

MEMORANDUM OF AGREEMENT
BETWEEN TINKER AIR FORCE BASE, OKLAHOMA and OKLAHOMA STATE
HISTORIC PRESERVATION OFFICE REGARDING HANGAR DOOR AND
CONSTRUCTION AT BUILDING 3001
Pursuant To 36 CFR Section 800.6 (a)

WHEREAS, Tinker Air Force Base proposes to install a new hangar door and construct a new lean-to addition onto Building 3001, Tinker Air Force Base, Oklahoma (the Undertaking); and

WHEREAS, Building 3001, has been determined eligible for listing in the National Register of Historic Places by consensus between Tinker Air Force Base and the Oklahoma State Historic Preservation Office (SHPO); and

WHEREAS, Tinker Air Force Base has consulted with the SHPO pursuant to 36 CFR Part 800, the Advisory Council on Historic Preservation regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f) (“the Act”) and have determined that the Undertaking may have an adverse effect on the above mentioned historic property; and

WHEREAS, Tinker Air Force Base agrees with the SHPO that there is lack of prudent and feasible alternatives to the installation of the hangar door and the construction of the lean-to addition, and the Undertaking cannot be completed without such adverse effects; and

WHEREAS, notwithstanding the adverse effects on the historic property, the Project is vital to the mission of Tinker Air Force Base; and

WHEREAS, in accordance with 36 CFR § 800.6(a), Tinker Air Force Base has notified the Advisory Council on Historic Preservation (the “Council”) of its adverse effect determination and the Council has chosen not to participate in the consultation process pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, in accordance with 36 CFR § 800.6(b)(1)(iv), this Agreement will become final upon submitting a copy of the executed Agreement, along with the documentation specified in 36 CFR § 800.11(f), to the Council prior to the beginning of construction pursuant to the Undertaking in order to meet the requirements of Section 106 and 36 CFR § 800.6(b)(1); and

NOW, THEREFORE, Tinker Air Force Base and the Oklahoma State Historic Preservation Office agree that upon Tinker Air Force Base’s decision to proceed with the Undertaking, Tinker Air Force Base shall ensure that the following stipulations are implemented in order to take into account the effects of the undertaking on Historic properties, and that these stipulations shall govern the project and all of its parts until this MOA expires or is terminated.

Stipulations

Tinker Air Force Base will ensure that the following measures are carried out:

1. Tinker Air Force Base will submit to the SHPO a Historic American Buildings Survey (HABS)/Historic American Engineering Record (HAER) Level 2 Survey documentation of the area where the new hangar door and new lean-to addition of Building 3001 are to be installed within 90 days of the execution of the MOA. The Level 2 HABS/HAER Survey documentation will follow applicable standards for HABS/HAER as currently published by Heritage Documentation Programs, National Park Service.
2. Tinker Air Force Base will submit to the SHPO the final Construction Documentation that conforms to the "Design Package 1 and Statement of Work (SOW)– Historical Design Narrative" as published by the USACE and on file, Tinker Air Force Base, 72 ABWCE. The Construction Documentation will be submitted within five working days of the execution of the MOA. Construction Documentation shall include 100% drawings and a final SOW.
3. Duration: If the undertaking has not been started within (5) years from the date of the execution of the MOA, this MOA may be terminated or reconsidered in accordance with 36 CFR § 800.6(c)(5). Reconsideration may lead to an amendment (see Stipulation 5). Termination is addressed further in Stipulation 6.
4. Dispute Resolution: Should the SHPO object at any time to any proposed actions covered by the MOA, Tinker Air Force Base shall consult with SHPO to attempt to resolve the objection(s). If Tinker Air Force Base cannot resolve the objection(s) within thirty (30) days, then Tinker Air Force Base will forward adequate documentation relevant to the dispute to the Council in accordance with 36 CFR §800.2 (b)(2), and to the SHPO.

Pursuant to 36 CFR §800.7 (c)(2), the Council shall comment and advise Tinker Air Force Base on the resolution of the objection(s) within forty-five (45) days of the receipt of the request.

If the Council or the SHPO do not provide comments regarding the dispute within forty-five (45) days of referral, Tinker Air Force Base may proceed to render a decision regarding the dispute. Tinker Air Force Base will consider comments from the Council and the SHPO in reaching a final decision regarding the dispute.

Tinker Air Force Base will notify, in writing, all parties of its decision. The decision of Tinker Air Force Base will be final.

5. Amendments and Noncompliance: The Parties may amend this MOA IAW 36 CFR § 800.6(c)(7). Any party proposing an amendment shall forward a copy of the proposed amendment to the other parties. Upon concurrence of the parties to the proposed amendment, Tinker Air Force Base will file the executed amended MOA with the Council. The amended MOA becomes effective when all original signatories have executed the amendment and the amended MOA is filed with the Council.

If any party to this MOA determines that its terms cannot be or are not being carried out, that party shall immediately consult with the other parties to develop an amendment to remedy the noncompliance pursuant to 36 CFR §800.6 (c)(7) and §800.6 (c)(8).

If the parties cannot agree to appropriate terms to amend the MOA, any party may terminate the MOA in accordance with Stipulation 6.

6. Termination: If the MOA is not amended within thirty (30) days following the conclusion of the consultation described in Stipulation 7, any signatory may terminate it with written notification to the other parties.

Within thirty (30) days following termination, Tinker Air Force Base shall notify the parties if it will initiate consultation to execute a new memorandum of agreement under 36 CFR §800.6 (c)(1) or request the comments of the Council under 36 CFR §800.7 (a) and proceed accordingly.


7. Compliance with the Anti-Deficiency Act: Any requirement for the expenditure of Department of Air Force funds by Tinker Air Force Base, established by terms of this agreement, shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act (31 USC 1341). In the event that Tinker Air Force Base is unable to carry out terms of this agreement due to the provisions of the Anti-Deficiency Act, Tinker Air Force Base shall advise the parties to this MOA, and shall otherwise comply with all applicable requirements of 36 CFR 800.
8. In the event Tinker Air Force Base is unable to carry out the terms of this MOA, no action shall be taken or irreversible commitment be sanctioned by Tinker Air Force Base that would result in any adverse effects with respect to the National Register-eligible Properties covered by this agreement. Moreover, Tinker Air Force Base agrees not to take or sanction any action that would foreclose the Council's considerations of modifications or alternatives that could avoid or mitigate the adverse effects until the completion of the commenting process.

Execution of this Memorandum of Agreement by Tinker Air Force Base and the Oklahoma State Historic Preservation Office, and implementation of its terms, evidences that Tinker Air Force Base has afforded the Advisory Council on Historic Preservation an opportunity to comment on the installation of the new hangar door and construction of a lean-to addition and its effects on historic properties, and that Tinker Air Force Base has taken into account the effects of the undertaking on historic properties.

TINKER AIR FORCE BASE

By:  Date: 16 Mar 11
ROBERT D. LABRUTTA, Colonel, USAF
Commander

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 3-24-2011
BOB L. BLACKBURN, Ph.D., State Historic Preservation Officer