

MEMORANDUM OF AGREEMENT  
AMONG  
DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
INDIAN HEALTH SERVICE,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
PROPOSED DISPOSITION OF THE OLD FORT DEFIANCE IHS HOSPITAL, ARIZONA

WHEREAS, the Department of Health and Human Services (HHS) and the Indian Health Service (IHS) constructed a new Fort Defiance IHS Hospital and plans to carry out the disposition of the old Fort Defiance IHS hospital buildings; and

WHEREAS, the undertaking consists of demolition of the old Fort Defiance IHS Hospital and associated buildings located on The Navajo Nation, Fort Defiance, Arizona;

WHEREAS, the IHS has consulted with the Navajo Nation, for which the buildings are located, pursuant to Public Law 94-437, Indian Health Care Improvement Act, and Public Law 93-638, Indian Self-Determination and Education Assistance Act; and

WHEREAS, HHS/IHS has determined that the undertaking may have an adverse effect on the old Fort Defiance IHS hospital building (FD-01) and three supporting buildings: residential garage (#33), residence (#34) and nurses' quarters (#35), of which buildings FD-01, 34 and 35 are considered eligible for inclusion on the National Register of Historic Places as historic properties representing the Federal Government's effort in delivery of health services to the Navajo people; and

WHEREAS, HHS/IHS has defined the undertaking's area of potential effects as permanent disposal of properties that are eligible for inclusion in the National Register of Historic Places; and

WHEREAS, the IHS Navajo Area Office has consulted with the Navajo Nation Historical Preservation Department (NNHPD) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) regarding the effects of the undertaking on historic properties and signed an Agreement (Attachment 1) to mitigate the effects of the undertaking; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), HHS/IHS 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, HHS/IHS and the ACHP agree that the undertaking shall be implemented in accordance with the IHS Navajo Area Office-Navajo Nation Historical Preservation Department Agreement of October 27, 2008, that contains the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### STIPULATIONS

HHS/IHS shall ensure that the following measures are carried out:

I. HABS DOCUMENTATION. Prior to the demolition of Buildings FD-01, 33, 34 and 35, the IHS shall ensure that the buildings are documented according to the Historic American Buildings Survey (HABS), Level II.

II. SALVAGE OF HISTORIC FABRIC. During the demolition operations, the IHS will salvage approximately 10% of the original perimeter/curtain wall rock material to be made available for re-use of similar buildings within the Navajo Nation. The IHS will store the rock material for two years within the Fort Defiance IHS area.

### III. 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, HHS/IHS may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below.

### IV. MONITORING AND REPORTING

The IHS completed the HABS and transmitted copies to the National Parks Service and the Navajo Nation Historical Preservation Department with both parties acknowledging receipt and acceptance in June and July 2011 respectively (Attachments 2 and 3). In July 2015, the NNHPD concurred that IHS satisfied the stipulations to proceed with demolition (Attachment 4).

### V. 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, HHS/IHS shall consult with such party to resolve the objection. If HHS/IHS determines that such objection cannot be resolved, the HHS/IHS will:

A. Forward all documentation relevant to the dispute, including the HHS/IHS's proposed resolution, to the ACHP. The ACHP shall provide HHS/IHS 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, HHS/IHS 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 HHS/IHS 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, HHS/IHS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, HHS/IHS 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 HHS/IHS'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.

### VI. 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.

### VII. 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 signatories to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment

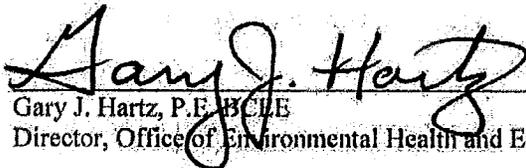
cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, HHS/IHS 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 HHS/IHS shall notify the signatories as to the course of action it will pursue.

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

SIGNATORIES:

Indian Health Service

  
\_\_\_\_\_  
Gary J. Hartz, P.E., BCLE  
Director, Office of Environmental Health and Engineering

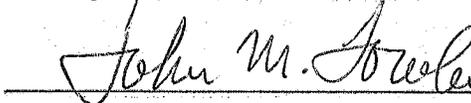
Date: 28 SEPT 2015

Department of Health and Human Services

  
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Genevieve Hanson  
Director, Real Estate and Logistics Portfolio  
Program Support Center, U.S. Department of Health and Human Services

Date: 28 Sept 2015

Advisory Council on Historic Preservation

  
\_\_\_\_\_

Date: 4/2/16

Attachments:

1. NNHPD concurrence of the NAIHS Buildings FD-01, 33, 34, 35, Old Fort Defiance Hospital Concurrence and Acknowledgement of Determination of Effect Proposed Environmental Remediation and Building Demolition Activities of October 27, 2008
2. National Park Service, Intermountain Region, acceptance of the old Fort Defiance Hospital Final HABS Level II Report of June 28, 2011
3. NNHPD acceptance of the NAIHS Buildings FD-01, 33, 34, 35, Old Fort Defiance Hospital Final HABS Level II Report of July 11, 2011
4. NNHPD concurrence of the Old Fort Defiance IHS Hospital and related building Environmental Remediation and Building Demolition of July 8, 2015



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Navajo Area Indian Health Service  
P.O. Box 9020  
Window Rock, Arizona 86515

October 27, 2008

Mr. Ron Maldonado, Compliance Officer  
Cultural Resource Section  
Historic Preservation Department  
The Navajo Nation  
P.O. Box 4950  
Window Rock, Arizona 86515

RE: NAIHS Buildings FD-01, 33, 34 and 35, Old Fort Defiance Hospital  
Concurrence and Acknowledgement of Determination of Effect  
Proposed Environmental Remediation and Building Demolition Activities

Dear Mr. Maldonado:

Pursuant to our recent discussion regarding the above referenced subject matter, I hereby submit for your signature, this formal request for Concurrence of Determination of Effect for the proposed Environmental Remediation and Building Demolition of four IHS buildings situated in the Old Fort Defiance Hospital compound. As you know, these four buildings identified above are considered eligible as historic properties and are currently deemed excess to the government by virtue of the recent construction of the new Fort Defiance Comprehensive Health Care Facility in 2004. In accordance to established consultation requirements of the Historic Preservation Act, the NAIHS submitted a Request for Determination of Effect due to the proposed remediation and demolition operations for the four buildings on July 09, 2008 (see attached letter), and have yet to receive a formal response.

Therefore, based upon our recent meeting, on behalf of the NAIHS, I hereby request that you provide Concurrence on this letter in order for the NAIHS to proceed with this undertaking. As discussed, due to the adverse impact to these four buildings due to building demolition, we will provide the following documents for your records and use,

1. HABS/HABR report, Level Two
2. Salvage of 10% of the original perimeter wall rock material to made available for re-use of similar buildings in the area.
3. Storage of the rock material for two years within the Fort Defiance IHS area.

Please sign at the space below and forward back to our office for our records. If you have any questions please contact me directly at (928) 871-5808. Thank you for your valued assistance on this matter.

Sincerely,

Glenn Tsingine, Staff Civil Engineer/Project Manager  
Division of Facility Management & Engineering/OEME

Concurrence: Date: 10-27-08  
Ron Maldonado, NNEIPD



United States Department of the Interior

NATIONAL PARK SERVICE  
INTERMOUNTAIN REGION  
12795 West Alameda Parkway  
P.O. Box 25287  
Denver, Colorado 80225-0287



IN REPLY REFER TO:  
H38 (IMDE-OCR) HABS

**JUN 28 2011**

Robert Graham, AIA  
Motley Design Group, LLC  
1114 NW Grand Ave.  
Phoenix, AZ 85007

Dear Mr. Graham:

We are pleased to inform you that we have reviewed and accepted the Historic American Buildings Survey (HABS) documentation for the **Fort Defiance Indian Hospital** on the Navajo Indian Reservation in Fort Defiance, Apache County, Arizona. The material documents the hospital complex and main hospital building (FD-1) HABS AZ-227; the Physician's Cottage (FD-34) HABS AZ-227-A; the Physician's Cottage Garage (FD-33) HABS AZ-227-B; and the Nurses' Dormitory (FD-35) HABS AZ-227-C.

We will transmit the documentation to the Library of Congress for permanent storage. Thank you for providing these documents. We appreciate your commitment to the recordation of our nation's endangered historic resources.

Sincerely,

**Christine Whitacre**

Christine Whitacre, Program Manager  
Heritage Partnerships Program

cc:

Ron Maldonado, Tribal Historic Preservation Office, The Navajo Nation, P.O. Box 4950, Window Rock,  
AZ 86515

~~Glenn Stagnie~~ Division of Facility Management & Engineering/OEHE, Navajo Area Indian Health  
Service, P.O. Box 9020, Window Rock, AZ 86515



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Navajo Area Indian Health Service  
P.O. Box 9020  
Window Rock, Arizona 86515

July 11, 2011

Mr. Alan S. Downer, PhD.  
Department Manager III  
Historic Preservation Department  
The Navajo Nation  
P.O. Box 4950  
Window Rock, Arizona 86515

RE: NAIHS Buildings FD-01, 33, 34 and 35, Old Fort Defiance Hospital  
Final HABS Level II Report

Dear Dr. Downer:

Pursuant to our March 11, 2011 meeting, on behalf of the Navajo Area Indian Health Service (NAIHS) and in reference to the above subject matter, I hereby submit to your office the Final HABS Level II Report for your records and files. As discussed in our 03/11/11 meeting here in NAIHS, the Navajo Nation Historic Preservation Department (NNHPD) will accept the report once the National Park Service has reviewed and accepted the report. Please be advised that the NPS has advised the NAIHS of their full acceptance as of June 28, 2011 (see attached copy). This report covers all four buildings and is a prerequisite to the forthcoming building demolition.

Therefore, please provide your acceptance signature at the below space for our records.

Thank you for your input and coordinative efforts on this undertaking and if you have any questions, please contact me directly at (928) 871-5808.

Sincerely,

Glenn Tsingine, Staff Civil Engineer/Project Manager  
Division of Facility Management & Engineering/OEHE/NAIHS

Accepted by:

  
Alan S. Downer, PhD., NNHPD

Date: 8.2.11

Attachments (2): HABS Level II Report  
NPS letter dated June 28, 2011

CC: Brian K. Johnson, REHS, MPH, Acting OEHE Director, OEHE/NAIHS  
Candace A. Tsingine, EIT, Acting Director, DFME/OEHE/NAIHS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Navajo Area Indian Health Service  
P.O. Box 9020  
Window Rock, Arizona 86515

July 8, 2015

Ora Marek-Martinez, PhD.  
Director  
Navajo Nation Historic Preservation Department  
P.O. Box 4950  
Window Rock, Arizona 86515

RE: ***Old Fort Defiance IHS Hospital and related buildings  
Environmental Remediation and Building Demolition***

Dear Dr. Martinez,

As per our discussion on this date, in reference to our June 22, 2015 correspondence concerning the above IHS Facilities in Fort Defiance, Arizona, the HABS report was completed and accepted by the Navajo Nation Historic Preservation Department (NNHPD) on August 02, 2011 by Dr. Alan S. Downer, former Director of NNHPD. This report was commissioned and coordinated through Dr. Downer and the National Park Service which was reviewed and accepted on June 28, 2011. At the request of Ms. Tamara Billie - Senior Archaeologist, NNHPD, another copy was submitted to NNHPD for her records on February 11, 2015.

With regards to the demolition process, our office will salvage a small percentage of the exterior rock material as noted in our October 27, 2008 letter to Mr. Ron Maldonado, former NNHPD Compliance Officer, and store it at a location within the Fort Defiance IHS Compound for a limited time frame which will be available to the community for possible building material usage.

As discussed, we can also work with your office to place this material at an alternate location either in Fort Defiance or Window Rock, Arizona as you desire. This location would need to be identified and appropriate Tribal Clearances will need to be obtained through your office prior to hauling and placing the material at this location.

With the above clarifications, please provide your *Concurrence* at the below space as we will now proceed with the disposition process that will include construction of a perimeter security fence along with mobilization of a licensed general contractor that specializes in Hazardous Materials Abatement, Removal and Disposal followed with full building demolition operations. As noted in my June 22, 2015 letter, all hazardous material will be transported to a State Certified Landfill licensed to receive such materials, and aside for the salvaged rock material, all other general construction debris will be hauled away to a certified license landfill.

Thank you for your time to discuss this matter and we look forward with working with your office in the future on other related IHS projects that impacts your Department.

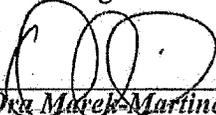
If you have any questions regarding this matter, please do not hesitate to contact me directly.

Sincerely,



Glenn W. Tsingine, Staff Civil Engineer/NEPA Coordinator  
Division of Facilities Management & Engineering, NAIHS/OEHE

Concurred:



Date:

7/8/15

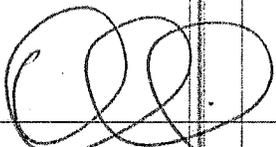
*Dr. Ora Macek-Martinez, PhD.*  
*Navajo Nation Historic Preservation Department*  
*The Navajo Nation*

CC: Brian K. Johnson, OEHE/NAIHS  
Candace Tsingine, DFME/OEHE/NAIHS  
Tamara Billie, NNHPD  
Record Files

MEMORANDUM OF AGREEMENT  
AMONG  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
INDIAN HEALTH SERVICE  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
PROPOSED DISPOSITION OF THE OLD FORT DEFIANCE HOSPITAL, ARIZONA

SIGNATORY PARTY

THE NAVAJO NATION TRIBAL HISTORIC PRESERVATION OFFICER

By:  Date: 3/3/14

Dr. Ora Marek-Martinez, Ph.D.  
Navajo Nation Historic Preservation Department  
The Navajo Nation