

# **MEMORANDUM OF AGREEMENT**

## **BETWEEN**

**STATUE OF LIBERTY NATIONAL MONUMENT, NATIONAL PARK SERVICE AND**

**NEW YORK STATE HISTORIC PRESERVATION OFFICER,**

**FOR DEMOLITION OF THREE HOUSING UNITS ON LIBERTY ISLAND**

**WHEREAS**, the National Park Service manages and administers the Statue of Liberty Enlightening the World (the Statue), Fort Wood, on which it is situated, and its setting on Liberty Island, as part of the Statue of Liberty National Monument (Park); and

**WHEREAS**, the Statue was listed in the National Register of Historic Places in 1981 and the Park has been working with the NY State Historic Preservation Office (SHPO) and the Keeper of the National Register to update the National Register nomination, and the eligibility of the housing units (Superintendent's House building 42, Duplex building 43, Triplex building 44) for the National Register is still undecided but they will be treated as eligible for the purposes of this undertaking; and

**WHEREAS**, the housing units were inundated by Hurricane Sandy in October 2012. Windows, doors and trim were broken and debris washed through the units causing substantial damage; and

**WHEREAS**, the NPS has created guidance for sustainable, resilient rebuilding in the wake of Hurricane Sandy that takes into account potential flooding and other climate factors; and

**WHEREAS**, the NPS considered several alternatives to demolition, but determined the modifications required to harden the buildings against future storms were infeasible and did not meet park needs; and

**WHEREAS**, NPS proposes to demolish the three buildings (42, 43, and 44); and

**WHEREAS**, the NPS has determined that the Area of Potential Effect (APE) includes the administrative (non-public) area of Liberty Island; and

**WHEREAS**, the NPS has consulted with the New York State Historic Preservation Officer (NYSHPO), in accordance with 36 C.F.R. part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f), and the NYSHPO agrees that the undertaking is an adverse effect; and

**WHEREAS**, the NPS has informed the ACHP of the adverse effect and invited the ACHP to consult on this Memorandum of Agreement and the ACHP has declined to participate; and

**WHEREAS**, the NPS has contacted the Delaware Nation, the Delaware Tribe of Indians, and the Stockbridge-Munsee Community to inform them of the project and invite them to participate in consultation, and none chose to participate; and

**WHEREAS**, the park has provided the public an opportunity to comment on this undertaking by posting a copy of this agreement prior to signature on the NPS Planning, Environment, and Public Comment (PEPC) website, and announcing the availability on the park's social media outlets; and

**NOW, THEREFORE**, the NPS and NYSHPO agree that the project shall be implemented in accordance with the following stipulations:

## **STIPULATIONS**

### **A. Mitigation of Adverse Effects**

1. Buildings 42, 43, and 44 will be documented by a HABS team – 42 and 43 to Level II, and 44 to Level I. The documentation will be archived at the park, a copy will be sent to the SHPO and a copy will be placed in the NPS electronic technical information system database (etic).
2. Within one year of demolition, the park will develop educational materials for the History & Culture page of the park's website that shows the effects of Hurricane Sandy on Liberty Island, changes to the Liberty Island resources as a result of Hurricane Sandy, and NPS's commitment to a sustainable future for the island. The SHPO will be notified when the information is posted and the public will be notified through social media.

### **B. Inadvertent Resource Discoveries**

If during construction or demolition activities previously unknown archeological resources are discovered, all work in the immediate vicinity of the discovery will be halted and the procedures of 36 CFR Part 800.13[c] followed. In the unlikely event that Native American human remains, funerary objects, sacred objects and objects of cultural patrimony are discovered, all work in the immediate vicinity of the discovery will be halted and the procedures of 43 CFR § 10.3 will be carried out including taking immediate steps to protect the discoveries in situ, notification of the three aforementioned tribes, tribal consultation and the development and execution of a Plan of Action.

### **C. Dispute Resolution**

Disputes regarding the completion of the terms of this Agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, the NPS or SHPO may request the participation of ACHP to assist in resolving the dispute. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The NPS's responsibility to carry out all actions under this Agreement that are not the subjects of dispute will remain unchanged.

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure be raised by a member of the public, the NPS shall take the objection into account and consult as needed with the SHPO.

### **D. Amendment of Agreement**

The Agreement may be modified by amendment at any time by mutual concurrence of all parties. Amendment of the Agreement as necessary shall be accomplished in the same manner as the original agreement. Amendments will be in writing and approved by the original signatories or their designated official.

### **E. Termination of Agreement**

Either party to this Agreement may terminate it by providing thirty (30) calendar days notice to the other party, provided that the parties will consult during the period prior to termination to seek agreements on amendments or other actions that would avoid termination. In the event of termination by the SHPO, the

NPS will request the comments of the ACHP, in accordance with 36 CFR Part 800.7[a].

**F. Anti-Deficiency Act**

All actions taken by the park in accordance with this MOA are subject to the availability of funds, and nothing in this MOA shall be interpreted as constituting a violation of the Anti-Deficiency Act.

**G. Term of Agreement**

This Agreement shall become effective after the date of the last signatory. The Agreement shall be null and void if its terms are not carried out within five (5) years from the date of its approval by the Park and SHPO, unless the signatories agree in writing to an extension for carrying out its terms. Otherwise, this Agreement shall become null and void when the project is complete, all of the above stipulations are fulfilled. The Agreement and any amendments shall be binding upon the parties, their successors, and assigns.

Execution of this Agreement by the NPS and SHPO, and implementation of its terms, evidences that the NPS afforded the ACHP an opportunity to comment on the project and its effects on the Statue of Liberty and Fort Wood, that the NPS has taken into the account the effects of the project on historic properties, and that the NPS has satisfied its Section 106 responsibilities for the project referenced in this Agreement.

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DEMOLITION OF THREE HOUSING UNITS AT LIBERTY ISLAND**

**AUTHORIZING SIGNATURES**

**National Park Service**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John Piltzecker  
Superintendent, Statue of Liberty National Monument

**New York State Historic Preservation Office**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ruth Pierpont  
Deputy Commissioner/Deputy SHPO