

MEMORANDUM OF AGREEMENT (MOA)

**AMONG
THE UNITED STATES ARMY, CORPS OF ENGINEERS, FORT WORTH DISTRICT,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER,
AND THE NEW BRAUNFELS UTILITIES
REGARDING THE SPRING CAP AT THE
COMAL SPRINGS, NEW BRAUNFELS, COMAL COUNTY, TEXAS**

WHEREAS, the New Braunfels Utilities (NBU) plans to modify the spring cap during construction of the Comal Springs Conservation Center at 333 East Klingemann Street in New Braunfels, Comal County, Texas; and

WHEREAS, the United States Army Corps of Engineers (Corps) has jurisdiction over the Comal Springs under Section 404 of the Clean Water Act, and NBU must obtain a permit from the Corps for alterations to the spring cap (undertaking; Corps project SWF-2014-00047); and

WHEREAS, in consultation with the Corps and the Texas State Historic Preservation Officer (SHPO), NBU has defined the undertaking's area of potential effects (APE) to be the spring cap, as shown on the attached Exhibit A; and

WHEREAS, the Corps has determined that the undertaking will have an adverse effect on the historic spring cap, which has been determined a contributing element to the eligible New Braunfels City Works Historic District, and has consulted with SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. 300101), 33 CFR 325 (Appendix C), and Antiquities Code of Texas; and

WHEREAS, in accordance with 36 CFR Part 800, the Corps has identified historic properties potentially affected by the undertaking, assessed the effects of the undertaking on historic properties, and sought ways to avoid, minimize, or mitigate adverse effects on historic properties; and

WHEREAS, the Corps has determined that the undertaking will have an adverse effect upon the historic spring cap, a property that is eligible for inclusion in the National Register of Historic Places as a contributing resource to the New Braunfels City Works Historic District, and has consulted with the SHPO pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. 300101); and

WHEREAS, the Corps has consulted with the SHPO and NBU regarding the effects of the undertaking, and has invited the permit applicant, NBU, to sign the MOA as a Signatory; and

WHEREAS, in accordance with 36 CFR 800.2(c), the Corps has identified consulting parties, sought their views on the effects to the spring cap, and provided them with documentation of the potential effects and the proposed mitigation measures (as well as the public outreach component), including review of this Memorandum of Agreement; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii);

NOW, THEREFORE, the Corps, SHPO, and NBU agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on historic properties.

STIPULATIONS

On behalf of the Corps, NBU shall ensure that the following measures are carried out:

I. INTERPRETIVE MARKERS

NBU and SHPO will coordinate development of two interpretive markers regarding the history of the New Braunfels Water Works. Proposed marker text will be developed and marker location(s) within the Site will be defined prior to the initiation of construction. These will be submitted to SHPO for review and approval. NBU shall have the approved interpretive markers fabricated and installed on site when practical during the natural course of construction and prior to the facility's completion.

II. ARCHEOLOGICAL MONITORING

NBU shall have an archeologist present during excavation in the vicinity of Sites 41CM204 and 41CM369 to monitor earth-disturbing activities. The archaeologist shall observe exposed earth for archaeological artifacts and/or features that may be eligible for listing as historic properties (see Section III). Work may cease while finds are documented thoroughly. A summary report will be delivered to the Corps and SHPO in compliance with NHPA and Antiquities Code of Texas guidance.

III. POST REVIEW DISCOVERIES

If potential impacts to eligible historic properties are discovered or unanticipated effects on historic properties are found, NBU shall have the contractor cease all work in the immediate vicinity (within 50 feet) until such time as representatives of the Corps and the SHPO can be notified. Work may only resume in the immediate vicinity only when the Corps and SHPO concur the resource has been fully assessed and documented and/or impacts mitigated in consultation with reviewing parties (described above). The Corps and SHPO shall have 30 days to review and comment on any assessments of potential impacts.

IV. DISPUTE RESOLUTION

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

- A. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps 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 Corps 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 Corps shall 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 Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision the Corps 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 responsibilities of the Corps to carry out all other actions subject to the terms of this MOA that are not subject of a dispute remain unchanged.

V. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment shall be effective on the date a copy that has been signed by all signatories is filed with the ACHP.

VI. TERMINATION

If any signatory to this MOA determines that its terms 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 Corps must either: (a) execute the 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 Corps shall notify the SHPO as to the course of action it will pursue.

VII. DURATION

This MOA will expire if its terms are not carried out within 5 years from the date of its execution by all parties. At such time, and prior to work continuing on the undertaking, The Corps shall either (a) execute a 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. Prior to such time, NBU may consult with the SHPO to reconsider the terms of the MOA and amend it in accordance with Stipulation V, above.

VIII. ANTI-DEFICIENCY ACT COMPLIANCE

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (ADA), 31 U.S.C. 1341. If compliance with the ADA alters or impairs NBU's ability to implement the stipulations of this MOA, the Corps will consult in accordance with the amendment and termination procedures found at Stipulations V and VI of this Agreement.

Execution and implementation of this MOA by the Signatories evidences that the Corps has taken into account the effects of the undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

UNITED STATES ARMY CORPS OF ENGINEERS

Stephen Brooks Date 4/5/16

Stephen L Brooks, Chief, Regulatory Division, United States Army Corps of Engineers, Fort Worth District

TEXAS STATE HISTORIC PRESERVATION OFFICER

Mark Wolfe Date 3/26/16

Mark Wolfe, State Historic Preservation Officer

NEW BRAUNFELS UTILITIES

Roger R. Biggers Date 1-28-16

Roger Biggers, Executive Director of External Affairs

CONSULTING PARTIES CONCURRING IN MOA:

CITY OF NEW BRAUNFELS

Amy McWhorter Date 2/16/16

Amy McWhorter, Historic Preservation Officer

COMAL COUNTY HISTORICAL COMMISSION

Karen Boyd Date 2/9/16

Karen Boyd, Chair