

**MEMORANDUM OF AGREEMENT**  
**AMONG THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS**  
**DAYTON MEDICAL CENTER,**  
**THE OHIO STATE HISTORIC PRESERVATION OFFICER, AND**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**REGARDING**  
**CONSTRUCTION OF A SMALL HOME COMMUNITY LIVING CENTER BUILDING,**  
**THE VA MEDICAL CENTER, DAYTON, MONTGOMERY COUNTY, OHIO**

**WHEREAS**, the Department of Veterans Affairs Medical Center in Dayton (Dayton VAMC) proposes to construct a new Small Home Community Living Center (CLC) single story building for Veterans on the campus of the Dayton VAMC, described below and collectively referred to as the 'Undertaking'; and

**WHEREAS**, the Undertaking consists of: Site work for the building, roads and utilities, and the construction of a new 12 bed CLC; and

**WHEREAS**, pursuant to 36 CFR § 800.3(a), Dayton VAMC has determined that this proposed project constitutes an undertaking and has consulted with the Ohio State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and its implementing regulations (36 CFR 800); and

**WHEREAS**, Dayton VAMC has defined the undertaking's Area of Potential Effects (APE) as an approximately 11-acre area in the southern portion of the Dayton VAMC campus, located along an extension of Illinois Avenue to the south of Building 226 and immediately to the southeast of Building 227; and

**WHEREAS**, the Dayton VAMC was listed on the National Register of Historic Places (NRHP) in 2004 as the Central Branch for the National Home for Disabled Volunteer Soldiers (REF # 03001412) for its significance in local and state history, and was designated a National Historic Landmark (NHL) in 2012 for its national importance in the administration of Veterans Affairs; and

**WHEREAS**, Dayton VAMC provided the public with information about the undertaking and its effects on historic properties and sought public comment and input, consistent with 36 CFR § 800.2(d); and

**WHEREAS**, in accordance with 36 CFR § 800.3(f), Dayton VAMC invited the following to be consulting parties: Preservation Ohio, Heritage Ohio, the American Veterans Heritage Center (AVHC), and the City of Dayton; and the City of Dayton expressed interest in participating in the consultation; and

**WHEREAS**, pursuant to 38 CFR § 800.5(d), Dayton VAMC has determined that this undertaking will have an adverse effect on the Dayton VAMC Campus, requiring consultation to explore alternatives that would avoid, minimize or mitigate the adverse effect; and

**WHEREAS**, pursuant to 36 CFR § 800.10, Dayton VAMC has invited the National Park Service Midwest Region (NPS) to participate in this consultation, and NPS has elected to participate; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), Dayton VAMC has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen to participate in consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**WHEREAS**, Dayton VAMC, the SHPO, the NPS, and the ACHP have consulted and reached agreement on how to resolve the adverse effect of the Undertaking;

**NOW, THEREFORE**, it is mutually agreed that Dayton VAMC will implement the following stipulations in order to resolve the adverse effect of the Undertaking.

### **STIPULATIONS**

Dayton VAMC shall ensure that the following measures are carried out as mitigation for the adverse effect:

## **I. Landscaping Buffer**

- A. Dayton VAMC will plan for and install landscaping to minimize the visual impact of the new CLC building being constructed currently. Dayton VAMC will submit a plan for the landscaping to the signatories and NPS for their review and comment prior to installation of the final landscaping. The signatories of this Memorandum of Agreement (MOA) and NPS shall have thirty (30) days to provide comments to the submitted plan.

## **II. Ohio Historical Marker**

- A. Dayton VAMC will work with the Local History Services Department of the Ohio History Connection (OHC) and incur the costs to write and produce an Ohio Historical Marker about one or more aspects about the history of the Dayton VAMC and its significance. Dayton VAMC will submit their proposed text for the marker to OHC by the deadline of July 1, 2020. (OHC Local History Services staff reserves the right to defer the Dayton VAMC to the next year if requirements are not submitted by the deadline). The exact location of the marker will be consulted on by all signatories and NPS. The signatories and NPS will have thirty (30) days to review and make comments on the location of this marker. Dayton VAMC will consider these comments and inform signatories and NPS of its decision.

## **III. Archaeological Report Finalization**

- A. Dayton VAMC will work with an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards in Archeology to finalize the Ohio Archaeological Inventory (OAI) from the 2014 Archaeological Resource Survey. This will be awarded by Dayton VAMC by December 31, 2020. The site numbers are 33MY0903-33MY0917. They are recorded in the report, Phase I Archaeological Resource Survey of the Dayton VA Medical Center, Dayton, Montgomery County, Ohio by Robert Ramirez and Patrick Thompson, Labat Environmental, Inc. May 23, 2014.



#### **IV. Site Work Monitoring**

- A. Dayton VAMC will retain the services of an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards in Archeology to monitor ground disturbing activity associated with the Undertaking. The archaeologist will observe the work and have access to the site to document and record any materials found. Any artifacts noted will be removed from the site by the archaeologist, documented and be provided to the Dayton VAMC Archivist.
- B. If properties are discovered that may be historically significant or unanticipated effects on historic properties found, Dayton VAMC shall follow the steps in 36 CFR § 800.13(b).

#### **ADDITIONAL PROVISIONS**

##### **1. Anti-Deficiency Act**

- A. Dayton VAMC'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. Dayton VAMC 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 Dayton VAMC's ability to implement the stipulations of this agreement, Dayton VAMC shall consult in accordance with the amendment and termination procedures found at Additional Provision 3 and 5 of this agreement.

##### **2. Resolving Objections**

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

- A. Forward all documentation relevant to the dispute, including Dayton VAMC's proposed resolution, to the ACHP. The ACHP shall provide Dayton VAMC 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, Dayton VAMC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories and provide them with a copy of this written response. Dayton VAMC 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, Dayton VAMC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Dayton VAMC shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA, and provide them and the ACHP with a copy of such written response.
- C. Dayton VAMC'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.

### 3. Amendments

Any signatory to this MOA may propose to Dayton VAMC that the MOA be amended, whereupon Dayton VAMC will consult with the other signatories to consider such an amendment. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

### 4. 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, Dayton VAMC may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Additional Provision 3, above.

### 5. Termination

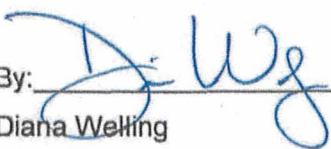
If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Additional Provision 3 above. If within thirty (30) days (or another time period agreed to by all signatories) 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, Dayton VAMC 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. Dayton VAMC shall notify the signatories as to the course of action it will pursue.


Execution and submission of this MOA, and implementation of its terms evidence that Dayton VAMC has afforded the ACHP an opportunity to comment on the Construct CLC Single Story Building project and its effects on historic properties, and that Dayton VAMC has taken into account the effects of the undertaking on historic properties.

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**SIGNATORIES:**

By:  Date: 2-6-20  
J. Thomas Hardy, D.O.  
ACTING DIRECTOR, U.S. DEPARTMENT OF VETERANS  
AFFAIRS MEDICAL CENTER, DAYTON, OHIO  
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By:  Date: 2/14/2020  
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By:  Date: 3/3/20  
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