

MEMORANDUM OF AGREEMENT

AMONG  
NATIONAL PARK SERVICE  
TEXAS HISTORICAL COMMISSION  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND THE  
CITY OF WACO

REGARDING THE  
LAND AND WATER CONSERVATION FUND ASSISTED SITE AT  
LAKE BRAZOS RECREATION AREA  
(FORT FISHER PARK)  
CONVERSION PARCEL  
WACO, TEXAS  
MCLENNAN COUNTY

WHEREAS, The National Park Service (NPS) administers the Land and Water Conservation Fund (L&WCF); and

WHEREAS, under the authority of the L&WCF Act (Public Law 88-578, as amended), the NPS may make grants available to States as the grantee, and through States to local jurisdictions as sub-grantees, and whereupon accepting L&WCF assistance, the grantee and sub-grantee forever agree to encumber the parkland under Section 6(f)(3) of the L&WCF Act; and

WHEREAS, the L&WCF conversion situations are processed by the NPS in accordance with 36 Code of Federal Regulations (CFR) Part 59.3 entitled "Conversion Requirements," and the NPS is required to comply with Section 106 of the National Historic Preservation Act (NHPA) prior to approval of a section 6(f)(3) conversion request; and

WHEREAS, the city of Waco, a Texas L&WCF sub-grantee, has initiated a conversion action (undertaking) for an element of grant number 48-00034 concerning Lake Brazos Recreation Area (Fort Fisher Park), McLennan County, Texas; and

WHEREAS, the NPS, in consultation with the Texas Historic Commission (THC), has determined that the proposed conversion of a 16.782-acre parcel within the existing Lake Brazos Recreation Area in the city of Waco, will have an adverse effect upon historic properties, including the Waco First Street Cemetery, which includes portions of the first historic City Cemetery and Masonic Cemetery, both established in 1852, all of which shall collectively be referred to as First Street Cemetery, and

WHEREAS, the undertaking consists of converting the remaining portion of the L&WCF-assisted site for the expansion of the Texas Ranger Hall of Fame and Museum, and replacing it with more or less 54.38 acres of land located near the confluence of the Brazos and

Bosque rivers which offers better outdoor recreation opportunities in the future (shown in attachment B), and

WHEREAS, the NPS has defined the undertaking's area of potential effect (APE) as the more or less 16.782 acres of park land at the Lake Brazos Recreation Area/Fort Fisher Park L&WCF-assisted site, which includes the portions of the First Street Cemetery, plus the proposed 54.38-acre replacement parcel, and

WHEREAS, the process to identify historic properties outlined in 36 CFR Part 800 will be followed before any development occurs, including modifications to the ground, on the 54.83-acre replacement parcel, and

WHEREAS the NPS has determined that the undertaking will have an adverse effect on the Waco First Street Cemetery, which is eligible for listing in the National Register of Historic Places, and has consulted with the THC pursuant to 36 C.F.R. part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the THC is authorized to enter into this Memorandum of Agreement (MOA); in order to fulfill its role of advising and assisting Federal agencies under 36 C.F.R. 800.3(c); and

WHEREAS, the city of Waco has participated in consultation and has been invited to be a signatory to this MOA; and

WHEREAS, the NPS and the Texas Parks and Wildlife Department (TPWD) co-manage the L&WCF, and NPS has invited TPWD to participate as a concurring party in this MOA; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the NPS has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, the NPS, the THC, the ACHP and the city of Waco 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.

## **STIPULATIONS**

### **I. MITIGATION MEASURES**

The NPS shall ensure that each of the following measures are carried out:

- a. The Waco City Council will take formal action to rededicate as a cemetery the area shown on attachment A (approximate area highlighted in green), which excludes areas covered by structures, within six (6) months of the occupancy of the Texas Ranger

Headquarters Offices or the completion of the conversion process, whichever event occurs last.

- b. The city of Waco shall take the following actions relating to the designation of the cemetery as a Historic Texas Cemetery and erection of a commemorative plaque describing the cemetery's history and significance.
  1. The city of Waco will prepare and submit application to the THC for the designation within 90 days of the city taking action to rededicate the cemetery area referenced in a above.
  2. The area to be covered by the designation generally includes areas shaded in blue and green on attachment A and includes property not subject to the section 106 process as it is not part of the L&WCF grant area (area shaded in blue on attachment A).
  3. Subject to historic landmark designation approval by the THC, the city of Waco will erect a commemorative plaque with the Historic Texas cemetery marker.
- c. The city of Waco shall take the following actions relating to the designation of the site as a State Archeological Landmark (SAL).
  1. The city of Waco will prepare and submit the application within 90 days of the city taking action to rededicate the cemetery area referenced in a. above.
  2. The area to be covered by the SAL designation generally includes areas shaded in blue, green, and yellow on attachment A and includes property not subject to the section 106 process as it is not part of the L&WCF grant area (area shaded in blue on attachment A).
  3. Subject to SAL approval by the THC, the city of Waco will erect a commemorative plaque.
- d. The city shall erect a barrier around the remaining cemetery to prevent activities in the area that are inconsistent with a cemetery and eliminate the separation between upper and lower terraces of the dedicated and rededicated cemetery area.
  1. To minimize the possible impact to burials, the city will submit a plan for a natural barrier including some type of markers to the THC within nine (9) months of the city taking action to rededicate the cemetery area.
  2. To eliminate the fence separating upper terrace and lower terrace and minimize the possible disturbance of burials, the city will submit a plan to the THC within nine (9) months of the city taking action to rededicate the cemetery area, that generally provides for cutting off the fence on the cement foundation and bringing in fill

materials to cover the cement foundation and creating a gradual slope between the two areas.

3. The city shall perform this work in conjunction with the road removal provided for in subsection e below.
- e. The city shall remove selected existing access roads over the cemetery, except for access to comply with fire code requirements.
1. The city of Waco will retain the roadways shown on attachment A to provide fire department access to the Texas Rangers Headquarters Offices.
  2. The city will submit a plan to the THC for the removal or partial removal of roadways shown on attachment A within nine (9) months of the City taking action to rededicate the cemetery area. The plan will generally provide for pulverizing certain road surfaces and removal of some of the asphalt surface.
  3. A gate will be installed on the retained roadway at the location to be determined to prevent general public use of the roadway from that point into the cemetery area, but will allow entry by fire vehicles and other authorized persons, such as utility and ground maintenance crews and equipment and Texas Rangers needing to load or unload tactical equipment stored near the fire stand system. The city will submit a plan for this work to the THC within nine (9) months of the city taking action to rededicate the cemetery area.
  4. The city will complete this work within twelve (12) months of the approval of plan.
- f. Collection of archival information on the cemetery and inclusion of this information in the genealogy section of the Waco-McLennan County Public Library and at the Waco city Secretary's Office.
1. The city shall provide the information it has collected to the Waco McLennan County Library and the Waco city Secretary's Office within 90 days of the conclusion of litigation related to the work performed by American Archaeology Group.
  2. The reports on the archaeology work will be provided after approved by the THC. The city will consult with the THC on whether to restrict access to certain information, such as specifics regarding valuables reburied with remains.
- g. Waco shall ensure that activities associated with archeological features carried out pursuant to this MOA are carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Professional Qualifications Standards set forth in the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716).

1. This requirement is not intended to prevent ground maintenance crews, utilities crews, and similar crews from performing their routine activities associated with grounds maintenance, repair and maintenance of utility lines, and repair and maintenance on the buildings. The city will be required to consult with the THC regarding certain work as set out in this agreement.
  
- h. Immediately upon the inadvertent discovery of human remains, Waco shall ensure that all ground disturbing activities being carried out by the responsible entity cease in the vicinity of the human remains and any associated grave goods, and that the site is secured from further disturbance or vandalism. The responsible entity shall immediately notify local law enforcement officials if a criminal offense has occurred, and within 48 hours of the discovery, shall initiate consultation with the THC to develop a plan for resolving the adverse effects. The plan shall follow the Council's "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects," as well as the sections of the Texas Health and Safety Code that pertain to abandoned cemeteries and graves.
  1. The provision shall not prohibit repair, maintenance, and replacement of utility lines installed as part of the construction on the Texas Rangers Headquarters and Education Center, provided the alignments and trenches previously cleared with the THC are used.
  2. Prior to the replacement of utilities lines that were not cleared as part of the construction on the Texas Rangers Headquarters and Education Center, the city shall consult with the THC regarding the appropriate testing, monitoring, or mitigation work that will be necessary. The THC will not unreasonably withhold its approval or require unreasonable mitigation work. For routine maintenance and repair of these lines, the city may proceed with such maintenance or repair provided the THC is advised of the scope of work at least one (1) week in advance. The THC shall not unreasonably withhold its approval of the work or require unreasonable mitigation work.
  3. If the immediate repair of a water or wastewater line is needed to preserve and protect the public health and safety, the city may proceed with the repairs and will notify the THC of the situation as soon as possible. The city will then consult with the THC concerning any mitigation work that may be needed. The THC shall not require unreasonable mitigation work.
  4. Prior to the repair of access roads in the area dedicated as a cemetery, the city will consult with the THC regarding appropriate testing and monitoring of the work. The THC shall not unreasonably withhold its approval of the work or require unreasonable mitigation work.
  5. Prior to construction activities associated with any structures, including access roads and parking lots, outside of the area dedicated as a cemetery, the city will consult with the THC regarding the appropriate testing and monitoring that will be needed. The

THC shall not unreasonably withhold its approval of the work or require unreasonable mitigation work.

6. If human remains are discovered through any of the above activities, articulated remains shall be reburied at the site provided for in subsection j within a reasonable time after discovery. Disarticulated remains shall be secured in a respectful and appropriate manner within the museum and periodically reburied at the site provided under subsection i. If human remains are discovered by a member of the public or person involved in non-ground disturbing activities, such remains shall be handled as disarticulated remains and shall be secured in a respectful and appropriate manner in the museum until reburial.
  - i. The disarticulated remains will be reburied and a plaque describing where these remains were originally buried and the reason for the reburial will be provided.
    1. The city will attempt to identify an area of sufficient size on site to rebury the disarticulated remains. If an area on site cannot be located without substantial expenditure for archeological services, the disarticulated remains will be reburied at the same site as the articulated remains.
    2. The city will submit to the THC a plan for the reburial and memorialization of these remains within nine (9) months of the city taking action to rededicate the cemetery area. The THC will not unreasonably withhold or condition its approval of those plans.
    3. Remains will be reburied after the required report is submitted to and approved by the THC, or as otherwise approved by the THC.
  - j. The city of Waco shall rebury complete interments from the archeological exhumation process at a perpetual care cemetery owned by city of Waco, in a defined area with a plaque describing where these individuals were originally buried and the reason for the reburial.
    1. The city will submit to the THC a plan for the reburial and memorialization of these remains within nine (9) months of the city taking action to rededicate the cemetery area. The THC will not unreasonably withhold or condition its approval of those plans.
    2. Remains will be reburied after the required report is submitted to and approved by the THC, or as otherwise approved by the THC.
  - k. A detailed report on all excavation, analysis of human remains, analysis of mortuary hardware, analysis of funerary objects, and reinterment of all remains shall be submitted to the THC.

1. The city anticipates that PBS&J will complete their report on their work under Permit No. 4878 within two (2) years.
  2. If the archaeological contractor on Permit No. 4520 and Permit No. 4630 does not file its report(s) with the THC as required by those permits, the city will consult with the THC to determine how to proceed with regard to human remains and artifacts.
- l. With regard to the proposed 54.38-acre replacement parcel shown on attachment B, although no known archeological or historic resources have been identified on the replacement parcel, the review conducted to date by the NPS to determine eligibility for inclusion in the national park system has not included a systematic archeological survey. Prior to any ground disturbance or developmental of the replacement parcel, the process to identify historic properties outlined in 36 CFR Part 800 will be followed.
  - m. Execution of this MOA by the NPS, the THC, and the ACHP, and implementation of its terms, are evidence that the NPS has afforded the ACHP an opportunity to comment on the undertaking and its effects on historic properties, and that the NPS has taken into account the effects of the undertaking on historic properties.

## **II. DURATION**

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the NPS may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V below.

## **III. MONITORING AND REPORTING**

Following the execution of this MOA, the NPS 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 any disputes and objections received in the NPS's efforts to carry out the terms of this MOA.

## **IV. DISPUTE RESOLUTION**

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

- a. Forward all documentation relevant to the dispute, including the NPS's proposed resolution, to the ACHP. The ACHP shall provide the 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, the 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 this written response. The 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, the NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the 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. The NPS'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, the NPS 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. The NPS shall notify the signatories as to the course of action it will pursue.

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



**SIGNATORIES:**

NATIONAL PARK SERVICE

By \_\_\_\_\_ Date \_\_\_\_\_  
Mr. Ernest Quintana  
Regional Director

TEXAS HISTORICAL COMMISSION

By \_\_\_\_\_ Date \_\_\_\_\_  
Mr. F. Lawrence Oaks  
Executive Director

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By \_\_\_\_\_ Date \_\_\_\_\_  
Mr. Don Klima  
Director

**INVITED SIGNATORIES:**

CITY OF WACO

By \_\_\_\_\_ Date \_\_\_\_\_  
Mr. Larry D. Groth, P.E.  
City Manager

**CONCURRING PARTIES:**

TEXAS PARKS AND WILDLIFE DEPARTMENT

By \_\_\_\_\_ Date \_\_\_\_\_  
Mr. Carter Smith  
Executive Director