

**Memorandum of Agreement  
Among  
U.S. Army Garrison Fort Sill, the  
Oklahoma State Historic Preservation Officer and the  
Advisory Council on Historic Preservation  
Regarding Improvements to the Indian Agency Cemetery, 4900 Area  
Fort Sill, Oklahoma**

**WHEREAS**, the U.S. Army Garrison Fort Sill (Fort Sill) plans to make improvements to the Indian Agency Cemetery (Cemetery) for its continued preservation and to facilitate access (Project) and such a Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. Part 800; and

**WHEREAS**, Fort Sill has defined the Area of Potential Effect (APE), including both direct and indirect effects, as the southeast portion of the Henry Post Army Airfield in the 4900 area of Fort Sill as seen in Appendix A. These are the maps which were provided to each of the consulting parties as part of the initiating correspondence for this undertaking and, therefore, reflect the originally proposed work; and

**WHEREAS**, Fort Sill has determined that the undertaking may have an adverse effect on the Cemetery, also known as Comanche Indian Cemetery, Comanche Mission Cemetery, or Comanche Indian Mission Cemetery, a property determined eligible for the National Register of Historic Places (NRHP), and the Henry Post Air Field, a property listed on the NRHP, and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800; and

**WHEREAS**, Fort Sill has consulted with the Comanche Nation, the Delaware Nation, the Fort Sill Apache Tribe of Oklahoma, the Apache Tribe of Oklahoma, the Kiowa Indian Tribe of Oklahoma, the Caddo Nation of Oklahoma, the Wichita and Affiliated Tribe, and the Cheyenne and Arapaho Tribes of Oklahoma, for which the Cemetery has religious and cultural significance, and has invited the Tribes to sign this Memorandum of Agreement (MOA) as concurring parties; and

**WHEREAS**, Fort Sill has consulted with Mr. Wahnne Clark, an interested member of the public, for which the Cemetery has religious and cultural significance, and has invited Mr. Clark to sign this MOA as a concurring party; and

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

**WHEREAS**, the Keeper of the National Register determined that the Cemetery was eligible for the NRHP in April 2011; and

**WHEREAS**, Fort Sill's original finding of adverse effect for the proposed undertaking, which included ten specific actions (see Appendix B), was provided to all consulting parties in correspondence dated June 6, 2011 with public notice of the finding being published in the *Lawton Constitution* on June 15, 2011; and

**WHEREAS**, the identified consulting parties were invited to attend a Section 106 consultation meeting on September 1, 2011, where alternatives to avoid and minimize the adverse effect were discussed by Fort Sill, the SHPO, the ACHP, the Comanche Nation, the Delaware Nation, the Fort Sill Apache Tribe of Oklahoma, and Mr. Clark; and

**WHEREAS**, Fort Sill has expanded its public outreach for the undertaking to include a public notice (Appendix C) which invited public comment upon the revised undertaking and was published in national, state and local newspapers consisting of the *Lawton Constitution* (Lawton, OK) and *San Diego Union-Tribune* (San Diego, CA) on April 6, 2012; the *Anadarko Daily News* (Anadarko, OK), *Daily Oklahoman* (Oklahoma City, OK), *Dallas Morning News* (Dallas, TX), *Denver Post* (Denver, CO), *Los Angeles Times* (Los Angeles, CA), *Star-Telegram* (Fort Worth, TX), *Tulsa World* (Tulsa, OK), and *Washington Times* (Washington, DC) on April 10, 2012; the *Albuquerque Journal* (Albuquerque, NM) and *Montgomery County Sentinel* (Rockville, MD) on April 12, 2012; the *Native American Times* (Nationwide), *Santa Fe New Mexican* (Santa Fe, NM) and *Washington Post* (Washington, DC) on April 13, 2012; and, *Indian Country Today* (Nationwide) on April 18, 2012; and

**WHEREAS**, in response to the public outreach effort, Fort Sill received, considered and evaluated 97 written comments from the public, some of which were incorporated into the planned improvements set out in the following stipulations below, all as described in the "Response to Comments Concerning the Draft Memorandum of Agreement Regarding Improvements to the Indian Agency Cemetery, 4900 Area, Fort Sill, Oklahoma" (Appendix D); and,

**NOW, THEREFORE**, Fort Sill, the SHPO, and the ACHP agree that the undertaking shall be implemented with the following stipulations and agreements in order to take into account the effects of the undertaking on historic properties and that these stipulations and agreements shall govern the undertaking and all of its parts.

## STIPULATIONS

Fort Sill shall ensure that the following measures are carried out:

### I. NAME AND CLASSIFICATION OF CEMETERY

A. Fort Sill shall continue to utilize "Indian Agency Cemetery" as the proper name for the Cemetery.

(1) To ensure a broad understanding of the Cemetery, the property's other names, including Comanche Indian Cemetery, Comanche Mission Cemetery, and Comanche Indian Mission Cemetery, may be referenced on signs and other items pertaining to the Cemetery.

(2) As "Yellow Mission Cemetery" has been identified for Comanche Nation elders as a derogatory term, Fort Sill will not utilize this name on signage and other items pertaining to the Cemetery.

B. Fort Sill initiated a request to the Department of Army's Human Resources Command (HRC) concerning the classification of the Cemetery as a Post or Private cemetery pursuant to Army Regulation (AR) 210-190. As discussed and agreed at the September 1, 2011 meeting, HRC's decision concerning this matter will be final. Fort Sill will provide HRC's decision on the

Cemetery being classified as a Post or Private cemetery in writing to the consulting parties, except the ACHP, within two weeks of receiving that decision.

## II. CEMETERY ACCESS AND SIGNAGE

A. Access to the Cemetery is during daylight hours, 365 days a year, through the Henry Post Army Airfield Operations Staff for safety and security purposes.

(1) Fort Sill is committed to assisting the public in gaining access to the Cemetery as quickly as possible; however, the public must also recognize that Airfield Operations Staff have other responsibilities which must take precedence at times.

B. As an active military airfield, it may be necessary to deny access to the Cemetery during activities which require a high level of security.

(1) Fort Sill reserves the right to deny access to the Cemetery during activities which require a high level of security.

(2) Fort Sill cannot provide advance notice of these occurrences as this would be a breach of security.

C. To facilitate contact with Henry Post Army Airfield Operations Staff, Fort Sill will place and maintain an informational sign on the Henry Post Army Airfield Access Gate that is located closest to the Cemetery that provide instructions and contact numbers for visitors to use in contacting Henry Post Army Airfield Operations Staff.

(1) This sign will conform to Fort Sill's Installation Design Guide (IDG).

(2) Fort Sill will install this sign within three months of execution of this MOA.

D. The current sign at Post Road will be replaced to include instructions and contact numbers for visitors to use in contacting Henry Post Army Airfield Operations Staff.

(1) This sign will conform to Fort Sill's IDG.

(2) The plat of the cemetery developed by the Fort Sill Geographic Information System (GIS) as seen in Appendix E will be incorporated into this sign.

(3) Fort Sill will install the replacement sign within five months of execution of this MOA.

## III. WORK TO BE PERFORMED IN THE CEMETERY

A. Within four years of execution of this MOA, Fort Sill will complete a Ground Penetrating Radar (GPR) study for the purpose of verifying the Cemetery boundaries and identifying any additional unknown graves.

(1) The GPR study area consists only of the currently established boundaries of the Cemetery and a 75 foot study area outside of the currently established Cemetery boundaries.

(2) The currently established boundaries for the Cemetery are based on the Universal Transverse Mercator (UTM) grid references utilized in the 2011 National Register nomination

submission for the property which are shown in red on the map in Appendix F. Per the National Register nomination, these boundaries were affirmed by the Comanche Nation in June 2007.

(3) Fort Sill will conduct necessary ground truthing activities, at its discretion, to identify found anomalies which may be associated with the airfield or other military activities in the 75 foot study area outside of the currently established Cemetery boundaries, as show in Appendix F and including the extreme southeast corner of the 1916 Joyner Survey, consisting of 0.00963255 acres, which was not encompassed in the Cemetery's currently established boundaries.

(4) No ground truthing activities will be implemented within the currently established Cemetery boundaries.

(5) Ground truthing activities will include the use of standard, professional archeological methods, tools and implements, both hand and mechanical, to excavate to the depth, and only to the depth, necessary to definitively determine the true character and nature of the anomaly.

(6) Fort Sill will provide written notification to all consulting parties, except the ACHP, at least ten (10) days in advance of any planned ground truthing activities.

(7) Each consulting party may have one representative on-site during the ground truthing activities. It is the responsibility of the representative to have proper equipment and training to ensure a safe work environment on the work site.

(8) Fort Sill will provide consulting parties, except for the ACHP, its findings based on the GPR study within five months of completing the physical survey.

B. Following completion of the GPR study, Fort Sill will mark the corners of the Cemetery boundaries with permanent survey-type corner markers.

(1) The installation of the corner markers will be permanent with the markers set in concrete.

(2) To avoid ground disturbing activity within the Cemetery, the corner markers will be set immediately adjacent to, but directly outside, the final Cemetery boundary as established after completion of the GPR study, including any ground truthing activities.

(3) The corner markers will be set at grade level so as to avoid vertical disturbance in the natural, grassy setting of the Cemetery.

#### IV. PRESERVATION PLAN

A. Fort Sill is committed to maintaining the Cemetery in a respectful manner and appearance that is in keeping with the nature and type of the property.

(1) Care for the Cemetery will be consistent with the other cemeteries on Post, allowing for the unique character of the Cemetery.

(2) In order to substantiate the standard of care for the Cemetery, Fort Sill will implement the Standard Operating Procedures (SOPs) for the Cemetery as seen in Appendix G.

(3) The SOPs for the Cemetery will be included in Fort Sill's forthcoming Integrated Cultural Resources Management Plan (ICRMP) and provided to the appropriate Post entities that have oversight authority for the Cemetery, including Henry Post Army Airfield Operations, the Directorate of Public Works (DPW), and the Directorate of Plans, Training, Mobilization and Security (DPTMS).

## V. ANTI-DEFICIENCY ACT

The stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs Fort Sill's ability to implement the stipulations of this agreement, Fort Sill will consult in accordance with the dispute resolution and amendment stipulations as specified in Stipulations VI and VII below.

## VI. DISPUTE RESOLUTION

A. 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, Fort Sill shall consult with such party to resolve the objection. If Fort Sill determines that such objections cannot be resolved, Fort Sill will:

(1) Forward all documentation relevant to the dispute, including Fort Sill's proposed resolution to the ACHP. The ACHP shall provide Fort Sill with its advice on the resolution of the objection within 30 calendar days of reviewing adequate information. Prior to reaching the final decision on the dispute, Fort Sill 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. Fort Sill will then proceed according to its final decision.

(2) If the ACHP does not provide its advice regarding the dispute within the 30 calendar day time period, Fort Sill may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Fort Sill 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) Any recommendation or comment that the ACHP provides pertains only to the subject of the dispute. Fort Sill's responsibility to carry out all other actions subject to the terms of the MOA that are not subject of the dispute remain unchanged.

## VII. AMENDMENT AND TERMINATION

A. 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.

B. 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 in accordance with Stipulation VII(A) above. If within 30 calendar days, an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

(1) Once the MOA is terminated, and prior to work continuing on the undertaking, Fort Sill must either execute a new MOA pursuant to 36 C.F.R. § 800.6(c) or request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7.

(2) Fort Sill shall notify the signatories as to the course of action it will pursue.

#### VIII. POST REVIEW DISCOVERY

A. If potential historic properties are discovered or unanticipated effects on historic properties found after the execution of this MOA, Fort Sill shall avoid, minimize, or mitigate adverse effects in accordance with 36 C.F.R. § 800.13(b).

#### IX. EFFECTIVE DATE, END DATE, APPLICABILITY

A. This Agreement is effective on the last date that all signatories sign. Fort Sill will comply with all terms and stipulations from that date forward.

B. This MOA will be incorporated into the Fort Sill Integrated Cultural Resources Management Plan (ICRMP) as an exhibit and will become an integral part of the ICRMP, including future updates.

C. This MOA will expire if its stipulations are not carried out within five years from the date of its execution. At such time, and prior to work continuing on the undertaking, Fort Sill shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, Fort Sill may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII(A) above. Fort Sill shall notify the signatories as to the course of action it will pursue.

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

SIGNATORIES:

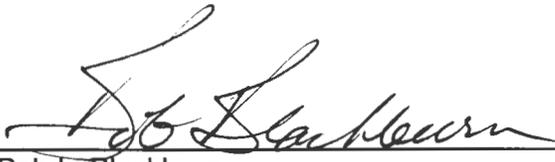
FORT SILL, OKLAHOMA

By: 

Paul S. Hossenlopp  
Colonel, U.S. Army  
Garrison Commander

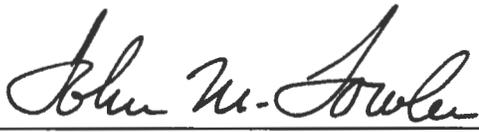
Date: 4 JUN 12

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER

By:   
Bob L. Blackburn  
Oklahoma State Historic Preservation Officer

Date: June 5, 2012

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:   
John M. Fowler  
Executive Director

Date: 6/11/12