

FEMALE MENTAL HEALTH  
BUILDING BATAVIA

August 19, 2011

MEMORANDUM OF AGREEMENT  
AMONG THE U.S. DEPARTMENT OF VETERANS AFFAIRS,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING CONSTRUCTION OF A NEW FEMALE MENTAL HEALTH BUILDING FOR  
THE WESTERN NEW YORK HEALTHCARE SYSTEM AT BATAVIA, NEW YORK

WHEREAS, the U.S. Department of Veterans Affairs (VA) proposes to construct a new female mental health building (the Project) for the Western New York Healthcare System at Batavia, New York, as described in the document entitled "Expand Female Mental Health Program, Western NY Healthcare System at Batavia," dated July 28, 2010, by Cannon Design (Attachment 1); and

WHEREAS, the VA has established the Project's area of potential effects (APE), as defined in 36 CFR 15 800.16(d), to be the boundaries of the historic district, including existing Buildings 7, 8, and 19; and

WHEREAS, Buildings 7, 8, and 19 and their setting contribute to the historical significance of the Batavia Veterans Affairs Medical Center (VAMC) historic district, a property that has been determined eligible for inclusion in the National Register of Historic Places (refer to figure 1); and

WHEREAS, the VA has determined that the Project would have adverse effects on the historic district by virtue of requiring demolition of Buildings 7 and 8; and

WHEREAS, the VA has considered alternatives to siting the Project on the location of Buildings 7, and 8, as discussed in the document entitled "Site Selection Report" (Attachment 2), and has decided to relocate the Project behind Buildings 7 and 8, partially on land currently occupied by Building 19 (refer to figure 2); and

WHEREAS, the VA has determined that the revised project site will have fewer adverse effects on the historic district by virtue of requiring demolition of one building, number 19, whose architectural integrity has been compromised, rather than two intact Buildings, numbers 7 and 8; and

WHEREAS, the New York State Office of Parks, Recreation and Historic Preservation acts as the State Historic Preservation Officer for the State of New York (SHPO) pursuant to National Historic Preservation Act (NHPA) § 101(b)(1); and

WHEREAS, the VA has consulted with the Seneca Indian Nation, the City of Batavia, New York, and the Advisory Council on Historic Preservation (ACHP) in accordance with Section 106 of the NHPA, 16 U.S.C. § and its implementing regulations (36 CFR Part 800.6(b) (2)) to resolve the adverse effects of the Project on historic properties; and

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WHEREAS, pursuant to 36 CFR 800.6(c) (3) VA has invited the Seneca Indian Nation and the City of Batavia to concur in this MOA, and they have agreed to be concurring parties OR have elected not to consult; and

WHEREAS, the VA, in consultation with the SHPO, the Seneca Indian Nation, and the City of Batavia has determined that the construction of the Project is unlikely to disturb any archaeological resources;

NOW, THEREFORE, the VA, the SHPO, and the ACHP agree that upon VA's decision to proceed with the Project, VA shall ensure that the following stipulations are implemented in order to take into account the effects of the Project on historic properties, and that these stipulations shall govern the Project and all of its parts until this MOA expires or is terminated.

### Stipulations

The VA shall ensure that the prior to construction the following stipulations are implemented:

1. The VA will maintain the roofs and exteriors of Buildings 7 and 8 in a manner consistent with the recommended approaches to rehabilitation in the *Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings* (<http://www.nps.gov/hps/tps/tax/rhb/index.htm>) and will seek ways to use the buildings or make them available for adaptive use in accordance with Sections 110(a)(1) and 111 of the NHPA.
2. Pursuant to Section 110(b) of the National Historic Preservation Act, the VA will document Building 19 prior to its demolition, and provide this documentation to the SHPO. Documentation will comprise pre-demolition high-resolution digital photography of all sides of the building and it's interior.
3. The VA will ensure that the new female mental health building is compatible with the architectural character of the VAMC historic district in terms of scale, massing, color, and materials, and is responsive to the recommended approaches to new construction set forth in the *Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings* <http://www.nps.gov/hps/tps/tax/rhb/index.htm>. The VA will ensure that the grounds surrounding the new structure are designed in keeping with the style and plant materials representative of the original landscape in the historic district. The VA will submit 90 % drawings and specifications for the project to the SHPO for review and comment and will ensure that any SHPO comments are addressed in the final documents.
4. Dispute Resolution
  - A. If any Consulting Party objects in writing with regard to the implementation of stipulations of this MOA, the VA will consult with the objecting party (ies) within 30 days of receipt of the objection. The VA will attempt to resolve the objection through consultation with the objecting party (ies), and, as necessary, other parties to this MOA.

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- B. *If resolution is obtained*, the VA will so notify all consulting parties, and absent timely objection, implement this MOA in accordance with the terms of the resolution.
  - C. *If resolution is not reached*, the VA will forward all documentation relevant to the objection to the ACHP and request ACHP's assistance in accordance with 36 C.F.R. §800.2(b) (2). Any advisory comments provided by the ACHP and all comments from consulting parties will be taken into account by the VA in making its final decision regarding the objection.
  - D. VA will provide a copy of its final decision regarding the objection to all signatories and consulting parties within 30 days of making the decision.
5. Amendments
- A. If any of the signatories to this MOA believes that an amendment is necessary, that party will inform the other consulting parties in writing and state the reason for the proposed amendment. The VA will consult with the consulting parties to determine the need and nature of the amendment and if it is warranted. Amendments will be developed in accord with 36 CFR §800.6(c) (7).
  - B. If an amendment cannot be agreed upon, the dispute resolution process in Stipulation 4 will be followed.
6. Termination
- A. If the VA cannot implement the terms of this MOA, or the SHPO or the ACHP determines the MOA is not being properly implemented, any of these signatories may propose that the MOA be terminated. The signatory proposing termination will notify in writing all other consulting parties to this MOA and explain the reason(s) for the proposed termination. Within 15 working days, all parties will consult to seek alternatives to termination.
  - B. Should such consultation fail, the VA, the SHPO or the ACHP may terminate this MOA by notifying the other consulting parties.
  - C. If the MOA is terminated, the VA will either consult in accordance with 36 CFR §800.6 to develop and execute a new MOA or request the comments of the ACHP pursuant to 36 CFR §800.7.
7. Duration
- This MOA will expire if its terms are not implemented with three (3) years from the date of its execution unless the signatories agree in writing to an extension. Six (6) months prior to the date of such expiration, should it appear that the terms of this MOA will not be implemented by such date,, VA will consult with the other consulting parties and

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interested members of the public to determine the appropriate course of action in order to remain in compliance with Section 106 of the National Historic Preservation Act.

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

U.S. DEPARTMENT OF VETERANS AFFAIRS

By: *Jason C. Petti* Date: 8-23-2011  
Jason C. Petti MSHA, VHA-CM, Interim Medical Center Director

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: *Ruth Pierpont* Date: 9/9/11  
Ruth Pierpont, Acting Deputy Commissioner  
New York State Office of Parks, Recreation and Historic Preservation

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *John M. Fowler* Date: 9/22/11  
John Fowler, Executive Director.

CONCUR:

SENECA NATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Barry E. Snyder Sr., President  
Seneca Nation of Indians

CITY OF BATAVIA, NEW YORK

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Joan Barton, Chairperson  
Batavia Historic Preservation Commission

