

**MEMORANDUM OF AGREEMENT
BETWEEN THE U.S.
DEPARTMENT OF VETERANS
AFFAIRS, NATIONAL
CEMETERY ADMINISTRATION,
AND THE
COLORADO HISTORIC PRESERVATION OFFICER
REGARDING THE
EXPANSION OF THE FORT LOGAN NATIONAL CEMETERY**

WHEREAS, the U.S. Department of Veterans Affairs (VA) National Cemetery Administration (NCA) Fort Logan National Cemetery in Denver, Colorado (VA FLNC), plans to acquire and develop land formerly developed as Fort Logan, as shown in Attachment A, for the purposes of expanding the VA FLNC (undertaking); and

WHEREAS, the area to be acquired is located in the Colorado Mental Health Institute at Fort Logan National Register Historic District (CMHIFL NRHD) and contains the former fort garage/repair shop (Building #180) and gas station (Building #64) which are contributing resources to the CMHIFL NRHD (Attachment B); and

WHEREAS, VA FLNC has defined the undertaking's Area of Potential Effects (APE) as the boundaries of the VA FLNC and the Fort Logan portion of the Colorado Mental Health Institute at CMHIFL NRHD as shown in Attachment C; and

WHEREAS VA FLNC has determined that the undertaking will have an adverse effect on the Colorado Mental Health Institute at Fort Logan National Register Historic District (CMHIFL NRHD), which is eligible for listing in the National Register of Historic Places, and conducted a cultural resources survey in 2017 confirming that no other historic properties are present, and has consulted with the Colorado State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, VA FLNC has determined that the buildings are slated for demolition pursuant to project development at a future time, and therefore the undertaking will have an adverse effect on the CMHIFL NRHD, and has consulted with the SHPO pursuant to Section 106; and

WHEREAS, VA FLNC has consulted with the Apache Tribe of Oklahoma; the Arapaho Tribe of the Wind River Reservation, Wyoming; the Cheyenne and Arapaho Tribes, Oklahoma; the Comanche Nation, Oklahoma; the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; the Ute Mountain Tribe; and the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Southern Ute Indian Tribe requested notification if unexpected discoveries are made during execution of the undertaking; and

WHEREAS, VA FLNC has consulted with Historic Denver, Inc. and the Sheridan Historical

Society regarding the effects of the undertaking on historic properties and has invited them to sign this memorandum of agreement (MOA) as concurring parties; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), VA FLNC 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); and

NOW, THEREFORE, VA FLNC and 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

VA FLNC shall ensure that the following measures are carried out:

- I. **APPLICABILITY**
 - a. The Anti-Deficiency Act, 31 U.S.C. 1341, prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. Accordingly, the parties agree that any requirement for the obligation of funds arising from the terms of this MOA shall be subject to the availability of appropriated funds for that purpose, and that this agreement shall not be interpreted to require the obligation of funds in violation of the Anti-Deficiency Act.
- II. **GENERAL**
 - a. All parties will send and accept official notices, comments, requests for further information and documentation, and other communications required by this MOA by e-mail.
 - b. Time designations are in calendar days. Failure to comment within specified time designations will allow VA FLNC to proceed to the next step in the process as outlined in this MOA.
- III. **MITIGATION**
 - a. VA FLNC will ensure that both Building#180 and #64 are documented as Historic Resource Documentation Level II, as outlined in the March 2013 History Colorado publication #1595, to include to include full descriptive and historical narrative (including relevant context(s), measured drawings, and digital photography, all in archivally stable format.
 - b. When documentation is complete, FLNC and VA Historic Preservation Office will retain copies. A disc and hard copy containing all photographs will be submitted to SHPO for inclusion in the files about the historical significance of the CMHIFL NRHD, and others will be archived locally at the Sheridan Historical Society and the Fort Logan Field Officer's Museum for public access.
- IV. **FUTURE CONSULTATION**
 - a. VA FLNC acknowledges that the Sheridan Historical Society has expressed concerns about future design features, as communicated in their letter dated August 21, 2018, and will continue consultation with them and other consulting parties pursuant to 36 CFR 800.4(b)(2) in order to avoid and/or minimize additional adverse effects to historic properties when the design phase for the expansion area of the VA FLNC has begun.

V. ADMINISTRATION AND DURATION

- a. This MOA will be executed and effective immediately on the date it is filed with the ACHP.
- b. This MOA will be executed in counterparts, with a separate signature page for each Signatory.
- c. This MOA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, VA FLNC may consult with the SHPO to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

VI. POST-REVIEW DISCOVERIES

- a. If properties are discovered that may be historically significant or unanticipated effects on historic properties found during implementation of this MOA, all ground disturbance will stop within 50 feet (15 meters) of the discovery, and the location of the discovery will be marked for avoidance.
 - i. A qualified archaeologist will recommend to VA FLNC whether the discovery is NRHP-eligible by evaluating it in accordance with 36 CFR § 60.4.
 - ii. VA FLNC will submit its finding to the SHPO for review and concurrence via e-mail.
 1. If VA FLNC finds that the archaeological resource is not eligible for the NRHP, and if the SHPO concurs or does not comment within 7 days, construction may proceed.
 2. If VA FLNC finds that the archaeological resource is eligible for the NRHP, and if the SHPO concurs or does not comment within 7 days, VA FLNC will seek to avoid the historic property. If it cannot avoid the resource, VA FLNC will prepare and implement a data recovery plan in consultation with SHPO.
 3. SHPO will have the opportunity to review and comment on reports describing all archaeological work.
- b. If human remains are discovered during construction, VA FLNC will follow procedures consistent with Colorado Revised Statutes Section 24-80-1302. If, upon inspection of the human remains, the Denver County Coroner determines that the remains are of Native American origin, VA shall proceed in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 USC 3001.

VII. MONITORING AND REPORTING

- a. Each 12 months following the execution of this MOA until it is fulfilled, expires or is terminated, VA FLNC 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 VA FLNC's efforts to carry out the terms of this MOA.

VIII. DISPUTE RESOLUTION

- a. Should either signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, VA FLNC shall consult with the SHPO to resolve the objection. If VA FLNC determines that such objection cannot be resolved, VA FLNC will:
 - i. Forward all documentation relevant to the dispute, including the VA FLNC's proposed resolution, to the ACHP. The ACHP shall provide VA FLNC 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 FLNC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, SHPO, and concurring

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

- ii. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, VA FLNC may make a final decision on the dispute and

proceed accordingly. Prior to reaching such a final decision, VA FLNC shall prepare a written response that takes into account any timely comments regarding the dispute from the SHPO and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.

- iii. VA FLNC'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. AMENDMENTS

- a. This MOA may be amended when such an amendment is agreed to in writing by both signatories. The amendment will be effective on the date a copy signed by both signatories is filed with the ACHP.

X. TERMINATION

- a. If either signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatory to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by both signatories) an amendment cannot be reached, either signatory may terminate the MOA upon written notification to the other signatory.
- b. Once the MOA is terminated, and prior to work continuing on the undertaking, VA FLNC 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 FLNC shall notify the SHPO as to the course of action it will pursue.

EXECUTION AND IMPLEMENTATION of this MOA, pursuant to 36 CFR 800.6(c), evidences that FLNC has afforded the ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, that FLNC has taken into account the effects of the Undertaking on historic properties, afforded the ACHP an opportunity to comment, and that FLNC has satisfied its Section 106 responsibilities.

**MEMORANDUM OF AGREEMENT
BETWEEN THE U.S.
DEPARTMENT OF VETERANS
AFFAIRS, NATIONAL
CEMETERY ADMINISTRATION,
AND THE
COLORADO HISTORIC PRESERVATION OFFICER
REGARDING THE EXPANSION OF THE FORT LOGAN NATIONAL CEMETERY**

SIGNATORY:

Department of Veterans Affairs
National Cemetery Administration
Continental District



Director, NCA Continental District

Date 9 May 2019

MEMORANDUM OF AGREEMENT
BETWEEN THE U.S.
DEPARTMENT OF VETERANS
AFFAIRS, NATIONAL
CEMETERY ADMINISTRATION,
AND THE
COLORADO HISTORIC PRESERVATION OFFICER
REGARDING THE EXPANSION OF THE FORT LOGAN NATIONAL CEMETERY

SIGNATORY:

Colorado State Historic Preservation Office

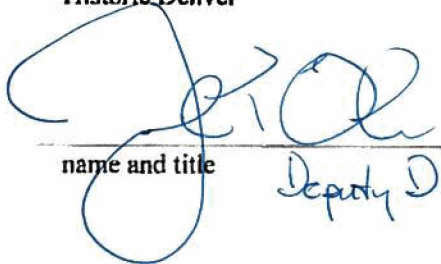

Colorado State Historic Preservation Officer

Date 5/13/19

MEMORANDUM OF AGREEMENT
BETWEEN THE U.S.
DEPARTMENT OF VETERANS
AFFAIRS, NATIONAL
CEMETERY ADMINISTRATION,
AND THE
COLORADO HISTORIC PRESERVATION OFFICER
REGARDING THE EXPANSION OF THE FORT LOGAN NATIONAL CEMETERY

CONCURRING PARTY:

Historic Denver


name and title Deputy Director

Date 6/7/2019

**MEMORANDUM OF AGREEMENT
BETWEEN THE U.S.
DEPARTMENT OF VETERANS
AFFAIRS, NATIONAL
CEMETERY ADMINISTRATION,
AND THE
COLORADO HISTORIC PRESERVATION OFFICER
REGARDING THE EXPANSION OF THE FORT LOGAN NATIONAL CEMETERY**

CONCURRING PARTY:

Sheridan Historical Society



Date

5/28/2019

name and title