

Disclaimer – this is an example sample only and any MOA drafted for actual use should be reviewed by appropriate counsel as needed prior to execution.

MEMORANDUM OF AGREEMENT  
AMONG THE GRANT SPONSOR,  
THE STATE AGENCY,  
ANYONE ELSE WHO HAS TO PAY FOR SOMETHING OR DO SOMETHING  
THE NATIONAL PARK SERVICE,  
THE STATE HISTORIC PRESERVATION OFFICER, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (if they choose to participate)

REGARDING  
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
FOR THE CONVERSION OF ALL/A PORTION OF PARK NAME  
PROTECTED BY SECTION 6(f)3 OF THE LAND AND WATER CONSERVATION FUND ACT  
WITH REPLACEMENT AT PROPERTY NAME IN CITY, STATE

WHEREAS, the National Park Service (NPS) administers section six of the Land and Water Conservation Fund (LWCF) Act; and

WHEREAS, section 6(f)2 of the LWCF Act requires the Governor of each state to delegate a state agency to accept and administer LWCF section six funds; and

WHEREAS, Governor WHO has delegated this responsibility to STATE AGENCY; and

WHEREAS, in DATE NPS awarded grant NUMBER to the STATE for WHAT at PARK NAME in the city of WHERE; and

WHEREAS, the STATE awarded this money to the GRANT SPONSOR via grant STATE GRANT NUMBER (if applicable); and

WHEREAS, section 6(f)3 of the LWCF Act protects parks that have received funding through the LWCF program from conversion to other than outdoor recreation use without approval from the Secretary of the Interior, which approval shall be given only when the standards of section 6(f)3 (16 U.S.C. section 460/-4) and its regulations (36 C.F.R. Part 59) are met; and

WHEREAS, the BRIEF CONVERSION DESCRIPTION necessitates PARK NAME, protected by section 6(f)3 of the LWCF Act, be converted from outdoor recreation to WHAT use; and

WHEREAS, NPS has determined that approval of a conversion constitutes an undertaking as defined in 36 CFR §800.16(y), and thus is subject to review under Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, the property converted (“Converted Property”) to WHAT use includes WHICH HISTORIC RESOURCES, all determined eligible for the National Register of Historic Places (NRHP) (Appendix A); and

WHEREAS, NPS has determined that the approval of the conversion at the converted property and the subsequent removal of NPS protection is an adverse effect on historic properties; and

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WHEREAS, NPS has determined that in order to meet the original intent of grant **NUMBER** and the requirements of Section 6(f)3 and 36 CFR Part 59, mitigation for the conversion impacts at the **PARK NAME** must include acquisition of a property that **RECREATION UTILITY PARAMETERS** and is of equal or greater fair market value as what is being converted to non-outdoor recreation use at the conversion site; and

WHEREAS, the **GRANT SPONSOR** has proposed the **REPLACEMENT PROPERTY NAME** as the replacement property that meets those requirements; and

WHEREAS, NPS and **STATE AGENCY** agree to proceed with approval of the **REPLACEMENT PROPERTY NAME** as replacement property to satisfy LWCF Act section 6(f)3 conversion requirements; and

WHEREAS, the proposed replacement site is eligible for the NRHP because of **REASON** (Appendix C); and

WHEREAS, the SHPO concurred with this determination on **DATE** (Appendix D); and

WHEREAS, NPS has determined that the development of the replacement site for public outdoor recreation use, which requires removal of the NRHP-eligible **WHAT**, is an adverse effect on historic properties; and

WHEREAS, NPS will be the lead federal agency for this undertaking and resolving the adverse effects through this MOA; and

WHEREAS, NPS has delegated Section 106 compliance to the **STATE AGENCY** and they will therefore oversee the implementation of all commitments contained in this Agreement on behalf of NPS; and

WHEREAS, the Area of Potential Effect (APE) has been determined after consultation with the consulting signatories (Appendix #); and

WHEREAS, NPS, or **STATE AGENCY** on their behalf, has consulted with the SHPO, interested and affected Indian tribes, and other signatories with a demonstrated interest in the effects of the undertaking on historic properties, pursuant to 36 CFR §800.2; and

WHEREAS, NPS has invited the **WHO** as Invited Signatories and they have accepted; and

WHEREAS, the public has been afforded the opportunity to comment on this undertaking **WHEN (can reference NEPA documents)**; and

WHEREAS, NPS has notified the ACHP of the adverse effect on the **ELIGIBLE HISTORIC PROPERTY NAME** pursuant to 36 CFR §800.6(a)(1) and the ACHP has **declined/agreed** to participate in this MOA; and

WHEREAS, NPS, or **STATE AGENCY** on their behalf, has consulted with **NAMES OF OTHER CONSULTING PARTIES THAT ARE INTERESTED BUT DON'T HAVE TO DO ANYTHING SPECIFIC IN EXECUTING THIS MOA** regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a concurring party;

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NOW, THEREFORE, NPS, SHPO, **SPONSOR, STATE AGENCY, and OTHER INVITED SIGNATORIES (not concurring parties)** 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, and that these stipulations will govern the undertaking and all of its parts until this MOA expires or is terminated.

## **I. STIPULATIONS**

## **II. COST**

## **III. DURATION**

- A. Failure of **SPONSOR** to obtain any necessary permits required to develop the replacement parcel as a park will negate the federal undertaking and make this MOA null and void. Should the **SPONSOR** fail to obtain any permit required to develop the replacement site as a park, they will contact signatories within ten days of being notified of that failure and NPS will respond with a recommendation of how to proceed.
- B. Section # of this agreement shall be implemented prior to **INSERT LANGUAGE HERE AS APPROPRIATE, LIKE PERHAPS BEFORE DESTRUCTION OF HISTORIC RESOURCE, ETC.**
- C. Terms of this MOA must be executed within five years of NPS' approval of the conversion action unless the agreement is amended according to the terms of section VII below.

## **IV. POST-REVIEW DISCOVERIES**

If potential historic properties are discovered or unanticipated effects on historic properties found, the NPS shall require the **STATE AGENCY** and the **GRANT SPONSOR** to implement the unanticipated discovery plan (Appendix D) of this MOA. In the event that newly discovered historic properties are found, and/or unanticipated effects to historic properties are found, NPS will follow the provisions of 36 CFR 800.13.

## **V. MONITORING AND REPORTING**

At the close of each calendar year following the execution of this MOA until it expires or is terminated, **STATE AGENCY** shall provide all signatories to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes or objections to carrying out the terms of this MOA.

## **VI. DISPUTE RESOLUTION**

Should any signatory to this MOA object in writing to **STATE AGENCY** to the manner in which the terms of this MOA are implemented, **STATE AGENCY** shall initiate consultation within 10 working days with said party to resolve the objection. If **STATE AGENCY** determines that such objection cannot be resolved, they will contact NPS who will:

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- A. Forward all documentation relevant to the dispute, including the **STATE AGENCY**'s proposed resolution, to the ACHP. The ACHP shall provide NPS 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, NPS 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 the written response. NPS 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, NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NPS 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. NPS' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

## **VII. 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.

## **VIII. 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 signatories in writing to attempt to develop an amendment per Stipulation VII, above. If within ninety (90) days 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, NPS must either (a) execute a new 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. NPS shall notify the signatories as to the course of action it will pursue.

## **IX. EXECUTION**

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

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SIGNATORY:

**NATIONAL PARK SERVICE**

BY: \_\_\_\_\_ DATE:

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SIGNATORY:

**STATE HISTORIC PRESERVATION OFFICER**

BY: \_\_\_\_\_ DATE:

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INVITED SIGNATORY:

**GRANT SPONSOR**

BY: \_\_\_\_\_ DATE:

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INVITED SIGNATORY:

**STATE AGENCY**

BY: \_\_\_\_\_ DATE:

**SLO / ASLO**



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INVITED SIGNATORY:

**WHO ELSE?**

BY: \_\_\_\_\_ DATE:

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CONCURRING SIGNATORIES:

**WHO**

BY: \_\_\_\_\_ DATE:

WHO

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APPENDIX A  
MAP OF CONVERTED PROPERTIES AT THE **PARK NAME**

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APPENDIX B

AREA OF POTENTIAL EFFECT (if difference from conversion or replacement)

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APPENDIX C  
MAP OF REPLACEMENT SITE  
ADDRESS

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APPENDIX D  
POST REVIEW UNANTICIPATED DISCOVERY PLAN

1. In the event that unanticipated archaeological or historic materials are discovered during project activities at the Bryant Site, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following:
  - a. Concerned Tribes' cultural resources staff and cultural committees,
  - b. **STATE AGENCY**
  - c. SHPO, and
  - d. NPS.
2. If human remains are discovered during the project activities at the Bryant Site, work in the location of the discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the following in the most expeditious manner possible according to RCW 68.50:
  - a. Concerned Tribes' cultural resources staff and cultural committees,
  - b. **STATE AGENCY**,
  - c. SHPO,
  - d. NPS, and
  - e. The coroner and local law enforcement.