

**MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,
ARKANSAS DEPARTMENT OF VETERANS AFFAIRS,
AND ARKANSAS STATE HISTORIC PRESERVATION OFFICE
REGARDING
TRANSFER OF LAND
AND STATE VETERANS HOME CONSTRUCTION GRANT;
EUGENE J. TOWBIN HEALTH CARE CENTER,
CENTRAL ARKANSAS VETERANS HEALTH CARE SYSTEM,
DEPARTMENT OF VETERANS AFFAIRS**

WHEREAS the United States Department of Veterans Affairs (VA) proposes to transfer approximately thirty (30) acres of land now comprising the Emerald Golf Course at the Eugene J. Towbin Health Care Center in North Little Rock, Arkansas to the Arkansas Department of Veterans Affairs (ADVA), and to provide a VA State Veterans Home Construction Grant (CFDA 64.005) to the ADVA to assist in construction of the Little Rock State Veterans Home on the site; and

WHEREAS pursuant to 36 CFR § 800.3(a), VA has determined that these two actions comprise a federal undertaking (the undertaking) requiring review under Section 106 of the National Historic Preservation Act; and

WHEREAS pursuant to 36 CFR § 800.4(a)(1), VA has determined that the area of potential effects (APE) for the undertaking comprises the Emerald Golf Course and adjacent parts of the Towbin Health Care Center campus; and

WHEREAS pursuant to 36 CFR § 800.5, VA has determined that the undertaking will have adverse effects on the North Little Rock Veterans Administration Hospital Historic District, a property listed in the National Register of Historic Places (NRHP); and

WHEREAS pursuant to 36 CFR § 800.6, VA has consulted with the Arkansas State Historic Preservation Officer (SHPO) to resolve the adverse effects; and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1), VA has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect, and the ACHP has elected not to participate in consultation; and

WHEREAS, pursuant 36 CFR § 800.6(a)(2), VA has invited the United Keetoowah Band of Cherokee Indians (United Keetoowah Band), the Quapaw Tribe, the Osage Nation, the Cherokee Nation, the North Little Rock Historic Commission, the Pulaski County Historical Society, the MacArthur Museum of Arkansas Military History, the Central Arkansas Genealogical & Historical Society, Camp Joseph T. Robinson, and the Arkansas Genealogical Society to participate in consultation, and the United Keetoowah Band and Quapaw Tribe have elected to participate and have participated; and

WHEREAS VA has completed an archaeological survey of the parcel scheduled for transfer, and found no evidence of significant historic or prehistoric data or of Native American cultural items; and

NOW, THEREFORE, it is mutually agreed that VA and ADVA will implement the measures set forth in this Memorandum of Agreement (MOA) to resolve the adverse effects of the undertaking:

Stipulations

VA will ensure that the following stipulations are implemented:

1. ADVA will design and construct the state veterans home to be compatible with the historic and architectural qualities of the historic Eugene J. Towbin Health Care Center and responsive to the recommended approaches to new construction set forth in the Secretary of the Interior's Standards and Illustrated Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service, Washington DC 1991; see <http://www.nps.gov/tps/standards/rehabilitation/rehabilitation-guidelines.pdf>).
2. ADVA will submit plans and specifications for construction of the new veterans housing to the SHPO for review and comment at the 30% and 75% levels, affording the SHPO at least thirty (30) days to review and comment on such plans and specifications and taking the SHPO's comments into account, subject to Stipulation 6;
3. If any historic or prehistoric artifacts or features are uncovered during construction, ADVA will notify VA and SHPO via email and cooperate in implementing the requirements of 36 CFR § 800.13.
4. VA will produce architectural documentation for each resource identified in the North Little Rock Veterans Administration Hospital Historic District nomination to the NRHP. This architectural documentation shall meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation set forth in 48 CFR § 44716*. The Arkansas Historic Preservation Program (AHPP) Arkansas Architectural Resource Form and associated photography meet these standards. VA will submit these forms to SHPO for review and comment, affording SHPO at least thirty (30) days to review and comment. VA will consider SHPO comments and submit final completed forms to SHPO within two years of the date of execution of this agreement.

Human Remains

5. Human remains are not expected to be discovered on this undertaking; however, if they are encountered during project implementation, ADVA will cease all ground disturbance in the vicinity of the discovery and immediately notify VA, SHPO, the Quapaw Tribe, and The United Keetoowah Band via email. The treatment of human remains shall follow the guidelines developed for the *Arkansas Burial Law* (Act 753 of 1991, as amended) and the Advisory Council on Historic Preservation's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* published February 23, 2007.

Dispute Resolution

6. Should disputes arise over implementation of this agreement, the parties will resolve them as follows:
 - a. Should any party to this agreement object in writing to VA or ADVA regarding any action carried out or proposed with respect to the undertaking or implementation of this agreement, ADVA will consult with the objecting party to resolve the objection. If after initiating such consultation ADVA determines that the objection cannot be resolved through consultation, VA will forward all documentation relevant to the objection to the ACHP, including VA's proposed response to the

objection. Within 30 days after receipt of all pertinent documentation, the ACHP will exercise one of the following options:

- i. Advise VA that the ACHP concurs in VA's proposed response to the objection, whereupon VA or ADVA will respond to the objection accordingly;
 - ii. Provide VA with recommendations, which VA and ADVA will take into account in reaching a final decision regarding their response to the objection; or
 - iii. Notify VA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. VA will take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of NHPA.
- b. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, VA may assume the ACHP's concurrence in its proposed response to the objection.
 - c. VA will take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; VA's responsibility to carry out all actions under this agreement that are not the subjects of the objection shall remain unchanged.
 - d. At any time during implementation of the measures stipulated in this agreement, should an objection pertaining to this agreement or the effect of the undertaking on historic properties be raised by a member of the public, VA will notify the parties to this agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this agreement to resolve the objection.

Duration

7. If the terms of this agreement have not been implemented by October 31, 2015 this agreement shall be considered null and void. In such event VA shall so notify the parties to this agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

Amending the Memorandum of Agreement

8. Any party to this agreement may propose to VA that the agreement be amended, whereupon VA will consult with the other parties to this agreement to consider such an amendment. 36 CFR 800.6(c)(1) shall govern the execution of any such amendment.

Terminating the Memorandum of Agreement

9. If VA determines that it cannot implement the terms of this agreement, or if another party to this agreement (including a concurring party) believes that the agreement is not being properly implemented, such party may propose to the other parties to this agreement that it be terminated.
 - a. The party proposing to terminate this agreement shall so notify all parties to this agreement, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties shall then consult.


- b. Should such consultation fail, VA or the SHPO may terminate the agreement by so notifying all parties.
- c. Should this agreement be terminated, VA will either:
 - i. Consult in accordance with 36 CFR 800.6 to develop a new MOA; or
 - ii. Request the comments of the ACHP pursuant to 36 CFR 800.7.

Anti-Deficiency Act

10. This agreement is subject to the Anti-Deficiency Act (31 U.S.C. Section 1341). VA's responsibilities under this agreement are contingent upon the availability of appropriated funds from which payment, if any, can be made. Should funds not be available to allow VA to meet its responsibilities, VA will defer its final decision(s) on implementing the undertaking until it has re-initiated consultation and complied with 36 CFR §§ 800.4 through 800.7 as applicable.

Execution and Implementation of this Memorandum of Agreement, and its filing with and acceptance by the ACHP, evidence that VA has afforded ACHP a reasonable opportunity to comment on the undertaking, and has taken into account the effects of the undertaking on historic properties.

U.S. DEPARTMENT OF VETERANS AFFAIRS

By:  Date: 10/17/2014

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS

By:  Date: 11/27/2014

ARKANSAS STATE HISTORIC PRESERVATION OFFICER

By: Frances McSwain, ASHPD Date: 4/24/2014

CONCUR

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS

By:  Date: 1-9-15