

**MEMORANDUM OF AGREEMENT
BETWEEN THE U.S. DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION
AND THE
ARIZONA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE PROPOSED CONSTRUCTION OF THE
COMMUNITY BASED OUTPATIENT CLINIC,
PHOENIX, MARICOPA COUNTY, ARIZONA**

WHEREAS, the US. Department of Veterans Affairs (VA), Veterans Health Administration (VHA), proposes to establish through a real property lease an approximately 203,000 NSF, five-story Community Based Outpatient Clinic (CBOC), including required parking (approximately 1,370 parking spaces), and other required site amenities and improvements in the City of Phoenix (City), Maricopa County, Arizona (the Undertaking); and

WHEREAS, VA has statutory authority for the Undertaking, and this Memorandum of Agreement (MOA or Agreement) is being developed pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108 and pursuant to 36 CFR 800 Part 800, the Advisory Council on Historic Preservation's (ACHP) regulations implementing Section 106, and the VA is signatory to this MOA; and

WHEREAS, VA has determined that the area of potential effects (APE), as defined in 36 CFR § 800.4(a), encompasses two privately-owned parcels totaling approximately 14.18 acres located at the northwest corner of North 32nd Street and East Van Buren Street (Attachment 1); and

WHEREAS, a Class III survey of the project area entitled *Class III Cultural Resources Survey of 14.18 Acres on Private Land for a potential Veterans Affairs Center in Phoenix, Maricopa County, Arizona* (May 29, 2018) was conducted in compliance with Chapter 8, Section 802[B2] of the City Historic Preservation Ordinance, and while no cultural resources were identified on the ground surface, the literature review identified two projected prehistoric canals crossing the project area; and

WHEREAS, a historic property treatment plan (HPTP) entitled *Addendum: General Historic Properties Plan for Archaeological Projects within the Boundaries of the City of Phoenix, Arizona-Proposed Veterans Affairs Center* (Klebacha 2018; Attachment 2) has been reviewed and approved by the City Archaeologist and State Historic Preservation Office (SHPO), identification testing has been implemented, and segments of two prehistoric canals and associated remnants of an agricultural field have been identified as a result of the testing; and

WHEREAS, VA has determined, and SHPO has concurred, that the canals and field are eligible for inclusion in the National Register of Historic Places under Criterion D and that the proposed Undertaking constitutes an adverse effect to historic properties pursuant to 36 CFR 800.5(d); and

WHEREAS, SHPO is authorized to enter this MOA in order to fulfill its role of advising and assisting Federal agencies in carrying out Section 106 responsibilities under the following deferral statutes: Section 101 and 106 of the NHPA, at § 800.2(c)(1)(i), and § 800.6(b), and the SHPO is a signatory to this MOA; and

WHEREAS, SHPO is authorized to advise and assist the federal and state agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under A.R.S. § 41-511.04(D)(4); and

WHEREAS, the Undertaking is subject to review by the Phoenix City Archaeologist and, pursuant to 36 CFR 800.3(f)(1), VA has invited the City to be a concurring party to this MOA; and

WHEREAS, Arizona State Museum (ASM) is responsible for coordinating responses to the discoveries of human remains, funerary objects, sacred ceremonial objects and objects of national or tribal patrimony on private land pursuant to A.R.S. § 41-865, and VA has invited ASM to be a concurring party to this MOA; and

WHEREAS, VA identified and invited the following Indian Tribes that may attach religious or cultural importance to affected cultural resources and Traditional Cultural Properties to consult, pursuant to 36 CFR 800.3(f)(2), regarding the effects of the Undertaking on historic properties: the White Mountain Apache Tribe, Gila River Indian Community, Tohono O'odham Nation, Ak-chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Fort McDowell Yavapai Nation, Hopi Tribe of Arizona, Pasqua Yaqui Tribe, Salt River Pima-Maricopa Indian Community of the Salt River reservation, Tonto Apache Tribe, Yavapai-Apache Nation of the Camp Verde Indian Reservation and the Yavapai-Prescott Indian Tribe (collectively, the Tribes), and none requested to be a consulting party; and

WHEREAS, in accordance with 36 CFR Part 800.6(a)(1), VA has notified ACHP of its adverse effect finding with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR part 800.6(a)(1)(iii); and

WHEREAS, VA will coordinate with the City Archaeologist for satisfying the public involvement requirements under Section 106 of the NHPA pursuant to § 800.2(d)(3); and

NOW THEREFORE, VA and the SHPO agree that this MOA shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

I. APPLICABILITY

VA is responsible for ensuring implementation of this MOA for the Undertaking, including those actions to be undertaken for the project by private developers.

II. GENERAL

A. All consulting parties shall send and accept official notices, comments, requests for additional information and/or documentation, and all other communications required by this MOA via email.

B. Time designations shall be in calendar days. Failure to comment within specified time designations shall not prevent VA from proceeding in the process as outlined in this MOA.

C. The definitions provided in 36 CFR §800.16(a) through (y) inclusive shall apply to this MOA.

III. PROFESSIONAL QUALIFICATIONS AND PERMITS

VA shall ensure that all archaeological work carried out pursuant to this MOA shall be conducted by or under the direct supervision of an individual or individuals who meet, at a minimum, the Secretary

of the Interior's Professional Qualifications Standards (48 Federal Register 44738-9, September 1983) in archaeology.

IV. IMPLEMENTATION OF TREATMENT PLAN FOR ARCHAEOLOGICAL DATA RECOVERY

- A. VA, in consultation with SHPO, City, and ASM have developed a strategy, as outlined in the End of Field Report (Behrend 2018; Attachment 3), for extent testing of identified prehistoric canals and associated features. Once the initial extent trenching has been completed, an in-field meeting with input from VA, SHPO, City, and ASM will be held to ascertain the best stripping options for addressing the research questions. The results of this meeting will guide the field and analytical methods to be used and address the data potential of the historic properties. These methods will then be immediately implemented, and a preliminary field report produced within fourteen (14) days of the completion of the field efforts.
- B. The preliminary End-of-Fieldwork report will minimally contain a discussion of the methods and treatments applied to each historic property with an assessment of the degree with which these followed 1) the earlier direction at the end of extent testing, 2) the site maps depicting all features and treatment areas, 3) the general description of recovered artifacts and other data classes [including features excavated or sampled], 4) the discussion of further analysis to be conducted, and 5) an assessment of the accomplishment of goals established at the end of extent testing. The review and comment period for the preliminary field report is fourteen (14) days; if no comments are received by VA, it can authorize the project to proceed. If revisions are requested, the revised preliminary report shall be submitted ten (10) days from receipt.

V. DATA RECOVERY REPORT, REVIEW AND COMMENT

VA shall ensure that a draft Data Recovery Report is submitted to consulting parties for review and comment within six (6) months of the completion of field work. Consulting parties shall have thirty days (30) to review and comment on the draft report. If a party does not comment on a submittal within 30 days of receipt, VA will follow-up by telephone or e-mail with the party. All comments shall be submitted to VA in writing; if revisions are requested, the revised draft of the Data Recovery Report shall be submitted for review and comment for another twenty (20) days from receipt. Copies of the final Data Recovery Report will be provided to all consulting parties.

VI. AUTHORIZATION OF CONSTRUCTION

- A. Following consultation with the consulting parties, and once mitigation specified at the in-field meeting at the end of data recovery has been completed and the Preliminary End-of-Fieldwork Report accepted, VA, at its discretion and pending compliance with all other applicable laws and regulations, may authorize the developer to begin construction on lands under any ownership or jurisdiction, subject to the appropriate jurisdiction's right-of-entry and ROW requirements.
- B. In the event that archaeological monitoring during construction is necessary, or unanticipated archaeological resources are discovered during construction, the City of Phoenix General Monitoring & Discovery Plan (2004, or as updated) shall be implemented.

VII. CONFIDENTIALITY

To the maximum extent allowed by federal and state law, VA will maintain confidentiality of sensitive information regarding historic properties that could be damaged through looting or

disturbance, and/or to help protect a historic property to which a Tribe attaches religious or cultural significance. However, any documents or records VA has in its possession are subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552 et. seq.) and its exemptions, as applicable. VA shall evaluate whether a FOIA request for records or documents would involve a sensitive historic property, or a historic property to which a Tribe attaches religious or cultural significance, and if such documents contain information that VA is authorized to withhold from disclosure by other statutes including the Section 304 of the NHPA, as well as the Archaeological Resources Protection Act. If this is the case, then VA will consult with the Keeper and the ACHP regarding withholding the sensitive information. If a Tribally sensitive property is involved, VA will also consult with the relevant Tribe prior to making a determination in response to a FOIA request.

VIII. PUBLIC PARTICIPATION

VA shall seek and consider the views of the public in a manner that reflects the nature and complexity of the Undertaking and its potential effects on historic properties, as well as the likely interest of the public in the effects on historic properties. VA has used its procedures for public involvement under the National Environmental Policy Act (NEPA) to solicit information and concerns about historic properties from members of the public. VA has ensured that an appropriate level of public involvement was provided, in accordance with § 800.2(d)(2). VA shall ensure public access to findings made pursuant to this MOA, consistent with Section 304 of NHPA and will consider comments or objections by members of the public in a timely manner.

IX. EMERGENCIES

Should an emergency situation occur which represents an imminent threat to public health or safety, or creates a hazardous condition, VA shall immediately notify the SHPO of the condition which has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the SHPO desire to provide technical assistance to VA, it shall submit comments within seven (7) calendar days from notification, if the nature of the emergency or hazardous condition allows for such coordination.

X. CURATION

- A. VA shall ensure that all artifacts, samples, and records resulting from the archaeological investigations conducted for the Undertaking, except as noted below, shall be curated in accordance with standards established at 36 CFR 79 and guidelines generated by the ASM.
- B. All materials subject to repatriation under A.R.S. § 41-865 shall be maintained until any specified analyses, as determined by the HPTP are complete. These materials will then be repatriated pursuant to the Burial Agreement.

XI. DISPUTE RESOLUTION

Should any signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, VA shall consult with such party to resolve the objection, and shall notify the SHPO and consulting parties of the objection. If VA determines that such objection cannot be resolved, VA will forward all documentation relevant to the dispute, including VA's proposed resolution, to the ACHP. The ACHP shall provide VA with its opinion on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, VA shall prepare a written response that takes into account any timely opinion or comments regarding the dispute from the ACHP, signatories and

concurring parties, and provide them with a copy of this written response. VA will then proceed according to its final decision.

If the ACHP does not provide comments regarding the dispute within the 30-day time period, VA may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, VA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.

The responsibilities of VA to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement or the effect of an undertaking on historic properties be raised by a member of the public, VA shall notify the parties to this Agreement and take the objection into account, consulting with the objector and with relevant parties to this Agreement to resolve the objection.

XII. AMENDMENTS

This Agreement may be amended when such an amendment is agreed to in writing by all signatories. Any signatory to this Agreement may propose an amendment in writing to VA.

VA shall consult with the signatories to this Agreement to consider the proposed amendment. If there is agreement among all signatories, the document shall be amended accordingly and the amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP. VA shall provide all consulting parties with a copy of the executed amendment.

XIII. SUSPENSION/TERMINATION

If the proposed Undertaking is terminated during data recovery for any reason, VA shall outline the steps to be taken in order to complete any data recovery or other treatment measures, including analysis, interpretation, report generation, and curation, that are in progress at the time of the proposed Project termination. The SHPO and consulting parties shall have ten (10) days to review and comment on the plan. VA shall consider all comments before authorizing implementation of the plan.

If any signatory to this Agreement 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 XII. If, within thirty (30) days (or another time period agreed to by all signatories), an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

Once the Agreement is terminated, and prior to work continuing on the Undertaking, VA must either (a) execute an Agreement 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. VA shall notify the signatories as to the course of action it will pursue.

XIV. DURATION

This Agreement will expire if its terms are not carried out within five (5) years from the date of its execution. At least six months prior to the end of the Sunset date, if the Undertaking will be continuing beyond the Sunset date, the signatories shall consult to determine if an extension of the

Agreement's duration is warranted. If it is decided that an extension is needed, the signatories shall consult to determine whether this Agreement remains satisfactory or if its terms need to be updated.

If there is consensus that the Agreement be updated or extended, VA will revise the Agreement as needed, pursuant to the Amendment stipulation (Stipulation XII), and consult with all signatories and concurring parties on the proposed changes. The updated Agreement amendment will be signed and executed by all signatories prior to the expiration date. VA will ensure that copies of the executed amendment are provided to all consulting parties.

XV. ANTI-DEFICIENCY ACT

VA's obligations under this Agreement are subject to the availability of funds and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 USC 1341). VA will make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs VA's ability to implement the stipulations of this Agreement, VA will consult with the signatories in accordance with the amendment and termination procedures in Stipulations XII and XIII.

XVI. COUNTERPART SIGNATURES


This MOA may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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

(INDIVIDUAL SIGNATURE PAGES FOLLOW ON SUCCEEDING PAGES)

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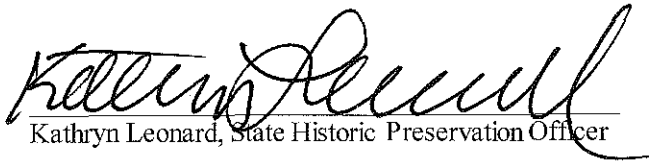
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Date: _____

RimaAnn Nelson, Medical Center Director, Phoenix VA Health Care System

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STATE HISTORIC PRESERVATION OFFICE


Kathryn Leonard, State Historic Preservation Officer

Date: 15 Oct 2018

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CONCURRING PARTY

CITY OF PHOENIX




Laurene G. Montero, City Archaeologist

Date: 10/4/2018

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CONCURRING PARTY

ARIZONA STATE MUSEUM


Patrick D. Lyons, Director

Date: 4 Oct 18