

**MEMORANDUM OF AGREEMENT
AMONG THE U.S. DEPARTMENT OF VETERANS AFFAIRS STATE HOME
CONSTRUCTION GRANT PROGRAM,
THE NEW MEXICO STATE HISTORIC PRESERVATION OFFICER,
THE NEW MEXICO GENERAL SERVICES DEPARTMENT,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE NEW MEXICO STATE VETERANS HOME BED REPLACEMENT
PROJECT, TRUTH OR CONSEQUENCES, NEW MEXICO**

WHEREAS, the U.S. Department of Veterans Affairs State Home Construction Grant Program (VA) plans to grant a State Home Construction Grant (FAI No. 35-006) to assist in the financing of the Bed Replacement Project (Project No. 35-006) at the New Mexico State Veterans Home located at 992 South Broadway, Truth or Consequences, Sierra County, New Mexico, (undertaking) to be constructed by the New Mexico General Services Department (NMGSD); and

WHEREAS, VA, pursuant to 36 CFR § 800.3(a), determined that the project to be funded by provision of a State Home Construction Grant constitutes an undertaking, per 36 CFR § 800.16(y), and is the type of activity that has the potential to cause effects on historic properties, and therefore subject to review under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) and its implementing regulations (36 CFR Part 800 – Protection of Historic Properties); and

WHEREAS, the undertaking consists of the construction of six (6) buildings of approximately 7,800 square-feet that will total approximately 46,800 square-feet and house 72 residents; and

WHEREAS, VA has defined the undertaking’s area of potential effects (APE) as described in Attachment 1; and

WHEREAS, NMGSD commenced construction of the undertaking on July 26, 2022, prior to VA review and approval of the grant application, and prior to the initiation of Section 106 review for the undertaking; and

WHEREAS, NMGSD is still in the process of completing the State Veterans Home Construction Grant application, and thus VA has not yet funded the application, and

WHEREAS, VA, in consultation with the New Mexico State Historic Preservation Officer (SHPO), requested guidance from the Advisory Council on Historic Preservation (ACHP) on how to comply with Section 106 for the undertaking on May 31, 2023, to which the ACHP recommended VA first determine if Section 110(k) of the NHPA (54 U.S.C. § 306113) applied to the actions of NMGSD as the grant applicant, pursuant 36 CFR § 800.9(c)(1); and

WHEREAS, VA, pursuant to 36 CFR § 800.9(c)(1), consulted with NMGSD and determined that Section 110(k) of the NHPA is not applicable to the situation, and reinitiated

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consultation for the undertaking pursuant to 36 CFR §§ 800.3 through 800.6 on July 28, 2023; and

WHEREAS, VA has determined, and the SHPO concurred, that the undertaking has resulted in adverse effects to the Carrie Tingley Hospital Historic District, which is listed on the National Register of Historic Places (N.R. 3001546, SR 1835), and has consulted with the SHPO pursuant to 36 CFR Part 800; and

WHEREAS, VA, in accordance with 36 CFR § 800.2(c)(2), initiated consultation with the Comanche Nation of Oklahoma, Fort Sill Apache Tribe of Oklahoma, Hopi Tribe of Arizona, Pueblo of Isleta, Kowa Tribe of Oklahoma, Mescalero Apache Tribe, Navajo Nation, Pueblo of Tesuque, White Mountain Apache Tribe, Ysleta del Sur Pueblo, for which the area has religious and cultural significance, and none of the Tribes chose to participate in consultation; and

WHEREAS, VA, in accordance with 36 CFR § 800.2(c)(3), initiated consultation with the City of Truth or Consequences (City) regarding the effects of the undertaking on historic properties, and the City chose not to participate in consultation; and

WHEREAS, VA, in accordance with 36 CFR § 800.6(c)(4), has consulted with NMGSD regarding the effects of the undertaking on historic properties, and NMGSD has chosen to accept VA's invitation to participate in this MOA as an invited signatory; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), 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, through consultation between the SHPO, ACHP, and NMGSD, several treatment measures were discussed to mitigate the adverse effect; and

NOW, THEREFORE, VA, the SHPO, NMGSD, and the ACHP (signatories) 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 shall ensure the following:

I. ADMINISTRATION

- A. All parties shall send and accept official notices, comments, requests for additional information and/or documentation, draft materials, final deliverables, and all other communications required by this MOA via email.
- B. Time designations in this MOA shall be in calendar days. Failure of any consulting party to respond within the specified comment period shall not preclude VA and NMGSD from implementing measures of this MOA.

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- C. Unless otherwise stated, all periods of review will be thirty (30) calendar days.
- D. For the purposes of this MOA, the definitions provided in 36 CFR § 800.16(a) through (z) inclusive shall apply.
- E. For the purposes of this MOA, the term “signatory” refers to all signatories and invited signatories.
- F. VA shall ensure that federal or contractor staff who meet the applicable Secretary of the Interior’s Professional Qualification Standards for architectural history, history, archaeology, architecture, and and/or historic architecture (36 CFR Part 61; 48 FR 44738-9) participate as required by this MOA.
- G. If NMGSD determines that the undertaking or mitigation measures (Stipulation III) must be modified, it will notify the VA Federal Preservation Officer (FPO). The FPO and NMGSD will consult with the SHPO to determine the effect of such modifications. If the modifications result in additional adverse effects to historic properties or do not adequately mitigate the adverse effects of the undertaking, additional mitigation to resolve adverse effects shall be determined in consultation with the SHPO and appended to this MOA pursuant to Stipulation VIII. All signatories will be informed of the outcome of this consultation.

II. ANTI-DEFICIENCY ACT

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. VA's obligations under this MOA are subject to the availability of appropriated funds, and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act. VA shall make reasonable and good faith efforts to secure the necessary funds to implement this MOA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs VA's ability to implement the stipulations of this MOA, VA shall consult in accordance with the amendment and termination procedures found at Stipulations VIII and IX of this MOA.

III. MITIGATION MEASURES

- A. Revise National Register of Historic Places and New Mexico State Register of Cultural Properties Registration Forms:
 - i. NMGSD shall ensure that the National Register of Historic Places (NRHP) and New Mexico State Register of Cultural Properties Registration Forms (SRCP) Registration form(s) for the Carrie Tingley Historic District are updated, and that these revised Registration form(s) are submitted to appropriate state and federal registers.
 - a. Amendments to the Carrie Tingley Historic District Registration form(s) shall be completed according to the standards of the *How to Complete the*

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National Register Registration Form, National Register Bulletin Guidance: Best Practices Review “Amending National Register Documentation,” (National Register Bulletin Issue 3, April 2023), available at

https://www.nps.gov/subjects/nationalregister/upload/BPR_additional-documentation-2023-04-12-FINAL.pdf, and in consultation with the State and National Register Coordinator at the SHPO.

- b. Updates to the Registration form(s) shall be completed by historic preservation professional(s) meeting the Secretary of the Interior’s Professional Qualification Standards under architectural history or history (Stipulation I(F)).
- c. A draft of the revised Registration form(s) will be prepared and submitted to the SHPO for review and comment by December 1, 2024. SHPO will review and comment within thirty (30) days.
- d. A final version of the revised Registration form(s) incorporating the SHPO comments will be submitted to NMGSD and SHPO by February 28, 2025. The SHPO will submit the revised Registration form(s) to the New Mexico Cultural Properties Review Committee for listing in the SRCP and to the Keeper of the National Register for listing in the NRHP.

B. Mothball Historic Main Hospital Building

- i. The General Services Department (GSD) shall ensure that the Carrie Tingley Hospital Main Building (Main Building) is secured and protected against damage until a preservation plan, management plan, or reuse plan is developed by NMGSD in consultation with the SHPO.
 - a. To achieve such security and protection, NMGSD will ensure a written security and protection plan (mothballing plan) for the Main Building is prepared by a historic preservation professional(s) meeting the Secretary of the Interior’s Professional Qualification Standards under historic architecture (Stipulation I(F)).
 - b. This mothballing plan will use recommended procedures from the National Park Service’s *Preservation Brief #31: Mothballing Historic Buildings* (Department of the Interior, National Park Service, 1993, available at <https://www.nps.gov/orgs/1739/upload/preservation-brief-31-mothballing-buildings.pdf>).
 - c. The mothballing plan shall include a routine maintenance chart and facilities checklist that will be incorporated into NMGSD project workflows. A draft mothballing plan will be submitted to SHPO for review and comment by July 1, 2024. SHPO will review and comment within thirty (30) days.
 - d. NMGSD shall monitor and protect the Main Building in accordance with the mothballing plan while the agency is preparing for future use of the building.
 - e. A final version of the mothballing plan incorporating the SHPO comments will be submitted by September 1, 2024.

C. Historic Cultural Property Inventory (HCPI) Forms

- i. NMGSD shall ensure the submittal of an inventory of historic State-owned cultural properties managed and/or maintained by NMGSD to SHPO.
 - a. The inventory will be submitted within two (2) years of the execution of this MOA.
 - b. The inventory shall consist of completed HCPI forms (current digital version with supporting documentation) for State-owned buildings, sites (excluding archaeological sites), structures, and objects 45-years old or older which are managed or maintained by NMGSD.
 - c. HCPI forms must be prepared by historic preservation professional(s) meeting the Secretary of the Interior's Professional Qualification Standards under architectural history or history (Stipulation I(F)).
 - d. Draft HCPI forms and required supporting documentation shall be submitted to the SHPO for review and comment by October 1, 2025. SHPO will review within thirty (30) days.
 - e. Final HCPI forms incorporating the SHPO's comments shall be submitted to the SHPO in digital format and uploaded into the New Mexico Cultural Resources Information System (NMCRIS) system by December 31, 2025.

D. Section 106 Training Manual for NMGSD Facilities Personnel

- i. NMGSD shall ensure a written training manual for projects involving historic properties is developed and utilized by all facilities personnel.
 - a. The training manual shall include the historic properties review process and information requirements under state and federal historic preservation laws.
 - b. The full contents of this training manual will be determined in consultation with the SHPO by June 1, 2024. At minimum, the training manual shall include the basic processes and procedures of project review and consultation with the SHPO under the National Historic Preservation Act of 1966, as amended, and the New Mexico Cultural Properties Act (Sections 18-6 through 18-6-23, NMSA 1978).
 - c. A draft of the training manual will be submitted to SHPO for review and comment by September 1, 2024. SHPO will review and comment within thirty (30) days.
 - d. A final version of the training manual will be submitted to SHPO by December 1, 2024.

IV. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, VA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

V. POST-REVIEW DISCOVERIES

If properties are discovered that may be historically significant or unanticipated effects on historic properties found, NMGSD shall immediately halt activities within twenty (20) meters of the property. NMGSD shall immediately inform the VA FPO of the discovery. If human remains are found, NMGSD shall follow New Mexico reporting and assessment standards as well as inform the VA FPO of the discovery.

For all post-review discoveries, NMGSD shall notify VA and VA shall comply with 36 C.F.R. 800.13(b) by notifying the signatories to this MOA. The notification shall include a description of unanticipated effects, an eligibility recommendation, or a proposed schedule for assessing eligibility, and, if appropriate, a process to resolve potential adverse effects. Signatories to this MOA shall provide NMGSD and VA with comment within fifteen (15) days of receiving adequate documentation.

VI. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, NMGSD shall provide all signatories to this MOA and the VA FPO a summary report (annual report) detailing work undertaken pursuant to its terms. Such report shall include the status of the undertaking, scheduling changes, problems encountered during the reporting period, status of stipulated items in this MOA including training of NMGSD staff, status of proposed amendments to this MOA, and any disputes and objections received in NMGSD's efforts to carry out the terms of this MOA.

NMGSD shall coordinate a meeting with all signatories and the VA FPO to be scheduled within ninety (90) days of distribution of the annual report, or another mutually agreed upon date, to discuss activities carried out pursuant to this MOA during the preceding year and activities scheduled for the upcoming year. This meeting, should it be deemed unnecessary, may be cancelled by mutual consent of the signatories to this MOA.

VII. DISPUTE RESOLUTION

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:

- A. 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.

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- B. 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.
- C. 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 signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days 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, 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.

X. CONFIDENTIALITY

NMGSD acknowledges that the historic properties covered by this MOA are subject to the provisions of § 304 of the NHPA relating to the disclosure of archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are consistent with said sections.

Execution of this MOA by the VA, the SHPO, NMGSD, and the ACHP 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.

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SIGNATORIES:

U.S. Department of Veterans Affairs State Home Construction Grant Program



Anna Gaug, Program Manager

Date: 10/17/23

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SIGNATORIES:

New Mexico Historic Preservation Officer



Dr. Jeff Pappas, State Historic Preservation Officer

Date: 10/17/2023

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SIGNATORIES:

Advisory Council on Historic Preservation



Reid J. Nelson, Executive Director

Date: November 2, 2023

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INVITED SIGNATORIES:

State of New Mexico General Services Department

Anna Silva

Anna Silva, Deputy Cabinet Secretary

Date: 10/17/2023

ATTACHMENT 1: Area of Potential Effect (APE)



**FAI 35-006: Bed Replacement, T or C , NM
Area of Potential Effect outlined in red**

