

2012
#AI# 46-014

MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS
AND THE
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE MICHAEL J. FITZMAURICE SOUTH DAKOTA VETERANS
HOME PROJECT

WHEREAS the **United States Department of Veterans Affairs (VA)** may provide funding for the Michael J. Fitzmaurice South Dakota Veterans Home Project (undertaking) pursuant to 38 CFR parts 4 and 59 (revised) that provides for grants to states for construction or acquisition of state home facilities—update of authorized beds; and

WHEREAS the undertaking consists of the demolition of the Women’s Building (Building #3) located within the Michael J. Fitzmaurice South Dakota Veterans Home in Hot Springs, SD.

WHEREAS the Michael J. Fitzmaurice South Dakota Veterans Home is a state owned property, the South Dakota Veterans Affairs (**SDVA**) shall coordinate demolition activities with the VA.

WHEREAS the VA has determined that the undertaking may have an adverse effect on Building #3, which is eligible for listing in the National Register of Historic Places, and has consulted with the South Dakota State Historic Preservation Officer (SHPO) pursuant to 36CFR part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16USC part 470f); and,

WHEREAS the VA has defined the area of potential effects (APE) as the location at 2500 Minnekahta Avenue, Building #3 within the campus of buildings towards the northwest corner of the property at the Michael J. Fitzmaurice South Dakota Veterans Home in Hot Springs, SD.

WHEREAS the VA has consulted with the: Assiniboine and Sioux Tribes of Fort Peck, Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe of Pine Ridge Reservation, Rosebud Sioux Tribe, Santee Sioux Nation, and Standing Rock Sioux Tribe, for which Building #3 may have religious and cultural significance, and has invited the Tribe to sign this Memorandum of Agreement (MOA) as a an invited signatory; and

WHEREAS, the VA has consulted with the City of Hot Springs regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as an invited signatory; and

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

Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii);

NOW, THEREFORE, the VA, the SDVA, and the SHPO 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 measures are carried out by the South Dakota Department of Veterans Affairs:

- I. Digital photographs of Building #3 that meet the National Register of Historic Places photograph standards, which means photos that are at least 2000 x 3000 pixels at 300 dpi, saved as TIFF, and submitted on CSs. Photograph shall include full views of the building's primary elevations, close-ups of any decorative, character-defining, or structural features, and general views of the building's interior. The photographs shall be submitted to and approved by the SHPO.
- II. A written history of Building #3 to include information on how the standards for healthcare facilities have changed since the building's construction in 1926. Additional information regarding historically significant events and the facility staff doctors and nurses associated with those events such as World War II, the Korean War, the Vietnam War, etc. and how those events relate to the changes in the healthcare facility over time shall be composed and submitted to the SHPO.
- III. The original 1926 floor plans and elevations (on paper and an additional copy scanned on CD ROM) shall be donated to the South Dakota State Archives for public use and reproduction.

IV. DURATION

This MOA will be null and void if its terms are not carried out within five years from the date of its execution. Prior to such time, the VA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below. The stipulations will be completed before the demolition of Building #3.

V. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, the VA shall avoid, minimize or mitigate the adverse effects and notify the SHPO and Indian Tribes within 48 hours of the discovery. Construction activities will cease until the adverse effects are mitigated through consultation with the SHPO.

VI. MONITORING AND REPORTING

The South Dakota Department of Veterans Affairs each year following the execution of this MOA until it expires or is terminated, shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the VA's efforts to carry out the terms of this MOA.

VII. DISPUTE RESOLUTION

Should any signatory party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the VA shall consult with such party to resolve the objection. If the VA determines that such objection cannot be resolved, the VA will:

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

C. The 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.

VIII. 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.

IX. 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 parties to attempt to develop an amendment per Stipulation VIII, 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

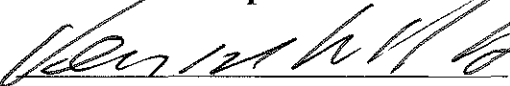
written notification to the other signatories.

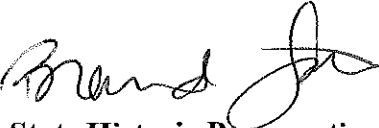
Once the MOA is terminated, and prior to work continuing on the undertaking, the VA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The VA shall notify the signatories as to the course of action it will pursue.

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

SIGNATORIES:

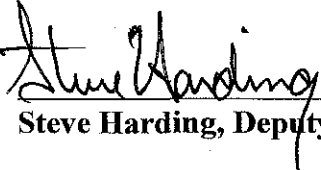
United States Department of Veterans Affairs

 Date 3-16-12
Vernon Wilkes, Director of VA Construction Grant Program

 Brandi Fate
Director, VA-OCAMS
State Historic Preservation Officer

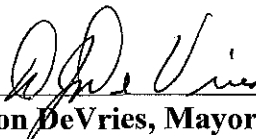
 Date 02-21-2012
Jay D. Vogt, State Historic Preservation Officer

South Dakota Department of Veterans Affairs

 Date 22 Dec. 2011
Steve Harding, Deputy Secretary

INVITED SIGNATORIES:

City of Hot Springs

 Date 12/8/11
Don DeVries, Mayor