National Register criteria and which are designated New York City Landmarks will be nominated by LPC, on behalf of the City, to the National Register through the process provided for in the State of New York.

2. Interim Identification.

Until the survey is completed, properties that may be affected by the Programs will be evaluated by LPC, on behalf of the City, against the National Register criteria. This process of evaluation is detailed in the attached "New York City Process."

(a) Properties that appear to meet the Criteria will be considered and treated as eligible for the National Register of Historic Places.

(b) If there is any question as to whether a property may meet the Criteria, the City sponsoring agency will request a determination of eligibility from the Secretary of the Interior in accordance with 36 CFR Section 63.2.

3. Review and Treatment.

Properties that are determined eligible for the National Register, nominated to the National Register, or listed in the National Register, will be treated in the following manner:

(a) Prior to initiating work on a project, the City sponsoring agency will submit documentation on the project to the New York SHPO for review and comment, following the process detailed in the attached "New York City Process."

(b) Properties that are to be rehabilitated will be rehabilitated in accordance with the recommended approaches in "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (Standards). The City will require that contracts for rehabilitation work adhere to the Standards.

(c) If the Standards cannot be met, or the proposed treatment of the property is not rehabilitation, or demolition is contemplated, or if the contemplated action could have an indirect effect on such properties, prior to taking any action, the City sponsoring agency will consult with the New York SHPO and obtain the Council's comments pursuant to 36 CFR Section 800.6(a), (b) and Section 801.4(b), (c).

(d) Funding of commercial moving costs and purchase of machinery and equipment will be exempt from the above-mentioned review process.

4. Ground-disturbing activity

(a) Prior to any ground-disturbing activity, LPC, on behalf of the City, will determine the archeological sensitivity of project areas. For those areas determined archeologically sensitive, the city sponsoring agency will submit documentation to the New York SHPO. This review process is detailed in the attached "New York City Process."

(b) If, after reviewing the documentation, the New York SHPO, in consultation with LPC, determines that the potential for significant archeological resources exists, then an archeological survey (field testing) of the affected area will be undertaken by the City sponsoring agency in consultation with the New York SHPO.

(c) The New York SHPO will evaluate the results of the survey and determine if there are archeological resources eligible for the National Register. If eligible resources exist, they will be avoided or preserved in place whenever feasible. When this is not feasible, the New York SHPO will be consulted, and a treatment consistent with the Council's handbook, "Treatment of Archeological Properties," and approved by the New York SHPO will be developed and implemented.

5. Personnel Training

All City agencies receiving funding through the Programs will send a representative to an annual training session with the New York SHPO staff architect on the application of the Standards.

6. Renewal.

This Memorandum of Agreement will continue in force in perpetuity. At two year intervals, the City and the New York SHPO will review and evaluate the Memorandum for possible modifications, termination, or extension. At the request of any of the parties, this Agreement may be reviewed for possible modification or termination at any time.

Execution of this Memorandum of Agreement evidences that the City has afforded the Council a reasonable opportunity to comment on the Programs and that the City has taken into account the effects of the Programs on historic properties.

DEPUTY

John M. Fowler (date) 7/19/85
Executive Director
Advisory Council on Historic Preservation

George (date) 10/4/85
City of New York, New York

Julia S. Hobbs (date) 12/11/85
New York State Historic Preservation
Officer

Charles R. Baker (date) 3 Jan '86
Chairman
Advisory Council on Historic Preservation

NEW YORK CITY PROCESS

The following process applies to activities funded through the Community Development Block Grant Program, the Urban Development Action Grant Program, the Rental Rehabilitation Program, and the Housing Development Grant Program (Programs).

1. All City agencies requesting funding through the Programs will send the Environmental Review Unit of Budget (OMB) three copies of the environmental reviews. OMB will send the New York City Landmarks Preservation Commission (LPC) one copy of the environmental review. The City sponsoring agency, ~~when required by LPC~~, will send photographs and maps itemizing properties under consideration.

2. LPC will analyze each review and will send OMB a response, within two weeks of receipt of the reviews, indicating those projects which may affect properties that are listed in the National Register of Historic Places or, in LPC's opinion, appear to meet the criteria for listing in the National Register, or which are proposed for areas that appear to be archeologically sensitive.

LPC shall consider the following criteria when conducting its analysis:

(a) individual exterior significance of any property to be affected by the Programs;

(b) context of any property to be affected by the Programs (designated or potential historic district?)

(c) proximity of any property to be affected by the Programs to a designated or potential historic district.

In addition, for any project involving ground disturbance, LPC will evaluate the project area against the New York SEPO's "Archeological Site Sensitivity Model" and other documentation maintained by LPC to determine the area's likelihood of yielding significant archeological remains.

3. For all projects involving properties listed in the National Register of Historic Places, or that appear to meet the criteria for listing in the National Register, or that appear to be archeologically sensitive as determined by LPC, OMB will then notify the sponsoring agency to submit the Project Review Checklist, including maps and necessary photographs, to the New York State Historic Preservation Officer (SHPO) for review. For areas that appear to be archeologically sensitive, the sponsoring agency will submit an historical background report (Stage 1A archeological report) describing the developmental history of the area from prehistoric to present times; this report will also contain information concerning prior ground disturbance. The sponsoring agency will supply OMB with a copy of the Project Review Checklist and/or the archeological historical background report submitted to the New York SHPO.

4. Upon receipt of the Project Review Checklist, the New York SHPO will review the information supplied and comment in 30 days. If the sponsoring agency submission is inadequate to complete review, the New York SHPO will notify the City sponsoring agency and OMB within 15 working days. When the New York SHPO receives adequate information, the 30-day comment period will begin.

Appendix E

Stump Removal Guidance

Removal of stumps will be accomplished by attaching a chain to the stump and a piece of heavy equipment which will then pull the unexposed portion of the stump from the ground. If this method is not practicable, then the bucket of the machine will be used to grab and pull the stump out. Additional excavation in the surrounding soil will be avoided whenever possible and minimized when it is necessary. Void spaces will be backfilled with fill soil and any original loose native soil from the rootball when possible. Locations for proposed stump removal that are proposed to occur in areas with known archeological sites will undergo further evaluation and consultation. An archeologist will be present during the removal of rootballs within or adjacent to previously recorded archeological sites or when there are unexpected discoveries. If any potential archeological resources are discovered, work will immediately cease, and the Subgrantee or contractor will notify the Grantee and FEMA.

