



**AMENDMENT NO. 1 TO
GLO CONTRACT NO. 19-127-000-B465**

THE GENERAL LAND OFFICE (the “GLO”) and **TEXAS HISTORICAL COMMISSION** (“THC”), each a “Party” and collectively “the Parties” to GLO Contract No. 19-127-000-B465 (the “Agreement”), desire to amend the Agreement.

WHEREAS, the Parties desire to amend the Agreement to reflect all GLO Programs that are subject to the terms of the Agreement; and

WHEREAS, the Parties desire to revise or replace certain language in the Agreement to clarify and accurately reflect the Parties’ respective responsibilities under the Agreement; and

WHEREAS, the Parties desire to extend the term of the Agreement; and

WHEREAS, the GLO will send a copy of this executed amendment to the ACHP;

NOW, THEREFORE, in accordance with Article XII of the Agreement, the Parties agree as follows:

1. The first three recitals of the Agreement are deleted in their entirety and replaced with the following:

“**WHEREAS**, the GLO administers the U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant – Disaster Recovery (“CDBG-DR”) and Community Development Block Grant – Mitigation (“CDBG-MIT”) programs (collectively, the “Program”) to provide financial assistance with funds appropriated by the Congress of the United States to facilitate disaster recovery, disaster relief, long-term recovery, restoration, economic revitalization, and mitigation and to affirmatively further fair housing, in accordance with Executive Order 12892, in areas which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.); and

WHEREAS, the GLO, in consultation with the THC, has determined that activities funded under the Program may have an effect on a CDBG-MIT-served or CDBG-DR-served historic property’s eligibility to be included in the National Register and the GLO must consult with the State Historic Preservation Officer (“SHPO”) for Texas, pursuant to Section 106 of the NHPA (herein, a “Section 106 Review”); and

WHEREAS, the GLO has determined that certain routine Program activities, listed in Attachment A, attached hereto and incorporated herein for all purposes, will have no effect on a CDBG-MIT-served or CDBG-DR-served historic property’s eligibility to be included in the National Register, and should be excluded from a Section 106 Review; and”

2. **ARTICLE III (B)** of the Agreement is deleted in its entirety and replaced with the following:

“(B) For all CDBG-DR and CDBG-MIT program submissions, an expedited review process of fourteen (14) calendar days upon receipt of complete documentation by SHPO will be in effect. This expedited review process shall only cover reviews submitted pursuant to **ARTICLES V** and **VI**, using the THC’s online eTRAC (electronic THC Review and Compliance) system, accessible at <https://www.thc.texas.gov/etrac-system>. For properties listed in or eligible for the NRHP, the THC may contact the GLO within the fourteen (14) day period to indicate that up to thirty (30) calendar days are required for the response. Additionally, for Undertakings where a report involving fieldwork is submitted, THC staff archeologists shall be allowed the full thirty (30) day period to review and comment.”

3. **ARTICLE IV (C)** of the Agreement is deleted in its entirety and replaced with the following:

“(C) **For cumulative effects:** For the purposes of this document and paraphrasing the National Environmental Policy Act definition (40 CFR § 1508.7), cumulative effects on historic properties are the effects that result from the incremental impact of the Undertaking when added to other past, present and reasonably foreseeable future Undertakings regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. GLO and THC shall notify the other Party if potential NRHP-eligible historic or archaeological districts are identified through consultation with interested parties during the course of program activities. Each potential district shall be evaluated for formal inclusion in CDBG-DR program evaluations as a historic district using criteria defined by the National Park Service in National Register Bulletin 15.”

4. **ARTICLE V (A) (3)** of the Agreement is deleted in its entirety and replaced with the following:

“(3) If an architectural property is at least forty-five (45) years of age, is not listed in the National Register, and has not been evaluated for National Register eligibility, the Responsible Entity shall submit documentation to the SHPO for review per **ARTICLE V (A) (5)** of this Agreement. The forty-five-year age limit was selected to ensure historic age resources were captured in the event of unforeseen potential Undertaking delays and to afford flexibility to account for potential inaccuracies in building dates. The Parties agree that prefabricated manufactured homes do not constitute an architectural property type of concern and do not need to be submitted to THC for historic property review regardless of age if this origin is confirmed by a SOI-qualified architectural historian.”

5. **ARTICLE VI (A) (1)** of the Agreement is deleted in its entirety and replaced with the following:

“(1) For Undertakings that involve new ground disturbance and are not listed as an Exempt activity under Attachment A, the Responsible Entity shall coordinate with the SHPO to determine whether archeological investigations are warranted. Documentation to aid in this determination may be provided by the Responsible Entity as outlined in **ARTICLE V (A) (5) (a)-(c)**, above. Documentation shall include, at minimum: the address (including city and county); a U.S. Geological Survey 7.5 minute quadrangle map with the property location and boundary shown; documentation establishing

whether the property is owned or controlled by a public agency; an Undertaking description noting impacts that will occur to the ground surface and the depth of the impact; and documentation of any extenuating circumstances that may be important for review, such as evidence of severe erosion or previous construction within the Undertaking area.”

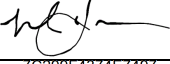
6. **ARTICLE XIV** of the Agreement is amended to reflect a termination date of **October 9, 2028**.
7. **ATTACHMENT A** to the Agreement, **List of Exempt Activities**, is deleted in its entirety and replaced with the **Revised List of Exempt Activities**, attached hereto and incorporated herein in its entirety for all purposes as **ATTACHMENT A-1**.
8. This Amendment shall be effective upon the date of the last signature.
9. The terms and conditions of the Agreement not amended herein shall remain in force and effect.


SIGNATURE PAGE FOLLOWS


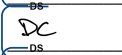
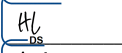
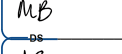

**SIGNATURE PAGE FOR AMENDMENT NO. 1 TO
GLO CONTRACT No. 19-127-000-B465**

GENERAL LAND OFFICE

TEXAS HISTORICAL COMMISSION

DocuSigned by:

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Mark A. Havens, Chief Clerk/
Deputy Land Commissioner
Date of execution: 4/4/2023

DocuSigned by:

01632F3C4E7946A...
Name: Mark wolfe
Title: Executive Director
Date of execution: 4/4/2023

- OGC 
- PM 
- SDD 
- DGC 
- GC 

ATTACHED TO THIS AMENDMENT:

ATTACHMENT A-1 – Revised List of Exempt Activities

LIST OF EXEMPT ACTIVITIES

The GLO, in consultation with the THC, has determined that the following activities do not meet the definition of an Undertaking since they either: (1) do not have the potential to cause effects on historic properties per 36 CFR § 800.4(d)(1); or (2) have limited potential to affect historic properties per 36 CFR § 800.5 and will have no adverse effect if carried out as described. The activities in this list require no further review under the terms of this Agreement. The GLO and Responsible Entities shall maintain a list of Undertakings completed per these exemptions and shall make the list available upon the request of the THC and include the updated list in the annual report.

GENERAL ACTIVITIES (Categorically Excluded under 24 CFR § 58.34)

- A. Environmental and other studies, resource identification, and the development of plans and strategies. (Implementation of such plans with federal funds may require consultation. If historic properties may be affected, SHPO recommends early consultation during planning stages.)
- B. Information and financial services.
- C. Administrative and management activities.
- D. Public services that will not have a physical impact or result in any physical changes to buildings, structures, sites, or objects, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, and welfare or recreational needs.
- E. Inspections and testing of properties for hazards or defects. (Action taken pursuant to such inspections with federal funds will require consultation.)
- F. Purchase of insurance (e.g. homeowners or flood insurance; does not include HUD mortgage insurance).
- G. Purchase of tools.
- H. Engineering or design costs. (Construction activities undertaken with federal funds will require consultation. If historic properties may be affected, SHPO recommends early consultation during design.)
- I. Technical assistance and training.
- J. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.
- K. Payment of principal and interest on loans made or obligations guaranteed by HUD;

REHABILITATION OF BUILDINGS

Interior Rehabilitation:

Undertakings limited to interior spaces of single- or multifamily residential buildings to be retained in the same use where the work will not be visible from the exterior of the building; no structural alterations are made; no demolition of walls, ceilings, or floors occurs; no drop ceilings are added; and no walls are leveled with furring or moved.

The following list of activities that do not need consultation with the SHPO provides further clarity for residential work and establishes standards for civic, commercial, and other property types.

A. Disaster recovery measures:

1. Temporary repair to single-family residential buildings to ensure safe shelter with access to essential electrical supply, HVAC, hot water, natural gas and potable water, and protection from elements such as weatherproofing and securing broken doors and windows.
2. Interior repairs to pre-disaster condition of single- or multifamily residential buildings, excluding structural repairs (e.g. foundation, framing), or other elements requiring architectural or engineering services.

B. Heating, ventilation, and air conditioning (HVAC):

1. Installing mechanical equipment in residential buildings in a manner that does not affect the exterior of the building.
2. Installing mechanical equipment in other building types within existing mechanical closets, chases, and unfinished attics or basements when ducts are not visible within occupied spaces of the building and access to the ducts does not require demolition of walls or ceilings in occupied spaces of the building.
3. Routine maintenance or retrofits to existing mechanical equipment, provided there is no physical impact on the building.
4. Replacement of existing mechanical equipment or installation of supplemental equipment, provided that exterior equipment is installed within the same footprint on the same pad, and interior equipment is installed within an existing mechanical closet or unoccupied attic or basement.
5. Upgrading existing facility and infrastructure-related pumps and motors, including those for HVAC systems, to variable-speed or premium efficiency standards.
6. Sealing, restoring, or insulating HVAC ducts, provided that the ducts are not visible in occupied spaces of the building and access to the ducts does not require demolition of walls or ceilings in occupied spaces of the building.
7. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors or carbon monoxide detectors (wired or non-wired).

C. Lighting and appliances:

1. Installation of fire, smoke, or carbon monoxide detectors.
2. Installation of compact fluorescent or LED bulbs in existing fixtures.
3. Replacement of fluorescent bulbs, ballasts, and/or wiring in existing fixtures.
4. Replacement of existing fluorescent fixtures with new fixtures, provided that the fixtures are not original to the building.
5. Installation of motion/occupancy sensors for lighting control.
6. Replacement of existing lighting in street lighting fixtures with high efficiency lighting.

7. Replacement of existing appliances.

D. Insulation:

1. Attic insulation with proper ventilation, provided that insulation is fiberglass batt or loose fill only (not spray foam).
2. Under-floor insulation in basements or crawl spaces, provided that insulation is fiberglass batt or loose fill only (not spray foam), and ventilation of crawl spaces.
3. Exterior blown-in wall insulation (not spray foam) where holes are not drilled through exterior wall material or decorative plasterwork on the interior and result in no permanent visible alteration to the structure.
4. Water heater tank and pipe insulation.
5. Radiant barriers in unoccupied attic spaces.

E. Plumbing:

1. Repairing plumbing systems in a manner that does not affect the interior or exterior of the building.
2. Water heater repair or replacement that does not require a visible new supply or venting.
3. Restroom improvements for handicapped access, provided the work is contained within the existing restroom.
4. Water conservation measures, such as installation of low-flow faucets, toilets, showerheads, urinals, or distribution device controls, in residential properties; and water conservation measures in other building types, provided that plumbing fixtures to be replaced are not original to the building.
5. Upgrading existing facility and infrastructure-related pumps and motors, including those for water/wastewater facilities, to variable-speed or premium efficiency standards.

F. Electrical:

Repairing or upgrading electrical systems in a manner that does not affect the interior or exterior of the building.

Exterior Rehabilitation:

A. Roofing:

1. In-kind replacement of existing roofing material.
2. Replacement of existing gutters and downspouts.
3. Installation of continuous ridge vents covered with ridge shingles or boards, or roof jacks/vents, bath and kitchen fan vents, gable vents, soffit and frieze board vents, and combustion appliance flues, if not located on a primary roof elevation or visible from the public right-of-way.
4. Installation of reflective roof coatings, with materials that closely match the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline.

5. Installation of new roofing or reflective roof coatings on a flat-roofed building with a parapet, such that the roofing material is not visible from any public right-of-way.
6. Replacement of asbestos tile roofing with composition shingle/asphalt shingle roofing matching the shape and pattern of the asbestos tile.

B. Siding, soffits, fascia, and masonry:

1. Repair or limited, in-kind replacement of existing siding, soffits, and fascia. Limited replacement shall not exceed 25% of the overall exterior area, and new material shall match existing in material, profile, and other characteristics.
2. Limited repair of masonry, including chimneys, where mortar matches the existing in color, texture, strength, joint width, and joint profile and methods are consistent with the preservation techniques in *Preservation Brief #2; Repointing Mortar Joints in Historic Masonry Buildings*. Limited repair shall not exceed 10% of the overall exterior wall area.

C. Painting:

1. Painting previously painted exterior surfaces, provided destructive surface preparation treatments, including but not limited to water-blasting, sandblasting and chemical removal, are not used.
2. Conducting lead-based paint abatement or interim controls pursuant to 24 CFR § 35.115(a)(13), if carried out by a qualified contractor using current best practices and methods that are consistent with the preservation techniques in *Preservation Brief #37: Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*. (Any removal of historic building materials or encapsulation with vinyl siding or other materials is not included in this exemption.)

D. Windows and doors:

1. Weatherstripping around windows and doors, installing thresholds, and other air infiltration control measures that do not harm or obscure historic windows, doors, or trim.
2. Caulking around windows and doors, provided that the color of the sealant matches adjacent materials.
3. Installing interior storm windows or doors, or exterior storm or wood screen doors, on residential buildings, in a manner that does not harm or obscure historic windows or trim.
4. Repair or repainting of existing storm windows.
5. Installing removable film on windows (if the film is transparent), solar screens, or window louvers, on residential buildings, in a manner that does not harm or obscure historic windows or trim.
6. Repair or replacement of missing or damaged window glass.
7. Repair of windows using in-kind materials.
8. Replacement of non-historic exterior doors with compatible wood panel doors.

E. Porches:

1. Repair (not replacement) of porch ceilings, steps, floors, or railings.

2. Repair of existing wheelchair ramps.
3. Installing a new wheelchair ramp on the side or rear entrance of a home, when not visible from any public right-of-way.
4. Installing a new wheelchair ramp on the front of a home, or other entrance visible from a public right-of-way, in a manner that does not remove, compromise, or damage existing historic materials or features and would be completely reversible without damage to historic fabric.

F. Ground-disturbing activity and site work:

1. Repairing or replacing in-kind existing driveways, parking areas, and walkways with materials of similar appearance in a manner that does not disturb historic landscape materials or features.
2. Excavating to gain access to existing underground utilities to repair or replace them, in a manner that does not disturb historic exterior building or landscape materials or features, and where all construction occurs within existing trenches.
3. Repair or replacement of metal utilitarian structures (e.g. pump houses, storage buildings) less than 45 years old, when performed in previously disturbed soils.
4. Ground disturbance that is minimal and occurs in documented, previously disturbed soil.

G. Elevation: Elevation of pier-and-beam, wood frame structures four feet or less if the front entrance stair configuration is unaltered. Foundation skirting and piers shall be extended or replaced with in-kind materials; brick or stucco piers with lattice or board and batten skirting is preferred in instances where historic materials are no longer present. This exemption does not apply to buildings with other structural systems, such as masonry construction or slab-on-grade foundations.

H. Generators: Installation of generators at existing facilities, where:

1. Ground-level equipment is located to the rear or side of the building or is otherwise screened from view from any public right-of-way, and any new equipment slabs and trenching occurs within previously disturbed soils.
2. Roof-mounted equipment is not visible from the ground level.

SINGLE-FAMILY HOUSING

- A. For single-family residential CDBG-DR or CDBG-MIT programs that involve new ground disturbance, archeological review by THC is not required if the Responsible Entity's SOI-qualified archaeologist verifies and documents that no known archaeological sites, archaeological districts, or natural water features (including wetlands) are located within 100 meters of the parcel boundary.
- B. The Louisiana-Rio Grande Canal Company Irrigation System is a collection of very large NRHP-listed historic districts within the Lower Rio Grande Valley, defined by local historic events and engineering design. Archeological review by THC is not required if project ground disturbances will occur more than 100 meters from an irrigation district canal or engineering feature, unless it is in proximity to a recorded archeological site or natural water feature, as noted Paragraph A, above.

INFRASTRUCTURE

The following projects may be exempt from review when they occur 25 feet or greater from the fence line or boundary of a cemetery, or where no work will occur within 15 feet of a cemetery. Projects which involve work within 15 feet of a cemetery must be submitted in accordance with **ARTICLE VI, ARCHEOLOGICAL REVIEW**, and will require archeological studies to verify whether or not there are any unmarked graves beyond the marked cemetery boundary. These studies may include scrapings or informant interviews with the manager of the cemetery association, local historians, funeral home directors, or other informed individuals.

- A. Routine road maintenance and resurfacing where work is confined to the existing right-of-way and previously maintained surfaces, ditches, culverts, and cut and fill slopes where there are no known historic properties, or historic properties would not be affected because the proposed work is clearly within a disturbed context. This exemption shall not apply in areas with brick streets or with tile curb markers or other decorative street features.
- B. Point repair to an existing water or wastewater line where construction occurs in the original trench
- C. Replacement of existing water or wastewater lines where all construction occurs within the original trench.
- D. Replacement of existing water or wastewater lines in a new trench paralleling the existing line if the following conditions are met:
 1. Replacement occurs beneath city streets or adjacent drainage rights-of-way (as in item A);
 2. Replacement does not occur within a National Register historic district or locally designated historic district;
 3. Replacement does not occur within the historic towns of Goliad, San Augustine, Jefferson, Nacogdoches, Bastrop, Castroville, San Ygnacio, Roma, Refugio, Ysleta, San Elizario, and Presidio;
 4. Replacement does not occur beneath brick-paved streets; and
 5. Replacement does not occur adjacent to roads in rural areas of the county (where abandoned cemeteries or unrecorded archeological sites might be impacted by a new trench).
- E. Minor alterations or additions to existing water or wastewater treatment plants or other facilities that are less than 45 years old. (Excavation of new treatment ponds or enlargement of existing ponds are not considered minor alterations and are subject to review).
- F. Installation of generators at existing water/wastewater or shelter facilities, where:
 1. Ground-level equipment is located to the rear or side of the building or is otherwise screened from view from any public right-of-way, and any new equipment slabs and trenching occurs within previously disturbed soils.
 2. Roof-mounted equipment is not visible from the ground level.
- G. Addition or replacement of equipment within the same location and footprint (Examples include but not limited to; Computer monitoring equipment, bar screens, clarifiers, chlorination equipment, SCADA equipment etc.).
- H. Repair of bridges less than 45 years old.



ORIGINAL PROGRAMMATIC AGREEMENT



**PROGRAMMATIC AGREEMENT
BETWEEN THE TEXAS HISTORICAL COMMISSION
AND
THE TEXAS GENERAL LAND OFFICE
GLO CONTRACT NO. 19-127-000-B465**

The **TEXAS GENERAL LAND OFFICE** (“GLO”) and the **TEXAS HISTORICAL COMMISSION** (“THC”), agencies of the State of Texas (each a “Party” and, collectively, the “Parties”), hereby enter into this Programmatic Agreement (the “Agreement”) concerning projects (each, an “Undertaking”) possibly affecting properties eligible for inclusion in the National Register of Historic Places (“National Register”), pursuant to Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108 (“NHPA”), and its implementing regulations at 36 C.F.R. Part 800; and

WHEREAS, the GLO administers the U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Disaster Recovery (“CDBG-DR”) programs (collectively, the “Program”) to provide financial assistance with funds appropriated by the Congress of the United States to facilitate disaster recovery, restoration, economic revitalization, and to affirmatively further fair housing, in accordance with Executive Order 12892, in areas which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 *et seq.*); and

WHEREAS, the GLO, in consultation with the THC, has determined that activities funded under the Program may have an effect on a CDBG-DR-served historic property’s eligibility to be included in the National Register and the GLO must consult with the State Historic Preservation Officer (“SHPO”) for Texas, pursuant to Section 106 of the NHPA (herein, a “Section 106 Review”); and

WHEREAS, the GLO has determined that certain routine Program activities, listed in **Attachment A**, attached hereto and incorporated herein for all purposes, will have no effect on a CDBG-DR-served historic property’s eligibility to be included in the National Register, and should be excluded from a Section 106 Review; and

WHEREAS, 24 C.F.R. Part 58 allows State, tribal, and local governments to assume HUD’s environmental review responsibilities as a “Responsible Entity,” including obligations under Section 106 of the NHPA and its implementing regulations at 36 C.F.R. Part 800; and

WHEREAS, certain subrecipients selected by the GLO may be designated as a Responsible Entity participating in the Program and will be required to comply with 24 C.F.R. Part 58, 36 C.F.R. Part 800, and any other applicable statutes and rules, and will further be required to fulfill the GLO’s roles, responsibilities, and terms of this Agreement and any amendments hereto; and

WHEREAS, in accordance with 24 C.F.R. Part 58, in instances in which a subrecipient lacks the capacity to act as a Responsible Entity, the GLO is designated the Responsible Entity; and

WHEREAS, the NHPA has implemented regulations at 36 C.F.R. § 800.14(b) to allow for the use of programmatic agreements for the efficient administration of the Section 106 Review process; and

WHEREAS, the GLO and the THC, as the SHPO for the State of Texas, agree that it is in the best interest of the State to streamline the Section 106 Review process through the use of this Agreement; and

WHEREAS, the GLO has invited the Advisory Council on Historic Preservation (ACHP) to determine whether the ACHP wishes to enter into consultation on this agreement and the ACHP has chosen not to participate in consultation.

NOW, THEREFORE, the GLO and the THC agree that this Program shall be administered in accordance with the following terms and conditions in satisfaction of NHPA requirements:

ARTICLE I – EXEMPTIONS FROM REVIEW

A. The Responsible Entity shall, within a reasonable time and with good faith effort, evaluate each historic-age property to determine the potential for effects. Activities not requiring SHPO review (“Exempt Activities”), listed in **Attachment A**, attached hereto and incorporated herein for all purposes, are determined by the Parties to not have the potential to cause effects on historic properties per 36 C.F.R. § 800.4(d)(1) or have limited potential to affect historic properties per 36 C.F.R. § 800.5, with no adverse effect if carried out as described. The Responsible Entity is not required to consult with the SHPO regarding Exempt Activities. The Responsible Entity shall keep documentation of its determination of exempt status on file and available for periodic review by the SHPO and shall include this information in annual reports prepared per **ARTICLE IX** below.

B. The GLO and the SHPO may add or remove activities from **Attachment A** by written amendment to this Agreement per **ARTICLE XII**.

ARTICLE II - RESPONSIBILITIES OF THE RESPONSIBLE ENTITY

The Parties have determined that activities not listed in **Attachment A** may have the potential to have an effect on a historic property and require review pursuant to this **ARTICLE II** and **ARTICLES III** through **VIII**, below. The Responsible Entity shall ensure that the following measures are carried out:

A. General Requirements of the Responsible Entity. For each Undertaking contemplated under this Agreement, the Responsible Entity shall consult with, and submit documentation for review to, the SHPO and other consulting parties, including, but not limited to, federally recognized Indian Tribes/Tribal Historic Preservation Officers (THPOs); representatives or local governments; and applicants for Federal assistance, permits, licenses, and other approvals, for the following:

1. Establish whether the Undertaking has the potential to affect historic properties (36 C.F.R. § 800.3(a), (c), and (d));

2. Identify the consulting parties who should be invited to participate in the Undertaking (36 C.F.R. § 800.3);
3. Seek public comment for individual Undertakings, and conduct public involvement activities (36 C.F.R. § 800.3(e));
4. Determine and document the scope of identification efforts and level of effort through the internal review and screening process of the Undertaking, including the Area of Potential Effect (APE) of the Undertaking (36 C.F.R. § 800.4(a) and (b));
5. Identify historic-age properties located within the Undertaking APE (36 C.F.R. § 800.4) and evaluate the National Register eligibility of each;
6. Apply the Criteria of Adverse Effect on historic properties to determine whether the properties may be affected by the Undertaking (36 C.F.R. § 800.5(a)(1));
7. Initiate consultation on the resolution of adverse effects with appropriate consulting parties (36 C.F.R. § 800.6);
8. Consult, as appropriate, regarding the determination of the Undertaking APE, the evaluation of National Register eligibility, and the effects of a Program Undertaking on historic properties;
9. Coordinate Section 106 Review with other relevant Undertaking reviews; and
10. Document individual Undertakings and maintain a record of all Undertaking reviews carried out pursuant to this Agreement.

B. Compliance. The Responsible Entity shall comply, and ensure each subrecipient's compliance through subrecipient agreements, if any, with the terms of this Agreement for all applicable Undertakings that are funded entirely or in part by monies from the Program. For purposes of this Agreement, the GLO and each self-performing GLO subrecipient are hereafter referred to, collectively, as the "Responsible Entity," except in instances where either such entity is named individually.

C. Professional Qualifications Standards. The Responsible Entity shall ensure that all actions prescribed in this Agreement involving the identification, evaluation, assessment of effects, treatment, monitoring, or disposition of historic properties, or involving the reporting or documentation of such actions, shall be carried out by or under the direct supervision of a person or persons meeting the Secretary of the Interior's ("SOI") Professional Qualifications Standards (48 Fed. Reg. 44738, September 29, 1983; http://www.nps.gov/history/local-law/arch_stnds_9.htm) in the fields of History, Archeology, Architectural History, or other applicable discipline, as appropriate based on the nature of the Undertaking, for the identification of historic properties and assessment of effects. Completion of mitigation under **ARTICLE V(D)** of this Agreement shall be performed or overseen by appropriately qualified professionals.

D. Public Participation. The Responsible Entity shall arrange, in a manner consistent with 36 C.F.R. § 800.8(c), for public participation appropriate to the scope of the programs covered by this Agreement in consideration of the nature of the activities undertaken in the Program and the likely

effects on historic properties. The Responsible Entity shall make appropriate efforts, in accordance with HUD regulations governing the Program, to involve the interested individuals, organizations, and entities.

E. Completion Required. The Section 106 Review required under this Agreement must be resolved before the Responsible Entity's final approval of any Undertaking application; before an irrevocable commitment to an Undertaking by the Responsible Entity; and before the Responsible Entity or the property owner alters a historic property.

ARTICLE III – RESPONSIBILITIES OF THE SHPO

A. Unless otherwise provided for in **ARTICLE III(B)** or **ARTICLE VII**, the SHPO shall review and comment on Responsible Entity-submitted documentation concerning an Undertaking within thirty (30) calendar days of receipt. If any Responsible Entity-submitted documentation is determined to be inadequate, the SHPO shall respond within thirty (30) days of receipt, and any supplemental documentation will be reviewed within thirty (30) days of its receipt by the SHPO. If the SHPO does not provide comments within the appropriate time period established herein for its response, the Responsible Entity may assume the SHPO concurs with its determination and may proceed with the Undertaking in accordance with all other terms of this Agreement.

B. For state-run program submissions, an expedited review process of fourteen (14) calendar days upon receipt of complete documentation by SHPO will be in effect. This expedited review process shall only cover reviews submitted pursuant to **ARTICLE V**, using the THC's online eTRAC (electronic THC Review and Compliance) system, accessible at <http://www.thc.texas.gov/etrac-system>. For properties listed in or eligible for the NRHP, the THC may contact the GLO within the fourteen (14) day period to indicate that up to thirty (30) calendar days are required for the response. Additionally, Undertakings requiring input from SHPO staff archeologists under **ARTICLE VI** will be allowed the full thirty (30) day period.

C. The SHPO response to a request for comment will include:

1. a statement of concurrence or non-concurrence with the Responsible Entity's findings and recommendations; and/or
2. any comments related to effects findings.

ARTICLE IV – AREA OF POTENTIAL EFFECTS

The Responsible Entity shall consult with the SHPO to determine and document the Area of Potential Effects ("APE"), as defined in 36 C.F.R. § 800.16(d), for an Undertaking, as follows:

- (A) **For direct effects:** The APE shall include the footprint to be directly affected by new construction, staging areas, and access areas, with regard to the identification of archeological sites. For the rehabilitation of any building without associated new construction or additions, the APE shall consist solely of the building being rehabilitated.
- (B) **For indirect effects:** A broader APE will be required to assess Undertakings that have the potential for visual or other indirect effects on nearby architectural properties, herein defined as non-archeological historic properties, including any significant structures and/or

landscape features located on the properties. Indirect effects may change the character of the property's use or physical features within the property's setting that contribute to its historic significance; are often audible, atmospheric, and visual effects; and may relate to viewshed issues.

- (C) **For cumulative effects:** For the purposes of this document and paraphrasing the National Environmental Policy Act definition (40 CFR § 1508.7), cumulative effects on historic properties are the effects that result from the incremental impact of the Undertaking when added to other past, present and reasonably foreseeable future Undertakings regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

ARTICLE V – ARCHITECTURAL REVIEW

(A) **Identification and Evaluation of Historic Properties.**

The Responsible Entity shall make a reasonable and good faith effort to identify historic properties located within the APE, as follows:

- (1) For Undertakings involving ground disturbance, the Responsible Entity shall coordinate with the SHPO to determine whether archeological background research and/or a field survey is warranted pursuant to **ARTICLE VI, ARCHEOLOGICAL REVIEW**. In making this determination, all parties shall reference HUD's HP Factsheet 6 (http://portal.hud.gov/hudportal/documents/huddoc?id=env_factsheet_6.pdf) and the ACHP's Policy Statement on Affordable Housing and Historic Preservation, Implementation Principle VIII (<http://www.achp.gov/docs/fr7387.pdf>).
- (2) For Undertakings with the potential for direct or visual effects to architectural properties, the Responsible Entity shall determine if properties within the APE are individually listed in the National Register, within the boundaries of a National Register historic district, or previously determined to be eligible for inclusion in the National Register. The Responsible Entity may reference the Texas Historic Sites Atlas at <http://atlas.thc.state.tx.us> to determine if a property already has historical designations, and may rely on previous coordination with SHPO for eligibility determinations. Properties listed or eligible for listing in the National Register shall require coordination with the SHPO per **ARTICLE V** of this Agreement.
- (3) If an architectural property is at least forty-five (45) years of age, is not listed in the National Register, and has not been evaluated for National Register eligibility, the Responsible Entity shall submit documentation to the SHPO for review per **ARTICLE V(A)(5)** of this Agreement. The forty-five-year age limit was selected to ensure historic age resources were captured in the event of unforeseen potential Undertaking delays and to afford flexibility to account for potential inaccuracies in building dates.
- (4) If the Responsible Entity determines that an Undertaking application involves an architectural property constructed fewer than forty-five (45) years ago, or a property

at least forty-five (45) years of age that has been determined ineligible for the National Register within the past five (5) years, and the property is not within the boundaries of a National Register-listed or -eligible historic district, no further coordination with SHPO shall be required for that property. The Responsible Entity shall keep documentation of this determination on file and available for periodic review by the SHPO per **ARTICLE IX** of this Agreement.

- (5) The Responsible Entity shall submit documentation of each architectural property requiring Section 106 Review to the SHPO for consultation. Documentation may be provided:
 - (a) Through the THC's online eTRAC system, accessible at <http://www.thc.texas.gov/etrac-system>;
 - (b) By using a "Request for SHPO Consultation" form, submitted in hard copy by mail or delivery service, or
 - (c) In a cover letter, with attachments including required information, submitted in hard copy by mail or delivery service.

Documentation should include, at a minimum, the address of the subject property (including city and county), a map showing the property location, the known or estimated date of construction, a brief architectural description, history of the property and names of architects or builders, if known, and current, clear overall photographs of the property. The submittal should indicate whether the property is listed in the National Register, if known, or determine whether it is eligible for listing in the National Register. Upon review, the SHPO shall concur or disagree with the eligibility determination provided within thirty (30) days.

- (6) If a property within the APE is determined eligible for National Register listing, further coordination shall be required per **ARTICLE V (B)**. If all properties within the APE are determined not eligible for the National Register and are not within a National Register-eligible historic district, and no historic properties are affected by the Undertaking, the Section 106 Review process is complete and no further coordination with the SHPO shall be required for the Undertaking.
- (7) Disputes regarding determinations of eligibility shall be referred by the Responsible Entity, through the GLO, to the Keeper of the National Register in accordance with 36 CFR § 800.4(c)(2) and 36 CFR § 63.2.

(B) Assessment of Adverse Effect

The Responsible Entity shall make a reasonable and good faith effort to assess adverse effects on historic properties within the APE, as follows:

- (1) For properties listed in, or determined eligible for, the National Register, the Responsible Entity shall submit to the SHPO documentation of any proposed activities that do not fall within the exclusions listed in **Attachment A**. Documentation may be provided as outlined in **ARTICLE V(A)(5)(a)-(c)**, above, and

shall include a scope of work, plans and specifications, or other detailed description of the Undertaking. Photographs of the areas in which work is to be performed shall be included. The Responsible Entity shall assess whether the Undertaking would have an adverse effect on the historic property per 36 C.F.R. § 800.5 and the SHPO shall concur or disagree with the determination.

- (2) Upon concurrence of the Parties that an Undertaking is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 C.F.R. § 68, hereinafter, the "Applicable Standards"), or the Undertaking otherwise does not meet the criteria to create an adverse effect, the Undertaking shall be considered to have no adverse effect, and no further coordination with the SHPO will be required for the Undertaking.
- (3) The Responsible Entity and the SHPO shall make best efforts to expedite reviews through a finding of "no adverse effect with conditions" when the scope of work can be modified to ensure adherence with the Applicable Standards. If the Undertaking cannot meet the Applicable Standards or otherwise would result in an adverse effect to historic properties, the Responsible Entity shall proceed with further consultation.

(C) Resolution of Adverse Effect

The Responsible Entity shall make a reasonable and good faith effort to resolve adverse effects on historic properties located within the APE. To resolve adverse effects, the Responsible Entity shall consult with the SHPO, any consulting parties, and the public, as appropriate, to seek alternatives to avoid, minimize, or mitigate the effect of the Undertaking per 36 C.F.R. § 800.6. To document alternatives considered in the planning process, Undertaking Applicants should provide written justification for the proposed action that will cause an adverse effect, summarize and provide documentation of alternatives to the action, and cite the specific reasons why the proposed action was selected over other alternatives. Consultation to resolve adverse effects shall result in the issuance of a Memorandum of Agreement ("MOA") per 36 C.F.R. § 800.6(c), or where appropriate, the Responsible Entity or the SHPO may propose the use of standard mitigation measures per **ARTICLE V(D)**.

(D) Standard Mitigation Measures.

In instances which the Responsible Entity, in consultation with the SHPO and other consulting parties, if any, determines one or more Undertakings will cause adverse effects to multiple historic properties, in lieu of negotiating separate MOAs for specific Undertakings, the Responsible Entity may use the standard mitigation measures described below in their entirety or as part of a broader mitigation plan. The use of standard mitigation measures and the specific scope of the mitigation measures shall be agreed upon by a letter exchange between the Responsible Entity and the SHPO, which the letter(s) shall become a part of the Responsible Entity's files.

(1) Historic American Building Survey ("HABS") Documentation

- (a) The Responsible Entity shall be responsible for performing archival-quality documentation of a historic property affected by the Undertaking. The

documentation shall meet the Secretary of the Interior's *Standards and Guidelines for Architectural and Engineering Documentation: HABS/HAER Standards* and National Park Service ("NPS") guidance documents, including the May 2010 transmittal guidelines *Preparing HABS/HAER/HALS Documentation; Historic American Buildings Survey Guidelines for Historical Reports*; December 2008 *HABS Guidelines; Recording Historic Structures and Sites with HABS Measured Drawings*; and June 2001 *HABS/HAER Photographs Specifications and Guidelines*; or the latest guidance from NPS at <http://www.nps.gov/history/hdp/standards/index.htm>.

- (b) The level of documentation shall be determined in consultation with the SHPO and NPS Intermountain Regional Office, and may be one of the following three (3) options:

Level I: measured drawings, large-format photography, and written history and description; or

Level II: existing drawings, large format photography, and written history and description; or

Level III: sketch plan, large format photography, and architectural data form.

- (c) The Responsible Entity shall submit the completed HABS documentation to the SHPO and NPS for review and approval. Within thirty (30) days of receipt, the SHPO shall advise the Responsible Entity if the submitted documentation is satisfactory or shall request specific revisions. The NPS may also request specific revisions to meet HABS standards. If any HABS documentation is determined to be inadequate, the SHPO shall respond within thirty (30) days of receipt, and any supplemental documentation will be reviewed within thirty (30) days of its receipt by the SHPO and NPS. Upon acceptance of the documentation by the SHPO and NPS, the Undertaking may proceed.
- (d) The Responsible Entity may also submit the complete documentation package to a local or regional archival repository or library, selected in consultation with the SHPO, in addition to, or in lieu of, review by NPS for inclusion in the HABS/HAER collection at the Library of Congress, if the SHPO agrees this alternative is acceptable. In such a case, the Undertaking may proceed following acceptance of the documentation by the SHPO and its receipt at the selected repository.

(2) **Digital Photographic Documentation**

- (a) The Responsible Entity shall be responsible for digitally photographing each historic property affected by an Undertaking or Undertakings conducted under this Agreement. Photography shall comply with the requirements of the NPS's *National Register Photograph Policy Factsheet* (<http://www.nps.gov/nr/publications/bulletins/photopolicy/index.htm>), or

the latest guidance from NPS, with regard to image size and format of digital files, photograph log, and permanence requirements for prints. The number and type of views shall be determined in consultation with the SHPO.

- (b) The Responsible Entity shall submit to the SHPO electronic media containing the digital images, and a photo log for review and approval. Within thirty (30) days of receipt, the SHPO shall advise the Responsible Entity if the submitted documentation is satisfactory or shall request specific revisions. If revisions are requested, the SHPO shall specify whether the revised documentation is to be submitted to SHPO for a second thirty (30)-day review. Upon acceptance of the documentation by the SHPO, the Undertaking may proceed.
- (c) The Responsible Entity shall also provide the complete documentation package to an appropriate archival repository or library, as determined in consultation with the SHPO.

(3) National Register of Historic Places Nomination

- (a) The Responsible Entity shall be responsible for developing a National Register of Historic Places nomination in keeping with the guidance provided in NPS's *National Register Bulletin #16A: How to Complete the National Register Nomination Form* and other applicable bulletins (<http://www.nps.gov/history/nr/publications>). The nomination shall include a historic context, architectural descriptions, photographs, and maps, as required to fully document the historic property or district.
- (b) The Responsible Entity shall submit one (1) electronic media file containing the completed nomination form and attachments for review and approval to the SHPO via the Electronic THC Review And Compliance System (eTRAC) (<http://www.thc.texas.gov/etrac-system>). Within sixty (60) days of receipt, the SHPO shall advise the Responsible Entity if the submitted nomination is satisfactory or shall request specific revisions. If revisions are requested, the SHPO shall specify whether the revised documentation is to be submitted to the SHPO for a second sixty (60)-day review. Upon acceptance of the nomination by the SHPO, the Undertaking may proceed.
- (c) The Responsible Entity shall not be responsible for carrying the nomination form forward for consideration by the State Board of Review and NPS, or for any subsequent revisions required by those bodies.

(4) Historic Context Development

- (a) The Responsible Entity shall develop a historic context related to the historic property affected and selected in consultation with the SHPO. All work shall be done in accordance with the guidance on developing historic contexts in the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (http://www.cr.nps.gov/local-law/arch_stnds_5.htm). The historic context shall include a methodology identifying archival

resources used and a bibliography for future research efforts.

- (b) The Responsible Entity shall submit one (1) electronic media file of the completed historic context for review and approval to the SHPO via the eTRAC system (<http://www.thc.texas.gov/etrac-system>). Within sixty (60) days of receipt, the SHPO shall advise the Responsible Entity if the submitted documentation is satisfactory or shall request specific revisions. If revisions are requested, the SHPO shall specify whether any revised documentation is to be submitted to the SHPO for a second sixty (60)-day review. Upon acceptance of the documentation by the SHPO, the Undertaking may proceed.
- (c) The Responsible Entity shall also provide the completed historic context to an appropriate archival repository or library, as determined in consultation with the SHPO.

(5) **Historic Property Inventory**

- (a) The Responsible Entity shall work with the SHPO 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 Responsible Entity shall continue to coordinate with the SHPO through the data collection process. The Responsible Entity shall use SHPO standards for the survey of historic properties and SHPO forms as appropriate.
- (b) The Responsible Entity shall prepare a draft inventory report, according to SHPO templates and guidelines. The Responsible Entity shall submit one (1) hard copy of the completed inventory and one (1) portable data storage device containing a digital file of the inventory to the SHPO for review and approval. Within sixty (60) days of receipt, the SHPO shall advise the Responsible Entity if the submitted documentation is satisfactory or shall request specific revisions, including whether any revised documentation is to be submitted to the SHPO for a second sixty (60)-day review. Upon acceptance of the documentation by the SHPO, the Undertaking may proceed.

- (6) **Public Interpretation.** Prior to implementation of the Undertaking, the Responsible Entity shall work with the SHPO 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. The Responsible Entity and SHPO shall continue to consult throughout implementation of the plan until all agreed upon actions have been completed.

(7) **Design Review for Infill Construction**

- (a) Prior to initiating the construction of a new building within a historic district or adjacent to historic properties, the Responsible Entity shall submit architectural and site plans for the proposed building to the SHPO for review and comment. For larger or complex new construction, the Responsible Entity shall establish a schedule for submittal of plans to the SHPO during plan development (e.g., 30%, 60%, and 90% construction documents) to allow for early and ongoing review. Within thirty (30) days of receipt of submitted architectural drawings, the SHPO shall provide recommendations to make the new construction compatible with the architectural character of nearby historic properties. The Responsible Entity shall consider any SHPO comments and make a reasonable and good faith effort to incorporate the SHPO's suggestions into the final architectural and site plans.
- (b) The Responsible Entity shall make reasonable attempts to use building setbacks, exterior materials, and overall building forms that are compatible with nearby historic properties.

ARTICLE VI – ARCHEOLOGICAL REVIEW

(A) **Identification and Evaluation of Historic Properties**

- (1) For Undertakings involving ground disturbance, the Responsible Entity shall coordinate with the SHPO to determine whether archeological investigations are warranted. Documentation to aid in this determination may be provided by the Responsible Entity as outlined in **ARTICLE V(A)(5)(a)-(c)**, above. Documentation shall include, at minimum: the address (including city and county); a U.S. Geological Survey 7.5 minute quadrangle map with the property location and boundary shown; documentation establishing whether the property is owned or controlled by a public agency; an Undertaking description noting impacts that will occur to the ground surface and the depth of the impact; and documentation of any extenuating circumstances that may be important for review, such as evidence of severe erosion or previous construction within the Undertaking area.
- (2) In determining whether archeological background research and/or field survey is warranted, all parties shall reference HUD's HP Factsheet 6 at: (http://portal.hud.gov/hudportal/documents/huddoc?id=env_factsheet_6.pdf) and ACHP's Policy Statement on Affordable Housing and Historic Preservation, Implementation Principle VIII (<http://www.achp.gov/docs/fr7387.pdf>).
- (3) At the request of the SHPO, the Responsible Entity shall make a reasonable and good faith effort to identify archeological properties within the APE. Pursuant to 36 CFR § 800.4(b)(1), the steps to fulfill this requirement may include, but are not limited to, background research, including review of the THC's Texas Archeological Sites Atlas, consultation, oral history interviews, sample field investigations, and reconnaissance or intensive field survey. All investigators will conform to the THC's *Archeological Survey Standards of Texas* (http://www.thc.texas.gov/public/upload/publications/THC_SurveyStandards_2014_0.pdf) and the Secretary of the Interior's

Standards and Guidelines for Archeology and Historic Preservation.

- (4) In accordance with Texas Natural Resources Code, Title 9, § 191.054, an Antiquities Permit may be issued by the THC to allow survey and discovery or excavation of archeological sites for Undertakings under any land within the jurisdiction of the State of Texas, such as property owned by a state agency or political subdivision of the state (cities, counties, river authorities, municipal utility districts, and school districts).
 - (5) A draft report of the investigations conducted per **ARTICLE VI(A)(3)**, above, should be produced in conformance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* and the Council of Texas Archeologists' *Guidelines for Cultural Resource Management Reports* (<http://www.thc.texas.gov/public/upload/CTAguidelines.pdf>), and submitted to the SHPO for review. The Responsible Entity shall receive a redacted version of the same archeological report for review and comment from qualified archeologists. Should the Responsible Entity employ a qualified archeologist, then unredacted versions may be submitted to the Responsible Entity. Comments received from the SHPO shall be addressed in the final reports. If no cultural resources are identified in the APE and the SHPO concurs, no further coordination with the SHPO will be required for the Undertaking.
 - (6) If cultural resources are identified within the APE, the Responsible Entity shall consult with the SHPO to develop a testing plan to determine eligibility for inclusion in the National Register, in accordance with the process described in 36 CFR § 800.4(c) and criteria established in 36 C.F.R. § 60.4. Alternatively, the Undertaking applicant may redesign the Undertaking to avoid completely all effects on the identified cultural resources. All draft reports of site testing shall be submitted to the SHPO for review and comment. Comments received from the SHPO shall be addressed in the final reports.
 - (7) If the Responsible Entity and the SHPO agree as to whether a property is eligible for inclusion in the National Register, such agreement is deemed conclusive for the purposes of this Agreement. Disputes regarding determinations of eligibility shall be referred by the Responsible Entity, through the GLO, to the Keeper of the National Register in accordance with 36 CFR § 800.4(c)(2). Cultural resources determined to be ineligible for the National Register shall require no further protection.
 - (8) During implementation of this Agreement, the Responsible Entity will protect information about historic properties, including location information or information provided by Indian tribes to assist in the identification of such properties, to the extent allowable under Section 304 of the National Historic Preservation Act, 54 U.S.C. § 306108, 36 CFR § 800.11(c), and in accordance with the Texas Natural Resources Code Title 9, § 191.021.
- (B) Assessment of Adverse Effect**

For archeological sites determined eligible for the National Register, the Responsible Entity

shall submit documentation to the SHPO of any proposed activities that do not fall within the exclusions of **Attachment A**. Documentation shall include an Undertaking description noting impacts that will occur to the ground surface and the depth of the impact. The Responsible Entity should assess whether the Undertaking would have an adverse effect on the historic property. If an adverse effect determination is made, the SHPO shall concur or disagree with the determination. If no determination is reached by the Responsible Entity, the SHPO shall determine whether the work meets the Criteria of Adverse Effect in 26 C.F.R. § 800.5. If the Responsible Entity and the SHPO concur that the Undertaking will have no adverse effect on historic properties, no further coordination with the SHPO shall be required for the Undertaking.

(C) Resolution of Adverse Effect

- (1) If the Responsible Entity and the SHPO determine that an Undertaking will have an adverse effect on a historic property, the Responsible Entity shall consult with the SHPO, tribes, consulting parties, and the public, as appropriate, to seek alternatives that would avoid, minimize, or mitigate the effect of the Undertaking per 36 CFR § 800.6.
- (2) The Responsible Entity shall prepare a data recovery plan (the “Plan”) that describes mitigation measures proposed to resolve the Undertaking’s adverse effects and provide the Plan for review and comment to all consulting parties. All parties shall have thirty (30) calendar days in which to provide a written response to the Responsible Entity. The Plan may include, as appropriate, a research design; excavation or recordation strategies; work and report schedules; site monitoring; and relocation, preservation, or reburial; and curation of artifacts and records. It shall take into account all research and previous work conducted and specify, at a minimum: a) the historic property where data recovery is to be conducted (this information shall be removed in the redacted version of the report); b) the excavation or recordation that will be performed under the approved Plan; c) the methods to be used, with an explanation of their relevance to the Undertaking research design; and d) the methods to be used in analysis, data management, and dissemination of data, including a schedule of work and report submission.
- (3) When adverse effects to historic properties cannot be avoided, the Responsible Entity, in consultation with the SHPO and any consulting parties, shall develop a plan to mitigate the adverse effects. If the SHPO approves the plan for mitigating the adverse effects, the Responsible Entity shall implement the plan. Upon completion of the approved mitigation methods, the adverse effect shall be considered resolved.
- (4) If the Responsible Entity and the SHPO fail to agree on an adverse effect resolution, consultation shall proceed in accordance with 36 C.F.R. § 800.7 and **ARTICLE XI**.

ARTICLE VII – EMERGENCY SITUATIONS

- (A)** When the Responsible Entity or other local government official determines that a historic property is an imminent threat to public health or safety as a result of a natural or man-made disaster or emergency declared by the President or Governor, the Responsible Entity shall

notify the SHPO of the determination as soon as possible under the circumstances and provide all pertinent historic property information and a proposed plan of action for SHPO review.

- (B) If the SHPO objects to the proposed emergency action within seven (7) days, the Responsible Entity shall comply with all applicable non-emergency terms of this Agreement.
- (C) This Article applies only to Undertakings that will be implemented within thirty (30) days after a federal or state disaster or emergency has been formally declared, as stipulated in 36 C.F.R. § 800.12(d), unless such disaster or emergency declaration is extended by written proclamation prior to expiration of the initial thirty (30)-day period.
- (D) Immediate rescue, repair, stabilization, and salvage operations conducted to preserve life or property are exempt from the provisions of this Agreement, with the exception that the Responsible Entity shall provide documentation of the action to the SHPO within thirty (30) days of the action. Where possible, emergency actions shall be undertaken in a manner that does not foreclose future preservation or restoration of affected historic properties.

ARTICLE VIII—POST-REVIEW DISCOVERIES AND UNFORESEEN EFFECTS

- (A) If, during the implementation of an Undertaking, a previously unidentified historic property is encountered, or a known historic property may be affected in an unanticipated manner, the Responsible Entity will assume its responsibilities under 36 CFR § 800.13(b), "Post-Review Discoveries: Discoveries without Prior Planning." The Responsible Entity will stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until the Responsible Entity concludes consultation with the SHPO.
- (B) The Responsible Entity will notify the SHPO of the discovery at the earliest possible time and consult to develop actions to take into account the effects of the Undertaking. The Responsible Entity will notify the SHPO of any time constraints, and all parties shall mutually agree upon timeframes for this consultation. The Undertaking Applicant may participate in this consultation. The Responsible Entity will provide the SHPO with complete documentation on the change in the Undertaking, potential effects, and written recommendations, to take into account the effects of the Undertaking.
- (C) When the discovery contains burial sites or human remains, the Responsible Entity shall follow the post-review discovery procedures of 36 C.F.R. § 800.13 and applicable requirements of the Texas Health and Safety Code, Title 1, Chapter 711, and treat said sites and/or remains in a manner consistent with the provisions of ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, or Funerary Objects* (February 23, 2007). Work shall immediately cease within a fifty (50) foot radius of the area of discovery.
- (D) If the SHPO does not object to the Responsible Entity's recommendations within the agreed upon timeframe, as developed pursuant to Section (B) above, the Responsible Entity will modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, the Responsible Entity and the SHPO will consult further to resolve the objection through actions including, without limitation, identifying Undertaking alternatives that result in the Undertaking having no adverse effect on historic properties, or

proceeding in accordance with **ARTICLES IV** through **VI**.

ARTICLE IX – MONITORING AND REPORTING

The SHPO may monitor activities carried out pursuant to this Agreement and shall review activities if requested by any interested party or person. The Responsible Entity shall cooperate with the SHPO in carrying out these monitoring responsibilities.

The Responsible Entity shall provide the SHPO with an annual report on activities carried out each fiscal year under the terms of this Agreement. The reports shall be due on September 1 of each year the Agreement is in effect. Each report shall include:

- (A) A list of all Undertakings that were exempt from review under **ARTICLE I**, including the address of each property, brief description of the work performed, and the exemption type from **Attachment A**; and
- (B) The status of any mitigation prepared pursuant to **ARTICLE V(D)** or **ARTICLE VI(C)**.

ARTICLE X – ANTICIPATORY DEMOLITION

The GLO shall not issue a grant a loan, loan guarantee, or other financial assistance to a subrecipient that has intentionally allowed or failed to prevent, in instances which the subrecipient has the authority to prevent, an adverse effect to an historic property. However, the GLO may determine, after consultation with the ACHP, that circumstances justify granting such assistance despite the adverse effect created or permitted by the subrecipient and will complete consultation for the Undertaking pursuant to the terms of this Agreement.

ARTICLE XI – DISPUTE RESOLUTION

Should a Party to this Agreement or a consulting party, including a subrecipient, object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the GLO shall consult with the objecting party to resolve the objection. If the GLO determines within thirty (30) days of receipt of an objection that such objection cannot be resolved, the dispute will be addressed as follows:

- (A) The GLO will forward all documentation relevant to the dispute, including the GLO's proposed resolution, to the ACHP in accordance with 36 CFR § 800.2(b)(2).
- (B) The ACHP shall provide the GLO with its advice on the resolution of the objection within thirty (30) days of receipt of adequate documentation; whereupon, the GLO shall prepare a written final response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and consulting parties, and provide copies of this written response to the objecting party, the ACHP, signatories, and consulting parties.
- (C) If the ACHP does not provide its advice regarding the dispute within thirty (30) days of the receipt of the GLO's proposed resolution, the GLO may make a final decision regarding the dispute and proceed accordingly. The GLO shall prepare a written response that takes into

account any timely comments regarding the dispute from signatories and consulting parties and provide copies of this written response to the objecting party, the ACHP, signatories, and consulting parties.

The Parties' responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

ARTICLE XII – AMENDMENTS

Amendments to this Agreement shall be by written agreement between the GLO and the THC. Subrecipients will be notified of any amendment to this Agreement via a Technical Guidance Letter issued under a subrecipient agreement. A copy of the amendment will be filed with the ACHP.

ARTICLE XIII – TERMINATION

A Party may terminate the Agreement upon thirty (30) days' written notification to the other. In the event of termination, the GLO will follow the procedure outlined in 36 CFR Part 800, Subpart B, "The Section 106 Process," with respect to Undertakings that had been covered by this Agreement.

ARTICLE XIV – TERM OF AGREEMENT

This Agreement shall be effective as of the date executed by the last party and will terminate five (5) years after its effective date. At any time during the term of this Agreement, the GLO and THC may extend the Agreement in accordance with ARTICLE XII. Unless a Responsible Entity terminates the Agreement earlier in accordance with ARTICLE XIII, the termination under this Article shall be effective for all Parties.

ARTICLE XV – ADDITIONAL PARTIES

Governmental bodies that are eligible to be Responsible Entities are required to comply with the terms of this Agreement as a condition of their participation in the Program. Except for ARTICLES XI, XII, and XIV, Responsible Entities other than the GLO will assume all roles, responsibilities, and terms ascribed to the GLO hereunder.

No assistance or approval for Program activities will be made by a Responsible Entity until it has approved the outcome of consultation with the THC and other consulting parties, if any. If the Responsible Entity does not approve the outcome of consultation for a specific Undertaking, then additional information, performance of additional consultations, or direct consultation with the SHPO and other parties may be required to complete the Section 106 Review process.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR GLO CONTRACT NO. 19-127-000-B465

Execution and implementation of this Agreement is evidence that the GLO has afforded the ACHP an opportunity to comment on these programs and that the GLO has taken into account the effects of the programs on historic properties.

GENERAL LAND OFFICE

DocuSigned by:



Mark A. Havens, Chief Clerk/
Deputy Land Commissioner

Date of execution: 10/9/2018

OGC ^{DS} gm

DD ^{DS} [Signature]

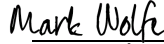
SDD ^{DS} PP

DGC ^{DS} MB

GC ^{DS} JG

TEXAS HISTORICAL COMMISSION

DocuSigned by:



By: Mark Wolfe
Title: Executive Director

Date of execution: 10/8/2018

ATTACHMENTS TO THIS AGREEMENT:

ATTACHMENT A – LIST OF EXEMPT ACTIVITIES

ATTACHMENT FOLLOWS

LIST OF EXEMPT ACTIVITIES

The GLO, in consultation with the THC, has determined that the following activities do not meet the definition of an Undertaking since they either: (1) do not have the potential to cause effects on historic properties per 36 CFR § 800.4(d)(1); or (2) have limited potential to affect historic properties per 36 CFR § 800.5 and will have no adverse effect if carried out as described. The activities in this list require no further review under the terms of this Agreement. The GLO and Responsible Entities shall maintain a list of Undertakings completed per these exemptions and shall make the list available upon the request of the THC and include the updated list in the annual report.

GENERAL ACTIVITIES (Categorically Excluded under 24 CFR § 58.34)

- A. Environmental and other studies, resource identification, and the development of plans and strategies. (Implementation of such plans with federal funds may require consultation. If historic properties may be affected, SHPO recommends early consultation during planning stages.)
- B. Information and financial services.
- C. Administrative and management activities.
- D. Public services that will not have a physical impact or result in any physical changes to buildings, structures, sites, or objects, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, and welfare or recreational needs.
- E. Inspections and testing of properties for hazards or defects. (Action taken pursuant to such inspections with federal funds will require consultation.)
- F. Purchase of insurance (e.g. homeowners or flood insurance; does not include HUD mortgage insurance).
- G. Purchase of tools.
- H. Engineering or design costs. (Construction activities undertaken with federal funds will require consultation. If historic properties may be affected, SHPO recommends early consultation during design.)
- I. Technical assistance and training.
- J. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.
- K. Payment of principal and interest on loans made or obligations guaranteed by HUD;
- L. Any categorical exclusion listed in 24 C.F.R. § 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in 24 C.F.R. § 58.5.

REHABILITATION OF BUILDINGS

Interior Rehabilitation:

Undertakings limited to interior spaces of single- or multifamily residential buildings to be retained

in the same use where the work will not be visible from the exterior of the building; no structural alterations are made; no demolition of walls, ceilings, or floors occurs; no drop ceilings are added; and no walls are leveled with furring or moved.

The following list of activities that do not need consultation with the SHPO provides further clarity for residential work and establishes standards for civic, commercial, and other property types.

A. Disaster recovery measures:

1. Temporary repair to single-family residential buildings to ensure safe shelter with access to essential electrical supply, HVAC, hot water, natural gas and potable water, and protection from elements such as weatherproofing and securing broken doors and windows.
2. Interior repairs to pre-disaster condition of single- or multifamily residential buildings, excluding structural repairs (e.g. foundation, framing), or other elements requiring architectural or engineering services.

B. Heating, ventilation, and air conditioning (HVAC):

1. Installing mechanical equipment in residential buildings in a manner that does not affect the exterior of the building.
2. Installing mechanical equipment in other building types within existing mechanical closets, chases, and unfinished attics or basements when ducts are not visible within occupied spaces of the building and access to the ducts does not require demolition of walls or ceilings in occupied spaces of the building.
3. Routine maintenance or retrofits to existing mechanical equipment, provided there is no physical impact on the building.
4. Replacement of existing mechanical equipment or installation of supplemental equipment, provided that exterior equipment is installed within the same footprint on the same pad, and interior equipment is installed within an existing mechanical closet or unoccupied attic or basement.
5. Upgrading existing facility and infrastructure-related pumps and motors, including those for HVAC systems, to variable-speed or premium efficiency standards.
6. Sealing, restoring, or insulating HVAC ducts, provided that the ducts are not visible in occupied spaces of the building and access to the ducts does not require demolition of walls or ceilings in occupied spaces of the building.
7. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors or carbon monoxide detectors (wired or non-wired).

C. Lighting and appliances:

1. Installation of fire, smoke, or carbon monoxide detectors.
2. Installation of compact fluorescent or LED bulbs in existing fixtures.
3. Replacement of fluorescent bulbs, ballasts, and/or wiring in existing fixtures.

4. Replacement of existing fluorescent fixtures with new fixtures, provided that the fixtures are not original to the building.
5. Installation of motion/occupancy sensors for lighting control.
6. Replacement of existing lighting in street lighting fixtures with high efficiency lighting.
7. Replacement of existing appliances.

D. Insulation:

1. Attic insulation with proper ventilation, provided that insulation is fiberglass batt or loose fill only (not spray foam).
2. Under-floor insulation in basements or crawl spaces, provided that insulation is fiberglass batt or loose fill only (not spray foam), and ventilation of crawl spaces.
3. Exterior blown-in wall insulation (not spray foam) where holes are not drilled through exterior wall material or decorative plasterwork on the interior and result in no permanent visible alteration to the structure.
4. Water heater tank and pipe insulation.
5. Radiant barriers in unoccupied attic spaces.

E. Plumbing:

1. Repairing plumbing systems in a manner that does not affect the interior or exterior of the building.
2. Water heater repair or replacement that does not require a visible new supply or venting.
3. Restroom improvements for handicapped access, provided the work is contained within the existing restroom.
4. Water conservation measures, such as installation of low-flow faucets, toilets, showerheads, urinals, or distribution device controls, in residential properties; and water conservation measures in other building types, provided that plumbing fixtures to be replaced are not original to the building.
5. Upgrading existing facility and infrastructure-related pumps and motors, including those for water/wastewater facilities, to variable-speed or premium efficiency standards.

F. Electrical:

Repairing or upgrading electrical systems in a manner that does not affect the interior or exterior of the building.

Exterior Rehabilitation:

A. Roofing:

1. In-kind replacement of existing roofing material.
2. Replacement of existing gutters and downspouts.
3. Installation of continuous ridge vents covered with ridge shingles or boards, or roof jacks/vents, bath and kitchen fan vents, gable vents, soffit and frieze board vents, and

combustion appliance flues, if not located on a primary roof elevation or visible from the public right-of-way.

4. Installation of reflective roof coatings, with materials that closely match the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline.
5. Installation of new roofing or reflective roof coatings on a flat-roofed building with a parapet, such that the roofing material is not visible from any public right-of-way.
6. Replacement of asbestos tile roofing with composition shingle/asphalt shingle roofing matching the shape and pattern of the asbestos tile.

B. Siding, soffits, fascia, and masonry:

1. Repair or limited, in-kind replacement of existing siding, soffits, and fascia. Limited replacement shall not exceed 25% of the overall exterior area, and new material shall match existing in material, profile, and other characteristics.
2. Limited repair of masonry, including chimneys, where mortar matches the existing in color, texture, strength, joint width, and joint profile and methods are consistent with the preservation techniques in *Preservation Brief #2; Repointing Mortar Joints in Historic Masonry Buildings*. Limited repair shall not exceed 10% of the overall exterior wall area.

C. Painting:

1. Painting previously painted exterior surfaces, provided destructive surface preparation treatments, including but not limited to water-blasting, sandblasting and chemical removal, are not used.
2. Conducting lead-based paint abatement or interim controls pursuant to 24 CFR § 35.115(a)(13), if carried out by a qualified contractor using current best practices and methods that are consistent with the preservation techniques in *Preservation Brief #37: Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*. (Any removal of historic building materials or encapsulation with vinyl siding or other materials is not included in this exemption.)

D. Windows and doors:

1. Weatherstripping around windows and doors, installing thresholds, and other air infiltration control measures that do not harm or obscure historic windows, doors, or trim.
2. Caulking around windows and doors, provided that the color of the sealant matches adjacent materials.
3. Installing interior storm windows or doors, or exterior storm or wood screen doors, on residential buildings, in a manner that does not harm or obscure historic windows or trim.
4. Repair or repainting of existing storm windows.
5. Installing removable film on windows (if the film is transparent), solar screens, or window louvers, on residential buildings, in a manner that does not harm or obscure historic windows or trim.
6. Repair or replacement of missing or damaged window glass.
7. Repair of windows using in-kind materials.

8. Replacement of non-historic exterior doors with compatible wood panel doors.

E. Porches:

1. Repair (not replacement) of porch ceilings, steps, floors, or railings.
2. Repair of existing wheelchair ramps.
3. Installing a new wheelchair ramp on the side or rear entrance of a home, when not visible from any public right-of-way.
4. Installing a new wheelchair ramp on the front of a home, or other entrance visible from a public right-of-way, in a manner that does not remove, compromise, or damage existing historic materials or features and would be completely reversible without damage to historic fabric.

F. Ground-disturbing activity and site work:

1. Repairing or replacing in-kind existing driveways, parking areas, and walkways with materials of similar appearance in a manner that does not disturb historic landscape materials or features.
2. Excavating to gain access to existing underground utilities to repair or replace them, in a manner that does not disturb historic exterior building or landscape materials or features, and where all construction occurs within existing trenches.
3. Repair or replacement of metal utilitarian structures (e.g. pump houses, storage buildings) less than 45 years old, when performed in previously disturbed soils.
4. Ground disturbance that is minimal and occurs in documented, previously disturbed soil.

G. Elevation: Elevation of pier-and-beam, wood frame structures four feet or less if the front entrance stair configuration is unaltered. Foundation skirting and piers shall be extended or replaced with in-kind materials; brick or stucco piers with lattice or board and batten skirting is preferred in instances where historic materials are no longer present. This exemption does not apply to buildings with other structural systems, such as masonry construction or slab-on-grade foundations.

H. Generators: Installation of generators at existing facilities, where:

1. Ground-level equipment is located to the rear or side of the building or is otherwise screened from view from any public right-of-way, and any new equipment slabs and trenching occurs within previously disturbed soils.
2. Roof-mounted equipment is not visible from the ground level.

INFRASTRUCTURE

The following projects may be exempt from review when they occur 25 feet or greater from the fence line or boundary of a cemetery, or where no work will occur within 15 feet of a cemetery. Projects which involve work within 15 feet of a cemetery must be submitted in accordance with **ARTICLE VI, ARCHEOLOGICAL REVIEW**, and will require archeological studies to verify whether or not there are any unmarked graves beyond the marked cemetery boundary. These studies may include scrapings or informant interviews with the manager of the cemetery association, local

historians, funeral home directors, or other informed individuals.

- A. Routine road maintenance and resurfacing where work is confined to the existing right-of-way and previously maintained surfaces, ditches, culverts, and cut and fill slopes where there are no known historic properties, or historic properties would not be affected because the proposed work is clearly within a disturbed context. This exemption shall not apply in areas with brick streets or with tile curb markers or other decorative street features.
- B. Point repair to an existing water or wastewater line where construction occurs in the original trench
- C. Replacement of existing water or wastewater lines where all construction occurs within the original trench.
- D. Replacement of existing water or wastewater lines in a new trench paralleling the existing line if the following conditions are met:
 - 1. Replacement occurs beneath city streets or adjacent drainage rights-of-way (as in item A);
 - 2. Replacement does not occur within a National Register historic district or locally designated historic district;
 - 3. Replacement does not occur within the historic towns of Goliad, San Augustine, Jefferson, Nacogdoches, Bastrop, Castroville, San Ygnacio, Roma, Refugio, Ysleta, San Elizario, and Presidio;
 - 4. Replacement does not occur beneath brick-paved streets; and
 - 5. Replacement does not occur adjacent to roads in rural areas of the county (where abandoned cemeteries or unrecorded archeological sites might be impacted by a new trench).
- E. Minor alterations or additions to existing water or wastewater treatment plants or other facilities that are less than 45 years old. (Excavation of new treatment ponds or enlargement of existing ponds are not considered minor alterations and are subject to review).
- F. Installation of generators at existing water/wastewater or shelter facilities, where:
 - 1. Ground-level equipment is located to the rear or side of the building or is otherwise screened from view from any public right-of-way, and any new equipment slabs and trenching occurs within previously disturbed soils.
 - 2. Roof-mounted equipment is not visible from the ground level.
- G. Addition or replacement of equipment within the same location and footprint (Examples include but not limited to; Computer monitoring equipment, bar screens, clarifiers, chlorination equipment, SCADA equipment etc.).
- H. Repair of bridges less than 45 years old.