DRAFT
MEMORANDUM OF AGREEMENT
BETWEEN
WRIGHT-PATTERSON AIR FORCE BASE AND
THE OHIO STATE HISTORIC PRESERVATION OFFICER,
REGARDING FY14-15 DEMOLITIONS FOR PHYSICAL PLANT REDUCTION AT
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

WHEREAS, the United States Air Force (Air Force), Wright-Patterson Air Force Base, Ohio (WPAFB), is proposing to demolish multiple facilities in Area A and Area B of the base, as part of an Air Force (AF) initiative to reduce the amount of the physical plant that it spends money on by 20% by the year 2020; and

WHEREAS, WPAFB has determined that implementation of the initiative to reduce the base physical plant through demolition of multiple facilities over a period of years (Undertaking) will affect properties included in, eligible or potentially eligible for the National Register of Historic Places (NRHP), and has informed the Advisory Council on Historic Preservation (ACHP), and consulted with the Ohio State Historic Preservation Office, hereinafter (SHPO), in accordance with (IAW) Title 36 Code of Federal Regulations (CFR) Part 800, regulations implementing section 106 of the National Historic Preservation Act (NHPA), as amended (Title 16 United States Codes [U.S.C.] Part 470f) (5 August 2004), to take the effects of the undertaking on historic properties into account and to afford the Council a reasonable opportunity to comment on the undertaking and its effects on historic properties; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(l), WPAFB has notified the ACHP of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(l)(iii); and

WHEREAS, WPAFB and SHPO agree that the Air Force cannot anticipate funding availability and hence future specific building demolitions in each fiscal year (FY) through 2020, therefore it is not possible to accurately assess adverse impacts of demolition in total or in any given year; and

WHEREAS, the WPAFB and SHPO have agreed, pursuant to 36 CFR 800.14(b), that Air Force compliance with Section 106 for the undertaking in FY14 and FY15 will be evidenced by execution and implementation of this MOA; and

WHEREAS, For FY16 through FY20, WPAFB and SHPO agree that Section 106 consultation for the entire undertaking will continue through development of a Programmatic Agreement (PA) for the following years of the undertaking; and

NOW, THEREFORE, WPAFB and SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the
undertaking on historic properties, and that these stipulations shall govern the undertaking until this MOA expires or is terminated.

**STIPULATIONS**

To the extent of its legal authority, and in coordination with the SHPO, WPAFB shall ensure that the following stipulations are carried out:

1. **MITIGATION**

   1.1 In FY15 WPAFB shall initiate the creation of a Mitigation Plan through support of an objective outside contractor to identify and prioritize potential mitigation for ongoing adverse effects proposed as part of this undertaking and to take into account past, current, and future cumulative effects to the cultural resources of the base. This mitigation would provide a review, analysis, and options for mitigation of future adverse effects.

   1.2 In FY15 WPAFB shall submit a project for funding for a geo-spatial mapping project to collect archived documentation of previously constructed elements of WPAFB, both extant and demolished. The intent is to capture geo-spatial data and add it to the existing geo-spatial database to portray the historical development of the base.

   1.3 WPAFB has determined that in an effort to mitigate some of the adverse effects of proposed future demolitions, it will retain and maintain Facility 30199 which is eligible for the NR, and is one of the facilities listed for demolition in FY2015.

2. **DISCOVERIES AND EMERGENCIES**

   2.1. WPAFB will manage its response to discoveries, unanticipated effects, and emergencies where feasible to avoid or minimize harm to historic properties and in accordance with Integrated Cultural Resources Management Plan (ICRMP) sections D.2, E.6, and E.7.

   2.2. If, in the process of reviewing any discovery, unanticipated effect or emergency, the Cultural Resources Manager (CRM) identifies the potential for an adverse effect to historic properties, the CRM will notify the SHPO by telephone or e-mail to consult and resolve the adverse effect. When appropriate, additional parties will be notified and consulted. The consultation process shall not exceed 10 working days. The CRM will provide SHPO and other involved parties with written recommendations reflecting the outcome of the consultation. If the parties do not object to the WPAFB recommendations within 10 working days of receipt, WPAFB will modify the scope of work as necessary to implement the recommendations.

   2.3. **Discoveries.** Should any historic properties or archaeological material be discovered during implementation of an action under this MOA, the contractor shall stop work in the
immediate area of discovery and immediately contact the CRM. The CRM, will consult with the SHPO to develop an appropriate treatment of the material and location. Work in the area of the discovery shall not resume until appropriate treatment for the affected historic properties has been implemented by the contractor. Discovery of human remains shall be treated in a manner that fully complies with the Native American Graves Protection and Repatriation Act (NAGPRA) procedures as spelled out in 43 CFR Part 10.

2.4. Emergencies. In the event that the WPAFB Installation Commander proposes an Emergency Action as an essential and immediate response to a disaster or emergency declared by the President of the United States, by the Governor of the State of Ohio, or by the installation commander, the CRM shall notify the SHPO within seven days of its intent to take emergency action. Emergency actions are assumed to occur within 30 days of a declaration of an emergency. In the event of an emergency that requires immediate action which does not permit advance notification, the CRM shall notify the SHPO of the action’s effects on historic properties. Immediate search, rescue, and salvage are exempt from requesting SHPO comment; however the CRM shall notify the SHPO of the necessity of any immediate emergency operation and its effect on historic properties.

2.4.1. WPAFB may take actions that affect historic properties without consultation to protect life, safety, and prevent further damage to property, consistent with 36 CFR 800.12. Emergency response work shall be undertaken in a manner to avoid or minimize effects on historic properties to the extent possible.

2.4.2. As early as possible, given the nature of the emergency, WPAFB will provide telephonic or e-mail notification of the emergency to the SHPO. Notification will include the steps being taken to address the emergency, the affected property and its historic significance, and a description of the emergency work (within appropriate security protocols) and potential effects of that work on the discovered property.

2.4.3. Within 30 calendar days following this notification, WPAFB will provide the SHPO and other parties, as appropriate, a written report documenting the actions taken to minimize effects, the present condition of the historic property, and the planned treatment of the property. The SHPO and other parties will have 30 calendar days to provide comments on the report and planned treatment. This action will also be included in the annual report in accordance with the ICRMP and Stipulation 3 of this MOA.

3. ANNUAL REPORT/MONITORING

3.1. Each March 31st following the first full year after execution of this MOA until it expires or is terminated, WPAFB shall provide all parties 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 other pertinent new issues from WPAFB's efforts to carry out the terms of this MOA.
3.2. The SHPO will provide written comments to the WPAFB CRM within 45 days of receipt of the annual report. Failure of SHPO to comment within this timeframe shall signify no objection to the Annual Report.

3.3. WPAFB will consider any timely comments received, and within 45 days following such receipt, will provide the commenting and all other reviewing parties with its response to the comments. Disputes that may arise hereunder shall be addressed pursuant to the Stipulation for Dispute Resolution of this MOA.

4. FISCAL REQUIREMENTS AND SOURCES

4.1. The stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. 1341. If compliance with the Anti-Deficiency Act alters or impairs WPAFB's ability to implement the stipulations of this MOA, WPAFB will consult in accordance with the dispute resolution, amendment, or termination stipulations as specified in stipulations 5 and 6.

4.2. Consistent with the Anti-Deficiency Act, any requirement for the payment or obligation of funds by USAF in connection with this MOA shall be subject to the availability of appropriated funds, and nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, and nothing in this document is intended to bind the Air Force to commit, obligate, appropriate or spend funds in violation of the Anti-Deficiency Act and other applicable laws respecting federal funding. Air Force compliance with this MOA is strictly subject to budget limitations and availability of funds. However, WPAFB agrees to aggressively seek sufficient funding through established procedures to fulfill its obligations under this MOA.

5. DISPUTE RESOLUTION

Should the SHPO object within thirty (30) days to any action implementing this agreement, WPAFB will consult with the SHPO to resolve the objection. If WPAFB determines that the disagreement cannot be resolved, WPAFB will request the ACHP to join the consultation in accordance with 36 CFR Section 800.6(b)(1)(v). If the ACHP objects within thirty (30) days to any action implementing this agreement, WPAFB will consult with the ACHP to resolve the objection. If agreement cannot be reached with ACHP participation, the procedures set forth in 36 CFR Section 800.7 will be used to terminate consultation and document the Air Force's decision. The Air Force will take any ACHP comment into account when making a final decision with respect to the subject of the dispute. The responsibilities of WPAFB and the Developer to carry out all actions under this agreement that are not the subject of the dispute will remain unchanged.

6. EFFECTIVE DATE, DURATION, AMENDMENT, ANNUAL REVIEW, AND TERMINATION
6.1. This MOA shall become effective upon execution by all parties.

6.2. The MOA shall be in effect for a period of 5 years following the execution by all signatory parties. This MOA will be null and void if its terms are not carried out within five (5) years from the date of its execution.

6.3. Any signatory may at any time propose amendment of this MOA, whereupon all signatories shall consult to consider such amendment pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). This MOA may be amended only upon written concurrence of all signatory parties.

6.4. If any party determines that it cannot carry out the terms of this MOA, that party may request an amendment to this MOA. Should the parties to this MOA not agree on an amendment, this MOA shall remain unchanged.

6.5. Any signatory to this agreement may revoke it upon written notification to the other parties by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, WPAFB will comply with 36 CFR Sections 800.3 through 800.6 with regard to individual aspects of the undertaking covered by this agreement.

7. DEFINITIONS

The definitions provided in the National Historic Preservation Act and the regulations at 36 CFR Part 800 apply to terms used throughout this agreement, such as “historic property” and “effect.”
Execution of this MOA and implementation of its terms evidences that WPAFB has afforded the ACHP an opportunity to comment on the undertaking and its effects on Historic Properties, and that WPAFB has taken into account the effects of the undertaking on historic properties. Execution of this MOA and implementation of its terms also evidence that WPAFB has fulfilled its responsibilities under Section 106 of the NHPA and applicable implementing regulations for all aspects of the undertaking.

SIGNATORY PARTIES:

UNITED STATES AIR FORCE

By: _________________________   Date: __________________
John M. Devillier
Colonel, USAF
Commander
Wright-Patterson AFB

OHIO HISTORIC PRESERVATION OFFICE

By: _________________________   Date: __________________
Mark J. Epstein, Department Head
Resource Protection and Review
Ohio Historic Preservation Office