

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICER, THE WEST
VIRGINIA DIVISION OF HOMELAND SECURITY AND EMERGENCY
MANAGEMENT, SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA, AND THE
NICHOLAS COUNTY BOARD OF EDUCATION REGARDING THE DEMOLITION
OF RICHWOOD HIGH SCHOOL, RICHWOOD, NICHOLAS COUNTY, WEST
VIRGINIA**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security proposes to administer Federal disaster assistance through FEMA's Public Assistance Program pursuant to the Robert T. Stafford Disaster Relief and Emergency Act, 42 U.S.C. §§5121-5207 (Stafford Act) through the West Virginia Division of Homeland Security and Emergency Management (WVDHSEM) to the West Virginia School Building Authority (SBA) for the demolition of Richwood High School (Undertaking), Richwood, Nicholas County, West Virginia, that is located in the floodway and was substantially damaged by flooding in June 2016, which resulted in declared disaster DR-4273-WV; and

WHEREAS, FEMA has defined the Undertaking's area of potential effects (APE) as the site of Richwood High School, which is located on an approximately two-and-one-half acre parcel; and

WHEREAS, FEMA, in consultation with the West Virginia State Historic Preservation Officer (SHPO), has determined that Richwood High School, 1 Valley Avenue, Richwood, Nicholas County, West Virginia, is individually eligible for listing in the National Register of Historic Places (NRHP) (historic property) under Criterion C (Architecture) for its significance as a representative example of the International architectural style; and

WHEREAS, FEMA has determined that the Undertaking will have an Adverse Effect on Historic Properties, and the SHPO has concurred with this determination in accordance with the *Programmatic Agreement Among the Federal Emergency Management Agency, the West Virginia State Historic Preservation Officer, the West Virginia Division of Homeland Security and Emergency Management, the Catawba Indian Nation, and the Seneca Nation of Indians of New York* (FEMA Statewide PA), executed June 22, 2016; and

WHEREAS, FEMA, in consultation with the SHPO, determined that the site of Richwood High School has high probability for the presence of archaeological deposits, but any archaeological materials are believed to have been destroyed by previous construction activities and that demolition activities, which will be concentrated around the building footprint, will not impact archaeological resources; and therefore, FEMA has determined that the Undertaking will result in No Historic Properties Affected (archaeology) and the SHPO has concurred with this determination; and

WHEREAS, FEMA has notified the Advisory Council on Historic Preservation (ACHP) regarding its intent to prepare a Memorandum of Agreement (MOA) to satisfy its Section 106

responsibilities pursuant to 36 CFR Part §800.6(a)(1)(iii) and section II.C.6 of the FEMA Statewide PA, and in a letter dated June 21, 2017, the ACHP has declined to participate; and

WHEREAS, FEMA notified the Federally-recognized Catawba Indian Nation (Catawba Nation), who is a signatory to the FEMA Statewide PA, in correspondence dated January 18, 2017, of the Adverse Effect on the historic property and FEMA's determination and SHPO's concurrence that the Undertaking would result in No Historic Properties Affected (archaeology); and the Catawba Nation has expressed that they have no immediate concerns with regard to traditional cultural properties, sacred sites or Native American archaeological sites within the APE; and

WHEREAS, FEMA notified the Seneca Nation of Indians of New York (Seneca Nation), who is a signatory to the FEMA Statewide PA, in correspondence dated January 18, 2017, of the Adverse Effect on the historic property (Richwood High School) and FEMA's determination and SHPO's concurrence that the Undertaking would result in No Historic Properties Affected (archaeology); and the Seneca Nation has not responded; and

WHEREAS, FEMA notified potential consulting parties of the Adverse Effect in correspondence dated February 24, 2017, and invited participation in the development of the MOA; and

WHEREAS, FEMA provided a public comment period of two weeks and held a public meeting regarding the Undertaking in Richwood, West Virginia, on July 27, 2017; and

WHEREAS, FEMA has invited the WVDHSEM as the Recipient, SBA as Sub-Recipient, and Nicholas County Board of Education (Nicholas County BOE) as the owner of the historic property to become invited signatories to this MOA; and

WHEREAS, FEMA, in consultation with the SHPO, has invited the City of Richwood and the Nicholas County Historic Landmark Commission to concur with the terms of this MOA, as provided by 36 CFR §800.6(c)(3), and Nicholas County Historic Landmark Commission has elected to concur; and

WHEREAS, FEMA, in consultation with the SHPO, has invited Richwood High School Alumni Association, Nicholas County Community Foundation, West Virginia Historical and Genealogical Society, and the Preservation Alliance of West Virginia, Inc., to participate as concurring parties, and they elected to not participate; and

WHEREAS, all references to time periods in this MOA are in calendar days, and notices and other written communications to FEMA may be submitted by e-mail; and

NOW, THEREFORE, FEMA, SHPO (signatories), WVDHSEM, SBA, and Nicholas County BOE (invited signatories) agree that the Undertaking shall be implemented in accordance with the following stipulations in order to mitigate the effect of the Undertaking on the historic property.

STIPULATIONS

To the extent of its legal authority and in coordination with the SHPO, WVDHSEM, SBA, and Nicholas County BOE, FEMA will require that the following measures are implemented:

I. Mitigation Measures

- A. Display Case for Richwood High School Memorabilia: FEMA shall provide funds to SBA through the WVDHSEM for the design and fabrication of one (1) display case that will accommodate a selection of Richwood High School trophies and memorabilia.
1. Within sixty (60) days after the execution of this MOA, FEMA shall approach an appropriate Richwood governmental or non-profit entity to determine a potential location for the display case and to determine the appropriate dimensions.
 2. In order to maximize sharing and visibility of the Richwood High School memorabilia, FEMA and Nicholas County BOE shall take into account the need to identify a location that provides wide accessibility and offers a learning opportunity regarding the history and legacy of Richwood High School to the general public.
 3. Within ninety (90) days after the execution of this MOA, Nicholas County BOE will negotiate an agreement with the identified host regarding the placement of the display case.
 4. Within 120 days after the execution of this MOA, SBA shall construct the case according to specifications and will donate the completed memorabilia case to the Nicholas County BOE.
 5. Within 150 days after the execution of this MOA, Nicholas County BOE shall place the display case at the agreed upon location and install a display of Richwood High School trophies and memorabilia. This memorabilia will be selected by the Richwood High School principal and his designees. The material selected will be appropriate to the size of the display case.
 6. Nicholas County BOE shall own and maintain the case throughout the thirty-six (36) month term of this MOA. Nicholas County BOE may elect to continue the loan of the display case and memorabilia beyond the thirty-six (36) month term of this MOA or may elect to remove the display case and the trophies and other memorabilia.
 7. Should all potential host governmental and/or non-profit organization(s) within the city of Richwood decline the display of the Richwood High School memorabilia, then the Nicholas County BOE shall contact the other signatories and invited signatories who will work with Nicholas County BOE to identify an alternate location in Nicholas County for the memorabilia display case. This alternate location should

also provide a high level of public accessibility. Should all potential hosts decline the display then the signatories and invited signatories will meet regarding the feasibility of this treatment measure. If the signatories and invited signatories feel that all reasonable options have been explored, then they may conclude that this treatment measure is infeasible and that those treatment measures that are implemented within the thirty-six (36) month term of the MOA are sufficient to meet FEMA's compliance responsibilities under Section 106. FEMA shall document these conclusions as described under Stipulation VI (Reporting Requirements).

- B. Recordation: Upon execution of this MOA, FEMA shall submit its completed photographic and written documentation of Richwood High School as required in Appendix C (Treatment Measures) of the FEMA Statewide PA. FEMA has consulted with the SHPO to determine the level and format of recordation required for Richwood High School. FEMA shall ensure that the following recordation package is submitted to the SHPO for review and approval prior to demolition of Richwood High School.
1. FEMA will digitally photograph the interior and exterior of Richwood High School. This photographic recordation will be performed by or under the direct supervision of an individual who meets the Secretary of the Interior's Professional Qualification Standards set out at 48 FR 44716, September 29, 1983, for History, Architectural History, or Historic Architecture and as identified by FEMA's Federal Preservation Officer (FPO). FEMA will take photographs of the following views:
 - a. Elevation/oblique of the four primary facades
 - b. Detail of main entrance
 - c. Detail of windows
 - d. Representative interior hallway
 - e. Representative classroom views
 - f. Any additional significant detail identified by team lead
 2. The digital photography (color) and black-and-white photographs must comply with requirements specified in the National Park Service's *National Register Photo Policy Factsheet*, " updated on May 15, 2013, which can be found at https://www.nps.gov/nr/PUBLICATIONS/bulletins/photopolicy/Photo_Policy_update_2013_05_15.pdf.
 3. All photographic documentation will be completed in advance of the demolition of the building.
 4. FEMA will also prepare a short narrative history of the Richwood High School building and how it contextually relates to the development of the City of Richwood, education in West Virginia, and its significance as an example of International style architecture.
 - a. This history will include a West Virginia Historic Property Inventory form.

- b. FEMA will research the West Virginia State Archives for building plans to include with the narrative history.
 - c. The history will be prepared by or under the direct supervision of an individual who meets the Secretary of the Interior's Professional Qualification Standards set out at 48 FR 44716 September 29, 1983, for History, Architectural History, or Historic Architecture and as identified by FEMA's FPO.
 - 5. FEMA will provide SHPO with the draft digital photographs and narrative history for a fifteen (15) day period.
 - a. SHPO will review all photographs and information submitted to document the current condition and setting of Richwood High School.
 - b. Comments provided by SHPO will be considered for incorporation into preparation of final documentation.
 - 6. FEMA will prepare two (2) archival copies of the recordation materials and shall submit one (1) copy to SHPO and one copy to the West Virginia State Archives.
- C. Due to the uncertainties created by post-demolition actions which may impact the implementation of the following treatment measures, the treatment measures described in I.C.1 (Interpretive Kiosk) and I.C.2 (Richwood High School Commemorative Park) will be revisited by the signatories and invited signatories six months after the execution of this MOA, and thereafter, every three months to determine if those treatment measures can be implemented in the Richwood community. After each of these meetings, FEMA shall document the conclusions as described under Stipulation VI (Reporting Requirements). Should the completion of these treatment measures prove to be infeasible within the thirty-six (36) month term of the MOA, FEMA will conclude that the implemented treatment measures are sufficient to meet FEMA's compliance responsibilities under Section 106 and the terms of the MOA will be complete.
- 1. Interpretive Kiosk: FEMA shall provide funds to SBA through the WVDHSEM for the design, fabrication and installation of one interpretive kiosk to be located on the site of the present Richwood High School or other appropriate site should the school site prove to be infeasible. This kiosk will be designed to communicate the historic and architectural significance of the school, including the role the current and previous high school buildings have played in the community; the construction of the current building; its eligibility for listing in the NRHP; and the impact of the 2016 flood upon Richwood High School specifically and the Richwood community generally.
 - a. Within thirty (30) days after deciding that it is feasible to proceed with the design and installation of the interpretive kiosk, SBA shall coordinate a meeting among SBA, WVDHSEM, SHPO, and FEMA to discuss the requirements of the MOA specific to the successful and timely completion of this treatment measure.

- b. SBA shall utilize either their existing staff resources, or shall hire a qualified consultant to assist with content development and design of the kiosk.
 - c. Upon completion of the plan for the interpretive kiosk, SBA shall submit the draft plan (which should include the proposed location) to the signatories for a fifteen (15) day review and comment period. These comments will be incorporated into any revision. SBA may also provide a courtesy review opportunity to concurring parties. At the end of this review period, the signatories will meet to finalize the plan for the kiosk.
 - d. SBA may award the fabrication contract to the fabricator of their choice, but will follow any required procurement procedures and policies.
 - e. SBA may coordinate with the City of Richwood to determine the location for the kiosk that will most benefit the public. SBA and their consultant will then carry out the production and installation of the interpretive kiosk at the location agreed upon by the signatories within sixty (60) days after finalization of the plan by the signatories and invited signatories. SBA will secure any required permits in advance of installation.
 - f. Nicholas County BOE's responsibility for maintenance of the kiosk shall not extend beyond the thirty-six (36) month term of this MOA.
2. Richwood High School Commemorative Park: If the signatories and invited signatories determine that implementation of the park is feasible, SBA will implement the following measures that will form the basis of a community park commemorating Richwood High School. In order to protect the federal investment, Nicholas County BOE shall negotiate and complete an agreement between Nicholas County BOE and a governmental or non-profit organization that provides for the transfer of the ownership of the land encompassing the park at the end of the thirty-six (36) month term of the MOA. This organization must be willing and able to assume responsibility for the park, including maintenance, liability and security. This agreement must be completed before SBA proceeds with those actions described in C.2.g through C.2.n:
- g. Construction of a one-quarter mile, asphalt-surface walking trail located on the site of Richwood Middle School and/or Richwood High School. Although the preferred site of the walking trail is the site of Richwood High School, its location in the floodway makes this site infeasible as FEMA generally does not allow construction in the floodway. In this case, FEMA will construct the walking trail on the site of Richwood Middle School. Effort will be made to locate the walking trail as close to the site of Richwood High School as possible.
 - h. Installation of signage that memorializes Richwood High School. These signs shall include:

- i. Original Richwood High School sign. This sign shall be relocated to the park after completion of the new high school facility.
 - ii. One (1) interpretive sign that memorializes the school.
 - iii. Eight (8) interpretive signs that memorialize the Richwood band, sports, and other high school activities.
- i. Relocation of the benches from the Richwood High School courtyard to locations along the walking trail. If relocation is not feasible, SBA will install replacement benches. Replacement benches will not duplicate the original benches in material or appearance.
 - j. Upon determination of the feasibility of the implementation of this treatment measure, SBA shall coordinate a meeting among the SBA, WVDHSEM, SHPO, Nicholas County BOE and FEMA to discuss the requirements of the MOA specific to the successful and timely completion of this treatment measure.
 - k. SBA shall utilize either their existing staff resources, or shall hire a qualified consultant to assist with a plan for the development and design of the walking trail and signs. SBA will work with concurring parties to identify the best location for the walking trail and to develop design and content of the signs.
 - l. Upon completion of the plan, SBA shall submit the draft plan, which should include the siting of the walking trail, the design and location of the signs, and the location of the benches, to the signatories for a thirty (30) day review and comment period. These comments will be incorporated into any revision. SBA may also provide a courtesy review opportunity to concurring parties. At the end of this review period, the signatories will meet to finalize the plan.
 - m. SBA may award the fabrication contract to the fabricator of its choice, but will follow any required procurement procedures and policies.
 - n. SBA will then implement the project. SBA will secure any required permits in advance of installation.
 - o. Nicholas County BOE will retain ownership and will maintain the park throughout the thirty-six (36) month duration of the MOA at which time it will transfer ownership to the governmental or non-profit community organization as outlined in the agreement signed by Nicholas County BOE and the governmental or community organization. However, should the governmental or non-profit entity decide to terminate the agreement at the time of transfer at the end of the thirty-six (36) month term of this MOA, then Nicholas County BOE will no longer be obligated to maintain the property and may dispose of the land in any way that the Nicholas County BOE finds appropriate.

p. Should the development of the commemorative park prove to be infeasible:

- i. The signatories may elect to produce the interpretive signs in a format that could be displayed on easels or be mounted on interior walls of a facility where they would be available for public viewing. SBA will donate the signage to a governmental or local non-profit organization which demonstrates willingness and ability to utilize the signage for the benefit of the public.
- ii. Nicholas County BOE will no longer be obligated to transfer ownership of the park to a government entity or legally established non-profit community organization.

II. Public Involvement: FEMA conducted a public meeting at Cherry River Elementary School, Richwood, WV, on July 27, 2017, 6:30 – 9:00 P.M., which was advertised in the *Charleston Gazette* and *Nicholas Chronicle*. Public comments were accepted orally and in writing at the public meeting and during the public comment period from July 20 through August 3, 2017. Copies of the MOA were available for review at the Richwood Public Library and the Summersville Public Library.

III. Post Review Discoveries

- A. SBA shall ensure that during demolition of Richwood High School, the contractor shall immediately cease demolition activities in the vicinity of the discovery should previously unidentified archaeological sites or unanticipated effects be discovered during implementation of the project. Personnel should take all reasonable measures to avoid or minimize harm to the archaeological find(s) and/or avoid or minimize further unanticipated effects.
- B. The person or persons encountering such properties or effects shall immediately notify WVDHSEM who will contact Stephanie Everfield, FEMA Region III Acting Regional Environmental Officer, at 404-309-6056, and the SHPO at 304-558-0240. Construction in the area of such sites or effects shall not resume until FEMA determines that the requirements of 36 CFR §800.13(b)(3) and Stipulation III.B, Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects of the FEMA Statewide PA, have been met.

IV. Anticipatory Actions

- A. FEMA shall not grant assistance to SBA should it, or those acting on its behalf, engage in anticipatory actions with the intent to avoid the requirements of this MOA.
- B. After consultation with the SHPO and the ACHP, however, FEMA may determine that circumstances justify granting such assistance despite the Adverse Effect created or permitted by SBA and shall complete consultation for the Undertaking.

V. Duration of Agreement

- A. This agreement will be null and void, unless amended per Stipulation VIII of this MOA, if its terms are not carried out within thirty-six (36) months from the date of execution.
- B. If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §800.6(c)(7) and §800.6(c)(8).

VI. Reporting Requirements

- A. Following each meeting of the signatories and invited signatories held to determine the feasibility of the treatment measures described in I.C.1 (Interpretive Kiosks) and I.C.2 (Richwood High School Commemorative Park), SBA and FEMA will prepare a treatment measure status report which shall be provided to the signatories and placed in the Section 106 administrative record.
 - 1. Each status report will include the following information:
 - a. Feasibility of treatment measures as determined by the signatories and invited signatories.
 - b. Progress on the treatment measures described under I.A (Display Case) and I.B (Recordation).
 - c. Status of treatment measure completion, including completion dates or anticipated schedule for completion.
 - 2. Within thirty (30) days of receipt, the signatories will review the treatment measure status report and provide written feedback to SBA and FEMA.
 - 3. The signatories may request a conference call to discuss the report content and discuss the implementation of this MOA.

VII. Dispute Resolution

- A. If any objection or dispute should be put forth by a signatory, invited signatory, or concurring party within the time frame provided by this MOA to any plans, specifications, or actions provided for review pursuant to this MOA, FEMA will consult further with the objecting party to seek resolution.
- B. If FEMA determines that the dispute cannot be resolved, FEMA shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR

§800.11(e), including FEMA's proposed resolution of the dispute. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP will either:

1. Advise FEMA that it concurs with FEMA's resolution to the dispute; or
 2. Provide FEMA with recommendations, which FEMA will take into consideration in reaching a final decision regarding the dispute; or
 3. Notify FEMA that it will comment pursuant to 36 CFR §800.7(c), and proceed to comment. Any comment provided will be taken into consideration by FEMA in accordance with 36 CFR §800.7(c) (4) with reference to the subject of the dispute.
- C. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute, and FEMA's responsibility to fulfill all actions that are not subject of the dispute will remain unchanged.
- D. Failure to fulfill the terms of this MOA requires that FEMA again request ACHP's comments in accordance with 36 CFR §800.7.

VIII. Amendments

Any signatory or invited signatory to this MOA may propose in writing to FEMA that the MOA be amended, whereupon FEMA will consult with all signatories to the MOA to consider such an amendment. 36 CFR §800.6(c)(1) shall govern the execution of any such amendment. The signatures of all the signatories shall be required for any amendment hereto to be effective. The amendment will be effective on the date a copy signed by all of the signatories and invited signatories is filed with the ACHP.

IX. Termination and Non-Compliance

- A. If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VIII, above.
- B. If within thirty (30) days an amendment cannot be reached, any signatory or invited signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated, FEMA must either (a) seek to resolve the adverse effects pursuant to 36 CFR §800.6(b) or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR §800.7. FEMA shall notify the SHPO, and invited signatory and concurring parties as to the course of action it will pursue.

X. Execution of the Memorandum of Agreement

- A. This MOA will be executed in counterpart, with a separate page to be signed by each signatory and concurring party. The MOA will become effective on the date of the final signature by the signatories and invited signatories.
- B. FEMA will provide each signatory and concurring party with a signed original of this MOA and will file a copy of the MOA with the ACHP.
- C. Execution and implementation of this MOA evidences that FEMA has taken into account the effects of the Undertaking on historic properties, has afforded the ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, and that FEMA has satisfied its Section 106 responsibilities for all aspects of the Undertaking.

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OF RICHWOOD HIGH SCHOOL, RICHWOOD, NICHOLAS COUNTY, WEST
VIRGINIA**

EXECUTED:

SIGNATORY

FEDERAL EMERGENCY MANAGEMENT AGENCY

By:

Emily Breslin
Emily Breslin
Public Assistance Branch Chief

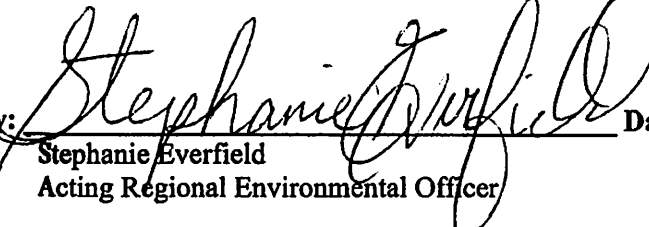
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9/27/17

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SIGNATORY:

FEDERAL EMERGENCY MANAGEMENT AGENCY

By:  Date: 10/02/2017
Stephanie Everfield
Acting Regional Environmental Officer

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SIGNATORY

WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: _____

Commissioner Randall Reid-Smith
State Historic Preservation Officer

Date: _____

10/2/17

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INVITED SIGNATORY:

**WEST VIRGINIA DIVISION OF HOMELAND SECURITY AND EMERGENCY
MANAGEMENT**

By:  Date: 10/2/17
Jimmy Gianato
Director

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INVITED SIGNATORY:

SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA

By:  Date: 10/2/17
Frank L. Blackwell
Executive Director

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INVITED SIGNATORY:

NICHOLAS COUNTY BOARD OF EDUCATION

By: Dr. Gus Penix Date: 9-26-17
Dr. Gus Penix
President

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VIRGINIA**

CONCURRING PARTY:

By:  Date: 9/29/2017
Nicholas County Landmark Commission
Chair, Ray Moeller