

**MEMORANDUM OF AGREEMENT
AMONG
US ARMY GARRISON – REDSTONE ARSENAL, ALABAMA,
THE ALABAMA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION,
THE CITY OF HUNTSVILLE, AND
LW REDSTONE COMPANY, LLC
REGARDING
CONSTRUCTION OF THE REDSTONE GATEWAY DEVELOPMENT
REDSTONE ARSENAL, ALABAMA
MOA-10229-201**

WHEREAS, US Army Garrison Redstone Arsenal, Alabama, (hereafter "Redstone Arsenal,") has leased 468 acres of Redstone Arsenal property to LW Redstone Company LLC (hereafter "L.W. Redstone") to develop additional office, retail, research and development, hotel and conference facilities and associated utilities and roads known as Redstone Gateway Development (Project) on the north end of Rideout Road, Redstone Arsenal, Alabama (Attachment A) to support the expanding mission requirements resulting from the Base Realignment and Closure Act (BRAC) decisions of 2005; and

WHEREAS, the lease was executed on July 16, 2009 through a 50-year Enhanced Use Lease (EUL) program pursuant to 10 U.S.C. § 2667, Leases: Non-excess properties of military departments, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, over 800 acres of Redstone Arsenal property was annexed on April 8, 2010 into the City of Huntsville's municipal boundaries allowing the City of Huntsville to perform horizontal construction to finish the land for vertical development within the Redstone Gateway; and

WHEREAS, the primary Area of Potential Effect (APE) for this project includes all areas of construction for the Redstone Gateway, any associated infrastructural improvements, and areas directly impacted by the alteration of any Army facilities to make way for the development of the EUL. The primary APE is defined as the north 1.8 miles of Rideout Road and all of the 470 acres contained within the EUL including in Township 4 South, Range 1 West, the southwest ¼ of Section 7, most of the west ½ of Section 18, and most of the northeast quarter of Section 19. The APE will include an access control fence excluding the EUL parcel west of Rideout Road from the secure portion of Redstone Arsenal. The secondary APE includes a 2.5 mile radius around the EUL with areas potentially affected by the view shed (Attachment B); and

WHEREAS, Redstone Arsenal has determined that the undertaking will have an adverse affect on archaeological site 1MA639, a large historic plantation site with intact

19th through early 20th century deposits (Attachment C), which is eligible under Criterion D for listing in the National Register of Historic Places (NRHP) based on Phase II evaluations conducted in 2006 and 2010, and has consulted with the Alabama State Historic Preservation Office (ALSHPO) (Attachment D-1, D-2, and D-3) pursuant to 36 C.F.R. Part 800; and

WHEREAS, Redstone Arsenal has consulted with the Alabama-Coushatta Tribe of Texas, the Choctaw Nation, the Chickasaw Nation, and the Muscogee (Creek) Nation for which the lands of Redstone Arsenal have religious and cultural significance and discussed the undertaking in a consultation meeting on November 3 and 4, 2010 and invited the tribes to comment on the undertaking; and

WHEREAS, the Alabama-Coushatta Tribe of Texas, the Choctaw Nation, the Chickasaw Nation, and the Muscogee (Creek) Nation declined to comment on the undertaking in the November 3 and 4, 2010 meeting; and

WHEREAS, Redstone Arsenal sent notification of the undertaking to federally-recognized Indian tribes (Tribes) for which the APE has religious and cultural significance (Attachment E) in a letter dated June 5, 2012, and invited the Tribes to comment on the undertaking (Attachment F); and

WHEREAS, the Chickasaw Nation and the Cherokee Nation commented on the undertaking (Attachment G-1 and G-2) stating that they concurred with Redstone Arsenal's determination; and

WHEREAS, Redstone Arsenal consulted with LW Redstone and the City of Huntsville regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as invited signatories; and

WHEREAS, Redstone Arsenal consulted with the Huntsville-Madison County Historical Society, the Historic Huntsville Foundation, the Madison Station Historical Preservation Society, and descendants of former owners of the plantation and invited them to sign this MOA as concurring parties, and all requested to be kept up-to-date on the work at 1Ma639 but declined to sign this MOA as concurring parties; and

WHEREAS, by letter dated August 10, 2010, Redstone Arsenal notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation and invited them to participate in the development of this MOA pursuant to 36 C.F.R. § 800.6(a)(1), and the ACHP notified the Secretary of the Army of their intention to be an active participant in this consultation in a letter dated January 25, 2011(Attachments H-1 and H-2) pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, Redstone Arsenal conducted Phase II evaluations on the four known archaeological sites within the APE and found that only one, Site 1Ma639, met the criteria for listing on the NRHP; and

WHEREAS, to fulfill requirements of 36 C.F.R. § 800.6(a)(4) and 36 C.F.R. § 800.11(f), Redstone Arsenal solicited the views of the public by public announcement (Attachment I) in local newspapers on November 7, 2012 and by placing a draft copy of this MOA in the Redstone Arsenal Public Affairs Office and on the Redstone Arsenal website, and no public comments were received; and

WHEREAS, a research design for data recovery (Attachment J) was prepared in September of 2010, reviewed by Redstone Arsenal, and concurred with by ALSHPO on February 29, 2012 (Attachment D-3); and

NOW THEREFORE, Redstone Arsenal, the ALSHPO, the ACHP, the City of Huntsville, and LW Redstone 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

Redstone Arsenal shall ensure that the following measures are carried out:

I. PROFESSIONAL STANDARDS AND QUALIFICATIONS .

All historic preservation work carried out pursuant to this MOA will be performed by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualification Standards for History, Architectural History and Archaeology as appropriate (48 FR 44738-9). Preservation professionals responsible for carrying out the historic and archaeological documentation covered by this MOA shall meet the Secretary of Interior's Standards (48 FR 44739) and the professional requirements set forth in the Alabama Historical Commission's Policy for Archaeological Survey and Testing in Alabama, (Alabama Historical Commission 2002).

II. ARCHAEOLOGICAL DATA RECOVERY

A. The data recovery at 1Ma639 will be conducted in accordance with the Data Recovery Plan (Attachment J) on those portions of the site that will be impacted by the undertaking.

B. The City of Huntsville and LW Redstone will complete data recovery at 1Ma639 within 15 years of execution of this MOA assuring that provisions of the Data Recovery Plan are carried out.

C. When all fieldwork specified in the Data Recovery Plan is complete, the City of Huntsville and L.W. Redstone shall submit a Management Summary to Redstone Arsenal and ALSHPO within 120 calendar days of completion of fieldwork. Redstone Arsenal will notify the other consulting parties by email of the fieldwork completion and will make the Management Summary available to any other consulting party upon request.

D. The data recovery field work on 1Ma639 may be done in increments at the discretion of LW Redstone to facilitate construction schedules, but a management summary must be submitted for each increment, and no more than one year may pass from the submittal of a management summary for one increment to the resumption of field work on the next increment.

E. All additional reports stemming from the field work will be completed in accordance with Stipulation VII(D).

III. LIMITATIONS FOR AVOIDED PORTIONS OF SITE 1MA639

At the discretion of LW Redstone, portions of Site 1Ma639 may be avoided by the undertaking. These avoided portions of 1Ma639 will not need to be subjected to data recovery as long as the following stipulations are adhered to.

A. Any portions of site 1Ma639 which are not included within the area subjected to data recovery may not undergo any sort of disturbance below the level of the ground without consultation with the Redstone Arsenal Cultural Resource Manager (CRM).

B. Archaeological features that extend above the surface of the ground in the area of site 1Ma639 that is excluded from the data recovery will not be disturbed, damaged, or impacted in any way without consultation with the Redstone Arsenal CRM and the ALSHPO.

C. Any removal of vegetation on the portion of site 1Ma639 which is not included in the data recovery must be done in accordance with the Redstone Arsenal Standard Operating Procedure (SOP) for Selective Logging and Timber Maintenance on NRHP Eligible Archaeological Sites (Attachment K).

D. Measures may be taken on certain archaeological features in the area of site 1Ma639 that is excluded from the data recovery, to reduce hazards that those features might pose to public safety. These measures will be taken only after consultation with the Redstone Arsenal CRM and the ALSHPO.

IV. POST-REVIEW DISCOVERIES

A. If any potential historic properties are discovered in the Primary APE during construction in the development of the EUL outside the boundaries of archaeological site 1Ma639, all work activities in the vicinity of the discovery (within a minimum of 50 feet) around the area of the discovery shall cease immediately, and the Redstone Arsenal CRM shall be notified. The CRM will notify the ALSHPO, as well as interested Native American tribes, within 48 hours of notification in accordance with the procedures in 36 C.F.R. § 800.13(b)(3) and consider any input provided.

B. If any unanticipated adverse effects to historic properties as a result of the undertaking are discovered, all work activities causing the unanticipated adverse effect shall cease immediately, and the Redstone Arsenal CRM shall be notified. The CRM will notify the ALSHPO, as well as interested Native American tribes, within 48 hours of notification in accordance with the procedures in 36 C.F.R. § 800.13(b)(3) and consider any input provided.

C. If, as a result of an inadvertent discovery on additional portions of the primary APE outside archaeological site 1Ma639, Phase II testing is necessary, L.W. Redstone and the City of Huntsville will ensure development of reports within six months of completion of field investigations at each inadvertent discovery to identify the presence or absence of potential historic properties. The reports will be submitted to Redstone Arsenal. Redstone Arsenal will then submit copies of the draft technical reports to the signatories of this MOA (except the ACHP) within 30 calendar days of receipt of the reports for review. The draft technical reports shall be consistent with the

standards outlined in Alabama Policy for Archaeological Survey and Testing in Alabama (Alabama Historical Commission 2002). LW Redstone and the City of Huntsville shall ensure that the draft reports are revised to reflect any comments from Redstone Arsenal or ALSHPO within one month of receipt. The signatories (except the ACHP) shall have 30 calendar days from the receipt of the drafts to review and comment. Comments shall be taken into consideration during revision of the draft report and preparation of the final report. Comments not addressed in revision will be addressed by letter or other written correspondence. Within six months of finalization of the draft Phase II report, Redstone Arsenal shall provide one bound copy of the final technical report of Phase II testing to the ALSHPO.

V. PROCEDURES FOR TREATMENT OF HUMAN REMAINS

A. The procedures for the treatment of known and future discoveries of prehistoric or historic Native American human remains within the primary APE will be carried out according to the attached Burial Treatment Protocol (Attachment L-1), and The Inter-Tribal Council Of The Five Civilized Tribes Organized February 3, 1950, Cherokee, Chickasaw, Choctaw, Muscogee (Creek), and Seminole Nations NAGPRA Policy Statement (Attachment L-2).

B. If non-Native American historic human remains are encountered during the course of development of the EUL within the primary APE, the Redstone Arsenal CRM and Army Criminal Investigation Command (CID) will be contacted immediately. Redstone Arsenal will then consult with the ALSHPO to determine appropriate treatment of the remains within two weeks of the discovery.

VI. PUBLIC EDUCATION

A. Redstone Arsenal will submit in writing a request to the City of Huntsville for use of the report or information contained there-in within one year after finalization of the report. The City of Huntsville will respond in writing to the request within two weeks of receiving the request.

B. Redstone Arsenal will develop an informational exhibit to present the findings of the data recovery to the public within one year of receiving the final data recovery report.

C. Upon finalization of the data recovery report, Redstone Arsenal will present a copy of the report to the Huntsville-Madison County Public Library Heritage Room and the Madison Branch of the public library within six months of receipt of the data recovery report.

VII. MONITORING AND REPORTING

A. LW Redstone and the City of Huntsville will notify the Redstone Arsenal

CRM of their start date for the data recovery work at least 30 calendar days prior to the initiation of field work.

B. Redstone Arsenal will update consulting parties, except the ACHP, on the data recovery by email or phone no later than December 1st of each year of fieldwork during the data recovery field work and laboratory analysis.

C. LW Redstone and the City of Huntsville shall ensure that all archaeological reports resulting from actions pursuant to this MOA are provided to the signatories, except the ACHP.

D. LW Redstone and the City of Huntsville shall submit a draft report of the data recovery to Redstone Arsenal for review no later than one year after completion of the field work.

E. LW Redstone and the City of Huntsville shall submit 10 copies of the final report to Redstone Arsenal no later than one year after Redstone Arsenal submits comments on the draft report.

F. Within one year of finalization of draft report, Redstone Arsenal shall provide one bound copy of the final technical report of the Data Recovery to the ALSHPO.

X. CURATION

A. All artifacts recovered and records generated in the course of the data recovery shall be property of Redstone Arsenal.

B. LW Redstone and the City of Huntsville will ensure that all recovered artifacts are stabilized and processed for curation at the University of Alabama Erskine Ramsey Archaeological Repository, Moundville, Alabama with all previous archaeological collections recovered from Redstone Arsenal. The Erskine Ramsey Archaeological Repository meets professional curation standards as established in 36 C.F.R. Part 79.

C. Copies of all records, including but not limited to field notes, maps, catalogue sheets, and representative photographs and negatives shall be submitted for curation with the artifacts.

D. Documentation that the repository has received these materials will be supplied by LW Redstone and the City of Huntsville to Redstone Arsenal, within three months of curation.

XI. 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, Redstone Arsenal shall consult with such party to resolve the objection. If Redstone Arsenal determines that such objection cannot be resolved, Redstone Arsenal will:

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

B. If the ACHP does not provide its advice regarding the dispute within the 30 calendar day time period, Redstone Arsenal may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Redstone Arsenal 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. Redstone Arsenal's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

XII. AMENDMENT

Any signatory to this MOA may request in writing that the MOA be amended or modified at any time, whereupon the signatories will consult with each other to consider such amendment or modification. Any such amendment or modification must be agreed to by all signatories and shall be in writing. The amended MOA will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

XIII. TERMINATION

A. 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 XII, above. If within 120 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate this MOA upon written notification to the other signatories. Once this MOA is terminated, and prior to work continuing on the portions of the undertaking that would directly affect a historic property, Redstone Arsenal must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Redstone Arsenal shall notify the signatories as to the course of action it will pursue.

B. Upon termination of this MOA, work on the undertaking may continue in those areas that will not have a direct adverse effect on a historic property.

XIV. DURATION

A. This MOA shall take effect on the last date it is signed by all signatory parties and will expire if its stipulations are not carried out by December 31 2027.

B. The signatories will reconvene every five years after signing of this MOA to ensure that the stipulations of this MOA are being met. Redstone Arsenal will contact the signatories to arrange the meeting.

XVIII. ANTI-DEFICIENCY ACT COMPLIANCE

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 Redstone Arsenal's ability to implement the stipulations of this agreement, Redstone Arsenal will consult in accordance with the amendment and termination procedures found in Stipulations XII and XIII of this MOA.

XIX. EXECUTION

Execution of this MOA by Redstone Arsenal, the ALSHPO, the ACHP, the City of Huntsville, and LW Redstone and implementation of its terms evidence that Redstone Arsenal has taken into account the effects of the undertaking on historic properties and afforded the ACHP an opportunity to comment.

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CONSTRUCTION OF THE REDSTONE GATEWAY DEVELOPMENT
REDSTONE ARSENAL, ALABAMA
MOA-10229-201**

SIGNATORIES:

US ARMY GARRISON – REDSTONE ARSENAL

By: _____


John S. Hamilton
Colonel, US Army
Garrison Commander

Date: _____

3/8/13

ALABAMA STATE HISTORIC PRESERVATION OFFICER

By: _____

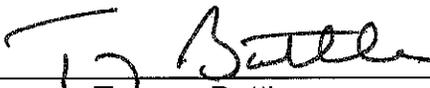

Elizabeth Brown
Deputy State Historic Preservation Officer

Date: _____

21 May 2013

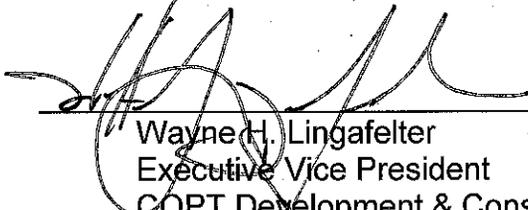
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THE CITY OF HUNTSVILLE

By: 
Tommy Battle
Mayor

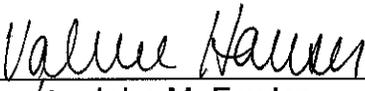
Date: 6/13/2013

LW REDSTONE COMPANY, L.L.C.

By: 
Wayne H. Lingafelter *DWF*
Executive Vice President *DDA*
COPT Development & Construction Services, LLC

Date: 7-17-13

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 
for John M. Fowler
Executive Director

Date: 8-7-13