

**MEMORANDUM OF AGREEMENT**

AMONGST THE

US DEPARTMENT OF VETERANS AFFAIRS

AND

NEW MEXICO HISTORIC PRESERVATION OFFICE

AND THE

ADVISORY COUNCIL ON HISTORIC PRESERVATION

AND

NEW MEXICO STATE PROPERTY CONTROL DIVISION

**WHEREAS**, the US Department of Veterans Affairs ( VA) provides grants to States for construction of State Home Facilities through the United States Veterans Affairs Home Construction Grant Program (38 U.S.C. § 8131-8137); and regulated in Title 38 Code of Federal Regulation (CFR) Part 59, with the understanding that each state provide a 35% match for all funding, with the VA providing 65% for eligible expenses; and

**WHEREAS**, the New Mexico Department of Health (DOH) has submitted an application under the VA Home Construction Grant Program to help fund construction of the New Mexico Veterans Hospital/Alzheimer's Skilled Nursing Unit (Phase I facility) as shown in Attachment A (Undertaking); and

**WHEREAS**, the State of New Mexico Legislature has allocated project funds for the planning, design and construction of the Undertaking; and

**WHEREAS**, the New Mexico State Property Control Division (PCD) will oversee construction of the Skilled Nursing Unit; and

**WHEREAS**, this Memorandum of Agreement (MOA) addresses Phase I development and generates planning documents to guide Phase 2 and subsequent development; and

**WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, and its implementing regulations at 36 CFR Part 800 requires Federal Agencies to take into account the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on those undertakings; and

**WHEREAS**, the, New Mexico State Historic Preservation Officer (SHPO) administers programs to preserve and protect the historical and cultural heritage of the State of New Mexico for the benefit of present and future generations under the following state statutes : New Mexico Cultural Properties Act (CPA), codified at NMSA 1978 §§ 18-6-1 et seq., the New Mexico Prehistoric and Historic Sites Protection Act (PHSPA), codified at NMSA 1978 §§ 18-8-1 et seq., and the New Mexico Cultural Properties Protection Act (NMSA §§ 18-6A-1 et seq.); and

**WHEREAS**, the purpose of this MOA is to ensure compliance with Section 106 of the NHPA, pursuant to 36 CFR § 800.6 (c), Section 18-6-8.1 of the CPA pursuant to 4.10.7 New Mexico Administrative Code (NMAC), and Section 18-8-7 of the PHSPA pursuant to 4.10.12 NMAC; and

**WHEREAS**, the VA authorized PCD to initiate consultation with the New Mexico SHPO; and

September 4, 2012

**WHEREAS**, the Undertaking's Area of Potential Effect (APE), as defined by 36 CFR § 800.16 (d), includes the entirety of the Carrie Tingley Hospital Historic District (Historic District), a property listed in the National and State Registers (NR# 03001546, SR# 1835), although the actual construction of the proposed facility will only occupy the northeastern portion of the Historic District as shown in Attachment B; and

**WHEREAS**, the VA, in consultation with SHPO, has determined that the Undertaking will have an adverse effect on the Historic District in accordance with 36 CFR Part 800.5; and

**WHEREAS**, the PCD has designed the Undertaking in a manner that is sympathetic to the architectural style of the existing facility; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(1), the VA has notified the 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

**WHEREAS**, the VA, through the Environmental Assessment process, has invited comment from the City of Truth or Consequences, National Park Service, USDA Natural Resource Conservation Service, Sierra County Flood Coordinator, New Mexico Environment Department, Environmental Protection Agency, Federal Emergency Management Agency, Army Corps of Engineers, Office of the State Engineer, US Fish & Wildlife Service, New Mexico Department of Game & Fish, New Mexico Energy, Minerals & Natural Resources Department, and NM Department of Transportation and the VA has not received comments; and

**WHEREAS**, the VA has consulted with Fort Sill Apache, Comanche Indian Tribe, Kiowa of Oklahoma, Hopi Tribe, Mescalero Apache, Navajo Nation, Pueblo of Isleta, Ysleta del Sur Pueblo, and White Mountain Apache regarding the effects of the Undertaking on historic properties and VA has not received comment; and

**NOW, THEREFORE**, the VA, SHPO, ACHP, and PCD agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### **STIPULATIONS**

The VA shall ensure that the following stipulations are carried out:

**I. Cultural Landscape Report (CLR).** Upon signing of the MOA, PCD will identify and document the history, significance and treatment of the Carrie Tingley Historic District as a cultural landscape following the consultation process outlined in stipulation V.

- a. Documentation and recommendations will be undertaken following the guidance of NPS Preservation Brief 36.
- b. Initial efforts will focus on the Northeastern part of the Historic District as defined in Attachment B and documentation will be complete prior to commencement of construction of Phase I.
- c. A final CLR will be completed within two years of signing the MOA to provide a full inventory of landscape elements throughout the entirety of the Historic District and will include PCD's policies for long term preservation and management of the district; PCD's long-range vision for the district, identification of potential new uses within the historic district; treatment recommendations and design guidelines that address additions, infill construction, landscape and signage. The CLR will include a long-term treatment plan for comprehensive maintenance and preservation.
- d. The final CLR must be completed and approved by the SHPO before any improvements are made within the Historic District.

**II. Historic Structure Report (HSR).** PCD will prepare a historic structure report (HSR) for the historic hospital building following the consultation process in stipulation V.

- a. The HSR will be prepared in accordance with National Park Service (NPS) Preservation Brief 43.
- b. The HSR will include an existing condition survey, historical research, an evaluation of the building's physical condition and its systems, identify project goals and recommend treatment.
- c. The HSR will be prepared and implemented within four years of signing the MOA and must be completed and approved by SHPO prior to any work, including code work, on the historic building.

**III. Archiving and Curation of existing views and landscape.** PCD shall display photos of the historic and current landscape and views in the lobby of the new facility within 6 months of completion of construction.

**IV. Phase II development.** PCD will not initiate consultation on behalf of the VA for phase II until phase I mitigation is complete. PCD will consult with SHPO on the phase II development early in the planning process and will take into account the recommendations of the CLR and HSR in designing subsequent phases.

**V. Consultation Process.**

- a. PCD will consult with the SHPO concerning the scope of work for the CLR and the HSR prior to sending out the Request for Proposals.
- b. PCD will submit drafts of the CLR and HSR at the 75% and 95% stage of completion to SHPO for review and comments. SHPO shall have 30 days to provide comment. If no comment is received within 30 days, PCD can instruct the professional consultant to move forward.

- c. PCD will ensure that the professional consultant makes all changes and revisions requested by SHPO for the 75% and 95% submission.
- d. PCD will submit a final draft of the CLR and the HSR to SHPO for review. The SHPO shall have 30 days to review and provide comments. If the SHPO does not provide comments within 30 days, then PCD will assume that the final is accepted as submitted and no comments will be forthcoming.
- e. The CLR and the HSR will be stand-alone reports but the CLR may reference that the HSR will be completed.

**VI. Professional Qualifications.** The CLR and HSR shall be conducted under the direct supervision of a person or persons meeting the Secretary of Interior's Professional Qualification Standards (48 FR 44716, September 29, 1983) and listed on the SHPO Directory of Qualified Supervisory personnel for the appropriate discipline (4.10.8 NMAC).

#### **VII. Unanticipated Discoveries**

- a. If previously unknown historic properties are exposed by construction, work will stop in the immediate vicinity, the property will be protected, and VA, ACHP and the SHPO notified within 24 hours of the discovery. If, in consultation with VA, ACHP and the SHPO, PCD determines that the property is eligible for inclusion on the National Register of Historic Places and it warrants preservation or treatment, the property will be recorded in conformance with the standards for survey on state land, 4.10.15 New Mexico Administrative Code (NMAC). If the property cannot be avoided by mitigation or construction, PCD, VA, ACHP and the SHPO will consult to develop and implement a plan to mitigate the effects of the undertaking on the property.
- b. If unmarked human burials are discovered during construction, work will stop in the immediate vicinity, the remains will be protected from further disturbance, and the local law enforcement agency and the Office of the Medical Investigator (OMI) will be notified immediately. If the OMI determines that the remains are without medico-legal significance, the OMI will terminate their jurisdiction to the SHPO, and PCD and SHPO will consult to determine the steps to be taken to protect or remove the remains in accordance with Part 4.10.11 NMAC.

#### **VIII. Dispute Resolution**

- a. 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, VA shall consult with such party to resolve the objection. If VA determines that such objection cannot be resolved, VA will:
- b. Forward all documentation relevant to the dispute, including the VA's proposed resolution, to the ACHP. The ACHP shall provide VA 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, VA 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. VA will then proceed according to its final decision.
- c. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, VA may make a final decision on the dispute and proceed accordingly. Prior to reaching such 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 MOA, and provide them and the ACHP with a copy of such written response.
  - d. VA'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.

**IX. Amendment.** Any Signatory to this Agreement may request that the MOA be amended, whereupon the parties shall consult to consider such amendment. Any request to amend this Agreement shall be mailed to each signatory and concurring party at least 60 days in advance of any proposed consultation date.

**X. Termination**

- a. 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 parties to attempt to develop an amendment per Stipulation IX, 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.
- b. Once the MOA is terminated, and prior to work continuing on the undertaking, VA 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. VA shall notify the signatories as to the course of action it will pursue.

**XI. Duration.** This Agreement will continue in full force and effect for five (5) years from the date of execution. At any time in the 6-month period prior to this date, VA may request in writing that the signatories review the Undertaking and consider an extension or modification of this Agreement. No extension or modification will be effective unless all signatories to the Agreement have agreed to it in writing.

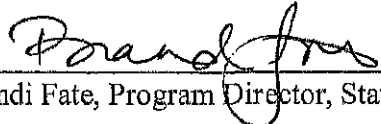
**XII. Satisfaction of Section 106 Responsibilities.**

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

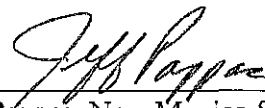
September 4, 2012

**SIGNATORIES:**

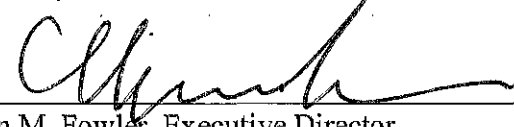
**Department of Veterans Affairs**

By  date: 10/15/12  
Brandi Fate, Program Director, State Veterans Home Construction Program

**Department of Cultural Affairs**

By  date: 9/25/12  
Jeff Pappas, New Mexico State Historic Preservation Officer

**Advisory Council on Historic Preservation**

for By  date: 11/1/12  
John M. Fowler, Executive Director

**INVITED SIGNATORY:**

**New Mexico State Property Control Division**

By  date: 9/25/12  
Charles S. Gara, Director