

**MEMORANDUM OF AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE
NEW JERSEY STATE HISTORIC PRESERVATION OFFICE
AND
CAPITAL HEALTH SYSTEM, INC.
REGARDING THE CONSTRUCTION OF THE CAPITAL HEALTH SYSTEM
HOSPITAL ON SOUTHFIELDS PHASE II, HOPEWELL TOWNSHIP,
MERCER COUNTY, NEW JERSEY**

WHEREAS, Capital Health System, Inc. proposes the construction of a new hospital and associated office building along with associated roadways, parking areas, utilities, and drainage basins on portions of the Southfields Phase II tract in Hopewell Township, Mercer County, using a mortgage insured by the United States Department of Housing and Urban Development (HUD); and

WHEREAS, on behalf of HUD, the consultant for Capital Health System, Inc. has consulted with the New Jersey Historic Preservation Office (HPO) to determine the Area of Potential Effects (APE); to identify significant, National Register eligible or listed properties; and to assess the effects of the project on those properties pursuant to the requirements of 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, HUD has determined in consultation with the HPO that the Hart Farmstead Site (28-Me-370), located within the APE, is eligible for listing in the National Register of Historic Places. Mr. Daniel D. Saunders, Acting Administrator and Deputy State Historic Preservation Officer concurred with this assessment in a review letter dated January 22, 2009, based on the following report:

“Phase II Archaeological Survey, Hart Farmstead Site (28-Me-370), Southfields Phase II, Township of Hopewell, Mercer County, New Jersey” by Richard Grubb & Associates, Inc. (November 2008).

WHEREAS, HUD has determined in consultation with the HPO that the construction of the proposed project will adversely affect the Hart Farmstead site (28-Me-370); and

WHEREAS, HUD has considered alternatives to the chosen design for the Capital Health System Hospital and determined that it is not feasible to implement alternatives involving avoidance or minimization of impacts. The chosen alternative contains measures to mitigate adverse effects to the Hart Farmstead site (28-Me-370) as presented in the following reports:

“Analysis of Alternatives to Avoid or Minimize Adverse Effects on the Hart Farmstead Site (28-Me-370), Capital Health System, Incorporated, Replacement Hospital, Hopewell Township, Mercer County” by Van Note-Harvey Associates, PC (February 17, 2009)

“Capital Health System (CHS)-Replacement Hospital, Discussion of Costs Associated With Recovery of Artifacts, Hart Farmstead Site (28-Me-370)” by Van Note-Harvey Associates, PC (February 24, 2009)

WHEREAS, the New Jersey HPO concurred in a review letter dated February 27, 2009 that archaeological data recovery is an appropriate means to mitigate the adverse effects on the Hart Farmstead site; and

WHEREAS, Capital Health System, Inc. on behalf of HUD, invited organizations and individuals with an identified interest in history or historic preservation via mail to comment on the proposed project through a Consultation Party letter dated June 13, 2008. No opposition to the project based on cultural resource issues was raised during outreach efforts; and

WHEREAS, HUD and Capital Health System, Inc. have participated in the consultation and have been invited to concur in the MOA; and

WHEREAS, the Advisory Council on Historic Preservation was notified of the adverse effect March 10, 2009 and has declined to participate in the consultation process in a letter dated **March 17, 2009**;

WHEREAS, the consulting parties agree that it is in the public interest to expend funds to implement this project through the recovery of significant information from archaeological sites; and

WHEREAS, the consulting parties agree that recovery of significant information from the Hart Farmstead Site (28-Me-370) may be done in accordance with the published guidance; and

WHEREAS, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work; and

NOW, THEREFORE, HUD and the New Jersey HPO 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 in compliance with the National Historic Preservation Act (16 U.S.C. 470).

STIPULATION

HUD will ensure that the following tasks are carried out:

1. Archaeological Data Recovery (Phase III) at 28-Me-370

- a. HUD and Capital Health System, Inc. shall ensure that the attached archaeological work plan (Revised Work Plan, Phase III Archaeological Data Recovery, Hart Farmstead Site [28-Me-370], dated March 4, 2009; Appendix A) is implemented prior to and in coordination with those project activities that could disturb the significant portions of the Hart Farmstead Site (28-Me-370).
- b. Capital Health System, Inc. shall ensure that the draft Phase III archaeological data recovery report will be prepared and submitted for review within 12 months of the completion of fieldwork.

c. Capital Health System, Inc. shall ensure that all records resulting from the archaeological investigations conducted at 28-Me-370 are curated in accordance with 36 CFR Part 79, and that all materials resulting from the archaeological investigations of 28-Me-370 are maintained in accordance with 36 CFR Part 79 until their analysis is complete.

d. Capital Health System, Inc. shall ensure that all final archaeological reports resulting from actions pursuant to this agreement will be provided to the HPO and, upon request, to interested parties.

e. Upon completion of the field investigations specified in this agreement, and the NJ HPO receives and approves Richard Grubb's brief archaeological status letter as defined in Appendix A, Capital Health System, Inc. may proceed with development activities in areas of 28-Me-370 affected by this agreement.

PROFESSIONAL QUALIFICATIONS

Capital Health System, Inc. shall ensure that the archaeological investigation and reviews carried out pursuant to this agreement are carried out by or under the direct supervision of a person or persons meeting at a minimum, the appropriate standards set forth in the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739).

ADMINISTRATIVE CONDITIONS

1. Dispute Resolutions

Should the SHPO or the Advisory Council object within 30 days to any information provided for review or action pursuant to this agreement, HUD shall consult with the objecting party to resolve the objection. If HUD determines that the objection cannot be resolved, HUD shall forward all documentation relevant to the dispute to the Advisory Council. Within 30 days after the receipt of all pertinent documentation, the Advisory Council will either provide HUD with recommendations, which HUD will take into account in reaching a final decision regarding the dispute, or the Advisory Council will notify HUD that it will comment pursuant to CFR 800.6(b). Any Advisory Council comment provided in response to such a request will be taken into account by HUD in accordance with 36CFR 800.6(c)(2) with reference only to the subject of the dispute; HUD's responsibility to carry out all actions under this agreement that are not the subject of this dispute will remain unchanged.

2. Notification of Start of Work

Capital Health System, Inc. shall provide 15 days advanced written notification to HUD and to NJHPO of the start of archeological field work.

3. Completion of Work in a Timely Manner

Archeological field investigations required by Stipulation 1a shall be completed prior to the start of construction activities within the Hart Farmstead Site (28-Me-370). Capital Health System, Inc. shall provide notification to HUD and NJHPO within 15 days of the completion of the archeological field work in accordance with Appendix A.

4. Documentation of Satisfaction of Stipulations

Capital Health System, Inc. shall submit a report demonstrating satisfaction of the requirements of Stipulation 1a and 1b of this agreement to the NJHPO, and HUD within one year of the completion of archaeological fieldwork.

Execution of this Memorandum of Agreement by HUD, the SHPO, and Capital Health System, Inc. and implementation of its terms, is evidence that HUD has taken into account the effects of the undertaking on historic properties.

5. Sunset Clause

This agreement shall be null and void if its terms are not carried out within 5 (five) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: Walter E. Kreher Date: 3-29-09
Walter E. Kreher
Director, Newark Multifamily Program Center

NEW JERSEY HISTORIC PRESERVATION OFFICE

By: D. Saunders Date: 3/23/09
Daniel D. Saunders
Acting Administrator and Deputy State Historic Preservation Officer

CAPITAL HEALTH SYSTEM, Inc.

By: Larry DiSanto Date: 3/23/09
Larry DiSanto
Executive Vice President and Chief Operating Officer, Capital Health System, Inc.