

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE KENTUCKY STATE HISTORIC PRESERVATION OFFICER,
KENTUCKY EMERGENCY MANAGEMENT,
LOUISVILLE/JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT,
METRO PRESERVATION OFFICER, AND
PARTICIPATING TRIBES
REGARDING THE ACQUISITION AND DEMOLITION OF
PRIVATE PROPERTIES IN LOUISVILLE, KY**

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

Whereas, FEMA entered into a Programmatic Agreement with the Kentucky Heritage Council (which the State has designated to serve as the State Historic Preservation Officer (SHPO)) and Kentucky Emergency Management (Grantee) executed July 21, 2014 (2014 Statewide PA), to address its responsibilities under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and the regulations at 36 CFR Part 800 implementing Section 106 and 110(f) of NHPA, including disaster and non-disaster projects.; and

Whereas, FEMA proposes to administer grant funding pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5121 et seq. (Public Law 93-288, as amended), and its implementing regulations codified in 44 CFR, to Louisville/Jefferson County Metropolitan Sewer District (Subgrantee) under various Hazard Mitigation Assistance (HMA) Programs to acquire and demolish numerous privately held buildings in Louisville, Jefferson County, Kentucky (Undertaking); and

Whereas, FEMA has determined, in consultation with SHPO, that several of the properties currently proposed in the Undertaking are located within the National Register of Historic Places (NRHP)-eligible Park DuValle South Historic and Belquin Subdivision District; and

Whereas, FEMA anticipates administering grant funding pursuant to the Stafford Act, and its implementing regulations codified in 44 CFR and 2 CFR 200, to the Subgrantee under various FEMA Programs on future Undertakings that may have the potential to affect historic properties in similar manners; and

Whereas, FEMA determined that these individual Undertakings may affect historic properties, including districts, and that the reviews required to meet FEMA's Section 106 responsibilities for the Undertakings will be streamlined and improved through the development and implementation of a Programmatic Agreement (Agreement) authorized under Stipulation II.C.6(c) of the 2014 Statewide PA to specifically address the review process for the Undertaking, to provide for treatment measures to address the adverse effects of the Undertaking, and to expedite the Section 106 review, and to minimize delays in FEMA's delivery of funds; and

Whereas, FEMA has consulted with the Grantee of FEMA Program funds and has invited them to sign the Agreement as a Signatory; and

Whereas, FEMA has consulted with the Subgrantee and has invited them to sign the Agreement as a Signatory; and

Whereas, FEMA has consulted with the Metro Preservation Officer and has invited them to sign the Agreement as a Signatory; and

Whereas, FEMA, in accordance with 36 CFR § 800.6(a)(1), has notified the Advisory Council on Historic Preservation (ACHP) of this Agreement and invited them to participate as a Signatory. The ACHP has declined to participate; and

Whereas, FEMA, in accordance with 36 CFR § 800.6(a)(2), FEMA has invited the following parties to participate in the consultation process for this Agreement as a concurring party: Neighborhood Planning and Preservation, Portland Now, Inc., Preservation Louisville, Olmstead Parks Conservancy, Louisville Metro Parks and Metropolitan Council District Members; and

Whereas, FEMA recognizes that the Absentee Shawnee Tribe of Oklahoma, Cherokee Nation, Delaware Nation of Oklahoma, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Miami Tribe of Oklahoma, Peoria Indian Tribe of Oklahoma, Shawnee Tribe, and the United Keetoowah Band of Cherokee Indians may have sites of religious and cultural significance [as defined in 36 CFR § 800.16(x)] in Louisville, Jefferson County, KY; and

Whereas, FEMA has invited the Absentee Shawnee Tribe of Oklahoma, Cherokee Nation, Delaware Nation of Oklahoma, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Miami Tribe of Oklahoma, Peoria Indian Tribe of Oklahoma, Shawnee Tribe, and the United Keetoowah Band of Cherokee Indians to enter into this Agreement as a Signatory party to fulfill the requirements of Section 106; and

Whereas, the Eastern Shawnee Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and United Keetoowah Band of Cherokee Indians, have agreed to enter into this Agreement as an invited Signatory party; and

Whereas, the Delaware Nation determined that the location of the project does not endanger cultural or religious sites of interest to them, but require notification if there are inadvertent discoveries; and

Whereas, the Shawnee Tribe responded that there are no known historic properties that will be negatively impacted by the project; but require notification if there are inadvertent discoveries; and

Whereas, Cherokee Nation, Eastern Band of Cherokee Indians and the Miami Tribe of Oklahoma have not responded to FEMA's invitation to enter into this Agreement as an invited Signatory party; and

Whereas, in keeping with 36 CFR § 800.2(d) of the Section 106 regulations, FEMA shall seek and consider the views of the public in a manner that reflects the nature and complexity of this Undertaking and its potential to affect historic properties, the likely interest of the public in those effects, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement of the Undertaking; and

Whereas, the consulting parties recognize that the exact number and location of private properties subject to this Undertaking is unknown, but will begin with properties identified in FEMA projects FMA-KY-2014-008, FMA-KY-2014-009, HMGP-1841-0035, HMGP-1912-0034, HMGP-1976-0020, and PDMC-PJ-04-KY-2012-001; and

Whereas, the consulting parties recognize that the Undertaking may affect NRHP-listed or -eligible for listing properties in addition to Park DuValle South Historic District.

Now, Therefore, the Signatories agree that the Undertaking shall be administered pursuant to the Agreement's Stipulations (below) in order to satisfy FEMA's responsibilities pursuant to NHPA Section

106. FEMA shall not approve funding of an Undertaking that may affect a historic property until the Undertaking is reviewed pursuant to this Agreement.

Stipulations

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

I. General

- A. Applicability - This Agreement applies to proposed acquisition/demolition Undertakings by the Subgrantee in Louisville, Jefferson County, KY. These properties have been determined to be flood-prone properties.
- B. Roles and Responsibilities: The below roles and responsibilities are in addition to those articulated throughout the Agreement.

1. FEMA

- a. FEMA shall use Federal, 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 shall review any National Register eligibility assessments previously conducted and make its own findings of effect.
- b. FEMA shall provide the Signatories and the ACHP with an annual report for the previous calendar year by May 30th of each year that this Agreement is in effect. The annual report will summarize the actions taken to implement the terms of this Agreement, statistics on Undertakings reviewed, and recommend any actions or revision to be considered, including updates to the appendices.
- c. FEMA shall confer annually and as necessary with other Signatories within 60 days after issuance of the annual report, to review the report and discuss concerns in greater detail. The review shall occur in person or by telephone as determined by FEMA.

2. SHPO

- a. SHPO shall participate in the annual review convened by FEMA to review the effectiveness of this Agreement in accordance with Stipulation I.B.1(c).
- b. SHPO shall coordinate with FEMA, to identify consulting parties, including any communities, organization, or individuals that may have an interest in the Undertaking and its effects on historic properties.

3. Grantee

- a. The Grantee shall ensure that their Subgrantee understands that failure to comply with any project-specific conditions that have been placed on their grants could jeopardize FEMA funding.
- b. The Grantee shall notify FEMA as soon as possible of any proposed change to the approved scope of work. The Grantee shall direct its Subgrantee not to implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
- c. The Grantee shall participate in the annual review convened by FEMA to review the effectiveness of this Agreement in accordance with Stipulation I.B.1(c).

- d. The Grantee shall coordinate with FEMA, to identify consulting parties, including any communities, organization, or individuals that may have an interest in the Undertaking and its effects on historic properties.
4. Subgrantee
 - a. The Subgrantee understands that failure to comply with any project-specific conditions that have been placed on their grants could jeopardize FEMA funding.
 - b. The Subgrantee shall participate in the annual review convened by FEMA to review the effectiveness of this Agreement in accordance with Stipulation I.B.1(c).
 - c. The Subgrantee shall coordinate with FEMA, to identify consulting parties, including any communities, organization, or individuals that may have an interest in the Undertaking and its effect on historic properties.
 5. Metro Preservation Officer
 - a. The Metro Preservation Officer shall participate in the annual review convened by FEMA to review the effectiveness of this Agreement in accordance with Stipulation I.B.1(c).
 - b. The Metro Preservation Officer shall coordinate with FEMA, to identify consulting parties, including any communities, organization, or individuals that may have an interest in the Undertaking and its effects on historic properties.
 6. Tribes

Participating Tribes shall participate in the annual review convened by FEMA to review the effectiveness of this Agreement in accordance with Stipulation I.B.1(c).
- C. Tribal Consultation
- FEMA shall conduct all Section 106 consultation with the Tribes.
- D. Public Participation
1. FEMA recognizes the views of the public are essential to informed decision making throughout the Section 106 consultation process. FEMA shall ensure the notification of the public on proposed Undertakings in a manner that reflects the nature, complexity, significance of historic properties likely to be affected by the Undertaking, the likely public interest given FEMA's specific involvement, and any confidentiality concerns of Tribes, private individuals, or businesses.
 2. FEMA may consult with the Grantee, Subgrantee, SHPO, participating Tribes, and other consulting parties to determine if there are individuals or organizations with a demonstrated interest in historic properties that should be included as a consulting party for the Undertaking in accordance with 36 CFR §800.2(c)(5). If such parties are identified or identify themselves to FEMA, FEMA shall provide them information regarding the Undertaking and its effect on historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c).
 3. FEMA may also provide public notices and the opportunity for public comment through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 44 CFR Part 10, 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.

4. Should a member of the public object in writing to implementation of the Agreement's terms, FEMA will notify the other Signatories in writing and take the objection into consideration. FEMA shall consult with the objecting party and, if that party so requests, the other Signatories for not more than 30 days. In reaching its decision regarding the objection, FEMA shall take into consideration all comments from these parties. Within 15 days after closure of this consultation period, FEMA shall provide the objecting and Signatory parties with its final decision in writing.
5. The Subgrantee shall notify the public and seek their comments for a 15-day comment period using the public notice template attached in Appendix B. This notification shall serve to assist parties in gathering information about the historic significance of properties affected by the proposed Undertaking that have not previously been determined National Register-eligible individually or as contributing resources to a historic district. Any comments provided will be considered by FEMA, as outlined in Stipulation II.B.5.c., and SHPO in evaluating National Register eligibility.
 - a. The public notice will be published in the newspaper of record for Jefferson County, Kentucky.
 - b. General information about the proposed Undertaking will be available at Louisville MSD's website and in hard copy format at their office.
 - c. The public notice comments will be collected and compiled by the Subgrantee.
6. Additional public participation may be required prior to resolving adverse effects to historic properties as outlined in Stipulation II.B.6.a.

E. Time Designations and Communication Methods

1. All time designations shall be in calendar days unless otherwise stipulated. If no Signatories object to FEMA's finding or determination related to an Undertaking within the agreed upon timeframe, FEMA may proceed to the next step in the consultation process as described in Stipulation II, Section 106 Review Process.
2. The consulting parties may send and accept official notices, comments, requests for further information and documentation, and other communications required by this Agreement via email.
 - a. If an email is larger than 5 megabytes it will be split into multiple emails. The subject line will display what number the email is out of the total number of emails expected (i.e., email 1 of 5)
 - b. Any email will be sent using delivery receipt to ensure that the email was received by the intended recipient.

II. Section 106 Review Process for FEMA Undertakings

A. Kentucky Clearinghouse Submittal

1. The Grantee will submit the required project information to the Kentucky Clearinghouse.
2. The SHPO will respond back to the Kentucky Clearinghouse that the project is under review using the terms of this Agreement.

B. Consultation Process

1. Historic Resource Survey

- a. Prior to submitting a project for SHPO review, the Subgrantee will conduct a historic resource survey of the project area if:
 - i. There are properties over 45 years old; and
 - ii. There are no historic resource surveys conducted within the past five (5) years that consider the properties contained in the Undertaking; and
 - iii. If the historic resource survey did not evaluate properties contained in the Undertaking as potentially historic due to the age of the structure at the time of the original survey, a new or updated historic resource survey will be required if the buildings are now over 45 years.
- b. The completion of all surveys will comply with *Specifications for Conducting Fieldwork and Preparing Cultural Resource Assessment Reports*, (KHC, most current version).
- c. When the Subgrantee has multiple applications affecting the same neighborhood or defined geographic area, the historic survey will address all related applications in one report that evaluates resources individually and as a group, and that addresses cumulative effects.

2. Preliminary Archaeology Research and Information Collection

- a. Prior to submitting a project for SHPO review, the Subgrantee will conduct a preliminary background research on the potential archaeological resources. This preliminary background information will include:
 - i. A full site check with the Office of State Archaeology and review of appropriate archival documents and historic maps.
 - ii. An assessment of the potential for intact archaeological deposits in the project area, including supporting documentation.
 - iii. Recommendations based on the specific project details, including location and nature of any potential sites, and impacts anticipated by demolition and the extent to which they could be avoided, if at all.
- b. This information shall be submitted to the SHPO and will be used to evaluate the potential impact to archaeological resources within the APE and the potential need for additional archaeological investigations.

3. Public Notice: the Subgrantee shall notify the public as outlined in Stipulation I.D.5.

- a. The Subgrantee will ensure the affected neighborhood association and council members are informed of the Undertakings.

4. Initial Consultation

- a. The Subgrantee will conduct the initial consultation with the SHPO and the Metro Preservation Officer.
- b. The Subgrantee will submit an initial consultation package to SHPO that includes:

- i. Clear, concise, and complete scope of work, including any temporary staging sites, length, width and depth of ground disturbance; and
 - ii. Color photographs of all sides of each property in the Undertaking and the surrounding neighborhood and landscape features; and
 - iii. Maps including project location map, topographic map, and map identifying areas of ground disturbance; and
 - iv. Documentation showing that the appropriate council members and neighborhood association have been informed and any responses received from them; and
 - v. Alternatives analyzed and dismissed; and
 - vi. Copy of the public notice and comments received; and
 - vii. Information on additional public involvement; and
 - viii. Historic resource survey (newly completed or copy of recent survey, if applicable); and
 - ix. Preliminary archaeology research and information collection summary.
- c. When the Subgrantee has multiple applications affecting the same neighborhood or defined geographic area, all documentation stipulated in II.B.4.b for properties covered in the related application will be compiled and submitted in a single initial consultation package.
 - d. The Subgrantee will submit a copy of this package to the Grantee and the Metro Preservation Officer.
 - e. SHPO will coordinate with the Metro Preservation Officer and respond back to the Subgrantee within 30 days of receipt of the consultation package. SHPO will submit carbon copies of their response to the Metro Preservation Officer and the Grantee.
 - i. If SHPO determines the initial consultation package is complete, responds with an assessment of eligibility and effect, the consultation process can move to Stipulation II.B.5.
 - ii. If SHPO determines additional information, consultation, including additional consultation on the potential to affect archaeological resources, or additional consulting party coordination is required to complete the initial review, the SHPO will notify the Subgrantee, and the Subgrantee shall submit additional requested information to SHPO or continue consulting with SHPO and other identified parties.
5. FEMA Review of Subgrant Application
- a. Once FEMA has received the Subgrant Application (SGA), which will include information provided to SHPO in Stipulation II.B.4.b., and has conducted an initial eligibility review, FEMA will initiate the EHP review of the application.
 - b. Recognizing the government-to-government relationship with Tribes, FEMA will conduct consultation with Tribes that have an identified interest in Jefferson County, Kentucky.

- c. Using information provided with the SGA and through consultation with Tribes, FEMA will make a determination of eligibility and determine what type of effect the Undertaking will have on the subject properties and request concurrence, if required.
 - i. If FEMA determines there are no historic properties affected and the documentation provided concurs with this determination, no further Section 106 review is required.
 - ii. If FEMA determines there are no adverse effects to historic properties and the documentation provided concurs with this determination, no further Section 106 review is required.
 - iii. If FEMA determines there are adverse effects to historic properties, including those of religious or cultural significance to Tribes, and the documentation provided concurs with this determination, FEMA will follow the process outlined in II.B.6.
 - iv. If FEMA determines additional information is required to determine eligibility and effect, FEMA will coordinate with the appropriate consulting parties to request the additional information. Once additional information is received, FEMA will then determine eligibility and effect following the procedures outlined above.
 - v. If FEMA and SHPO/Tribes do not agree on the determination of eligibility, FEMA shall either:
 - a. Elect to consult further with the objecting party until the objection is resolved; or
 - b. Treat the property as eligible for the National Register; or
 - c. 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).

6. Resolution of Adverse Effects

- a. Public Involvement: Depending upon the size and scale of the adverse effect caused by the Undertaking, FEMA may seek additional input from the public and the consulting parties.
 - i. FEMA will adjudicate comments received by the public.
 - ii. If there are objections to the proposed Undertakings, FEMA will follow the process outlined in Stipulation I.D.4.
- b. FEMA will propose to resolve adverse effects to historic properties using the Standard Treatment Measures (STMs) outlined in Appendix C. The STMs have been approved by the consulting parties as measures to address various adverse effects caused by the Undertaking.
 - i. FEMA will convene a conference call with consulting parties to determine which STMs are to be used to resolve the adverse effects, level of effort required to complete the STMs, responsible party(ies) for completing the work outlined in the STMs, and associated timeframes for completing the STMs.

- ii. Following the conference call, FEMA will send an email summarizing and requesting concurrence with outcomes of the conference call. FEMA will request consulting parties' concurrence within 15 days of receipt of this request.
 - iii. If consulting parties cannot agree to use STMs, FEMA will try to resolve the disagreement with the objecting party following Stipulation IV.B. If the dispute cannot be resolved, FEMA will move forward resolving the adverse effects to the historic properties in accordance with 36 CFR § 800.6(c).
 - c. Following consultation with the Signatory parties and other consulting parties, as identified, FEMA may develop a Memorandum of Agreement (MOA) to identify project-specific treatment measures to resolve adverse effects to historic property(ies) subject to the Undertaking that are not stipulated in Appendix C for any specific historic property or properties subject to the Undertaking.
7. FEMA shall satisfy its Section 106 compliance responsibilities for each Undertaking that requires resolution of adverse effects after:
 - a. The completion of the public participation activities outlined above.
 - b. The completion of the STMs identified to resolve the adverse effects for the specific Undertaking.

III. Other Considerations

- A. The Subgrantee will notify the Grantee and the Grantee will notify FEMA if the proposed open space use does not conform with the activities listed in 44 CFR § 80.19(a)(1) or if construction of a structure is proposed in the open space. If FEMA receives a notice of open space use, FEMA will ensure the open space use is reviewed to ensure compliance with the terms of this Programmatic Agreement.
- B. The Subgrantee shall immediately notify the Grantee if there are proposed changes to the Undertaking. When notified by the Subgrantee, the Grantee shall notify FEMA as soon as possible of any proposed change to the approved scope of work. FEMA shall then consult with SHPO to determine if the scope of work change will have an effect to the historic property.
- C. Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects
 1. Upon notification by the Subgrantee of an unexpected discovery, or if it appears that a Undertaking has affected a previously unidentified property or affected a known historic property in an unanticipated manner, the Grantee shall immediately notify FEMA and require the Subgrantee to:
 - a. Stop construction activities on the construction site in the event of a discovery.
 - b. Take all reasonable measures to avoid or minimize harm to the property until FEMA has completed consultation with the SHPO, participating Tribe(s), and any other consulting parties.
 - c. If human remains are discovered, notify the local law enforcement office and coroner/medical examiner in accordance with Kentucky Revised Statutes (KRS 72.020) and protect the remains from any harm.
 - d. Assist FEMA in completing the following actions, as required:

- i. Upon notification by the Grantee of a discovery, FEMA shall immediately notify the SHPO, participating Tribe(s), and other consulting parties that may have an interest in the discovery, previously unidentified property or unexpected effects, and consult to evaluate the discovery for the National Register eligibility and effects of the Undertaking on historic properties.
- ii. FEMA shall consult with the SHPO, participating Tribe(s), and other consulting parties in accordance with the consultation process outlined in Stipulation II.B.5.c., Project Review, to develop a mutually agreeable action plan with timeframes to identify the discovery or previously unidentified property, take into account the effects of the Undertaking, resolve adverse effects if necessary and ensure compliance with applicable Federal, State, and local statutes.
- iii. FEMA shall coordinate with the Grantee and the Subgrantee regarding any needed modification to the scope of work for the Undertaking necessary to implement the recommendations of the consultation and facilitate proceeding with the Undertaking.
- iv. 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)* and any state-specific policies that may be in force.

D. Curation

1. In cases where archaeological survey and testing are conducted on private land, any recovered collections remain the property of the land owner. In such instances, FEMA and the Grantee, in coordination with the SHPO, and affected Tribe(s), shall encourage the land owners to donate the collection(s) to an appropriate public or Tribal entity. In cases where the property owner wishes to transfer ownership of the collection(s) to a public or Tribal entity, FEMA and the Grantee shall ensure that recovered artifacts and related documentation are curated in a suitable repository and associated costs are covered as agreed to by FEMA, SHPO, and affected Tribe(s) and following applicable State or Tribal guidelines.
2. When an Undertaking will adversely affect a National Register listed or eligible archaeological site, FEMA may treat the adverse effect by providing for the recovery of any significant information through archaeological data recovery. FEMA shall consult with the SHPO, participating Tribe(s), and other consulting parties to prepare a research design (data recovery plan) including a specific plan for curation and determine who is responsible for associated costs. This plan will incorporate any relevant curation provisions contained in the SHPO's *Guidelines for Conducting Archaeological Studies*, ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* published in the Federal Register (64 Federal Register 27085-27087 (May 18, 1999)), or other provisions agreed to by the consulting parties. No excavation should be initiated before FEMA acceptance and approval of the curation plan.

As stipulated in the curation plan, artifacts, as well as field and laboratory records sufficient to document the collection, shall be curated at a facility preferably in state, that meets the standards of, and in accordance with the provisions of 36 CFR Part 79, "Curation of Federally

Owned and Administered Archaeological Collections,” and applicable State or Tribal requirements.

IV. Implementation of the Agreement

A. Amendments

1. If any Signatory determines that an amendment to the terms of this Agreement must be made, the Signatories shall consult for no more than 60 days to seek amendment of the Agreement.
2. An amendment to this Agreement, exclusive of the appendices, shall be effective only when it has been signed by all the Signatories.
3. The appendices may be amended at the request of FEMA or another Signatory in the following manner:
 - a. FEMA, on its own behalf or on behalf of another Signatory, shall notify the Signatories of the intent to modify the current appendix or appendices and shall provide a draft of the updated appendix or appendices to all Signatory Parties.
 - b. If no other Signatory objects in writing within 30 days of receipt of FEMA’s proposed modification, FEMA shall date and sign the amended appendix and provide a copy of the amended appendix to the other Signatories. Such an amendment shall go into effect on the date FEMA transmits the amendment to the other Signatories.

B. Dispute Resolution

1. Should any Signatory object in writing to the terms of this Agreement, FEMA shall consult with the objecting party for not more than 60 days to resolve the objection.
2. If the objection is resolved within 60 days, FEMA shall proceed in accordance with the resolution.
3. If FEMA determines within 60 days that the objection cannot be resolved, FEMA shall forward to the ACHP all documentation relevant to the objection, including FEMA’s proposed resolution. Within 30 days of receipt, ACHP will:
 - a. Concur with FEMA’s proposed resolution; or
 - b. Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the objection; or
 - c. Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to so.
4. FEMA shall take into account any ACHP recommendations or comments, and any comments from the other Signatories, in reaching a final decision regarding the objection. FEMA shall provide in writing to the ACHP and Signatories a summary of its final decision before authorizing any disputed action to proceed. The Signatories shall continue to implement all other terms of this Agreement that are not subject to the objection.
5. Should the ACHP not respond within 30 days, FEMA may assume the ACHP has no comment and proceed with its proposed resolution to the objection after providing the ACHP and Signatories a written summary of its final decision.

C. Severability and Termination

1. In the event any provision of this Agreement is deemed by a Federal court to be contrary to, or in violation of, any applicable existing law or regulation of the United States of America, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of this Agreement shall remain in effect.
2. FEMA, the SHPO, Grantee, Subgrantee, or Metro Preservation Officer may terminate this Agreement by providing 60 days written notice to the other Signatories, provided that the Signatories consult during this period to seek amendments or other actions that would prevent termination. If this Agreement is terminated, FEMA shall comply with Section 106 through other applicable means, pursuant to 36 CFR Part 800. Upon such determination, FEMA shall provide all other Signatories and the ACHP with written notice of the termination of this Agreement.
3. A participating Tribe may notify other Signatories that it is fully withdrawing from participation in this Agreement. Following such a withdrawal, FEMA shall 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, 36 CFR §800.8(c), or an applicable alternative under 36 CFR 800.14. Withdrawal from this Agreement by a Tribe does not terminate the Agreement. At any time that this Agreement remains in effect, a Tribe that has withdrawn from the Agreement may notify the other Signatories in writing that it has rescinded its notice withdrawing from participation in the Agreement.

D. Duration and Extension

1. This Agreement shall remain in effect from the date of execution for a period not to exceed seven (7) years unless otherwise extended pursuant to Stipulation IV.D.2. below, or terminated pursuant to Stipulation IV.C.2, Severability and Termination.
2. The Signatories may collectively agree to extend this Agreement to cover additional calendar years, or portions thereof, through an amendment per Stipulation IV.A., provided that the original Agreement has not expired.

E. Execution and Implementation

1. This Agreement may be executed in counterparts, with a separate page for each Signatory, and shall become effective on the date of the final signature of FEMA, SHPO, Grantee, Subgrantee and Metro Preservation Officer.
2. FEMA shall ensure that each Signatory is provided with a complete copy of the Agreement, including an original set of signatures.
3. Execution and implementation of this Agreement is evidence that FEMA has afforded the ACHP a reasonable opportunity to comment on FEMA's referenced Undertakings, and that FEMA has satisfied its Section 106 responsibilities for referenced Undertakings.

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PRIVATE PROPERTIES IN LOUISVILLE, KY**

Federal Emergency Management Agency



Gracia Szczech

Gracia Szczech

Regional Administrator

FEMA Region IV

9/3/15

Date

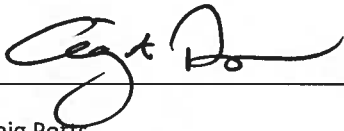
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513 Kentucky Heritage Council

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516 Craig Potts

9-3-15

Date

517 State Historic Preservation Officer

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PRIVATE PROPERTIES IN LOUISVILLE, KY**

Kentucky Emergency Management



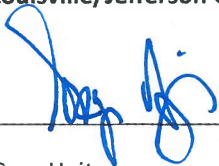
Michael Dossett
Director



Date

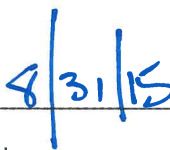
535 PROGRAMMATIC AGREEMENT AMONG
536 THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
537 THE KENTUCKY STATE HISTORIC PRESERVATION OFFICER,
538 KENTUCKY EMERGENCY MANAGEMENT,
539 LOUISVILLE/JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT,
540 METRO PRESERVATION OFFICER, AND
541 PARTICIPATING TRIBES
542 REGARDING THE ACQUISITION AND DEMOLITION OF
543 PRIVATE PROPERTIES IN LOUISVILLE, KY

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545 Louisville/Jefferson County Metropolitan Sewer District

546 

547 _____
548 Greg Heitzman

549 Executive Director

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547 _____
548 Date

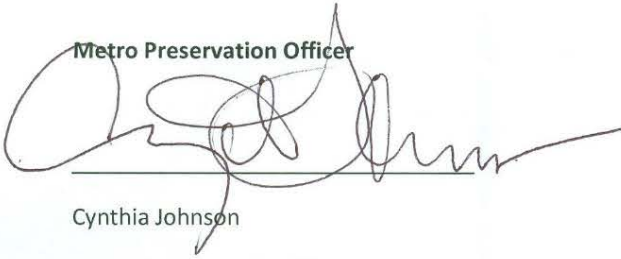
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551 REVIEWED BY:

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553 MSD-LEGAL DEPARTMENT
554 700 W. LIBERTY STREET
555 LOUISVILLE, KY 40203
556 (502) 540-6000

PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE KENTUCKY STATE HISTORIC PRESERVATION OFFICER,
KENTUCKY EMERGENCY MANAGEMENT,
LOUISVILLE/JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT,
METRO PRESERVATION OFFICER, AND
PARTICIPATING TRIBES
REGARDING THE ACQUISITION AND DEMOLITION OF
PRIVATE PROPERTIES IN LOUISVILLE, KY

Metro Preservation Officer



Cynthia Johnson

Metro Preservation Officer

9/4/15

Date

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE KENTUCKY STATE HISTORIC PRESERVATION OFFICER,
KENTUCKY EMERGENCY MANAGEMENT,
LOUISVILLE/JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT,
METRO PRESERVATION OFFICER, AND
PARTICIPATING TRIBES
REGARDING THE ACQUISITION AND DEMOLITION OF
PRIVATE PROPERTIES IN LOUISVILLE, KY**

Invited Signatory

Eastern Shawnee Tribe of Oklahoma

Glenna Wallace

Chief

Date

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE KENTUCKY STATE HISTORIC PRESERVATION OFFICER,
KENTUCKY EMERGENCY MANAGEMENT,
LOUISVILLE/JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT,
METRO PRESERVATION OFFICER, AND
PARTICIPATING TRIBES
REGARDING THE ACQUISITION AND DEMOLITION OF
PRIVATE PROPERTIES IN LOUISVILLE, KY**

Invited Signatory

Peoria Tribe of Indians of Oklahoma

John Froman

Chief

Date

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE KENTUCKY STATE HISTORIC PRESERVATION OFFICER,
KENTUCKY EMERGENCY MANAGEMENT,
LOUISVILLE/JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT,
METRO PRESERVATION OFFICER, AND
PARTICIPATING TRIBES
REGARDING THE ACQUISITION AND DEMOLITION OF
PRIVATE PROPERTIES IN LOUISVILLE, KY**

Invited Signatory

United Keetoowah Band of Cherokee Indians

George Wickliffe

Chief

Date

Appendix A: Contact Information

FEMA

Stephanie Madson

Regional Environmental Officer

DHS/FEMA Region IV

3003 Chamblee-Tucker Rd, Atlanta, GA 30341

KYEM

Geneva J. Brawner

State Hazard Mitigation Officer

Kentucky Emergency Management

100 Airport Road, Third Floor

Frankfort, KY 40601

SHPO

Ms. Kary Stackelbeck

Program Administrator

Kentucky Heritage Council

State Historic Preservation Office

300 Washington Street

Frankfort, KY 40601

Louisville MSD

Sharlie Khan

Project Administrator

700 West Liberty Street

Louisville, KY 40203-1911

Final

9/4/2015

Appendix B

Public Notice Template

The Louisville/ Jefferson County Metropolitan Sewer District has submitted an application through the Grantee for an acquisition and demolition project funded by FEMA under the Acquisition and Demolition of Private Properties in Louisville, Kentucky. The project will affect historic and non-historic properties that are located in the floodplain in the following neighborhoods: Belquin Subdivision, Wewoka/West Park, Algonquin Meadows, and Linwood.

Presidential Executive Orders 11988, 11990, 13690, the National Environmental Policy Act, and the National Historic Preservation Act require that all federal actions in or affecting floodplains, wetlands, or historic properties be reviewed for opportunities to relocate, and be evaluated for social, economic, historical, environmental, legal and safety considerations. The public is invited to participate in the process of identifying alternatives and analyzing their impacts. Any adverse effects to historic properties or other natural or cultural resources as a result of this Undertaking will be resolved.

Interested persons may obtain information about these actions or a specific project by contacting Sharlie Khan/Project Administrator at 502-540-6512 or sharlie.khan@louisvillemtd.org. Comments should be received within 15 days of the date of this notice.

Appendix C

Treatment Measures

When avoidance or minimization is not appropriate, the following mitigating Standard Treatment Measures (STMs) are suggested for the resolution of adverse effects.

Depending on the nature of historic properties affected and severity of adverse effects, FEMA, the Grantee, Subgrantee, SHPO, Metro Preservation Officer, and participating Tribe(s) shall develop a treatment measure plan that includes one or more of the following STMs. This Appendix may be amended in accordance with Stipulation IV.A.3.

I. Recordation

- A. Digital Photography Package: Prior to ground disturbing and demolition activities, the designated responsible party shall oversee the successful delivery of a digital photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture as determined by FEMA, as appropriate. The digital photography package will meet the standards cited in the NPS' *National Register of Historic Places Photographic Policy March 2010* or subsequent revisions (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>).
1. 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. An electrical copy of this index will also be provided.
 2. 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.
 3. The designated responsible party shall submit the digital photography package to the SHPO and participating Tribe(s) for review and approval. Once approved by the SHPO and participating Tribe(s), the designated responsible party shall submit a copy to the SHPO, participating Tribe(s) and an agreed upon local repository for permanent retention.
- B. 35mm Black and White Photography Package: Prior to ground disturbing and demolition activities, the designated responsible party shall oversee the successful delivery of a 35 mm film black and white film photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
1. The 35 mm film black and white film photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. Exterior photographs shall include full oblique and contextual images of each elevation. Exterior views shall be keyed to a site plan while interior views shall be keyed to a floor plan of the

building/structure. The photographs shall be indexed according to the date photographed, site number, site name, site address, direction, frame number, subject matter and photographer's name recorded on the reverse side in pencil.

2. The 35 mm film black and white film photography package shall include one (1) full set of 35mm film black and white photographs printed on acid free paper, the corresponding 35mm film negatives in acid free sleeves, a completed state architectural inventory form, and a written site history of the historic property.
 3. The designated responsible party shall submit the 35 mm black and white film photography package to the SHPO and participating Tribe(s) for review and approval. Once approved by the SHPO, and participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to the SHPO, participating Tribes, and an agreed upon local repository for permanent retention.
- C. Measured Historic American Building Survey (HABS)-Level Drawings: Prior to ground disturbing and demolition activities, the designated responsible party shall be responsible for HABS-level drawings produced at a precise scale from recorded measurements. Drawings may be produced either by hand or with computer-aided drafting (CAD) and will include both plans and elevations. In consultation with SHPO, original architectural drawings, or copies of original drawings may be acceptable in lieu of newly created drawings.

The designated responsible party shall submit the drawing package to the SHPO and participating Tribe(s) for review and approval. Once approved by the SHPO, and participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to the SHPO, participating Tribe(s) and an agreed upon local repository for permanent retention.

- D. Large Format Photography Package: Prior to ground disturbing and demolition activities, the designated responsible party shall oversee the successful delivery of a large format photography package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate.
1. The large format photography package shall include a comprehensive collection of photographs of both interior and exterior views showing representative spaces and details of significant architectural features and typical building materials. 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.
 2. 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, a completed state architectural inventory form, and a written site history of the historic property.
 3. The designated responsible party shall submit the large format film photography package to the SHPO and participating Tribe(s) for review and approval. Once approved by the SHPO, and participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to the SHPO, participating Tribe(s) and an agreed upon local repository for permanent retention.

E. State Level Documentation: Prior to ground disturbing and demolition activities, the designated responsible entity shall oversee the successful delivery of a documentation package prepared by staff or contractors meeting the Professional Qualifications for Architectural History, History, Architecture, or Historic Architecture, as appropriate. The State Level Documentation package shall include the following:

1. The state architectural inventory form will be completed or updated as needed if one already exists. As part of this documentation, a written history of the historic property will be compiled based on an archival search conducted at locations such as a local county courthouse, a local historical society if one exists, the Kentucky State Department of Libraries and Archives, the Kentucky Historical Society, and other appropriate repositories to gather specific information about the historic property and general information about the history of the surrounding area or neighborhood. A report of these investigations will be presented along with the inventory form as part of the documentation.
2. The building or structure will be further documented with digital photographs showing all exterior elevations, architectural elements, interior ornamentation, woodwork, and any other significant, character defining details. Digital photographs will meet the standards cited in the NPS' **National Register of Historic Places Photographic Policy March 2010** or subsequent revisions. (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>). All photographs will be provided on an archival quality CD/DVD. A selection of the photographs will be printed on 5" x 7" archival quality, acid free paper. Each photograph will be labeled with the date, site number, direction, and subject.
3. Measured floor plans of each floor of the buildings or structures will be prepared. These drawings will be at a scale of 1/8 inch per foot, and will be analytical in nature, showing construction details, alterations, and additions. Drawings may be produced either by hand or with computer-aided drafting (CAD). The drawings shall be on archival quality, acid free paper. In consultation with SHPO, original architectural drawings, or copies of original drawings may be acceptable in lieu of newly created drawings. Each drawing shall be labeled with the title of the building, survey number, view, dimension, name of the field worker and drawing preparer, date of the drawing, scale bar, north arrows for plans, and explanatory notes.
4. The designated responsible party shall submit the documentation package to the SHPO and participating Tribe(s) for review and approval. Once approved by the SHPO, and participating Tribe(s), the designated responsible party shall submit a copy of the approved documentation to the SHPO, participating Tribe(s) and an agreed upon local repository for permanent retention.

II. Tribal 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 sites are discovered in conjunction with the Undertaking, including through archaeological studies, excavation, geotechnical investigations, grading, and all ground-disturbing activity. The plan will also formalize procedures for Tribal monitoring during archaeological studies,

grading, or ground disturbing activities for the Undertaking. No photography of Native American human remains or funerary objects will be allowed. Public Interpretation

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

III. Historical Context Statement and Narratives

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

IV. Oral History Documentation

Prior to ground disturbing and demolition activities, FEMA, the Grantee, and Subgrantee shall work with the SHPO and participating Tribe(s) to identify oral history documentation needs and agree upon a topic and list of interview candidates. Once the parameters of the oral history project have been 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 designated responsible party shall use staff or contractors that meet the Secretary's Professional Qualifications for the appropriate discipline.

V. Historic Property Inventory

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

VI. National Register and National Historic Landmark Nomination

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

VII. Geo-References of Historic Maps and Aerial Photographs

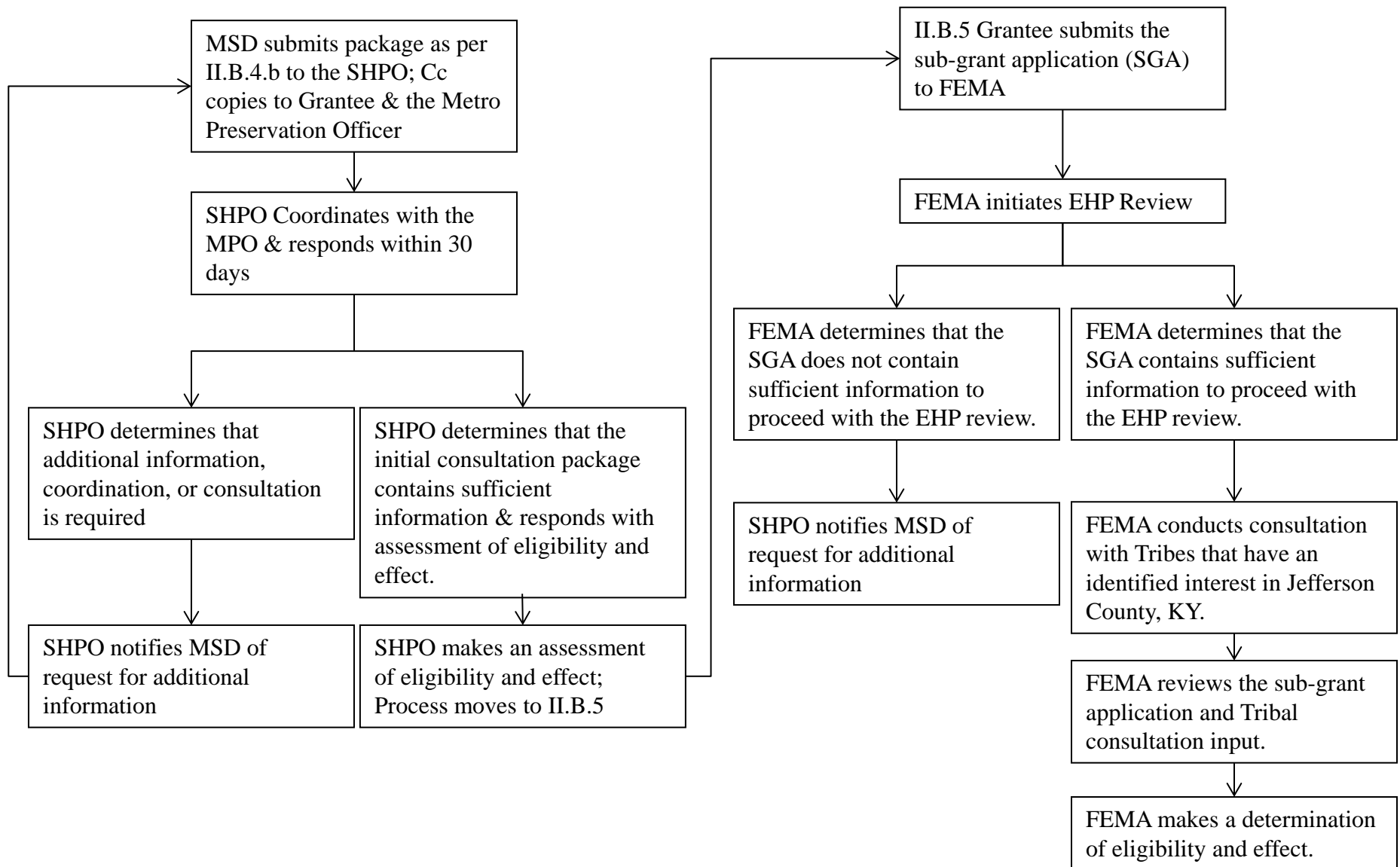
Prior to ground disturbing and demolition activities, FEMA, the Grantee, and Subgrantee shall work with the SHPO and participating Tribe(s) to identify the historic maps or aerial photographs for scanning and geo-referencing. Once a list of maps or aerial photographs have been agreed upon, the designated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

VIII. Community Digital Archives

Prior to ground disturbing and demolition activities, FEMA, the Grantee, and Subgrantee shall work with the SHPO and participating Tribe(s) to identify a strategy to conduct voluntary community digital archives for an agreed upon neighborhood or area. Parties will agree upon a public outreach plan to inform the public of an opportunity to digitize historic family documents and records. Members of the public that participate will receive an electronic copy of their files on a CD-ROM and will be asked to voluntarily allow a copy of their digital records to be archived at an identified repository in order to continue collecting Louisville local history.

Appendix D: Section 106 Consultation Flow Chart

Section 106 Process under the Louisville/Jefferson County MSD 2 PA



Section 106 Process under the Louisville/Jefferson County MSD 2 PA

