

MEMORANDUM OF AGREEMENT
BETWEEN THE GENERAL SERVICES ADMINISTRATION
AND THE
TEXAS STATE HISTORIC PRESERVATION OFFICER
REGARDING THE DISPOSAL OF THE EXCELL HELIUM PLANT
MOORE COUNTY, TEXAS

WHEREAS, the General Services Administration (GSA) has determined that the disposal of the Excell Helium Plant (also referred to as the Exell Helium Plant) in Moore County, Texas will have an effect on the plant's historic properties, which are eligible for inclusion in the National Register of Historic Places. The Excell Helium Plant (of the U.S. Bureau of Mines) originated in 1943 and is among five plants constructed during the period. It is historically significant for its association with Federal helium production during World War II and the Cold War; and,

WHEREAS, GSA has consulted with the Texas State Historic Preservation Officer (SHPO) 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 GSA has consulted with Native American tribes (the Comanche Nation, Wichita and Affiliated Tribes, Apache Tribe of Oklahoma, Mescalero Apache Tribe, Jicarilla Apache Nation, and the Kiowa Tribe of Oklahoma) that have expressed interest in the region in which Moore County is located, and has invited designated tribal officials to provide input, including any requests for additional information concerning this undertaking, or provide any information they should wish to share regarding potential traditional or cultural resources at this property;

WHEREAS, pursuant to 36 C.F.R. § 800.6(a)(1), prior to beginning consultation to resolve adverse effects, GSA notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding by providing the documentation specified in 36 C.F.R. 800.11(e), and the ACHP declined to participate; and

WHEREAS, GSA has consulted in accordance with 36 C.F.R. 800.6(b)(1), "Resolution without the Council;" and,

WHEREAS, in accordance with 36 C.F.R. 800.6(b)(1)(iv), GSA will submit this Agreement, along with the documentation specified in 36 C.F.R. 800.11(f), to the ACHP prior to approving the undertaking in order to meet the requirements of section 106 and 36 C.F.R. 800.6(b)(1);

NOW THEREFORE, GSA, and the Texas SHPO, agree that mitigation for this undertaking does not include preservation covenants at the Excell facility due to the existence of such covenants for the Amarillo Helium Plant, which has been transferred out of government ownership; said covenants support the long term preservation of the Amarillo Helium Plant and its presence serves as mitigation for the potential loss of the Excell facility. GSA, and the Texas SHPO, further agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the proposed undertaking on historic properties:

STIPULATIONS

GSA will insure the following measures are carried out:

- I. The Intermountain Office of the National Park Service (NPS) has agreed to submit the Historic American Engineer Record (HAER) documentation, produced by the Santa Fe Office of NPS in 2001-2002, to the Library of Congress (LOC) within 90 days of the acceptance of this agreement. Copies of this documentation will also be provided to the Texas SHPO along with a letter documenting the submittal to the LOC. The SHPO and the HAER office of the NPS will have 30 days to review the documentation. GSA will work with the Intermountain Office of the NPS to resolve comments, if any, following SHPO and HAER review.
- II. Public interpretation of the Excell Helium Plant is provided through existing axonometric drawings and 3-D modeling which are curated in collections at the Texas Tech School of Architecture. In addition, these plans have been incorporated into a web site that is currently available on the Texas Tech School of Architecture's web site, http://www.arch.ttu.edu/exell_plant/.

III. DURATION

This MOA will expire if its terms are not carried out within two (2) years from the date of its execution. Prior to such time, GSA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V below.

IV. DISPUTE RESOLUTION

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

A. Forward all documentation relevant to the dispute, including GSA's proposed resolution, to the ACHP. The ACHP shall provide GSA 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, GSA 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. GSA 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, GSA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, GSA 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. GSA'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 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.

VI. **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) 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, GSA 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. GSA shall notify the signatories as to the course of action it will pursue.

Execution of this Memorandum of Agreement and implementation of its terms evidence that GSA and SHPO have consulted on the GSA's proposal to dispose of the Excell Helium Plant and its effects on the plant's historic properties, and that GSA has taken into account such effects on these historic properties.

SIGNATORIES:

GENERAL SERVICES ADMINISTRATION

By: Melvin Freeman

Date: 4/29/10

Melvin Freeman, Director Real Property Utilization and Disposal

TEXAS STATE HISTORIC PRESERVATION OFFICER

By: Mark Wolfe

Date: 4/19/10

Mark Wolfe, Texas State Historic Preservation Officer