

MEMORANDUM OF AGREEMENT

BETWEEN [insert Agency]

AND THE

[insert name of State or Tribe] ["STATE" or "TRIBAL"] HISTORIC PRESERVATION OFFICER

REGARDING THE [insert project name and location]

WHEREAS the [Agency] ([insert Agency abbreviation]) plans to ["carry out" or "fund" or "approve"/"license"/"permit" or other appropriate verb] the [insert project name] (undertaking) pursuant to the [insert name of the substantive statute authorizing the Federal agency involvement in the undertaking], [insert legal cite for that statute]; and

WHEREAS the undertaking consists of [insert a brief explanation of the undertaking]; and

WHEREAS, [Agency abbreviation] has defined the undertaking's area of potential effect (APE) as [insert written description and/or "described in Attachment XXX"]; and

WHEREAS [Agency abbreviation] has determined that the undertaking may have an adverse effect on [insert name of historic property(ies)], which ["is" or "are"] ["listed in" or "eligible for listing in"] the National Register of Historic Places, and has consulted with the [insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer (["SHPO" or "THPO"]) pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS [Agency abbreviation] has consulted with the [insert name of Tribe(s)], for which [insert name of historic property(ies)] ["has" or "have"] religious and cultural significance, and has invited the Tribe[s] to sign this Memorandum of Agreement (MOA) as an invited signatory [Insert this whereas clause if appropriate]; and

WHEREAS, [Agency abbreviation] has consulted with [insert names of other consulting parties, if any] regarding the effects of the undertaking on historic properties and has invited them to to sign this MOA as a ["invited signatory(ies)" or "concurring party(ies)"]; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), [Agency abbreviation] has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, [Agency abbreviation] and the ["SHPO" or "THPO"] agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

[Agency abbreviation] shall ensure that the following measures are carried out:

[I.-III. (Or whatever number of stipulations is necessary) Insert negotiated measures to avoid, minimize, or mitigate the adverse effects on historic properties.]

IV. DURATION

This MOA will be null and void if its terms are not carried out within five (5) years **[or specify other appropriate time period]** from the date of its execution. Prior to such time, [Agency abbreviation] may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, the [Agency abbreviation] shall implement the discovery plan included as attachment **[insert number of attachment]** of this MOA. **[Insert this stipulation if there is an indication that historic properties are likely to be discovered during implementation of the undertaking.]**

VI. MONITORING AND REPORTING

Each **[insert a specific time period]** following the execution of this MOA until it expires or is terminated, [Agency abbreviation] shall provide all parties to this MOA **["and the ACHP" if desired]** a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in [Agency abbreviation]'s efforts to carry out the terms of this MOA.

VII. DISPUTE RESOLUTION

Should any signatory * or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, [Agency abbreviation] shall consult with such party to resolve the objection. If [Agency abbreviation] determines that such objection cannot be resolved, [Agency abbreviation] will:

A. Forward all documentation relevant to the dispute, including the [Agency abbreviation]'s proposed resolution, to the ACHP. The ACHP shall provide [Agency abbreviation] with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute,

[Agency abbreviation] shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. [Agency abbreviation] will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, [Agency abbreviation] may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, [Agency abbreviation] shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. [Agency abbreviation]'s responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VIII. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

IX. TERMINATION

If any 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. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, [Agency abbreviation] must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. [Agency abbreviation] shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the [Agency abbreviation] and ["S" or "T"]HPO and implementation of its terms evidence that [Agency abbreviation] has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.**

SIGNATORIES:

[insert Agency name]

_____ Date

[insert agency official name and title]

[insert name of State or Tribe] ["State" or "Tribal"] Historic Preservation Officer

_____ Date
[insert name and title]

INVITED SIGNATORIES:

[insert invited signatory name]

_____ Date
[insert name and title]

CONCURRING PARTIES:

[insert name of concurring party]

_____ Date
[insert name and title]

Notes:

** This document assumes that the term "signatory" has been defined in the agreement to include both signatories and invited signatories.*

*** Remember that the agency must submit a copy of the executed MOA, along with the documentation specified in Sec. 800.11(f), to the ACHP prior to approving the undertaking in order to meet the requirements of section 106. 36 CFR § 800.6(b)(1)(iv).*