

MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL GUARD BUREAU,
WYOMING MILITARY DEPARTMENT,
ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE WYOMING STATE HISTORIC PRESERVATION OFFICE
FOR THE
DEVELOPMENT OF A REGIONAL TRAINING INSTITUTE AND INFRASTRUCTURE
IMPROVEMENTS AT CAMP GUERNSEY
PLATTE COUNTY, WYOMING
2013

WHEREAS, the National Guard Bureau (NGB), as the lead federal agency, is required to comply with the National Historic Preservation Act (16 U.S.C. §470f) (NHPA), and its implementing regulations (36 C.F.R. Part 800), and the NGB provides federal funding and guidance to state Guard organizations; and

WHEREAS, the Wyoming Military Department (WYMD) intends to construct a Regional Training Institute (RTI) and to make various infrastructure improvements at Camp Guernsey State Military Reservation (Camp Guernsey) located in Platte County, Wyoming (Project). RTI development includes construction of an administrative/education/billeting building, a motor vehicle storage facility, medical clinic, dining facility, parking lot, and storm water management facilities. Infrastructure improvements include upgrades, extension, and improvements to water, gas, sewer, electrical and communication lines and to existing roads. This project will be completed using a combination of federal and state funds, WYMD and NGB have determined that this project constitutes a federal undertaking as defined by 36 C.F.R. § 800.16(y); and

WHEREAS, WYMD has defined the Area of Potential Effect (APE) as illustrated in Attachment A; and

WHEREAS, the Camp Guernsey State Military Reservation Cantonment Area Historic District (Historic District), which WYMD identified and determined eligible for listing in the National Register of Historic Places (NRHP) under criteria A and C in 2006, is located within the APE; and

WHEREAS, WYMD determined that the Undertaking will have an adverse effect on the Historic District and has consulted with the Wyoming State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800, of the regulations implementing Section 106 of the NHPA; and

WHEREAS, WYMD, in consultation with the SHPO, has defined the adverse effect as alteration of the Parade Field, a contributing resource to the Historic District, as well as potential effect to the Historic District's integrity; and

WHEREAS, the WYMD invited nineteen federally recognized tribes as listed and documented in Attachment B to participate in consultation and none agreed to participate; and

WHEREAS, WYMD invited the City of Guernsey, Platte County Historic Preservation Board (CLG), Platte County Historical Society, Alliance for Historic Wyoming, the Wyoming Veteran Museum, and the Wyoming National Guard Museum to participate in consultation and all declined to participate; and

WHEREAS, WYMD has afforded the public an opportunity to comment on the undertaking through notification in the local paper on April 9, 2013, and a public meeting held on April 16, 2013 during which no comments were received; and

WHEREAS, the WYMD, by letter dated March 26, 2013 invited the Advisory Council on Historic Preservation (ACHP) to participate in this consultation per 36 C.F.R. § 800.6 (a) (1) and the ACHP has agreed to participate in consultation by letter dated April 12, 2013; and

WHEREAS, the WYMD, based on records review and a pedestrian survey, has determined there are no known archeological sites within the APE and the SHPO has concurred with this finding; and

WHEREAS, the Undertaking may result in the demolition of up to four buildings (10, 402, 405 and 406), WYMD has evaluated these buildings and determined that they are not eligible for listing in the NRHP individually or as contributing resources to the Historic District and the demolition will not result in adverse effects to the Historic District and the SHPO has concurred with this finding; and

WHEREAS, Camp Guernsey is a 59,139.7 acre state owned training facility operated by the WYMD; and

WHEREAS, this undertaking was initially discussed during preliminary Section 106 consultation on the Camp Guernsey Master Plan, WYMD, SHPO, NGB and ACHP have agreed to separate this project from the Master Plan consultation in order to accommodate the expedited timing of this project; and

WHEREAS, WYMD has given SHPO the opportunity to comment on the design of the utility and infrastructure improvement portion of this Undertaking; and

NOW, THEREFORE, WYMD, the NGB, the SHPO and the ACHP 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.

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STIPULATIONS

The WYMD shall ensure that the following measures are implemented:

I. MITIGATION OF ADVERSE EFFECTS TO PARADE FIELD

A. WYMD shall establish photographic Key Observation Points (KOPs) across Camp Guernsey (Attachment C) for the purpose of establishing consistent photographic locations. A minimum of three (3) and a maximum of six (6) photographic sessions, will be completed prior to, during, and after the implementation of the undertaking

1. The pre, during, and post construction appearance of Camp Guernsey will be documented in archival quality photographs with large format negatives. The WYMD will consult with the SHPO to schedule the photographic sessions and the need for the optional three (3) photographic sessions. The preconstruction photography will be completed before July 8, 2013.
2. WYMD will provide funds for the Wyoming State Parks and Cultural Resources photographer to conduct this work, which will conform to SHPO standards based upon National Park Service Historic American Buildings Survey (HABS) level III standards. Three duplicate copies will be produced. One copy shall be retained by WYMD one copy shall be provided to the WYSHPO and one copy shall be offered to the Wyoming State Archives.

B. WYMD shall complete, a Public Interpretive Plan (PIP) for historic properties on Camp Guernsey, within five years of the execution of this agreement. The WYMD will consult with the SHPO and provide the SHPO with the opportunity to review and comment on the draft Scope of Work for the development of the PIP. The WYMD will prepare a Request for Proposal (RFP) for the completion of the PIP and will contract the services of a professional interpretive design firm to complete this project. SHPO will participate on the selection team to review and select the consultant who will complete the PIP. SHPO will review and comment on the 30%, 60%, and 95% draft of the PIP. SHPO shall have fourteen (14) calendar days to provide comments on each PIP submission.

II. MINIMIZATION OF ADVERSE EFFECTS FROM THE RTI CONSTRUCTION ON THE HISTORIC DISTRICT

A. Source Selection Plan

1. WYMD shall prepare a Source Selection Plan (SSP) for the RTI design/build contract (a sample SSP is found at Attachment D). WYMD shall notify SHPO within fourteen (14) calendar days of the initial, and any subsequent SSP development meetings. All SSP drafts shall be submitted to SHPO within five (5) calendar days of completion.

2. The SHPO representative shall have fourteen (14) calendar days to comment on each SSP draft.

B. Phase I Request for Qualifications (RFQ) Source Selection Committee (SSC)

1. WYMD shall draft, in consultation with the SHPO, minimum qualifications for an architect or historic architect and design team which employs or has access to a professional with historic preservation experience. The qualification requirements will meet or exceed the Secretary of Interior's Standards for Archaeology and Historic Preservation found in 36 CFR Part 61. WYMD shall include the qualifications requirement in the RFQ.

2. The SHPO representative shall fulfill all duties required for a Phase I SSC member as stated in the SSP. The SHPO representative, as a member of the source selection committee, shall attend all training required by the SSP prior to initiation of the selection process. The SHPO representative shall be required to rate contractors based on contractor submitted qualifications and SSP.

C. Phase II Request for Proposal (RFP) Source Selection Committee

1. WYMD shall include the Facilities Excellence Plan for Historic Properties at Camp Guernsey (FEP) and SHPO's Historic Preservation Design Guidelines for Camp Guernsey (Attachment E) with the RFP. The Source Selection Authority designated in the SSP shall approve all final design requirements in the RFP.

2. The SHPO representative shall fulfill all duties required for a Phase II SSC member as stated in the SSP. The SHPO representative shall be required to rate contractors based on contractor submitted proposals and SSP.

3. The SHPO representative may submit project specific design recommendations no less than fourteen (14) calendar days prior to the scheduled finalization of the RFP. WYMD shall develop RFP evaluation criteria in consultation with the SHPO as it relates to the FEP and SHPO's Historic Preservation Design Guidelines for Camp Guernsey.

D. WYMD shall meet with SHPO within thirty (30) calendar days of selecting a contractor to consult on SHPO's participation in post-selection design review and approval process.

E. WYMD shall meet with SHPO within fourteen (14) calendar days after the final design is submitted by the contractor.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

A. The WYMD's Cultural Resources Manager (CRM) shall serve as the primary point of contact for this Agreement and shall be responsible for all internal review and coordination within the WYMD, and coordination with the SHPO and other consulting parties under this Agreement.

B. The WYMD CRM shall have access to Qualified Staff. For the purposes of this MOA, "Qualified Staff" is defined as an individual who meets the Secretary of the Interior's *Professional Qualification Standards* (36 C.F.R Part 61). Qualified Staff shall have professional qualifications, training, and experience relevant to the technical requirements of a given undertaking. For example: Architectural Historians or Historical Architects will be utilized to survey historic buildings, while Archaeologists or Anthropologists will be utilized to perform archaeological investigations.

IV. ANTI-DEFICIENCY ACT COMPLIANCE

All requirements set forth in this Agreement requiring expenditure of Department of Army (Army) funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. Section 1341). No obligation undertaken by the Army under the terms of this Agreement shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose.

V. SIGNATORIES

For the purposes of this Agreement the term "Signatories" means the NGB, WYMD, SHPO and the ACHP, each of which has authority under 36 CFR § 800.6(c)(8) to execute, amend or terminate the Agreement.

VI. DURATION

This Agreement will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, WYMD may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation XI below.

VII. POST-REVIEW DISCOVERIES

In the event that one or more historic properties are discovered or that unanticipated effects on historic properties are found during the implementation of this MOA, WYMD shall follow the procedure specified in 36 CFR § 800.13(b)(3).

VIII. INADVERTANT DISCOVERY OF HUMAN REMAINS

Should human remains be encountered, work will immediately stop in the vicinity of the discovery and the area will be secured. The WYMD will notify the Platte County Sheriff's office, Platte County Coroner's office and the SHPO.

IX. MONITORING AND REPORTING

A. Every two years beginning in calendar year 2015, until this agreement expires or is terminated, WYMD shall provide all Signatories to this Agreement a summary letter report detailing work undertaken pursuant to its terms. Such report shall be submitted by the end of the first quarter of the year and shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in WYMD's efforts to carry out the terms of this Agreement.

B. Within thirty (30) calendar days of submission of the report required by Stipulation IX.A, the WYMD and SHPO shall meet in order to discuss the any issues raised in the report, and the effectiveness and implementation of the Agreement.

X. DISPUTE RESOLUTION

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

A. Forward all documentation relevant to the dispute, including the WYMD's proposed resolution, to the ACHP. The ACHP shall provide WYMD 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, WYMD 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 all signatories with a copy of this written response. WYMD will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty calendar (30) day time period, WYMD may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, WYMD 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 all signatories and the ACHP with a copy of such written response.

C. WYMD's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

XI. 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 is filed with the ACHP.

XII. TERMINATION

If any signatory to this Agreement 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 XI, 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 Agreement upon written notification to the other signatories.

Once the Agreement is terminated, and prior to work continuing on the undertaking, WYMD must either (a) execute an Agreement 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. WYMD shall notify the signatories as to the course of action it will pursue.

XIII. ENTIRETY OF AGREEMENT

This Agreement consists of eleven (11) pages, Appendix A; Area of Potential Effect Map consisting of one (1) page, Appendix B; list of Federally Recognized Tribes consulted, consisting of one (1) page, Appendix C; Map of Key Observation Points consisting of one (1) page and, Appendix D; Example Source Selection Plan consisting of forty-seven (47) pages and, Appendix E; Historic Preservation Design Guidelines for Camp Guernsey consisting of five (5) pages and the Facilities Excellence Plan for Historic Properties at Camp Guernsey consisting of seventy-nine (79) pages, represents the entire and integrated agreement among the signatories and supersedes all prior negotiations, representations and agreements, whether written or oral.

XIV. INDEMNIFICATION

Each party to this Agreement shall assume the risk of any liability arising from its own conduct. No party to this Agreement agrees to insure, defend or indemnify any other party to this Agreement

XV. PRIOR APPROVAL

This Agreement shall not be binding upon any signatory unless this Agreement has been reduced to writing before performance begins as described under the terms of this Agreement, and unless this Agreement is approved to form by the Attorney General of Wyoming or his representative.

XVI. SEVERABILITY

Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and any signatory may renegotiate the terms affected by the severance.

XVII. SOVEREIGN IMMUNITY

The State of Wyoming, the WYMD, NGB, the SHPO and the ACHP do not waive their sovereign immunity by entering into this Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.

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

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Signature Page

NATIONAL GUARD BUREAU

By: 
MICHAEL C. AHN
Colonel, US Army
Chief, Environmental Programs Division

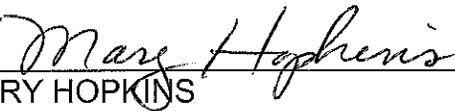
Date: 21 Jun 13

WYOMING MILITARY DEPARTMENT

By: 
K. LUKE REINER
Major General, Wyoming Army National Guard
The Adjutant General

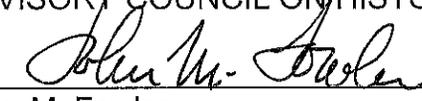
Date: 4 Jun 13

WYOMING STATE HISTORIC PRESERVATION OFFICE

By: 
MARY HOPKINS
State Historic Preservation Officer

Date: 7/1/13

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 
John M. Fowler
Executive Director

Date: 7/11/13

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WYOMING ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

By: S. Jane Caton #101075 Date: 5-22-13
S. Jane Caton, Senior Assistant Attorney General
Representing: Wyoming State Historic Preservation Office

By: [Signature] Date: 5/24/13
Ryan Schelhaas, Senior Assistant Attorney General
Representing: Wyoming Military Department