MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL GUARD BUREAU,
THE WYOMING MILITARY DEPARTMENT
AND
WYOMING STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
SECURITY IMPROVEMENTS AT THE
EVANSTON, LANDER, AND WORLAND ARMORIES
2018

WHEREAS, the National Guard Bureau (NGB), as a federal agency, is required to comply with the National Historic Preservation Act (54 U.S.C. §100101 et seq., NHPA) and its implementing regulations (36 CFR Part 800), and the NGB provides federal funding and guidance to state National Guard organizations1; and

WHEREAS, the Wyoming Military Department (WYMD), as the agency responsible for construction for the Wyoming Army National Guard (WYARNG), proposes to implement physical security requirements (Appendix A; Exhibit 2 Tab C to Appendix 1 (Operations Division) Annex C (Operations) to ARNG Annual Base Operations Guidance FY17) to the Evanston, Lander, and Worland Armories located in Wyoming; and because the project occurs on state owned lands and completed using federal funds, the WYMD and NGB have determined that the project constitutes a federal Undertaking as defined by 36 CFR §800.16(y); and

WHEREAS, the WYMD has defined the Area of Potential Effect (APE) as three separate areas, encompassing the buildings and their adjacent landscapes as illustrated in Appendix B (APE, Site Location, and Undertaking Location); and

WHEREAS, the WYMD has determined that the Undertaking shall have an adverse effect on the Evanston, Lander, and Worland armories, all of which are individually eligible for listing on the National Register of Historic Places (NRHP) under Criterion A, and has consulted with the Wyoming State Historic Preservation Office (SHPO) pursuant to 36 CFR Part 800; and

WHEREAS, the WYMD consulted with the SHPO pursuant to 36 CFR §800.6(b), and determined that there are no prudent or feasible alternatives for the Undertaking scope or location in a letter dated; and

WHEREAS, WYMD, in consultation with the SHPO, has defined the adverse effect as construction of security improvements to three NRHP-eligible Armories in Evanston (Uinta County), Lander (Fremont County), and Worland (Washakie County), Wyoming; and

WHEREAS, the WYMD determined the APEs are completely developed and the Undertaking does not have the potential to significantly affect protected tribal resources, tribal rights or Indian lands as outlined in DoD Instruction 4710.02, and does not require consultation with federally-

---
1 The Army National Guard Directorate (D, ARNG) is a component of the NGB.
recognized tribal governments as outlined in a memorandum for record in Appendix C (Memorandum for Record: No Potential to Effect Tribal Resources); and

WHEREAS, the WYMD invited parties interested in historic preservation (Appendix D; Interested Parties List) to participate in consultation via letter dated December 15, 2017, and the Washakie County Historic Preservation Board agreed to participate; and

WHEREAS, the WYMD has afforded the public an opportunity to comment on the MOA through public notices posted in the Uinta County Herald, Lander Journal, and Northern Wyoming Daily News on [DATE] and posted this MOA on http://wyomilitary.wyo.gov for thirty (30) days starting on [DATE], and no public comments were received; and

WHEREAS, the WYMD notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination, provided the specified documentation and invited the ACHP to participate in this consultation per 36 CFR §800.6 (a)(1) in a letter dated July 26, 2017 and the ACHP declined to participate in the consultation by letter dated August 14, 2017 (Appendix E; ACHP Response to Invitation to Consult); and

NOW, THEREFORE, the WYMD, NGB and the 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 the historic properties.

STIPULATIONS

The WYMD shall implement the following mitigation measures:

I. Mitigation of Adverse Effects on three NRHP Eligible Armories

A. The WYMD shall document the Evanston, Lander, and Worland Armories using the following measures:


   i. Drawings: select existing drawings, where available, may be photographed with large-format negatives or photographically reproduced on Mylar in accordance with the U.S. Copyright Act, as amended.

   ii. Photographs: photographs with large-format negatives of exterior and interior views, or historic views where available and produced in accordance with the U.S. Copyright Act, as amended.

   iii. Written data: history and description.
2. Review: The WYMD will submit the draft HABS documentation the SHPO and the NGB for review. Each party will have 30 days to review the documentation and submit comments to the WYMD. If no comments are received, the WYMD shall assume no comment.

3. WYMD shall produce one

4. Repository: The WYMD will submit all final HABS documentation to the National Park Service Archive.

II. Administrative Stipulations

A. Definition of signatories. For the purposes of this MOA the term "signatories" to this MOA means the NGB, WYMD and the SHPO, each of which has authority under 36 CFR §800.6(c)(8) to terminate the MOA if agreement cannot be reached regarding an amendment.

B. Professional supervision.

1. WYMD shall identify a Cultural Resources Manager (CRM) who shall serve as the primary point of contact for this MOA and shall be responsible for all internal review and coordination, reporting, and coordination with the SHPO and other consulting parties under this MOA.

2. 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 CFR Part 61). Qualified Staff shall have professional qualifications, training, and experience relevant to the technical requirements of a given Undertaking.

3. Each year following the execution of this MOA until the requirements are completed, it expires, or is terminated, the WMD shall provide the WY SHPO an email or letter 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 the WMD's efforts to carry out the terms of this MOA.

C. Anti-Deficiency Act compliance. All requirements set forth in this MOA requiring expenditure of Department of 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 MOA shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose.
D. 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, the WYMD and NGB shall consult with such party to resolve the objection. If the WYMD and NGB determines that such objection cannot be resolved, the NGB will:

1. Forward all documentation relevant to the dispute, including the WYMD’s proposed resolution, to the ACHP. The ACHP shall provide the WYMD and the NGB 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, the WYMD, in consultation with the NGB, shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the signatories, and provide them with a copy of this written response. The WYMD and NGB will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the WYMD, in consultation with the NGB, may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the WYMD, in consultation with the NGB, 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.

3. The WYMD responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

F. 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.

G. 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 II. F. 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, the WYMD must either (a) execute an MOA pursuant to 36 CFR §800.6 or (b) request the Secretary of the Army request, take into account, and respond to the comments of the ACHP under 36 CFR §800.7. The WYMD shall notify the signatories as to the course of action it will pursue.

H. Entirety of Agreement. This Agreement consists of eleven (11) pages, Appendix A; Exhibit 2 Tab C to Appendix 1 (Operations Division) Annex C (Operations) to ARNG Annual Base Operations Guidance FY17 consists of five (5) pages, Appendix B; APE, Site Location, and Undertaking Location consists of four (4) pages, Appendix C; Memorandum for Record: No Potential To Effect Tribal Resources consists of two (2) pages, Appendix
D. Interested Parties List consists of two (2) pages, Appendix E; ACHP Response to Invitation to Consult consists of two (2) pages. These represent the entire and integrated Agreement among the signatories and supersede all prior negotiations, representations and agreements, whether written or oral.

I. Duration. This MOA will expire if its terms are not carried out within fifteen (3) years from the date of its execution. Prior to such time, the WYMD may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation II. F. above.

J. 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, the WYMD shall cease work in the vicinity of the discovery and safeguard the site. The WYMD will proceed with notifications and initiate actions to resolve adverse effects as specified in 36 CFR §800.13(b)(3).

K. Inadvertent Discovery and Treatment of Human Remains. There is no specific law pertaining to repatriation or burials discovered on state land in Wyoming. If previously unidentified human remains or other cultural items, as defined in the Native American Graves Protection and Repatriation Act, 25 USC §3001 et seq., (NAGPRA), are discovered, work in the vicinity of the discovery will immediately cease and the remains or other cultural items will be safeguarded in place. WYMD will follow the provisions of NAGPRA consistent with 43 CFR §10.4, Inadvertent Discoveries as those apply to federally-controlled lands. The WYMD will include this requirement in any permit, work order, or contract issued to complete the construction project and implement the Stipulations in this MOA.

L. Sovereign Immunity. The State of Wyoming, the WYMD, NGB, the SHPO and expressly reserve their sovereign immunity by entering into this MOA, 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 MOA.

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

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

Execution of this MOA by the WYMD, NGB, and SHPO 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.
MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL GUARD BUREAU,
THE WYOMING MILITARY DEPARTMENT
AND
WYOMING STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
SECURITY IMPROVEMENTS AT THE
EVANSTON, LANDER, AND WORLAND ARMORIES
2018

Signature Page

NATIONAL GUARD BUREAU

By: ____________________________ Date: ______________________
ERIK T. GORDON
Colonel, GS
I&E, Army National Guard
MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL GUARD BUREAU,
THE WYOMING MILITARY DEPARTMENT
AND
WYOMING STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
SECURITY IMPROVEMENTS AT THE
EVANSTON, LANDER, AND WORLAND ARMORIES
2018

Signature Page

WYOMING MILITARY DEPARTMENT

By: ___________________________ Date: ___________________________

K. LUKE REINER
Major General, Wyoming Army National Guard
The Adjutant General
MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL GUARD BUREAU,
THE WYOMING MILITARY DEPARTMENT
AND
WYOMING STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
SECURITY IMPROVEMENTS AT THE
EVANSTON, LANDER, AND WORLAND ARMORIES
2018

Signature Page

WYOMING STATE HISTORIC PRESERVATION OFFICE

By: ___________________________ Date: ___________________________
MARY HOPKINS
State Historic Preservation Officer
MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL GUARD BUREAU,
THE WYOMING MILITARY DEPARTMENT
AND
WYOMING STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
SECURITY IMPROVEMENTS AT THE
EVANSTON, LANDER, AND WORLAND ARMORIES
2018

Signature Page

WYOMING ATTORNEY GENERAL’S OFFICE: APPROVAL AS TO FORM

By:________________________________ Date:_______________________
Tyler M. Renner, Assistant Attorney General
Representing: Wyoming State Historic Preservation Office

By:________________________________ Date:_______________________
Susan G. O’Brien, Senior Assistant Attorney General
Representing: Wyoming Military Department
MEMORANDUM OF AGREEMENT

AMONG

THE NATIONAL GUARD BUREAU,
THE WYOMING MILITARY DEPARTMENT
AND
WYOMING STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
SECURITY IMROVEMENTS AT THE
EVANSTON, LANDER, AND WORLAND ARMORIES
2018

List of Appendices

Appendix A: Exhibit 2 Tab C to Appendix 1 (Operations Division) Annex C (Operations) to ARNG Annual Base Operations Guidance FY17

Appendix B: APE, Site Location, and Undertaking Location

Appendix C: Memorandum for Record: No Potential to Effect Tribal Resources

Appendix D: Interested Parties List

Appendix E: ACHP Response to Invitation to Consult
APPENDIX A

EXHIBIT 2 TAB C TO APPENDIX 1 (OPERATIONS DIVISION) ANNEX C (OPERATIONS) TO ARNG ANNUAL BASE OPERATIONS GUIDANCE FY17
APPENDIX B
APE, SITE LOCATION, AND UNDERTAKING LOCATION
Evanston Armory Site Location

Area of Potential Effect (APE)

USGS Topographic Map: Evanston, WY

State of Wyoming
Land Armory Site Location

Area of Potential Effect (APE)

USGS Topographic Map: Lander, WY

1:24,000
Worland Armory Site Location

Area of Potential Effect (APE)

USGS Topographic Map: Worland, WY

State of Wyoming
APPENDIX C

MEMORANDUM FOR RECORD: NO POTENTIAL TO EFFECT TRIBAL RESOURCES
MEMORANDUM FOR RECORD

SUBJECT: No Effect to Tribal Resources from Armory Physical Security Improvements

1. The Wyoming Military Department (WYMD) has determined physical security improvements for Anti-terror Force Protection to Stand-alone Facilities (SAF) have no potential to effect tribal resources. The WYMD’s SAFs are limited to armories and focus on the built environment less than sixty years old. Armory properties are fully developed by numerous out buildings, parking lots, military vehicle staging areas, and landscaping contemporaneous with or built after construction of the armory buildings. Secondly, armory properties are in or adjacent to city limits surrounded by modern development. Therefore, the WYMD has determined there is no possibility tribal resources are present on armory properties.

KENNETH F HUMPHREY
Cultural Resources Manager
APPENDIX D

INTERESTED PARTIES LIST
State Agencies:
Wyoming Veterans Commission

City Governments/Certified Local Governments:
Washakie County Historic Preservation Board
Evanston Historic Preservation Commission
Fremont Historic Preservation Board

Historical Preservation Interest Groups:
Wyoming Historical Society
Alliance for Historic Wyoming
APPENDIX E

ACHP RESPONSE TO INVITATION TO CONSULT
August 14, 2017

Mr. Loren J. Thomson  
Construction & Facilities Management Officer  
5410 Bishop Boulevard  
Cheyenne, WY 82009-3320

Ref: Proposed Physical Security Improvement at all Stand-alone Facilities in Worland, Lander, and Evanston by the Wyoming Army National Guard  
Washakie, Fremont and Uinta Counties, Wyoming

Dear Mr. Thomson:

The Advisory Council on Historic Preservation (ACHP) has received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information provided, we have concluded that Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of our regulations, “Protection of Historic Properties” (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and it is determined that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Memorandum of Agreement (MOA), developed in consultation with the Wyoming State Historic Preservation Office (SHPO), and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the MOA, and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with the notification of adverse effect. If you have any questions or require further assistance, please contact Ms. Katharine Kerr at 202-517-0216 or via e-mail at kkerr@achp.gov.

Sincerely,

Artisha Thompson  
Historic Preservation Technician  
Office of Federal Agency Programs