

MEMORANDUM OF AGREEMENT

BY AND AMONG  
THE DEPARTMENT OF VETERANS AFFAIRS,  
AND  
THE KANSAS STATE HISTORIC PRESERVATION OFFICE  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING THE  
ENHANCED-USE LEASE AND GRAVESITE DEVELOPMENT  
PROJECT  
AT THE  
DWIGHT D. EISENHOWER VA MEDICAL CENTER,  
LEAVENWORTH KANSAS

**WHEREAS**, the Department of Veterans Affairs (VA) is defined to include the Veterans Health Administration (VHA) and the National Cemetery Administration (NCA), and;

**WHEREAS**, the Department of Veterans Affairs (VA) owns approximately 87 acres of real property, as described and depicted in attached **Exhibit A** (Survey map depicting parcels identified for both the enhanced-use lease project 52 acres the NCA Gravesite development project-35 acres), consisting of approximately 87 acres known as the VA Eastern Kansas Health Care System, Dwight D. Eisenhower VA Medical Center (DDEVAMC), Leavenworth, KS, and;

**WHEREAS**, the DDEVAMC and the Leavenworth National Cemetery were together known as the former Western Branch of the National Home for Disabled Volunteer Soldiers (1865 – 1930) and the entire property is a historic district, formally listed on the National Register of Historic Places, and;

**WHEREAS**, VA was congressionally authorized and funded \$11.9 million for a Facility Rightsizing and Gravesite Development Project in 1999 to remove unutilized excess buildings at the Medical Center and to expand the adjacent Leavenworth National Cemetery on to some of the vacated land. The project scope included the demolition of 38 unused historic buildings and the transfer of approximately 54 acres to NCA control for cemetery expansion. Once completed, the project would have added approximately 15,000 gravesites; a 1,500 niche columbarium; and consolidated the Medical Center's health care facilities to improve services, reduce maintenance costs, and maximize resources; and;

**WHEREAS**, VA determined that the project, which included demolition of historic buildings that contribute to the historic district, would have an effect on the historic district and that the effect might be adverse. Therefore, the DDEVAMC

initiated discussions with the Kansas State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) under Section 106 of the National Historic Preservation Act, and;

**WHEREAS**, in discussions with preservation stakeholders, VA revised the project plans to explore an enhanced-use lease as a viable alternative to demolition of historic buildings, in order to preserve the historic buildings and mitigate adverse impacts.

**WHEREAS**, pursuant to its authority contained in the provisions of 38 U.S.C. Sections 8161, et. seq., VA solicited developers through issuance of a Request for Proposals (“RFP”) entitled “Enhanced-Use Leasing - Redevelopment and Adaptive Reuse Opportunity,” dated June 14, 2002, seeking developer interest in the long-term lease, planning, financing, construction, management and operation of a mixed-use development on the Property, and;

**WHEREAS**, following its issuance of the RFP, VA competitively-selected Eisenhower Ridge Association (ERA) to be the developer of the Property pursuant to an enhanced-use lease (“Lease”) for 75 years, and;

**WHEREAS**, VA and the ERA agree that the Lease shall provide for and set forth the conditions whereby the ERA shall be the master developer of the Property, with the right and obligation to finance, develop, construct, alter, operate, improve, renovate, repair, replace, sublease, and maintain the Property, and;

**WHEREAS**, VA has approved a development plan submitted by ERA as described and depicted in **Exhibit B** (copy of VA approval of ERA development plan dated July 17, 2003) and will sign an enhanced-use lease agreement with the ERA for the rehabilitation and reuse of 38 buildings and adjacent property and ERA has participated in this consultation and been invited by the VA to sign this Memorandum of Agreement (MOA) as a concurring party, and;

**WHEREAS**, the Kansas SHPO and ACHP support the Enhanced-Use Lease of the buildings and property on the Dwight D. Eisenhower VA Medical Center, Leavenworth Kansas as described and depicted in **Exhibit C** (Draft enhanced-use lease agreement) as a means to preserve the historic properties, and;

**WHEREAS**, VA’s revised Facility Rightsizing and Gravesite Development Project includes transfer of approximately 35 acres of DDEVAMC property to the NCA for expansion of burial capacity at the Leavenworth National Cemetery, and;

**WHEREAS**, Kansas Preservation Alliance, the Preservation Alliance of Leavenworth and the National Trust for Historic Preservation participated in this consultation and have been invited by the VA to concur in this MOA, and;

**WHEREAS**, VA has consulted with the Kansas State Historic Preservation Officer (SHPO) and invited the ACHP to participate, in accordance with Section 106 of

the National Historic Preservation Act of 1966, as amended and its implementing regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), and;

**NOW THEREFORE**, VA, ACHP, and the SHPO agree that these undertakings will be implemented in accordance with the following stipulations:

## STIPULATIONS

### A. For the Cemetery Expansion Project for NCA:

1. The NCA shall notify the Kansas SHPO of each phase of the cemetery expansion relating to excavation, grading, new construction or rehabilitation of historic buildings and submit plans relating to the implementation of such projects not more than twelve (12) months in advance of the proposed start date of the project. The VA shall submit any subsequent changes to proposed undertakings to the SHPO for review.
2. The SHPO shall have thirty (30) days from receipt of plans to review and respond. If SHPO does not respond within the 30-day time frame, it shall be deemed that the SHPO has no comments or objections.
3. The NCA shall initiate development of a NAGPRA Plan of Action no later than 90 days following the signing of this MOA.

### B. For the Right-Sizing Project for VHA, now an Enhanced-Use Lease:

1. ERA will develop the Leavenworth enhanced-use lease property in accordance with the executed lease including its approved Development Plan (Exhibit B). Any future significant deviations from the lease, and its Development Plan, (e.g., proposed site work, new construction, rehabilitation or demolition) will be submitted to the SHPO and the VA for prior review and comment. If issues and concerns cannot be successfully resolved by the VA, ERA and the SHPO, the parties will proceed in accordance with the Dispute Resolution Process described in Paragraph C1 below.
2. Provided ERA's future plans are approved by the SHPO and the National Park Service for purposes of the state and federal rehabilitation tax credit programs, no further review under this MOA is required. Should future development plans ultimately be found by the SHPO and/or the National Park Service not to meet the Secretary of the Interior's Standards or if ERA determines not to apply for the rehabilitation tax credit for any part of this undertaking, the VA shall notify the ACHP and initiate consultation pursuant to 36 CFR Part 800.
3. Upon execution of the Lease, ERA and the SHPO will collaborate to achieve mutual goals. Upon such execution, ERA will immediately assume control and responsibility for developing the property as agreed to in the Enhanced-Use Lease. The reviews by VA and the SHPO as referenced in Paragraph B1 above shall include early design consultations, ongoing periodic meetings, and

presentations by ERA. Furthermore, the ERA shall prepare all documentation needed for the SHPO and VA review, including a detailed explanation of the scope of the proposed project with appropriate drawings and photographs of the existing buildings or structures affected by the proposed activities.

4. The SHPO shall have thirty (30) days from receipt of any request for comments of new additions, new construction, demolition, or historical modification to review and respond. If the SHPO does not respond within the 30-day time frame, they shall be deemed to have no comments or objections.
5. ERA shall provide VA with a courtesy copy of any and all written correspondence issued to the SHPO.

C. For all undertakings covered in this MOA, by both VHA and NCA:

**1. DISPUTE RESOLUTION:**

Should any signatory object in writing to the manner in which any measure of this MOA is implemented, the VA shall consult with the objecting party and any other party as appropriate to resolve the objection. If the VA determines that such objection cannot be resolved, the VA shall forward all relevant documentation to the ACHP, including the VA's proposed resolution. Within 30 days after receipt of all relevant documentation, the ACHP will:

- a. Advise the VA that it concurs in the VA's proposed resolution, whereupon the VA will resolve the objection accordingly; or
- b. Provide the VA with recommendations, which the VA will take into account in resolving the objection; or
- c. Notify the VA that it will comment pursuant to 36 CFR, Part 800 (c). The VA will take into account any such ACHP comments and comments from other parties in accordance with 36 CFR Part 800 (c) (4), with reference only to the subject in dispute. The parties' responsibilities to carry out all other actions under this MOA will remain unchanged.

Should the ACHP not provide recommendations or comments within the 30-day timeframe, the VA may implement the measures described in its proposed resolution of the dispute submitted to the ACHP.

**2. MONITORING AND REPORTING:**

For five (5) years following the execution of this agreement the VHA shall provide a summary report regarding enhanced-use lease project and NCA shall provide a summary report regarding Rightsizing and Gravesite Development project, for comment by SHPO and ACHP, detailing work undertaken pursuant to its terms. Such reports shall be submitted on January 31<sup>st</sup> of each year and include any scheduling changes proposed including a description of all projects

scheduled in the upcoming year, problems encountered and any disputes and objections received in the VA's efforts to carry out the terms of this agreement. Failure to provide such summary reports may be considered noncompliance with the terms of this MOA pursuant to Stipulation C5, "AMENDMENTS and NONCOMPLIANCE", below.

### **3. EMERGENCIES:**

In the event that natural disasters, fires, sudden disruptions of utilities service, spill events or other emergency events occur, ERA or the VA may take actions without consultation to stabilize any involved historic properties, prevent further damage, or perform immediate rescue and salvage operations conducted to preserve life or property. Where possible, such emergency measures will be performed in a manner that does not foreclose future preservation or restoration. Emergency response work will be undertaken in a manner to avoid or minimize effects on historic properties. Should historic properties be discovered during emergency repair or response activities, work in the immediate area of the property will cease if ERA or the VA determines that a work stoppage at the site will not impede emergency response activities. If ERA undertakes any of the emergency activities it shall notify the VA as soon as practicable and coordinate with the VA to consult with the SHPO and any other appropriate party. At the earliest feasible time the VA will advise the SHPO and any other appropriate party by telephone of the emergency and the steps being taken to address the emergency; or the discovered property, if any, and its apparent significance. All emergency stabilization activities must be undertaken within the 30-days following the emergency event unless otherwise agreed to by the SHPO.

### **4. DISCOVERIES**

- a. If during the implementation of this undertaking, a previously unidentified historic property is discovered or previously unanticipated effects occur to known historic properties, ERA will immediately stop work in the area of the discovery, protect the property from damage until the discovery has been addressed and notify the VA. The VA and ERA will consult to determine actions that can be taken to resolve a potential adverse effect and within 48-hours will notify the Kansas SHPO and, if appropriate, any Native American tribes that may ascribe religious and cultural significance to the newly discovered property. This notification shall include an assessment of the National Register eligibility and the proposed actions to resolve any potential adverse effect.
- b. VA shall request SHPO and any Native American tribe to respond within 48-hours of the notification.
- c. If ERA determines to demolish any non-contributing building, the VA will consult with the SHPO to determine if this action may affect archeological properties and if a potential to effect historic properties exists the SHPO will work with the VA and ERA to develop a monitoring plan for the demolition.
- d. The VA will take into account any recommendations regarding National Register eligibility and the proposed actions, and then carry out appropriate

measures. If these measures include archeological investigations, they will be carried out by or under the direct supervision of a person or persons meeting, at the minimum, the Secretary of the Interior's Professional Qualification Standards. The VA shall provide the SHPO and any Native American Tribe with a report documenting the actions when they have been completed.

**5. AMENDMENTS AND NONCOMPLIANCE**

If any signatory to this MOA, including any invited signatory, determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date it is signed by all of the original signatories. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation C6.

**6. TERMINATION**


If the MOA is not amended following the consultation set out in Stipulation 5, it may be terminated by any signatory or invited signatory. Within 30 days following termination, the VA shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR 800.6(c) (1) or request the comments of the ACHP under 36 CFR 800.7(a) and proceed accordingly.

Execution of the Memorandum of Agreement by the VA, the Kansas SHPO and the ACHP and implementation of its terms evidences that the VA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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**SIGNATORIES:**

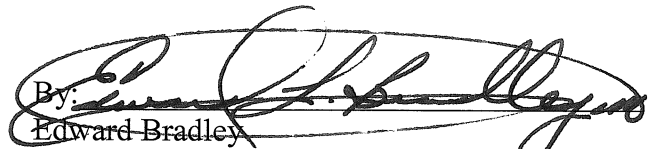
**DEPARTMENT OF VETERANS AFFAIRS:**

By:   
Robert M. Malone, Jr.  
Director, VA Eastern Kansas Health Care System

Date: 6/8/05

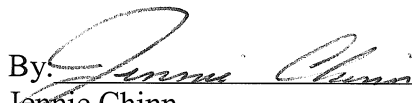
By: Robert B. Holbrook  
Robert Holbrook, Director, Office of Construction Management  
Veterans Affairs, National Cemetery Administration

Date: June 6, 2005

By:   
Edward Bradley  
Designated VA Representative, Office of Asset Enterprise Management


Date: 7/26/05

**KANSAS STATE HISTORIC PRESERVATION OFFICE:**

By:   
Jennie Chinn  
State Historic Preservation Officer

Date: 6/8/05

**ADVISORY COUNCIL ON HISTORIC PRESERVATION:**

By:   
John M. Fowler, Executive Director

Date: 6/17/05

**CONCUR: EISENHOWER RIDGE ASSOCIATION (ERA)**

By: Ross Freeman  
Ross Freeman, President  
Eisenhower Ridge Association

Date: \_\_\_\_\_

**CONCUR: KANSAS PRESERVATION ALLIANCE**

By: Ken Bower  
Ken Bower, President

Date: 7/7/05

**CONCUR: PRESERVATION ALLIANCE OF LEAVENWORTH**

By: John R. Kennedy  
John R. Kennedy, President

Date: \_\_\_\_\_

**CONCUR: NATIONAL TRUST FOR HISTORIC PRESERVATION**

By: \_\_\_\_\_  
Barbara Pahl, Director  
Mountains/Plains Office

Date: \_\_\_\_\_