

(SAMPLE FORMAT)

MEMORANDUM OF AGREEMENT

BETWEEN [insert Agency]

AND THE [insert State] STATE HISTORIC PRESERVATION OFFICER

REGARDING THE [insert project name and location]

WHEREAS, the [Agency] ([insert Agency abbreviation]) has determined that the [insert project name] (undertaking) may have an adverse effect on [insert name of historic property(ies)], which is [choose appropriate: listed in/eligible] for the National Register of Historic Places, and has consulted with the [State] State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f); and

WHEREAS, [Agency] has consulted with the [**insert Tribe(s), if any], for which [insert name of historic property(ies)] has religious and cultural significance, and has invited the Tribe to sign this Memorandum of Agreement (MOA) as a an invited signatory; and

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

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

NOW, THEREFORE, [Agency] and the [State] 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

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

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

IV. **DURATION**. This agreement 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] may consult with the other signatories to reconsider the terms of the agreement and amend in accordance with Stipulation VIII below.

V. **POST-REVIEW DISCOVERIES** (*when historic properties are likely to be discovered, see Section 800.13(a)(2) of Council's regulations*) If potential historic properties are discovered or unanticipated

effects on historic properties found, the [Agency] shall implement the discovery plan included as attachment [XXX] of this agreement.

VI. MONITORING AND REPORTING

Each year (*or specify other appropriate time period*) following the execution of this agreement until it expires or is terminated, [Agency] shall provide all parties to this agreement [and the Council (*optional*)] 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]'s efforts to carry out the terms of this agreement. Failure to provide such summary report may be considered noncompliance with the terms of this MOA pursuant to Stipulation VIII, below.

VII. DISPUTE RESOLUTION

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, [Agency] shall consult with the objecting party(ies) to resolve the objection. If [Agency] determines, within 30 days, that such objection(s) cannot be resolved, [Agency] will:

A. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise [Agency] on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by [Agency] in reaching a final decision regarding the dispute.

B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, [Agency] may render a decision regarding the dispute. In reaching its decision, [Agency] will take into account all comments regarding the dispute from the parties to the MOA.

C. [Agency]'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. [Agency] will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. [Agency]'s decision will be final.

VIII. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this MOA, including any invited signatory, 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). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation VIII, below.

IX. TERMINATION

If an MOA is not amended following the consultation set out in Stipulation VIII., it may be terminated by any signatory or invited signatory. Within 30 days following termination, the [Agency] shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the Council under 36 CFR §800.7(a) and proceed accordingly.

Execution of this Memorandum of Agreement by [Agency] and [State] SHPO and **[**insert name of invited signatories and concurring parties, if any]**, the submission of documentation and filing of this Memorandum of Agreement with the Council pursuant to 36 CFR Section 800.6(b)(1)(iv) prior to [Agency]'s approval of this undertaking, and implementation of its terms evidence that [Agency] has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

SIGNATORIES:

[insert Agency name]

[insert name and title] Date

[insert State] State Historic Preservation Officer

[insert name and title] Date

INVITED SIGNATORIES:**

[insert invited signatory name]

[insert name and title] Date

CONCURRING PARTIES:**

[insert name of consulting party]

[insert name and title] Date

Notes

*** Tribes that place religious and cultural significance on historic properties located off Tribal lands should be invited to sign the MOA in accordance with Section 800.6 (c)(2)(i). Consulting parties sign the MOA either as "invited signatories" or as "concurring parties" in accordance with Section 800.6(c)(2)(ii) and 800.6(c)(3), respectively.*