

**MEMORANDUM OF AGREEMENT  
AMONG  
UNITED STATES ARMY  
AND  
NEW MEXICO STATE HISTORIC PRESERVATION OFFICER  
REGARDING DEMOLITION OF THREE STRUCTURES  
AT  
FORT WINGATE, NEW MEXICO**

**June 16, 2011 DRAFT**

**WHEREAS**, the United States Army (Army) installation at Fort Wingate, New Mexico was closed under the provisions of the Defense Base Closure and Realignment Act of 1988 (BRAC) and the Army is proceeding with the BRAC environmental cleanup prior to transfer to other federal agencies; and

**WHEREAS**, Structure 53 (Water Tower) and associated Structure 46 (Water Tank ) have remained unused for decades and do not meet current New Mexico Environmental Department (NMED) quality standards, Occupational Safety and Health Administration (OSHA) standards for access and the Federal Aviation Administration (FAA) has determined the Water Tower poses a significant hazard to aircraft; and

**WHEREAS**, the extraordinary costs of preservation efforts to meet OSHA access and FAA standards that would result in an unusable facility led the Army to the decision to demolish both structures under on-going BRAC environmental remediation; and

**WHEREAS**, due to extensive soil contamination under Structure 6 (Gas Station), the environmental restoration of the installation shall unavoidably require removal of the structure under on-going BRAC environmental remediation; and

**WHEREAS**, the demolition of these three structures constitutes an undertaking (the Undertaking) under Section 106 of the National Historic Preservation Act; and

**WHEREAS**, the Area of Potential Effect (APE) of the Undertaking consists of the immediate area around the subject structures; and

**WHEREAS**, the Army in consultation with the New Mexico State Historic Preservation Officer (SHPO) has determined that the subject properties in the APE of the Undertaking are eligible for the National Register of Historic Places (NRHP), and

**WHEREAS**, the Army in consultation with the SHPO has determined the Undertaking shall have an adverse effect on these historic properties; and

**WHEREAS**, the Army and SHPO concur that no known archaeological sites eligible for the NRHP are present within the APE; and

**WHEREAS**, the Advisory Council on Historic Preservation (ACHP) has been notified of the Undertaking and its adverse effect on historic properties and has chosen not to participate in consultation; and

**WHEREAS**, the federally recognized tribes of Pueblo of Zuni and the Navajo Nation have been notified

of the undertaking, offered the opportunity to consult and have either not responded or have chosen not to consult on the Undertaking; and

**NOW THEREFORE**, the Army and the SHPO 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**

The Army will ensure that the following measures are carried out:

### **I. MITIGATION**

#### **Documentation**

The Army shall prepare architectural photographic and written documentation of all NRHP eligible structures at each installation in separate documentation reports within 24 months of the execution of this MOA.

1. All documentation activities shall be conducted by preparers whom meet the standards set forth in the *Secretary of the Interior's Professional Qualification Standards* (36 CFR Part 61 Appendix A and 48 FR 44738-9).
2. Photography shall consist of digital images that meet or exceed National Park Service Photographic Standards for Digital Images dated March 2008.
  - a. The Army shall forward digital photographs to the SHPO for review and comment in regard to number of views and general quality of the images.
  - b. SHPO shall respond electronically within 15 days. If no response is received within 45 days, the Army shall assume compliance with photographic standards.
  - c. Upon meeting all photographic standards, the Army may proceed with the undertaking while completing all other stipulations of this agreement.
3. Written documentation shall consist of narrative text equal to Level II of the Historic American Building Survey, high quality digital images, and index of images and a photographic site plan and shall meet the professional standards of the SHPO.
  - a. Written documentation shall incorporate the photographic documentation.
  - b. The Army shall forward an electronic draft of the written documentation to the SHPO for review.
  - c. SHPO shall provide comments electronically back to the Army to incorporate in the final report within thirty (30) calendar days of receipt.
  - d. Should substantial comments be received, the Army shall resubmit second drafts.
  - e. If comments on any draft are not received within forty-five (45) calendar days, the Army shall prepare and submit the final documentation consisting of archival copies of the written and photographic documentation.
  - f. Final documentation shall then be forwarded to SHPO to accompany photographs.
  - g. Duplicate archival copies will be kept on file with the 63<sup>rd</sup> Regional Support Command.

## **II. INADVERTENT DISCOVERIES**

In the event of inadvertent discovery of historic properties or archaeological sites during the implementation of this undertaking, all work will cease in the vicinity of the discovery. In compliance with 36 CFR § 800.13(b) the Army shall notify within 24 hours the SHPO, and, if applicable, federally recognized tribal organizations that attach religious and /or cultural significance to the affected property. The SHPO, the Army, and the Tribal representatives, as appropriate, will conduct a joint field inspection within 72 hours of the notification of the discovery. The Army, in consultation with the appropriate parties, will develop a treatment plan for the discovery prior to resumption of construction activities in the area of the discovery.

## **III. ANTI-DEFICIENCY ACT**

The stipulations of this agreement are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs the Army's ability to implement the stipulations of this agreement, the Army will consult in accordance with the amendment and termination procedures found at Sections V and VII of this agreement.

## **IV. DISPUTE RESOLUTION**

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

A. Forward all documentation relevant to the dispute, including the Army's proposed resolution, to the ACHP. The ACHP shall provide the Army with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Army 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. The Army will then proceed according to its final decision.

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

C. The Army'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.

## **V. AMENDMENTS**

This Agreement 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.

## **VI. DURATION OF THE AGREEMENT**

This Agreement will shall be in effect until all stipulations have been met.

**VII. 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 V, above. If within thirty (30) calendar 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, the Army 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. The Army shall notify the signatories as to the course of action it will pursue.

**EXECUTION** of this Agreement by the Army and SHPO, and implementation of its terms evidence that the Army has taken into account the effects of this undertaking on historic properties and afforded the SHPO an opportunity to comment.

**SIGNATORIES:**

UNITED STATES ARMY

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Patterson  
Environmental Coordinator  
Fort Wingate, New Mexico

NEW MEXICO STATE HISTORIC PRESERVATION DIVISION

By: \_\_\_\_\_ Date: \_\_\_\_\_

Jan V. Biella  
New Mexico State Historic Preservation Officer